

## Fact Sensitivity Again

Matthew Noah Smith

Yale University

||DRAFT – please do not cite or distribute without author’s permission||

3/2/09 3:39 PM

### 1. Introduction

Do contingent facts that are not intrinsically normative— facts about geography, physics, biology, sociology, psychology, and history, for example – limit fundamental political principles? By fundamental political principles (or just principles), I mean principles that do not depend upon another principle for their justification. Exactly how a fact might limit political principles I shall leave largely as an open question for the time being, but a formal account would be useful to give some substance to the notion of the *fact-sensitivity of political principles*. The formal account I shall assume is the following: facts limit a political principle when changing those facts changes the content of the political principle. For example, a principle of justice would be fact-sensitive if at least some of its content would be different if, for example, human beings were omniscient.

One view, which we might think of as the Platonic view, is that principles are not fact-sensitive. On the Platonic view, principles are pretty much like mathematical truths that we can access through some form of idealized rational reflection. Another view, which we might think of as the Aristotelian view, is that principles are quite fact-sensitive. On this view, the contents of fundamental principles almost entirely depend

upon how human beings in fact are. Thus, we cannot know these principles without knowing, for example, a great deal about the biology of human beings.<sup>1</sup>

Given these two examples of positions on the spectrum of fact-sensitivity, we can discern three questions associated with the fact-sensitivity of principles:

1. Are fundamental principles fact-sensitive?
2. If so, then to what facts are these principles sensitive?
3. Given fact-sensitivity and the facts to which a principle is sensitive, what is the precise nature of the dependency relationship?

This paper is concerned with (1) only. In particular, I argue that, contra G.A. Cohen's recent arguments,<sup>2</sup> principles *might* be fact-sensitive; and I argue that they might be fact-sensitive in virtue of certain *conceptual* requirements. If I suggest a way to establish that fundamental principles are fact-sensitive, then questions (2) and (3) become quite pressing.

## 2. Cohen's Objection

John Rawls famously held that principles are fact sensitive. In *Theory of Justice* Rawls argues that the decision procedure by which the principles of justice are determined is one in which parties take into consideration a fair bit of empirical data.<sup>3</sup>

---

<sup>1</sup> One might argue that Aristotle endorses a Platonic principle in the sense that he treats the following as the ultimate principle: Flourishing is the ultimate good and it is what must be promoted in all political orders. This principle, though, would be an almost contentless since according to Aristotle what counts as flourishing is specified by appeal to human capacities.

<sup>2</sup> In "Facts and Principles" and *Rescuing Justice and Equality* (RJE).

<sup>3</sup> CITE

And, in *Political Liberalism*, the fact of reasonable pluralism drives a great deal of the theory.<sup>4</sup>

But one might ask: why are the principles of justice fact-sensitive? And, why are they sensitive to the facts to which Rawls takes the principle to be sensitive? For example, Rawls asserts that data about how economies function will play a role in determining what the principles of justice are, but he denies that data about how risk-averse human beings are should play a role in determining such principles (Rawls assumes that human beings would be quite risk averse when reasoning from the original position, but not on any empirical grounds). If we can assume a certain ideal form of rational agency (i.e., risk-aversion under uncertainty), why can we *also* assume that economies function as they in fact function even though *that* presumes mass irrationality (e.g., market failures are often the products of risk-*friendliness* under uncertainty). Insofar as we see some facts playing certain roles and others playing no role at all in the construction of principles of justice, then we may ask if there is an ultimate principle directing the application of facts in this theory construction?

These are just the sorts of questions that Cohen asks of constructivist theories of justice and Rawls' theory, in particular. Cohen argues a careful interrogation of the grounds of the supposedly fact-sensitive principles of justice Rawls puts forward will reveal that they gain their plausibility from fact-*insensitive* principles.<sup>5</sup> Cohen's argument for this claim is quite straightforward:

---

<sup>4</sup> CITE

<sup>5</sup> See fn 2.

1. Whenever a fact F confers support on a principle P, there is an explanation why F supports P, an explanation why any ground grounds what it grounds.
2. The explanation whose existence is affirmed in the first premise invokes or implies a more ultimate principle, commitment to which would survive denial of F, a more ultimate principle that explains why F supports P.
3. This move from principle to fact to principle to fact cannot go on indefinitely.  
  
So,
4. Every fact-sensitive principle reflects a fact-insensitive principle.<sup>6</sup>

But, this argument fails. Although I have doubts about other premises in the argument, I shall focus my objection on Premise 2.<sup>7</sup>

To show this, let us consider Cohen's 'argument' for Premise 2:

---

<sup>6</sup> This is drawn, almost verbatim, from pp. XX in RJE.

<sup>7</sup> The first premise is an interesting version of Leibniz's celebrated Principle of Sufficient Reason (PSR). The premise denies that there can be brute "support" relations between a reason and what that reason is a reason for. Cohen presents this as an unproblematic premise, but it is insidiously self-undermining. For, as it is stated, it invites us to ask of any reason (r1) given as support for the premise (p): why does r1 ground p (alternatively: why (r1Gp))? And the answer to that question involves the provision of a new form of reason (r2) of the form: r2G(r1Gp). Thus, we may ask: why r2G(r1Gp)? The answer: some new reason, r3 grounds [r2G(r1Gp)]: r3G[r2G(r1Gp)]. Thus we ask: why r3G[r2G(r1Gp)]? The answer: some new reason, r4, grounds r3G[r2G(r1Gp)]: r4G( r3G[r2G(r1Gp)]). And so on. So, Cohen *must* want to restrict the relations that need explanation to relations between facts and principles. But, what justifies this restriction? What is behind the PSR is a demand for explanation *tout court*, not just a demand for explanations of the relationships between facts and principles.

“For this second premise, my defense is simply to challenge anyone who disagrees to provide an example in which a credible and satisfying explanation of why some F supports some P invokes or implies no such more ultimate principle.”  
(p. XX in RJE)

In this paper, I take up this challenge.

### 3. Conceptual Truths About Principles

Consider belief. It has been claimed that, as a conceptual matter, belief aims at the truth. On this view, it is a constitutive feature of belief that it aims at the truth; this, though, is not a principle about what *believers* ought to do (i.e., it does not say that *we* ought to have true beliefs). It is only a necessary (=essential) feature of belief: a mental state that ceases to aim at the truth is not a broken belief; it is a mental state that ceases to be a belief. (On the other hand, if there are such things as broken beliefs, then beliefs that fail to be true are the ones that are broken.) Note that we do not need to appeal to any ultimate principle about the cognitive or psychological architecture of human beings to get at this fact about belief. It simply is a conceptual truth about belief. Thus, any theory of belief must mention how belief aims at the truth if it is to be a theory of belief and not, e.g., a theory of presupposition or desire.

Turning now to the question at hand, let us ask the following: What if it were a conceptual truth about some fundamental political principle, e.g., a principle of justice, that if it were realized in an actual society, then the society would be stable? This truth would *not* be a normative principle in itself in the sense of it being a normative principle

picking out stability as a value. It is simply a conceptual truth about justice that if it were ever realized in a society, that society would be stable. It could even be the case – or at least Cohen would have to allow that it could be the case – that stability is *disvaluable* (e.g., because it might make creativity impossible) while at the same time being a necessary component of just societies in virtue of their being just.<sup>8</sup> But, in order to determine what principles of justice will ensure stability in an actual society, we must appeal facts about the actual society, or at least to facts about how societies could be, which are contingent, non-normative facts. Thus, the principle of justice would be fact-sensitive.

In this way, it could be the case that the requirements for a successful account of a principle are determined by conceptual factors that cannot be delinked from the principle that is itself the focus of inquiry and so by factors that are not associated in a meaningful way with some more ultimate principle. For example, what makes some principle of justice a principle of *justice* and not, e.g., an aesthetic principle, are features that a principle of justice has as a matter of conceptual truths about justice. We can see this particularly clearly when it comes to *fundamental* principles. For, what it is for some principle to be the principle that it cannot depend upon a more fundamental principle except on pain of regress. What it is for a fundamental principle to be the principle that it is must depend upon factors that are conceptually internal to the principle itself, on pain of fundamentality becoming an impossible feature for our political principles to possess.

---

<sup>8</sup> To see why Cohen must allow this, note that he affirms a pluralism of political values such that justice is one of many and not the sovereign political value. CITE

Just this sort of argument, in fact, is one that Cohen gives against Rawls at a later point in his book.<sup>9</sup> Cohen charges Rawls with, in effect, conceptual confusion when he presents the principles that reasoners in the original position choose as principles of *justice*. Cohen argues that the principles chosen in the original position are principles of regulation (alternatively called “all-things considered best principles to live by”) and not principles of justice. Cohen writes:

“My objection to that identification is that, simply because they *are* the *all*-things considered best principles to live by, optimal all-things-considered principles are therefore not necessarily the best principles considered from the point of view of justice alone.” (RJE 275 – italics in the original)

This point makes sense if we can find some gloss of “from the point of view of justice alone.” And, the most natural gloss is to treat this “point of view” as defined by conceptual truths about justice: the point of view is thereby defined as that which concerns justice and justice alone *as a conceptual matter*. So, when Cohen objects to the Rawlsian decision procedure, he is objecting to a decision procedure infected with conceptual confusion – confusion that leads choosers in that decision procedure to mistake certain matters as justice-related as a matter of conceptual truth, when in fact these matters are justice-related only contingently. Thus, Cohen writes

“Rawlsians believe that the correct answer to the question “What is justice?” is identical to the answer that specially designed choosers, the denizens of the

---

<sup>9</sup> CITE.

Rawlsian original position, would give to the question “What general rules of regulation for society would you choose, in your particular condition of knowledge and ignorance?”” (RJE 277)

What is striking here is that Cohen is mobilizing straightforwardly conceptual grounds for objecting to the Rawls. And, the conceptual grounds are, in effect, that Rawlsians conflate one concept – the concept of justice – with another concept – the concept of all-things considered principles for regulating common life. This objection to Rawls is not new: Rawls’ entire project in *Theory of Justice* was revolutionary for many reasons, but one of the ways in which it was revolutionary was the introduction of *social justice* as a distinct and possibly sovereign form of justice. In response, some objected strenuously that Rawls was playing fast and loose with the concept of justice.<sup>10</sup> Recall, after all, that *distributive justice*, which at the time was a perfectly genuine form of justice, appears only in the second of Rawls’ two principles of justice (and really only in the first part of the second principle). The other principles of justice were not the familiar forms of distributive justice, retributive justice, corrective justice, and so on. So, Rawls was charged with stitching together many distinct elements of political philosophy into a single master subject under the heading of *social justice*. Cohen’s objection is strikingly similar to these older objections in that Cohen charges Rawlsians with mashing together all sorts of different virtues into a single principle and labeling it the principle of justice. Thus, the objection rests on conceptual insights into justice and not the charge that that decision makers in the original position are covertly appealing to more ultimate principles.

---

<sup>10</sup> CITE.

This point is reinforced by Cohen’s assertion later in the text that in order for choosers in the original position (or any ideal reasoner in a constructivist account of justice) to determine which principles are principles of justice, the reasoners must possess *already* some grasp of what justice is.<sup>11</sup> That is, they must have a grasp of what is in some sense a fundamental principle of justice, but the fundamental principle they have is the principle governing concept acquisition, *not* the substantive principle of justice. For example, in order to recognize the correct solution to a partial differential equation (PDE), one must have already the concept of a PDE and the concept of the solution of one. Mere exposure to examples of PDEs and their solutions will do not do; one must transcend those examples to come to know, in some kind of general sense, what a PDE is and what a solution to one is. This knowledge is not identical to knowing what the solution to any particular PDE is; it is only identical to knowing the requirements any correct solution to any particular PDE would have to meet in order to be a correct solution to a PDE. For example, because I know a little bit about PDEs, I know that

“Ketchup!”

fails to meet these requirements, but

$$“v(x, \tau) = \exp(-\alpha x - \beta \tau)u(x, \tau).”$$

does meet these requirements. One immediately knows this if one has the concept of a

---

<sup>11</sup> CITE.

PDE and the concept of a solution of a PDE *even if does not know how to solve a PDE* (I was in this very position in college: I understood what PDEs were and I knew exactly what a solution to a PDE would look like, but I consistently failed to solve them correctly, which led me to abandon my physics major to pursue philosophy). That is, it is not necessary to have any idea of what the determinate, substantive answers to any particular PDEs are (or even *likely* are) to know what the answers would look like.

Analogously, in order for those in the original position (or in any ideal choosing scenario) to determine the correct principles of *justice* and not other principles (like, e.g., aesthetic principles), they must already possess some grasp of the concept of justice. But they do not need to have any idea *whatsoever* of what the likely true principles are. The knowledge that allows them to rule out certain principles as non-starters is therefore conceptual knowledge about basic requirements a principle must meet if it is to be a principle of *justice* as opposed to some other principle, e.g., an aesthetic principle, and *not* knowledge of a substantive principle of justice itself. That is all that they – and we philosophers – need to know about justice in order to get started.

This is part of the significance, in fact, of Rawls' remarkable initial pages of *Theory of Justice*, in which he offers the conceptual underpinning for any constructivist project (even though Rawls rejects any claim to be giving a conceptual analysis of justice at any point).<sup>12</sup> One might reject – and many have rejected – Rawls' account of conceptual requirements for a successful theory of justice (namely that a theory of justice is a theory of the *first* principles of a society and that these principles regulate the basic institutions of the society by governing the distribution of the benefits and burdens of

---

<sup>12</sup> CITE

social cooperation<sup>13</sup>). But, one cannot deny that such requirements must be initially provided if there is to be any success in the endeavor of giving principles of justice as opposed to giving some *other* principles.

I stress that these requirements are conceptual requirements and not normative ones, in the sense that they are *not* requirements that are set by deeper normative principles. Rather, they are requirements that determine whether someone possesses the concept of justice and can apply it correctly, i.e., whether someone is a competent user of the concept. And, since competent users of concepts can have different theories of the concept (e.g., people with different views about how cars function can still be competent users of the concept *car*), we can expect that competent users of the concept *justice* could have radically different substantive theories of justice.

Presenting these conceptual requirements as competency requirements suggests that there is a small set of requirements *all* of which are grasped by any competent users. But, that is not the case: a competent user can have more or less knowledge about the conceptual requirements that must be met to generate a true theory of, e.g., justice. That is, while there is some minimum subset of conceptual requirements that must be grasped, it is not the case that this subset is identical with the complete set of conceptual requirements. At the very least, there is no *prima facie* reason why it would be so. It is, then, hard to see why, as a conceptual matter, it *couldn't* be (as opposed to isn't) the case that as a conceptual truth about justice, for any principle of justice to be a principle of *justice* it must be sensitive to some facts (e.g., facts about the human condition like, for example, that we are epistemologically imperfect beings). Note that Cohen must provide a *perfectly general* argument that, as a conceptual matter, for a theory of justice to be a

---

<sup>13</sup> CITE

theory of *justice* and not some other virtue, such a theory *couldn't* make reference to some fact, if his argument is to go through. Otherwise, he must consider each possible concept of justice and show that it does not lead to fact-sensitive principles of justice.

It will not do to object at this stage that I am, in fact, identifying a further ultimate principle in virtue of which the principle is sensitive to some fact. For, according to the argument I have presented, insofar as we must appeal to any further principle to explain both why the principle of justice is sensitive to such-and-such facts as opposed to any other facts and how the principle is sensitive to these facts, the further principle is a principle of concept application (or possession) and *not* a substantive normative principle. Thus, if these principles of concept application (or possession) are in some sense more “ultimate” than a principle of justice, they are not more ultimate in the relevant sense, namely the sense of being more ultimate moral and political principles.

#### **4. Some Candidate Conceptual Demands**

Here are two possible conceptual requirements for a principle of justice to be a principle of justice. I present them in order to show what Cohen must accept as conceptual truths if his argument against fact-sensitivity is to go through – I do not present them in order to defend them. Let me reiterate: that even if these two candidate requirements fail, Cohen must show that *any* candidate conceptual requirement that established the fact-sensitivity of justice would fail, otherwise Premise Two in his argument is all washed up.

##### **(a) Usefulness**

Suppose that a principle of justice, to be a principle of justice, must be *useful* for those who understand that principle. In particular, it must be *possible* for the principle to be useful, as opposed to it being probably that it's useful, which is a much higher bar. For example, if all who understand the principle for some reason are failing to see how the principle would be useful because everyone is spending too much time watching TV and playing video games, then the principle *could* be useful (if only the subjects stopped being so lazy). So, the mere fact of general laziness preventing people from finding a principle of justice useful would not count against the principle of justice being a principle of *justice*. On the other hand, if it simply were biologically impossible for beings who understood the principle to use it (e.g., the principle requires, as a matter of justice, that physically distinct beings unite into a single massive being), then the principle would be useless and, according to the conceptual requirement imagined here, it would not be a principle of *justice*. In this way, this conceptual requirement makes it the case that principles of justice would be sensitive to certain facts, facts about our biology, for example.

Why *couldn't* this usefulness requirement be a conceptual requirement of any principle of justice? Perhaps other normative principles, e.g., *utopian* normative principles, couldn't have this conceptual requirement, but principles of *justice* could. Note that denying the usefulness requirement involves claiming that it is a *conceptual* truth that the principles of justice could be utterly useless for beings like us. For example, Cohen must accept the claim that it is conceptually possible that principles of justice could require that we, e.g., all liquefy ourselves into separate globs of sentient goop and then unify into a single lump of sentient goop, i.e., the principles of justice

could require that we do the impossible not merely the improbable.<sup>14</sup> Cohen might accept this claim, but what are the deep reasons (at least what the reasons that are more compelling than Cohen's brute intuitions) that ground the acceptance of this claim? At the very least, Cohen must explain (a) why the usefulness requirement is so *prima facie* attractive even though (b) it is, according to him, nonetheless false.

### **(b) Knowability**

Could it be that insects do not have unjust social orders, even though they have social orders? If so, then one explanation of this claim is that insects cannot understand principles of justice and so cannot know these principles. Why is this an explanation? Because a conceptual requirement of any principle of justice is that it is in principle knowable by those to whom it applies, i.e., a principle of justice, to be a principle of justice, must be in principle knowable by those who are governed by it.<sup>15</sup>

Is there a deeper, possibly ultimate normative principle driving the knowability requirement? Not necessarily: it *could* be the case that knowledge of the principles of justice, because they are such amazing, mind-blowingly precious principles, would drive the knower – or entire societies that know the principle – crazy, and so if we have anything it's a normative principle that recommends an *unknowability requirement*. That is, there is no conceptual inconsistency with holding on the one hand that principles of justice must be knowable as a conceptual matter, and, on the other hand, that fundamental principles of morality along with facts about how ultimate principles affect our minds entail that the knowability requirement is a morally awful conceptual feature of justice.

---

<sup>14</sup> CITE.

<sup>15</sup> This is not the same thing as the publicity requirement, although it is a necessary condition for it.

For the sake of argument, suppose that there is a principle of justice so complex that human beings cannot understand it (because we are cognitively limited beings and this principle, because of its awesomeness, is something only God, because of God's omnipotence, can understand). Is it possible that we are doomed forever not to know whether we live in an unjust society because it is *impossible* for us to understand what the true principle of justice is? It is possible, but Cohen and others proceed under the assumption if there is a true principle of justice, then it will be understandable for at least *some* human beings (Oxford-, Cambridge- and Harvard-trained analytic philosophers only?). That is, Cohen is certainly operating as the knowability requirement is a conceptual feature of justice. This, in itself, merely hints at a performative contradiction and is not an obviously serious objection since Cohen and others could simply be knowingly philosophizing out of folly (but for fun). The important point here is that for Cohen's argument not to founder on a serious counterexample, namely that the knowability requirement is a conceptual feature of justice, he must grant that it is *in principle* possible that the principles of justice are *in principle* unknowable by human beings, even when these principles have non-trivial and non-empty content.

I have no argument for why Cohen ought to accept the knowability requirement, but Cohen has similarly offered no reasons at all – much less any convincing reasons – why we should reject the knowability requirement and therefore affirm the conceptual possibility of the *unknowability of justice*. It is important to note that what Cohen must show is that the possibility of the unknowability of justice is a *conceptual truth* about justice. For, if it is merely an empirical matter whether justice is knowable (i.e., facts that are not intrinsically related to justice determine whether justice is knowable), then Cohen

has accepted a deep form of fact-sensitivity: whether the knowability requirement holds for justice, i.e., whether justice is fact-sensitive, will depend upon facts that have nothing to do with justice, i.e., the fact-sensitivity of justice will itself be fact-sensitive! He may be willing to accept this claim, but it certainly seems to violate the spirit, even if not the letter, of his view.

It requires more than brute intuition to make the case that the knowability requirement is false: we must make a conceptual argument that illuminates something about the deep structure of justice. Merely pointing out that we can imagine cases in which beings live in an unjust society but do not know that fact is the wrong kind of argument, since it presupposes that *we*, the imaginers, know what justice requires. What we must imagine is that we simultaneously are competent users of the concept of justice but cannot and hence never will (and *not* that we merely are not likely to) come to know what the substantive principles of justice are. Such dumbfounding is possible when it comes to natural kinds that play roles in our best physical theories (e.g., it may be impossible for us every to know much about the nature of black holes), but it is not as easy to conceptualize when it comes to normative political principles such as justice.