King's Research Portal

How Practices Matter*

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IT is uncontroversial that existing institutions and practices[1] are relevant in determining how best to *implement* a particular principle of political morality, such as a principle of justice. The set of courses of action, regulatory rules, and policies that best realise the demands of justice (whatever one thinks they are) in Geneva will be different from those required in Poland. It is uncontroversial, that is, that information about existing institutional and political contexts is needed in coming to a concrete judgment regarding which particular course of action, regulatory rule, or policy is the best possible way forward from where we are now.

Less well understood is whether existing institutions and practices should play any role in *justifying*, *formulating*, and *grounding*[2] the principles *themselves*, prior, as it were, to their application to the regulatory rules and policies. Imagine, for example, you were to consider what principles of justice, if any, should apply to an international organization (such as the World Trade Organization, or the European Union, or the United Nations), or other political institution (such as the state). How would you proceed in answering that question? Would you assume that the basic principles of justice that are to be applied should be

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[1]A practice is, as Nicholas Southwood usefully puts it, a 'regularity in behavior among the members of a group that is explained, in part, by the presence within the group of pro-attitudes (or beliefs about the presence of pro-attitudes) towards the relevant behavior that are a matter of common knowledge'. Nicholas Southwood, 'The moral/conventional distinction', *Mind*, 120 (2011), 761–802, at pp. 774–5. Notice that such regularities need not be rule-governed. If the Italians generally go to the cinema on Sundays and most Italians think that this is a good way of doing things (which is, in turn, commonly known), and go to the cinema (in part) in virtue of that very positive belief, then there is a practice of going to the cinema on Sundays even if no one feels it would be appropriate to take up a critical attitude towards others for failing to go to the cinema on Sundays. Cf. H. L. A. Hart, *The Concept of Law*, 2nd edn. (Oxford: Oxford University Press, 1994), pp. 10ff. In part because of its inclusivity, I prefer this account to ones that emphasize rule-governed activities, such as the Rawlsian one. See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), pp. 47–8. An institution, in my terms, is then a more formally organized social practice.

[2]I discuss the distinction between justifying, formulating, and grounding below.

justified, formulated, and grounded independently of the specific characteristics of the institutions in question? Would you assume that the content, grounds, and scope of such basic principles would remain invariant with respect to changes in the characteristics of the institutions? Or would you assume that such principles must be responsive to facts about, in this case, the international organization, including facts about its design, limits, participants and particular history?

This question—To what extent and in what sense should principles of political morality be responsive to facts about social practices?—gains its salience against the background of a general anxiety within contemporary political philosophy about how 'realistic' political theories ought to be.[3] In this article, I shall not attempt to provide a survey of this literature, nor to assess its merits, which would take us too far afield.[4] Rather, I will set out three little discussed ways in which the justification, formulation, and grounding of principles can depend on practices. In doing so, my aim is to map the terrain of possibilities, and so to clarify what is at stake in these debates. Throughout the discussion, my primary interlocutor will be G. A. Cohen, and his arguments against 'fact-infested' political philosophy. As we shall see, even if we accept the force of Cohen's central arguments, they leave open—perhaps surprisingly—a wide array of ways in which practices can matter. Seeing the diversity of ways in which practices can matter will provide, in turn, a series of strategies for those who want to argue that

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[3]Broadly speaking, there are six areas of current debate that have been spurred by this anxiety. First, there are Rawlsians who take seriously the idea of a 'realistic utopia'. See, e.g., John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999). Second, there are philosophers who think that we ought, in part, to assess political theories according to whether they are feasible. See, e.g., Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2004), and, more critically, Pablo Gilabert and Holly Lawford-Smith, 'Political feasibility: a conceptual exploration', *Political Studies*, 60 (2012), 809–25. Third, there are 'political realists' who reject the idea that political philosophy is best understood as 'applied ethics'. See, e.g., Bernard Williams, 'Realism and moralism in political argument', *In the Beginning Was the Deed*, ed. G. Hawthorn (Princeton, NJ: Princeton University Press, 2005), and R. Geuss, *Philosophy and Real Politics* (Princeton, NJ: Princeton University Press, 2008). Fourth, there are critical theorists who believe that political philosophy should pay more attention to currently existing structures of power. See, e.g., Rainer Forst, *Justification and Critique* (Malden, MA: Polity, 2014). Fifth, there are philosophers who believe that non-ideal theory can be done without ideal theory. See, e.g., Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009). And sixth, there are philosophers who believe that principles of political morality ought to be defended in light of their perceived role or function within existing social practices. See, e.g., Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); Aaron James, *Fairness in Practice* (New York: Oxford University Press, 2012); Andrea Sangiovanni, 'Justice and the priority of politics to morality', *Journal of Political Philosophy*, 16 (2008), 137–64; and, in a different vein, Joseph Raz, *Engaging Reason* (Oxford: Oxford University Press, 1999). More critically, see David Estlund, 'Utopophobia', *Philosophy & Public Affairs*, 42 (2014), 113–34. I address versions of all of these views more explicitly in 'Normative political theory: a flight from reality?', in *Political Thought and International Relations: Variations on a Realist Theme*, ed. D. Bell (Oxford: Oxford University Press, 2009), pp. 219–40. See also footnote 32 on 'Justice and the priority of politics'.

[4]Such an inquiry would take us too far afield in part because, as Patrick Tomlin, ('Should we be utopophobes about democracy in particular?', *Political Studies Review*, 10 (2012), 36–47) and Laura Valentini, ('Ideal vs. non-ideal theory: a conceptual map', *Philosophy Compass*, 7 (2012), 654–64) argue, the *degree* of 'realism' a theory should invoke will vary according to the concepts and questions one is asking. The point of this article is, from this point of view, to clarify how facts can (and cannot) enter *at all* into the justification, formulation, and defense of a theory.

social practices should receive a more prominent place in political theorizing. My discussion will also bear methodological fruit: if I am right about how practices can be important in mediating the application of higher-level principles, then social interpretation must play a larger and more explicit role in political philosophy than one might otherwise expect.

I. RELATIVISM

If you are a relativist, then social practices matter in determining the truth value of any substantive proposition about the content, grounds, or scope of a principle of political morality.[5] For example, as a relativist you will assess the principle, 'for all sentient beings x, x ought always to act so as to maximize aggregate utility', relative to the standards of a particular culture or socially salient group. The standards of the particular group determine whether a principle—even a universalist one that ranges over all sentient beings (such as act utilitarianism)—is true or false (for that group). And, of course, to determine what, exactly, the relevant standards of assessment for the group or culture in question in fact are, one will have to examine the structure and character of the practices that define the group. If you are a relativist, therefore, there is a crucial way in which facts about social practices matter to political philosophy: such facts determine the truth value of substantive propositions about the content, grounds, and scope of principles of political morality.[6]

There are many well-known problems with relativism about moral truth, so I leave it aside for the rest of this article. The more interesting question is how *non-relativist*, *universalist* principles might depend on practices, to which I turn in the next section. But the contrast, as we shall see, will prove useful.

II. TRIGGERING

The second way in which practices might matter is *triggering*. A principle of political morality, that is, might bind people when and because they are joint participants either in a social practice or in social interaction independent of a practice. An example of the former might be: 'One ought to distribute goods equally if and only if, and because, people share a national identity'. Egalitarianism is here triggered by some morally relevant feature of national identity—an identity which, in turn, is both generated and sustained by a complex network of underlying social practices. Notice that without the network of practices, there would be no national identity, and so no principles of

egalitarian justice would apply. I shall refer to principles that are triggered in the presence of a social relation (whether practice-based or not), as *relational*, and to those that apply to human beings as such, independently of the social relations in which participate, as *non-relational*.

I now want to introduce some distinctions that will help us to clarify the character of such relational principles, and be important to the rest of our discussion, namely the distinction between the *domain*, *scope*, *content*, *extension*, and *grounds* of a principle. The general form of relational principles is this: 'For all x and y, x and y ought to C_j if (or iff[7]), and because,[8] $x R_i y$'[9], where R_i denotes a parameter that can take any kind of social relation i as a value and C_j denotes a parameter that can take any action, attitude, or goal j as a value. A social relation exists, in the sense I am using the term, if and only if individuals share either ongoing, relatively stable forms of interaction outside of any practice, or are joint participants in a practice (and such participation is common knowledge). Examples of the former include sporadic trade or loosely organized mutual protection. Examples of the latter include sharing a national identity, or cooperating in a system of mutual production, or being subject to a system of ongoing coercion, or being married, or being friends.

The universal quantifier 'for all x and y', in turn, specifies a particular **domain**. This domain is usually taken to include all and only human beings, or all and only persons, or all and only sentient beings. This is what we mean when we say that the principles apply *universally*, even though they are only triggered in the presence of a social relation. By **content**, I mean whatever particular actions, attitudes, or goals are specified for C_j. By **scope**, I refer to the range of the social relation '$x R_i y$'. For example, if R_i takes participating in a coercive scheme as a value (as in 'for all human beings x and y, x and y ought to distribute goods equally iff, and because, x and y share in a system of mutual coercion'), this is equivalent to saying that the scope of egalitarianism ranges over all and only those who share in systems of mutual coercion. The **extension** of a principle, in turn, refers to the range of individuals in the actual world who fall under the principle's scope. This last category is important in the global justice debates,

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[7]The relevant social relation could state either a sufficient or a necessary and sufficient condition for the application of the principle. For example, one might hold that egalitarianism applies to all those who share a national identity and leave it open whether it might also apply among those not so related, or one might say that egalitarianism applies all *and* only to those who share a national identity. Both cases count as asserting principles with relational scope.

[8]Note that the 'because' is *inside* the scope of the conditional; 'because' is therefore meant to assert a normative relation between the antecedent and consequent. So the use of 'because' shouldn't be read in the usual way that 'A because B' is read, namely as implying both 'if B, then A' and 'B' (and therefore 'A'). As stated, the conditional principle 'B if (or iff) and because A' does not imply 'B'. This will become important below.

[9]Note that the conditional ought—'if $x R_i y$, then x and y ought to C_j'—takes narrow scope (unlike normative requirements). The reason one can't wide-scope a conditional of this kind is straightforward: It would imply that if we ought to relate in way R_i, then we ought to act according to C_j (even if we don't *actually* relate in way R_i). This follows directly from the application of the distribution axiom common to both standard modal and deontic logic [O (p → q) → (Op → Oq)].

since it will determine whether the principle has a global extension or whether the principle only applies to smaller subsets of the world's population, such as only among citizens and residents of states. If, for example, all individuals across the globe are participants in a single system of coercion, then the relational principle just mentioned would have a *global* extension.

The form of practice-dependence reflected in the distinction between relational and non-relational principles is uncontroversial: virtually no one denies that there are at least some relational principles.[10] The more difficult question is whether all relational principles must ultimately be grounded in some higher-level *non*-relational principle. If this were true, then it would reveal an interesting fact about the basic structure not just of political morality but of morality generally, and it would show that practices really do have an entirely derivative role.

Can Cohen's argument regarding the fact-insensitivity of all fundamental principles of political morality provide the route to such a conclusion? It might seem to do just that. After all, if fundamental principles of political morality are fact-insensitive, then shouldn't they also apply whatever the nature and character of particular, contingent social practices? In this section, I show that Cohen's argument (which I shall refer to as the FPT) cannot be used to establish this conclusion.[11] If I am right, then practices can play a role in triggering not only *applied* but also *foundational* principles—principles, that is, that are not grounded in any higher-level principle or principles. This has wide-reaching implications for our understanding of the place of practices in justifying principles, as we will see in the next few sections.

Before we can embark on our argument, I need to be clear about what the **grounds** of a principle refer to. (This will also become important again in section III.) A principle, P, is grounded in a fact or principle, Q, when Q *explains why* P.[12] For example, a version of the nationally-bounded relational principle mentioned above—'distribute equally if, and because, people share a national identity of kind x'—might be grounded in a higher-level principle and an empirical fact such as, 'we have independent and conclusive reasons to promote national identities of kind x, and such national identities are unsustainable in the absence of an (internally) egalitarian distribution'.[13] Any political philosophy that aims to

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[10]With the exception of some erstwhile act utilitarians—though it is worth mentioning that most act utilitarians will allow for lower-level relational principles, such as the principles governing promising, to count, for example, as rules of thumb, or instruments for better realizing greatest aggregate utility in the long run.

[11]Note that Cohen never argued that it did. But it is worth exploring exactly why he was right not to do so to gauge the force of Cohen's critique, and hence to clarify exactly what role practices can play.

[12]See, e.g., Kit Fine, 'Guide to ground', *Metaphysical Grounding: Understanding the Structure of Reality*, ed. Fabrice Correia and Benjamin Schnieder (Cambridge: Cambridge University Press, 2012), pp. 37–80, and G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), p. 236.

[13]See S. Scheffler, 'Relationships and responsibilities', *Philosophy & Public Affairs*, 26 (1997), 189–209.

defend a set of normative principles either explicitly lays out or implicitly presupposes a normative structure of grounds for those principles of the same general form as this one.

With the idea of a ground, I return to the FPT. The FPT holds that whenever a fact grounds a normative principle, it does so in virtue of a more ultimate principle that is not supported by any facts. A fact counts as supporting a principle, for Cohen, when the denial of the fact would entail the denial of the principle. I will refer to this special kind of fact-dependence as fact-dependence$_C$ to remind the reader of its special sense. Cohen asks us to suppose that a principle P, which states that we ought to keep our promises, is supported by a fact F, namely that people can pursue their projects only when promises are kept. For the argument to go through, we must take Cohen to mean: 'P iff, and because, F'.[14] From this it follows that if F is generally false—if, that is, people cannot pursue their projects when people keep their promises—then the principle 'P' ('we ought to keep our promises') must also be false. The principle is thereby said to 'depend$_C$', since the denial of the fact leads to the denial of the principle.

Cohen's thesis is then that the truth of any such fact-sensitive$_C$ principle must depend on some further, higher-level, and fact-independent$_C$ principle that explains *why* F supports P. In Cohen's example, the higher-level principle is this one: we ought to promote people's projects. That further principle (unlike 'P') survives denial of fact F: we ought to promote people's projects whether or not promise-keeping is a good way of doing so. If the regress ends there (Cohen says, and I agree, that it must end somewhere), then the ultimate grounds for the principle of promising are not dependent$_C$ on any facts. I believe the argument is sound.

In the example, as stated, and in the other examples that Cohen offers, the final, ultimate principle is always a non-relational one, such as the principle that 'we ought to promote people's projects', which does not (we suppose) depend on the presence of a social interaction or relationship. But can the ultimate principle be relational? Imagine that the ultimate principle supporting promise-keeping is (much more plausibly) in fact a principle of fidelity, such as *FID*: 'if (or iff[15]) *A* voluntarily and intentionally leads *B* to expect that *A* will do *x*, then, in the absence of special justification, *A* must do *X* unless *B* consents to *x*'s not being

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[14]Imagine the form of the explanation were merely 'P because F' (where we read the 'because' *outside* the scope of the conditional). On a natural reading, 'P because F' *simpliciter* implies both 'F' and 'if F, then P'. So the denial of 'F' would only entail the denial of the *explanatory* principle 'P because F'. It would not entail denial of either the conditional, 'if F, then P', or the principle 'P' itself (since 'P' could anyway be explained by some other ground). For this reason, I have taken Cohen to mean that 'P holds iff and because F'. This reading has the added advantage that we can then leave it open whether the 'because' is inside or outside the conditional. See also footnote 8.

[15]As I explain in footnote 19, it makes no difference to the argument if we take the principle to state a conditional or biconditional.

done'.[16] On this view, one ought to keep one's promises if (or iff) and because one has induced an expectation by promising. Notice that *FID* is relational: the consequent applies (or only applies) in the presence of the social interaction specified by the antecedent. Does Cohen's argument commit him to the claim that there must be some still higher-level, *non*-relational principle that explains why one ought to do what one says (absent special justification) between (or only between) those who raise and those who accept the expectations? One might think it does. After all, it might seem that if there is no explanation for why the facts in *FID*'s antecedent are required for the consequent to hold, then *FID* would ultimately serve to ground an ought-statement in a set of facts, and so Cohen's argument would fail.

But Cohen's argument, I believe, doesn't require him to affirm a still higher non-relational principle, or give up the FPT. This is because *FID* has a *conditional* form, and principles of the form, 'O (where O is some ought-statement) if (or iff), and because, F (where F is some fact)', are fact-*independent*$_C$.[17] They are fact-independent$_C$ because the truth of 'O if (or iff), and because, F' (and so the truth of, for example, *FID*) *survives the negation of F*. If, for example, one does not induce any expectations (for example, by promising), then this doesn't make *FID* false; it just means either that some other condition must hold for one to have reason to do what that one has said or, alternatively, that one has no reason to do what one has said. Indeed, the principle 'O if (or iff), and because, F' would be true even in worlds where the facts F never materialize.[18] For example, if *FID* were true, it would apply to worlds in which no one ever induces any expectations in others (or where such expectations are never accepted).[19] Therefore, unlike Cohen's own version of the example, which presupposes a commitment to the principle that 'we ought to promote people's projects', *FID*

[16]This is a much truncated version of the principle as defended in Thomas Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 304 (this foreshortened version, while lacking in precision, will do for the illustrative purposes to which I am putting it). Incidentally, this principle strikes me as a much more plausible candidate for an explanation of promise-keeping than the odd, and rather elliptical, one chosen by Cohen.

[17]Cohen writes, 'The "lovers of sights and sounds" in Book V of Plato's *Republic* think it suffices for saying what justice is to say what counts as just within the world of sights and sounds. They scarcely recognize the question: What is justice, as such? In a world where the facts are F, they believe that P constitutes justice, and they do not abstract even so far as to see that they believe, independently of the facts, principles of the form: if F then P. Plato thinks, and I agree, that you need to have a view of what justice itself is to recognize that justice dictates P when F is true. That is how justice transcends the facts of the world' (*Rescuing Justice*, p. 291). This is exactly right.

[18]Recall that the 'because' in the formulation is *within* the scope of the conditional, and so does not imply (like Cohen's version of the example) that F holds (as when we assert simply 'P because F'). See footnote 8.

[19]Note that this holds even if we take the biconditional statement of the principle. Imagine, for example, that *FID* stated: 'iff *A* voluntarily and intentionally leads *B* to expect that *A* will do x, then, in the absence of special justification, *A* must do X unless *B* consents to x's not being done'. In worlds where F is false, i.e., where one has *not* voluntarily and intentionally led anyone to expect that one will do x (for example, by promising), then one lacks the obligation to do what one says, but it does not imply that *FID* is false.

neither presupposes that anyone has in fact induced any expectations nor that anyone ought to induce any expectations. It remains silent on those questions; it only says that *if* (or *iff*) one induces expectations, then one must do what one has said (and do so because one has induced an expectation). This is true of all relational principles, including ones with factual antecedents regarding the nature and character of social practices.[20]

I conclude that relational principles (which all have factual antecedents) can function as *final* bases for other principles—as grounds, that is, that do not presuppose some further non-relational principle. This has implications for the example with which I began, and for other examples involving relational principles with antecedents specifying some property or or set of properties regarding some social practice. Recall that I asked what principles of justice ought to apply to an international (or supranational) organization, such as the EU. And I wondered whether the principles ought to be responsive to the nature and character of the EU. Now we can see more clearly that a principle such as 'distribute the gains from trade among its member states equally if, and because, an international institution has characteristics x (which the EU, let us suppose, has)'—is relational but fully fact-insensitive$_C$: it holds whether or not institutions like the EU exist, and yet it does seem responsive, in the only sense that matters for theory construction, to facts about institutions like the EU. This provides a strategy for anyone who wants to argue for institution- or practice-specific principles without running afoul of Cohen's strictures. If I am right, then Cohen's argument has therefore left open a crucial way in which facts about social practices can matter at a fundamental level.

III. JUSTIFYING VERSUS GROUNDING

So far, we have been considering the role of social practices in *grounding* and *formulating* principles. But I have not yet discussed *justification*. This is the aim of the present section. In the next section we shall explore how social practices

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[20]We can go one step further. So far I have granted the soundness of Cohen's argument. But there is an important sense in which the relational examples I have adduced can be used to show that Cohen's argument, in fact, *fails*. We have seen that relational principles have the general form 'P if (or iff), and because, F'. But notice that the 'because' in this formulation states a *grounding* relation between F and P: P holds *in virtue of* F; F *explains why* P holds; in the example I have been pursuing, *inducing expectations* explains why *we ought to do what we say (absent special justification)*, and so *why we ought to keep our promises*. (Compare classic cases of metaphysical or natural grounding such as: 'the ball is red and round in virtue of the fact that, or because, the ball is red and the ball is round' and 'The fact that the particle is accelerating obtains in virtue of the fact that it is being acted upon by some net positive force' [these examples are from Fine, 'Guide to ground'].) Therefore, we can conclude that if relational principles can be fundamental, then there is an important class of principles—relational ones—that are indeed grounded in facts. I do not press this point because (as we have seen) the grounding relation indicated by the 'because' in the statement of the principle is embedded in a conditional (see footnote 8), which makes it fact-independent in Cohen's special, technical sense. But in a broader, non-technical sense, it seems natural to say that relational principles *are* grounded in facts, including of course facts about social practices.

can have a crucial role in the justification of a set of principles—a role that an exclusive focus on grounding would lead us to overlook.

As we have seen, 'normative grounding' is a normative relation between a principle and a further principle or fact, and is on a par with forms of, for example, metaphysical grounding.[21] The grounds of a principle tell us in virtue of what the principle holds, or what explains why it holds. 'Normative justification' is, on the other hand, an epistemic relation between two or more *beliefs about* principles rather than a relation between the principles themselves. This means that the justification of my belief in a principle and what I believe the grounds of that principle are may come apart.[22] For example, I might rightly assert that there is an infinity of prime numbers. But the justification of my belief might not be based on the mathematical grounds for its truth. I may be justified in holding the belief simply because my friend, who is a professional mathematician, told me that it is true and that Euclid has a proof demonstrating its truth. I may know that there is an infinity of primes via testimony. But no one would say that they believe their friend has made it the case that there is an infinity of primes; no one would say that this fact about primes obtains in virtue of the fact that my friend believes it.

This distinction is crucial to understanding the 'method of reflective equilibrium' as, indeed, a method of *justification* in the sense I have just outlined. To see the point, picture the list of principles invoked by any systematic political theory (say the one contained in Rawls's *A Theory of Justice*, or Dworkin's *Justice for Hedgehogs*), and imagine all the statements of the form: 'I believe that principle P holds in virtue of F and/or P_1, which holds in virtue of . . .' This would be a list of the (purported) normative grounds for all the principles in the theory. As we have seen in the previous section, I grant that at the bottom of such grounding chains will be fundamental principles, which, by definition, are not (we believe) grounded in any further principle and/or fact. Let us imagine further that such grounding chains are logically consistent. Would we be *justified* in holding that our beliefs regarding the principles and their grounding relations are true *merely in virtue of their logical consistency*? Surely not. There are an infinity of possible chains of belief about internally consistent principles and their (purported) connecting grounds.

To get justification going, we need what Rawls calls 'considered convictions', or convictions that are robust to reflection and judgment, and formed in the best

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[21]In 'Guide to ground' Fine gives the following examples of metaphysical and natural grounding, respectively: 'the ball is red and round in virtue of the fact that, or because, the ball is red and the ball is round' and 'the fact that the particle is accelerating obtains in virtue of the fact that it is being acted upon by some net positive force'.

[22]For an analogous discussion, see Broome's response to Kearns and Star in John Broome, 'Reply to Southwood, Kearns and Star, and Cullity', *Ethics*, 119 (2008), 96–108, at pp. 101–2, which emphasizes the distinction between considerations that function as *evidence* for the truth of an ought-claim and reasons for the ought-claim itself. I thank Clayton Littlejohn for discussion on this point.

possible circumstances (for example, in the absence of pressure or distorting interest). We might, for example, have a series of considered convictions that the principles at the bottom of each of these chains are self-evident. If this were true, then we could say that our belief that the downstream principles really are grounded in the proposed list of ultimate principles is justified.[23] But let us say that we were not so lucky, that, in fact, the principles at the bottom of our grounding chains were not self-evident (which seems more likely to be the case, especially given how abstract many of these principles will in fact be).[24] In those cases, from where might justification come?

In any work of moral or political philosophy, the justification for our beliefs in the ultimate principles will most often come from the fact that they imply conclusions that we endorse independently or from the fact that they imply conclusions that cohere with other things we believe (including background theories and independent principles at all levels of reflection). When this is the case the *order of justification and the order of grounds comes apart*. This is why Rawls writes that 'I have not proceeded . . . as if first principles, or conditions thereon, or definitions either, have special features that permit them a peculiar place in justifying a moral doctrine. They are central elements and devices of theory, but justification rests upon the entire conception and how it fits in with and organizes our considered judgments in reflective equilibrium'.[25] In this passage, Rawls doesn't deny that there are first or fundamental principles at the bottom of chains of grounding relations, he just denies that their justification must reside in their self-evidence, mere meaning, or logical form.

Let me provide an example to fix ideas. Let us say we are in two minds: we find both some utilitarian first principle appealing and some Kantian one. They converge in their judgments, let us suppose, in many cases. But there is one case in particular on which they do not. While utilitarianism would undoubtedly forbid slavery in the world as we know it (and in many nearby possible worlds), it does not forbid slavery in every possible world. There are worlds, in other words, where the facts would turn out such that the enslavement of some by the many would produce greater aggregate utility. But, on reflection, we find slavery so repugnant that this seems to miss something fundamental: its prohibition cannot rest on a mere contingency about the way certain social facts are arranged in our world. The Kantian theory, on the other hand, forbids slavery in all possible worlds as incompatible with the dignity of our rational agency (or, alternatively, as incompatible with our innate right to freedom). On this

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[23]Our belief would be justified, more precisely, by the self-evidence of the ultimate principles in conjunction with the fact that the lower-level principles follow from them (in some normatively relevant sense which includes being constitutively determined by them), with appropriate modifications in cases in which we needed to add more uncertain facts to the mix.

[24]See Rawls, *A Theory of Justice*, pp. 508–9.

[25]Ibid., p. 507.

basis, we endorse the Kantian first principle and reject the utilitarian one. In this case, what ultimately *explains* slavery's wrongness, we believe, is the Kantian first principle, but the *justification* for our belief that the Kantian first principle is true or appropriate[26] (and the utilitarian one false) resides in our considered judgment that slavery would be repugnant in every possible world. Put another way, our considered conviction that slavery is wrong in every possible world (which we assume our interlocutor shares) provides us with *evidence* that the Kantian first principle is true, but it does not *ground* that principle in the relevant sense.

Before I trace the implications of this distinction for the third way in which practices matter, it is worth pausing to reflect not only on the ubiquity of the pattern of inference[27] exemplified in the previous paragraph but also, and more importantly, on the fact that most of the space and effort in first-order contemporary normative philosophy is in *justifying* beliefs about principles at all levels of generality (by, for example, 'testing' them against our considered convictions and showing how they cohere with the rest of what we believe) rather than in merely tracing chains of (purported) grounding relations. This strikes me as self-evident but I will mention three examples to consolidate the point, which will be crucial when I weigh the importance of the type of practice-sensitivity outlined in the next section. The first example is Dworkin. Dworkin is a hedgehog, by which he means that his belief in any one basic principle is justified by the way it hangs together with all the rest.[28] Although Dworkin ends up endorsing many first principles, none of them is simply affirmed as self-evident. There is no privileged starting point: while Dworkin need not deny that his first principles can stand at the bottom of chains of grounding relations, their justification ultimately flows from their place in the whole picture.

But, at least on this point, Derek Parfit seems no different. Consider, for example, the place of Parfit's hypothetical examples and their relations to the first principles, which he ultimately ends up endorsing (such as, say, the principle of priority). Parfit justifies first principles both by tracing their intuitively appealing implications for a number of test cases (and rejecting principles that do not tally

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[26]I have written 'true or appropriate' to remain neutral between realism and (sophisticated forms of) anti-realism; in the rest of the article, I drop the 'and appropriate'. That metaethical dispute is not germane to this article.

[27]The pattern of inference in the previous paragraph is an instance of inference to the best explanation. What best explains the judgment that slavery is wrong, we believe, is the Kantian theory. This is our reason for endorsing it. See also the helpful discussion in Eva Erman and Niklas Möller (2013), 'Practice-dependence and practice-independence: a false dichotomy' (manuscript).

[28]See, e.g., Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), p. 1. While it would be misleading, for example, to say that the principle of equal concern—which says that a government must show equal concern for the fate of all within its dominion—is *grounded* in the principle of responsibility—which says that each person is to decide for himself how to make something valuable of his life, it would not be misleading to say that the two are (in part) justified in virtue of how they work together in producing a plausible conception of justice.

up the right results), and then demonstrating how the principles endorsed together best explain the truth in each of the main three traditions of ethics.[29] First principles are rarely justified as self-evident; they are justified, rather, on the basis of the verdicts they produce and on their coherence with the rest of what we believe. Once again, in cases like this, the proposed grounds for principles and the justification of our beliefs in them come apart.

In his discussion of justification in political philosophy, Rawls writes:

> justification is argument addressed to those who disagree with us, or to ourselves when we are of two minds. It presumes a clash of views between persons, or within one person, and seeks to convince others, or ourselves, of the reasonableness of the principles upon which our claims and judgments are founded.[30]

This strikes me as exactly right: indeed, most of what goes on in any work of moral or political philosophy is precisely this kind of justification—'argument addressed to those who disagree with us'—rather than the mere enumeration of one's beliefs regarding grounding chains.[31]

IV. PRACTICES IN THE JUSTIFICATION OF MEDIATING PRINCIPLES

In the previous section, I discussed the distinction between grounding and justification, and noted how justification and grounding can come apart, especially in cases where we justify our belief in a principle by arguing that it best explains a set of judgments that we endorse independently, or because it implies conclusions that cohere with the rest of what we believe. In this section, I address how, with this distinction in hand, we can pinpoint another way in which social practices matter, this time with respect to the *justification* rather than the *grounds* or *formulation* of a set of principles. As we shall see, our discussion will also allow us to draw some important implications both for methodology and for Cohen's arguments against Rawls.

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[29]Derek Parfit, *On What Matters* (Oxford: Oxford University Press, 2011), vol. 1, e.g., p. 367.
[30]Rawls, *A Theory of Justice*, p. 508.
[31]It is worth mentioning that while Cohen draws a similar distinction to the one I have drawn between the grounds of a principle and the justification of our belief in it (see p. 247, *Rescuing Justice*), he often seems to conflate the two. For example, on the very first page of the chapter he cites Rawls ('Conceptions of justice must be justified by the conditions of our life as we know it or not at all') without noting that Rawls is here speaking of *justification* rather than *grounding*. Indeed, throughout the chapter, he often (confusingly) uses the term 'justifies' as a synonym for 'grounds', and at one point (pp. 241–4) he seems to think that he needs to address holists about justification (of which Rawls's reflective equilibrium is an instance). This is a mistake. Holism (about justification) is a thesis not about the structure of *grounds* but about the structure of what I have called *justification*. So if he (and I) are right about the distinction, then he doesn't need to address the objection at all. This raises a further question about how much of his critique of Rawls actually has bite, a point which I address in the next to last section. On Cohen's use of the distinction, see also Robert Jubb, 'Logical and epistemic foundationalism about grounding: the triviality of facts and principles', *Res Publica*, 15 (2009), 337–53.

The best way to approach our argument is by contrasting two ways in which we might apply higher-level principles to social practices.[32] According to the first, we think of the practice—along with its constituent rules and more general norms—as an instrument for realizing a set of higher-level principles and values for which we have independent justification. Our immediate practical aim is to reform (or transform) the rules and norms constitutive of the practice so as to better realise, on balance, those higher-level principles and values. We recognise that not all of the values and principles will be capable of being simultaneously realised, given a long list of empirical constraints, but we try to identify that revised mix of rules and norms that would serve the principles and values to the greatest possible extent while respecting their varying degrees of importance and priority. Call this mode of application *instrumental*.

According to the second, we also approach a practice with a critical eye. We also wonder how we can reform (or transform) the rules and norms governing the practice, but we are less clear about the higher-level principles and values which apply; we are less clear, that is, about which higher-level principles and values we ought to use as standards for reform (or transformation) and how they bear on the practice in question. (Imagine, for example, that we are approaching the practice of human rights, including both human rights law as well as human rights culture, or, to return to our previous example, the EU.) To be sure, we have some idea about many higher level principles and values—including, for example, principles of fidelity, fairness, impartiality, reciprocity, solidarity, legitimacy, justice, and so on—but, at this point in our reflection, they lack determinacy, or at any rate, enough determinacy to help us in our critical task. What we need, in short, are *mediating* principles—principles that bridge the gap between the higher-level principles and the lower-level norms and rules constitutive of the

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[32]In Sangiovanni, 'Justice and the priority of politics to morality', I contrasted two different *approaches* to political theory generally, namely 'practice-dependence' and 'practice-independence'. I now believe that this was misleading. The better way to conceive of the distinction is by focusing on two different *modes of applying* higher-level principles and values (as I explain in the text). I also believe that the discussion of the relation between higher-level and lower-level principles in this paper (including the distinction between grounding and justification) is much clearer than the brief discussion at pp. 147–8 of 'Justice and the priority of politics to morality'. That said, there is an important difference in sensibility between those who believe that most principles of political morality can be (or ought to be) worked out and justified (in our terms) independently of practices and then applied instrumentally, and those who do not. For some arguments intended to motivate greater attention to the mediating function of practices, see section IV of 'Justice and the priority of politics to morality'. There are, of course, others, and one could reject what I say in section IV and still believe that social interpretation is required in justifying mediating principles. I thank David Owen and Rainer Forst for discussion on these points. In contrast to 'Justice and the priority of politics to morality', this paper has also sought to address to what extent Cohen's arguments from Part II of *Rescuing Justice* affect the kind of practice-dependent methodology advocated here. My conclusion, as we have seen, is: not at all. Finally, I now reject the 'political' conception of human rights advocated in 'Justice and the priority of politics to morality'. For my current view, see 'Beyond the political-orthodox divide on human rights: the broad view', in *Human Rights: Moral or Political?* ed. Adam Etinson (Oxford: Oxford University Press, forthcoming).

practice as it currently is. Call the mode of application required to derive such mediating principles *mediated deduction*.

There are two key differences between *mediated deduction* and *instrumental*. First, they have different targets. The targets for *instrumental* are the rules and norms governing the practice as it currently stands. The targets for *instrumental* are therefore what Cohen calls *rules of regulation*, which are '"device[s] for having certain effects," which we adopt or not, in the light of an evaluation . . . of [their] likely effects'.[33] The targets for *mediated deduction* are, on the other hand, not the rules and norms governing the practice as it stands—its rules of regulation—but the standards we are to use to evaluate such rules. I return to this point below. Second, and closely related, *instrumental* aims for *all-things-considered* judgments regarding what rules and norms ought to govern the operation of the practice. *Mediated deduction*, on the other hand, need not aim for all-things-considered judgments. It might simply try to identify *one* standard among many—say, a standard of justice, legitimacy, or reciprocity—that ought to govern our all-things-considered judgments regarding the practice as a whole.

This distinction and its importance will be clearer by working through an example that is designed to illustrate the patterns of inference typically involved in each type of application.

Instrumental. Imagine you want to morally assess the rules and norms governing the EU. Your overarching theory of political morality is a well-worked out version of rule utilitarianism. You believe that we ought, therefore, to adopt those feasible rules and regulations for the EU that maximize the aggregate welfare of all human beings. To identify the set of such rules and norms, you draw up a list of feasible institutional schemes that we could implement from where we are now—each scheme specifying a different arrangement of basic rules and norms for the operation of the EU. You then rank the options on that list according to the degree of expected welfare each would achieve, and select the one that maximizes the sum total. Call that scheme EU-S. Your pattern of inference looks like this:

(1) One ought to select those rules of regulation that maximize the aggregate welfare of all persons.
(2) Holding all else constant, scheme EU-S would maximize expected aggregate welfare.
(3) Therefore, we ought to adopt EU-S as the optimal set of rules of regulation for the EU.

It should be clear that similar patterns could be generated for other well-worked out theories of political morality.

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[33]Cohen, *Rescuing Justice*, p. 265.

Mediated deduction. Now imagine that you want to morally assess the rules and norms governing the EU, but you do not possess a set of principles that are as determinate as the principle of utility deployed in *instrumental*. Instead, you are committed to a broad panoply of values and higher-level principles of political morality, whose implications are well-worked out for other contexts such as, for example, the state. But you are unsure how these higher-level principles and values—of justice, legitimacy, solidarity, reciprocity, and so on—might bear on the EU. Let us further suppose that you are particularly interested in working out standards of socio-economic justice for the EU, and you believe that an important part (though not the only part) of socio-economic justice is grounded in considerations of reciprocity. The question then becomes: 'What middle-level principles of reciprocity apply to the EU?' The schema for deriving such middle-level, or *mediating*, principles looks like this:

(4) If one has engaged in long-standing, mutual, and beneficial interaction, then one has an obligation to give a fair return to those involved;
(5) The EU gives rise to long-standing, mutual, and beneficial institutionally-mediated interactions among member states and citizens;
(6) Given the nature and structure of such interactions, the demand to give a fair return for benefits received generates and grounds a specific set of principles EU-P;
(7) Therefore, we ought to use principles EU-P (along with other EU-relevant principles) to establish which rules of regulation to adopt.

Once we have arrived to (7), we can then use these standards to suggest reforms (or transformations) of the rules of regulation governing the EU, and so we can move on to a pattern like *instrumental*. The point, however, is that the type of application involved in going from (4) to (6) is very different in structure and form to the pattern evinced by (1)–(3).

These two schemata allow us to put in sharper relief the differences mentioned above. First, notice that the relation between the general principle of reciprocity stated in (4) and the particular, contextually fixed principle of reciprocity stated in (6) is, in *mediated deduction*, the relation of a genus to a species, rather than the relation of a means to an end, as (2) is to (1) in *instrumental*. (6) spells out a more determinate principle of reciprocity for the specific kind of institutionally mediated interaction mentioned in (5). (2), on the other hand, merely tells us that EU-S is the optimal means, given the set of feasible schemes, for achieving aggregate welfare. It does not specify a more determinate understanding of what, for example, aggregate welfare is, or in virtue of what we ought to maximize it.

Second, notice that EU-S is the optimal set of rules of regulation that ought to govern the EU all-things-considered, whereas EU-P is merely one set of middle-level standards for assessing rules of regulation. EU-P are not themselves, that is, rules of regulation. Unlike EU-S, they are not 'devices' adopted in light of their effects; they do not tell us, for example, how much reciprocity can be

achieved all-things-considered and given a set of empirical constraints. Rather, they tell us what reciprocity *is* for a given context. To be sure, the principle of reciprocity stated in (6) is what Cohen calls an *applied* principle (since it is the result of applying a higher-level principle of reciprocity conjoined with a set of facts about the EU), but not all applied principles, it is important to emphasize, must also be, in virtue of that fact, also rules of regulation.[34] This will become important below, when I turn to Cohen's critique of Rawls.

Before I turn to Rawls, however, I need to identify how the distinction between justification and grounding bears on the patterns identified above. This will help us to see exactly how practices matter in the third sense I mentioned above. From the point of view of *grounding*, the two patterns are exactly the same. (3) is ultimately grounded in (1) by way of (2). (7) is ultimately grounded in (4) by way of (5) and (6). And, while (4) is a relational principle, both (1) and (4) are first or foundational principles and hence fact-independent$_C$.

But the two diverge quite significantly when seen from the point of view of *justification*. Let us consider *instrumental* first. The justification for your belief in (3) flows entirely from the fact that (a) you have independent reasons for believing that (1) is the foundational principle of political morality, (b) (3) is grounded in (1) by way of (2), and (c) your warranted belief that (2) is the correct assessment of the empirical circumstances. The justification for the premises in *mediated deduction* works very differently. The key difference resides in (6). (5) says that the EU is an instantiation of the morally relevant social relations specified in (4). It does not say, like (2), that the EU is an instrument for realizing more reciprocity in the world. The belief is, however, warranted in the same way as (2), since it is an empirical statement. But what justification can we offer for (6)? Put another way: How do we 'get from' the higher-level principle of reciprocity stated in (4) to EU-P? How, for example, would we justify our belief in (6) to someone who thinks reciprocity requires something very different, say, EU-P* (recall: 'justification is always addressed to those who disagree with us')?

Our justification of a mediating principle like (6), I would like to suggest, requires an interpretation of the nature of, in this case, the EU. In the specific case of a principle of reciprocity, we need to know what kinds of mutually beneficial interaction the EU makes possible on the best interpretation of what the EU

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[34]Although he doesn't put any weight on the distinction, Cohen's definitions (rightly) allow for there to be applied principles that are not rules of regulation. See, e.g., Cohen, *Rescuing Justice*, p. 276: 'My critique . . . rests upon two distinctions. The first is the exclusive but not exhaustive distinction between (a) fundamental normative principles, that is, normative principles that are not derived from *other* normative principles, and (b) principles of regulation or, as I have preferred to say, *rules* of regulation, whether they be those rules that obtain by order of the state or those that emerge within the milder order of social norm formation: income tax rules are state rules of regulation, and rules about what we owe to each other beyond the realm of state force, such as the rules that govern (or misgovern) the battle of the sexes, are nonstate rules of regulation. (*The distinction is not exhaustive because there exist derivative normative principles, some fact-insensitive and some not, that are not rules of regulation.*)' Emphasis added.

does.[35] This general account of the EU's point and purpose, in turn, would give structure to our judgment that reciprocity, say, requires principles for different kinds of mutually beneficial interaction: one for relations among member states, and one for relations among EU citizens. And it would help us to frame what kinds of fair return member states and citizens owe one another given the nature of their cooperation. To be sure, this interpretive work will require us to point to still further higher-level principles or values (which explain why the goods the EU produces and enables are in fact good, and so on), but it should be clear that we can only form a conception of these higher-level values and principles (including the mediating principle) and how they bear on the EU once we think through what the nature of the EU as a practice in fact is.[36] It would be very unlikely, as a result, that the mediating principles could be defended successfully as the result of a mere derivation (on the model of *instrumental*) from higher-level values and principles whose contents and form are already determined independently. This has important methodological implications, to which we will turn in a moment.

To further illustrate the point, consider other, related examples of the schema.[37] From (4), for example, we could derive principles of reciprocity for family members, friends, university colleagues, citizens, states, team members, and so on. Consider:

(4) If one has engaged in long-standing, mutual, and beneficial interaction, then one has an obligation to give a fair return to those involved;

(5′) Practice-mediated relations between children and parents in modern families normally give rise to long-standing, mutual, and beneficial interactions;

(6′) Given the nature and structure of such filial relations, the demand to give a fair return for benefits received generates and grounds a specific set of obligations O.

There are, of course, many reciprocity-based schemata like this (as many as there are different types of mutually beneficial, on-going relationship). The important point is that the obligations specified in variants of (6) will vary according to the nature and structure of the practices involved, and that variation will have to be defended in terms of the different nature of the practices at stake. Reciprocity

among friends requires very different things than reciprocity among citizens, family members, and so on, precisely as a result of the different nature of the practice-mediated relations.

So far, I have focused on fundamental *relational* principles (e.g., reciprocity), where the relevance of practices will be most obvious. But there are also fundamental *non*-relational principles whose application must adopt the pattern exemplified by *mediated deduction*. Consider:

(8) One owes respect to all x;

(9) Given the nature and structure of the (practice-mediated) doctor-patient relationship, the demand to show respect generates and grounds a specific set of obligations D (if one is a doctor) and P (if one is a patient);

(8) is a non-relational principle. It tells us to respect all human beings whatever our relation to them. But what respect requires will vary according to the types of social relations one stands in with others. Again, what respect requires among doctors and patients is different from what respect requires among human beings as such, colleagues, friends, lovers, citizens, and so on. Each of these practice-mediated relations, furthermore, is not a means or tool for realizing 'more' respect. They are simply different relations in which respect plays a varying role (in the same way that reciprocity played a varying role in the previous examples).

In this section, I have argued that understanding the nature of a practice is crucial to the *justification* of a system of principles, especially (but not exclusively) relational ones. This has an important methodological upshot: social interpretation of practices—in which we try to understand the point and purpose of a practice by seeking to characterise its underlying or motivating value or goodness (should it have any)[38]—are central aspects of any political theory that aims to evaluate the existing practices from the point of view of higher-level values and principles that have what we might call an *open texture*.[39] Such principles have an open texture when they cannot be used to provide a unique determination of the all-things-considered optimal rules of regulation in the absence of a mediating principle. My aim in making this role explicit is to draw attention to the important, but not well-understood, place of practices in the *justification* of our political theories of justice, legitimacy, solidarity, and so on. If I am right about this, and if I am right that, in fact, most of our political morality has in fact just such an open texture (*pace* some forms of, for example,

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[38]If it doesn't, or if it has features that make it independently wrong or bad, then we might simply reject the practice *in toto*. The point is that many practices will need reform (or transformation) rather than rejection, and when they must be reformed (rather than discarded), then we will need mediating principles to help us to determine in what direction they ought to do so. If this is right, then social interpretation has an often un-avowed role to play in wide swathes of substantive, first-order moral and political philosophy.

[39]Cf. Hart, *The Concept of Law*, ch. 7.

utilitarianism and perhaps luck egalitarianism), then Cohen has in fact left open another fundamental way in which social practices matter.

V. COHEN V. RAWLS

So far, I have conceded the force of Cohen's main arguments and focused on to what extent they count as defences of 'fact-free' political philosophy. In this section, I want to argue that, given the distinctions I have been making, there is a relatively straightforward defence of Rawls that defuses the force of Cohen's double-pronged critique from Part II of *Rescuing Justice*, and so leaves Cohen without a target.

The first prong of the critique is the FPT. Here's the response a Rawlsian could give: 'Cohen is right that fundamental principles on his definition are fact-independent$_C$. But Cohen is wrong that Rawls is committed to the claim that they are not. Whenever Rawls mentions a fundamental principle that depends on a set of facts about society or persons, he means to state these principles in a conditional way. The principles are relational, and, as we have seen above, relational principles can be both fundamental and fact-independent$_C$. Hence there is no real argument between Rawls and Cohen.'

Cohen also has a second prong to his critique, namely that Rawls mischaracterises fundamental principles of justice as rules of regulation. Rawls, for example, writes, 'Justice as fairness begins . . . with one of the most general of all choices which persons might make together, namely, with the choice of the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions', and he often refers to principles of justice as 'regulating' a well-ordered society.[40] Cohen contends that Rawls has made a mistake since principles of justice are meant to give us a critical perspective on rules of regulation. But, if this is true, then principles of justice cannot themselves *be* rules of regulation; they must be higher-level standards for assessing rules of regulation.[41]

Given what I have said above, Rawlsians can provide another straightforward answer. They can begin by conceding that the Two Principles are *applied* principles (in Cohen's sense), but they can go on to clarify (as I have above) that applied principles need not be rules of regulation.[42] A principle is applied when it is grounded in either higher-level principles alone or in higher-level principles conjoined with certain relevant facts. A rule of regulation, in turn, is a '"device[s] for having certain effects," which we adopt or not, in the light of an evaluation . . . of [their] likely effects'[43]. Examples of rules of regulation include things like

[40]Rawls, *A Theory of Justice*, p. 12; see also p. 8.
[41]Cohen, *Rescuing Justice*, ch. 7.
[42]See footnote 35, above, and accompanying text.
[43]Cohen, *Rescuing Justice*, p. 265.

tax and insurance policies, and broader non-legal social conventions.[44] The only modification a Rawlsian would need to make would be a verbal one, namely to stop referring to the Two Principles as 'first principles', which Rawls often does. On this reading of Rawls, we ought to construe the Two Principles as what I have called *mediating* principles—principles that mediate, that is, between higher-level values and norms of reciprocity, equality, fraternity, impartiality, and so on, and the design of main social and political institutions constitutive of basic structures.[45]

For illustration, consider a meaning-preserving paraphrase of the Difference Principle, for example: 'Among feasible schemes, choose the one that, *ceteris paribus*, organizes socioeconomic inequalities such that the worst off are as well off as they can be iff, and because, the inequalities occur between subjects of a basic structure'. This principle is not fundamental, since it is grounded in higher-level principles of reciprocity, equality, fraternity, impartiality, and so on, but it also doesn't strike me as a rule of regulation, since it is not endorsed in light of its *effects* but in light of the higher-level principles that, in turn, explain its normative force. The 'rule of regulation', in this case, is not the difference principle but the feasible institutional scheme x, whatever it is, that we would choose because and insofar as it maximizes the position of the least advantaged (*ceteris paribus*). On this reading, the Original Position would then be understood primarily as a device of *justification* (in the sense outlined above), whose aim is to motivate the Two Principles as principles mediating between higher-level principles and values and the design of a specific set of institutions, namely a basic structure (analogous to the EU above).[46] Once again, while Cohen's arguments urge us to uncover the higher-level principles that are operative in the Rawlsian apparatus, they have not identified any kind of basic error.

VI. CONCLUSION

I have argued that social practices can play three non-exhaustive but important roles in the formulation, justification, and grounding of principles of political

[44]See footnote 35, above, for reference and, more broadly, the tax and insurance policy examples in ch. 7 of *Rescuing Justice*.

[45]On this reading, I do not think it is an interesting question to ask whether the higher-level principles are also principles *of justice* or whether *only* the Two Principles should be considered principles of justice properly speaking (cf. Cohen, *Rescuing Justice*, pp. 304ff.). Nothing hangs on this purely verbal dispute. For more on this point, see Andrew Williams, 'Justice, incentives and constructivism', *Ratio*, 21 (2008), 476–93. For simplicity's sake, perhaps the most perspicuous reading is to say that the higher-level values and principles are principles of political morality generally, and only the Two Principles are principles of justice. So justice is always justice for basic structures.

[46]Cf. John Rawls, *Justice as Fairness: A Restatement*, ed. E. Kelly (Cambridge, MA: Harvard University Press, 2001), pp. 17ff; *Political Liberalism* (New York: Columbia University Press, 1993), p. 24 on the Original Position as a 'device of representation'.

morality. First, social practices can determine, within relativist theories, what the standards for assessment ought to be for any proposition of political morality, including theories about specific principles, such as principles of justice. Relativism will always be a live option for anyone who believes that people's contingent beliefs about fundamental principles can determine or ground the content of those principles. But those who adhere to the dictum 'believing don't make it so', as I do, will want to look elsewhere for ways in which practices can matter. Second, social practices can trigger the application of fundamental principles; they can, that is, enter into the factual antecedents of fundamental relational principles. Seeing how they do so dispels the suspicion that at the bottom of any theory of universalist political morality must lie solely *non*-relational principles. Third, the interpretation of social practices can play a crucial role in mediating the application of higher-level principles and values, and hence in justifying applied principles that are not rules of regulation. And, if I am right that most higher-level principles and values of political morality are open-textured, and that the aim of much first-order political philosophy is to bring them to bear on the world as we know it, then social interpretation should play a much more central role than it has to date.

The argument has also allowed us to weigh the importance and force of Cohen's recent salvoes against 'fact-infested' philosophy, including, most prominently, Rawls's. We have seen that, when properly understood, Cohen's arguments leave open not only a wide array of ways in which practices matter but also a strategy of response for Rawlsians and others. Even though many of Cohen's arguments therefore lack the critical bite they promise, they have proven helpful in clarifying the terrain, and in identifying more precisely the ways in which facts about social practices can matter in justifying, grounding, and formulating principles of political morality.

Many political philosophers have the intuitive sense that political theory should be more responsive to facts about social practices as we know them,[47] yet they wonder how they can do so without either becoming relativists, or giving undue normative power to the mere existence of a (contingent) practice, or more generally falling afoul of Cohen's strictures. I have suggested that they need not worry. Rather, they must simply be alive to the distinction between justification and grounding, and be careful in stating which principles are fundamental, which ones relational, and which ones mediate the application of still higher-level principles.

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[47]See, e.g., the list cited in footnote 3.