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Constructivism: Metaphysical Not Political

Thesis Advisor

Prof. Sebastiano Maffettone

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by Michele Bocchiola

Cycle XX

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J'entre en matière sans prouver l'importance de mon sujet. On me demandera si je suis prince ou législateur pour écrire sur la Politique? Je réponds que non, et que c'est pour cela que j'écris sur la Politique. Si j'étais prince ou législateur, je ne perdrais pas mon temps à dire ce qu'il faut faire; je le ferais, ou je me tairais.

Jean-Jacques Rousseau, *Du Contrat Social*.

Constructivism: Metaphysical Not Political

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Constructivism: Metaphysical Not Political

Introduction

1. The Constructivist View

All of us, or at least most of us, have moral convictions. But some of us, maybe most of us, are not as confident about our moral convictions as we are about some other kinds of convictions; for instance, convictions about the existence of empirical objects. Somebody would hardly deny that there are things like mountains. There seems to be less confidence, instead, about which moral norms should guide our behaviors or which principles should model our social institutions. This might be because the subject matter of moral theory is different in kind from the subject matter of empirical sciences. Can claims about moral issues be as objective as claims on empirical ones? The simple answer is that moral claims can be objective, but that they are objective in a different way. A philosophical account of this difference, however, is

a more complex task.

Many of our everyday moral evaluations claim objectivity. When someone says that an action is morally *wrong*, sometimes she is just presenting a personal opinion, but often she is claiming that the action in question is *objectively wrong*. *Ceteris paribus*, anyone who performed that action would, be doing something morally wrong. At least, the judgment that something is morally wrong makes a stronger claim of intersubjective acceptability than other kinds of evaluation.¹ But what makes an action morally *wrong* for everyone and not just for someone? Is it the mere capacity to think about it? Or is it something different, something independent of our capacity to think about questions of moral right and wrong?

In the history of thought, philosophers have provided different answers to these questions. Some have opted for a robust form of justification that derives the objectivity of moral claims from moral values or moral facts, that is, from moral ‘entities’ provided of a peculiar worldly existence. On this view, there are facts those instantiate moral properties such as being *right* or *good* of an action or *just* of a social institution. These moral properties could be natural (they can be accounted for as other natural properties are) or non-natural (i.e. *sui generis*). Both approaches see the subject matter of ethics as independent of us, or of our thinking.

Some other philosophers think that this way to approach moral theory requires excessively strong ontological commitments. Constructivism – the view I am presenting and defending in this dissertation – aims at providing a different notion of objectivity in moral theory. On this interpretation, a moral claim is objective if it provides the correct solution to a practical problem and is able to motivate us to

¹ The question of objectivity covers a broad range of philosophical issue. In this dissertation I limit my analysis to the case of moral objectivity.

behave accordingly. Thus, the objectivity of moral claims is not derived from any independent order of truths or facts. This “practical turn” in moral theory leaves all metaphysical issues aside. So, what could an appropriate account of moral objectivity without ontology possibly be?

Objectivity might mean more things. It has to do with truth of our statements and beliefs, with the correctness or justification of the method by which we know what we know and with more complex question about the nature of what there is in the world or we believe to exist. These are three levels of inquiry that provides different notion of objectivity. These are the semantic, epistemological and ontological levels of objectivity. Anytime I use the world objectivity I specify to which level I refer.

Our commonsense conception of objectivity is, without a doubt, influenced by the scientific view of the world: everything that exists belongs to the empirical world. According to this view, a judgment has to report or describe facts and properties of facts in the world outside of us. For example, “there is a pencil holder on my desk” is objective if there really is an object on the table and that object happens to be a pencil holder. However, there are disciplines where the same intuitive line of reasoning does not apply. The subject matter of moral theory, for instance, might be not be considered as real as the objects on my desk are. Thus, one might think, a strong conception of objectivity could be applied to ethics only if there were either moral facts or moral properties of facts tracked by the content of moral claims. The problem here is not finding a conception of objectivity that would fit this framework, but how could there be such entities and how one could possibly be in touch with those queer abstract entities that moral claims allegedly refer to.²

² These objections are presented by John L. Mackie in his *Ethics: Inventing right and wrong*, Oxford: Penguin Books, 1977, chapter 1. I develop this argument in Chapter One.

Many philosophers accept the claim that there are objects in the world outside us whose existence does not depend on our thinking about them.³ For instance, I would not say something bizarre by affirming that there is an object on my desk and its existence does not depend upon my cognitive activity. Thus, I can say that it is *true* that “there is an object on my desk” (i.e., it is not a matter of my opinion). That statement reports a fact of the world. Now, some people might question my saying that the object on my desk is a pencil holder. Somebody might protest that the proposition “there is a *pencil holder* on my desk” is as true as “there is *something* on my desk”. Indeed, for someone that thing could be a container for drinks. Ascription of a specific property (to be a container for drinks rather than to be a pencil holder) could be a function of the attitude that I form towards the object in front of me. And the fact that other people have my same attitude towards this specific object does not prove that the property of being a pencil holder shows the same kind of mind-independence as other physical properties do.

Some people, like realists, would look for some property (something like its shape, or the material from which it is made) that makes this object either a container for drinks or a pencil holder. If the object on my desk is made from leather, it is a pencil holder rather than a container for drinks. So, claimants of a realist conception of the world would say that there are some facts about this object, something like the fact that it is made from leather, or it is round. Those facts, which are true of the object on my desk, give me a reason to believe that it is a pencil holder and not a container for

³ The problem here is to understand what the existence of objects implies for our discourse about objects in the world (at the semantic level), their nature (at the ontological level) and our way of knowing them (at the epistemological level). On the notion of objectivity and its constructivist understanding see Chapter Two.

drinks.⁴ Properties such as ‘being made from leather’ or ‘being round,’ realists argue, do not depend on one’s conceiving of the object on my desk. This object is ‘round’ and ‘made from leather,’ whether or not one develops any attitude towards it. Therefore, we can conclude that “there is a pencil holder on my desk” is an objective statement, since it does not depend on my subjective attitudes (like my believing it).

One may wonder how judgments can be objective without referring to something real. If we enter the realm of moral and political theorizing, we can still talk about facts, properties etc., but – on the *epistemological* level – ethical-political claims cannot be as objective as the empirical ones, simply because moral facts and moral properties of facts do not exist – on the *ontological* level – as other facts and properties in the world outside of us. However, there are fields of study where a strong conception of objectivity holds even though their subject matter is different from the subject matter of empirical sciences. One may say that this difference in the subject matter make moral theory open to a certain degree of relativity,⁵ and therefore not objective, at least in the strong sense as its surface grammar appears. Even if our common conception of morality can admit a certain degree of relativity, it is not easy to make the same admission about the objectivity of judgments such as “two and two are four.” It is usually said that mathematics cannot be dependent on our opinions, even if it is a matter of convention. According to the intuitionist conception of mathematical reason-

⁴ One might say that ‘being round’ or ‘being made from leather’ are not brute facts, since they can be explained by some other facts. True: These properties can be explained in terms of their atomic structures. But, once we arrive to some subatomic particle, we need to stop to some true propositions that, through reasoning, provide me with reasons for defining that object a pencil holder.

⁵ Here, I take “relativity” to mean that standards of right and wrong (or good and bad) can vary according to the moral or political communities we take into account. Further distinctions, even if important, are not needed here.

ing, for example, the objectivity of mathematical judgments depends not on the ontological reality of numbers (or the alleged existence of any other mathematical objects), but upon the possibility of getting a correct result by correctly applying a procedure of calculation.⁶ If a calculation allows us to get the result ‘four units’ by adding two units to two units, the correctness of that result depends neither on the nature of what we are summing, nor on the existence of entities such as numbers. Rather, it depends on the existence of a procedure that allows us to perform such a calculation. The judgment “two and two are four” is objective if a procedure of calculation (i.e. a piece of mathematical reasoning) has been correctly applied to what one is summing, leaving aside the issue of what one is summing.

Does the same argument apply in moral and political theory? If it does – as constructivists think – then the claim would be that the notion of objectivity in this domain, like in mathematics, does not depend upon the ontology of its subject matter. Ethical objects, like values or reasons, are products of our mind. Possibly, for an action to be right or for a social institution to be just is not a matter of moral properties somehow possessed by the objects we are evaluating; rather it is one’s intentional conceiving of them, through a process of reasoning under certain constraints, that makes that action right, that social institution unjust.⁷ My aim in this dissertation is to show that we can construct moral entities (as moral subjectivists might do) but this “construc-

⁶ See Paul Benacerraff, “What Numbers Could Not Be,” in Paul Benacerraff and Hilary Putnam (eds.), *Philosophy of Mathematics*, Cambridge: Cambridge University Press 1983.

⁷ One way to read the possible application of that way of reasoning in mathematics to the question of objectivity in moral theory is to think that constructing moral entities makes them real. But this formulation, even if consistent with my understanding of constructivism, can be interpreted in a subjectivist way, according to which whatever is constructed is real. Accepting this formulation could imply that any value constructed by a moral agent is valid for her. But this is not my view.

tion” does not undermine the objectivity of moral claims such as “the action X is right.” Its objectivity is warranted by the correct application of a suitably specified procedure of reasoning, which gives a reason for conceiving of a plain fact as a morally or politically relevant fact. This is the idea held by constructivists.

2. Constructivist Views: Gauthier, Rawls, Scanlon and Dworkin

Constructivism is a new and promising approach to moral and political theory. Nevertheless there are no precise statements of it. Many theories are defined as constructivist or attacked for being constructivist. But most of the time, those theories are so different from one another that it is not clear whether there is a unified approach that can actually be labeled ‘constructivism.’ As a result, in the contemporary debate, one can find different kinds of constructivism. Neo-Hobbesians like David P. Gauthier, Kantian theorists such as John Rawls, non-naturalist realists such as Thomas M. Scanlon and also liberal legal theorists such as Ronald Dworkin are considered constructivists. These philosophers hold different views. Nevertheless, they share some basic constructivist tenets. Basically, they share the view that moral claims are truth-apt (they can be true and false) but not because of certain moral facts or moral properties of facts. Moral claims do not track properties of moral facts. Secondly, moral claims can be objective and their objectivity is not derived from any independent order of moral values, but from their capacity to be practical (namely, their capacity to give us reasons for actions).

Of course, constructivists differ in many respects. A first, broad distinction might be drawn on the way in which they conceive of the procedure of construction. It

is possible to distinguish a *Hobbesian* constructivism, according to which the procedure of construction has to be understood in terms of rational choice theory and utility maximization. Gauthier in *Morals By Agreement* lays out this view.⁸ Views such as the ones defended by Rawls,⁹ Scanlon¹⁰ and Dworkin,¹¹ represent non-Hobbesian, but rather Kantian, forms of constructivism, that leave individual preferences aside and focus more on criteria of public justification of moral and political claims. In the next

⁸ David P. Gauthier, *Morals by Agreement*, Clarendon Press, Oxford 1986. For an introduction to Gauthier's moral philosophy see Margaret Moore, "Gauthier Contractarian Morality", in David Boucher, and Paul Kelly (eds.), *The Social Contract from Hobbes to Rawls*, New York: Routledge, 1994. Gauthier is the most representative Hobbesian constructivist. Kurt Baier and Robert Nozick might be interpreted as Hobbesian constructivist as well. See Kurt Baier, *The Moral Point of View: A Rational Basis for Ethics*, New York: Ithaca, 1958; Robert Nozick, *Anarchy, State, and Utopia*, New York: New York : Basic Books, 1974.

⁹ Rawls's reading of constructivism can be found in all his works and especially in John Rawls, *A Theory of Justice*, rev. ed., Cambridge, Mass.: Harvard University Press, 1999; "Kantian Constructivism in Moral Theory", in *Journal of Philosophy*, 77, 1980; *Political Liberalism*, New York: Columbia University Press 1996, Lecture III. On Rawls' view see Samuel Freeman, "Kantian Constructivism and the Transition to Political Liberalism", in Id., *Rawls*, London: Routledge 2008; S. Freeman, "The Burdens of Public Justification", *Politics, Philosophy and Economics*, 6, 2007; Ronald Milo, "Contractarian Constructivism", in *Journal of Philosophy*, 99, 1995; Larry Krasnoff, "How Kantian is Constructivism?", in *Kant-Studien*, n. 90, 1999; Onora O'Neill, "Constructivism in Rawls and Kant," in S. Freeman (ed.), *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press 2003.

¹⁰ On Scanlon's view see Thomas M. Scanlon, *Contractualism and Utilitarianism*, in A. Sen e B. Williams (eds.), *Utilitarianism and Beyond*. Cambridge University Press, Cambridge 1982; *What We Owe To Each Other*, Cambridge, MA: Harvard University Press, 1998; "Metaphysics and Morals," *Proceedings and Addresses of the American Philosophical Association*, 77, 2003. On Scanlon's contractualist view see Onora O'Neill, "Constructivism VS. Contractualism", *Ratio*, 16, 2003; Mark Timmons, "The Limits of Moral Constructivism." *Ratio*, 16, 2003.

¹¹ Ronald Dworkin, "Objectivity and Truth: You'd Better Believe It," *Philosophy & Public Affairs*, 25, 1996; "The Original Position", in N. Daniels (ed.), *Reading Rawls*, Oxford: Basil Blackwell, 1975. On Dworkin's view see Larry Krasnoff, "How Kantian is Constructivism?".

paragraphs, I briefly introduce those views, focusing on their constructivist features. The critical discussion about them is postponed to Chapter Four, once a more detailed analysis of constructivism is laid out.

According to Gauthier, the procedure of construction is to be modeled not on the basis of some moral considerations, but rather on some notion of individual advantage. Gauthier believes there is a link between rationality and morality. This is shown by the connection between *practical reason* and *interest*, and expressed by the idea of maximizing individual utility. Even if the “language of interests” is different from the “language of duties,” Gauthier thinks it is possible to justify the second starting from the first. So people have reasons for (or against) something when principles issued by a certain procedure are able to improve their position.

The foundations of Gauthier’s ethics rule out *ex ante* moral requirements; their inclusion would require further justification. What validate moral claims are principles issued by a procedure that tends to increase individual utility. This view can be considered a constructivist one since there is no appeal to moral entities that are independent of people’s attitude toward a given state of affairs. Gauthier argues that

[v]alue is not an inherent characteristic of things or state of affairs, not something existing, as part of the ontological furniture of the universe in a manner quite independent of persons and their activities. Rather, value is created or determined through preference. Values are products of our affections.¹²

Gauthier’s procedure of construction is a process of bargaining among individuals. He calls this procedure the rule of “minimax relative concession,”

¹² David Gauthier, *Morals by Agreement*. p. 47.

following which “the equal rationality of the bargainers leads to the requirement that the greatest concession, measured as a proportion of the conceder’s stake, be as small as possible.”¹³ The bargainers look for an equilibrium point between claims and gains, which is reached when the ratio between initially expected utility, on the one hand, and finally achieved utility, on the other, is maximized. The capacity of increasing this ratio depends upon individuals’ bargaining powers.

Now, leaving any issue of distributive justice aside, let us see what are the premises of this position. Gauthier represents human beings as purely *a-social, self-interested* and *non-cooperating* when they see themselves as totally free to pursue their own aims, like in Hobbes’s state of nature. Then human beings are *rational*. The concept of rationality here involved is taken from the social sciences. Roughly speaking, it corresponds to an agent’s capacity to identify the most effective means to achieve a given end. This end is the maximization of utility. Thus, principles of justice are a rational, objective means if they can increase individual utility. People see that sharing benefits and redistributing costs upon society, rather than to fight for bettering one’s position, is more advantageous. Therefore, in order to move from the state of nature into the cooperative society, agents make a general agreement, bargaining the terms of their cooperation.

On the Kantian interpretation of constructivism, instead, individual preferences and desires are ruled out, leaving the place to a moralized interpretation of person. In *A Theory of Justice* Rawls introduces his constructivist view claiming that “the moral facts are determined by the principles which would be chosen in the original position. These principles specify which considerations are relevant from the standpoint of

¹³ *Ibid.*, p. 14.

social justice.”¹⁴ Rawls defines his theory as “constructivist” in opposition to the so-called rational intuitionism. He grounds his theory in a *practical* conception of objectivity. For a theoretical conception of objectivity like the one endorsed by philosophers such as Plato,¹⁵ Gottfried Leibniz,¹⁶ Samuel Clarke,¹⁷ Richard Price,¹⁸ Henry Sidgwick,¹⁹ William D. Ross,²⁰ George E. Moore²¹ (the rational intuitionists)²² and, more recently, Gerald A. Cohen,²³ moral norms or principles of justice are objective if they refer to some moral facts, which are independent of moral agents and prior to social institutions. For constructivists, instead, normative principles are objective if they can be accounted for as outcomes of a procedure of construction.

In order to yield objective normative principles, a procedure has to match certain requirements of practical reasoning. Famously, Rawls thought that the

¹⁴ John Rawls, *A Theory of Justice*, p. 40.

¹⁵ Plato, *The Republic*, Cambridge: Cambridge University Press, 2000; *Gorgias*, Oxford: Oxford University Press, 1994.

¹⁶ Gottfried Leibniz, *Philosophical Essays*, Hackett Publishing, 1989.

¹⁷ Samuel Clarke, *A Discourse Concerning the Unchangeable Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation: The Boy Lectures 1705*.

¹⁸ Richard Price, *A Review of the Principal Questions in Morals*, Oxford: Clarendon Press, 1948.

¹⁹ Henry Sidgwick, *The Methods of Ethics*, first edition 1874, London: Macmillan 1907, 7th ed., (reprinted by Hackett Publishing, Indianapolis 1981).

²⁰ William D. Ross, *The Right and The Good*, Oxford: Clarendon Press 1930.

²¹ George E. Moore, “The Conception of Intrinsic Value,” *Philosophical Studies*, London: Kegan Paul, 1922; *Principia Ethica*, first edition 1903, Cambridge: Cambridge University Press, 2000.

²² John Rawls, “Kantian Constructivism”, p. 557. For a historical discussion on the relation between rational intuitionism and constructivism see Christine M. Korsgaard, *The Sources of Normativity*, Cambridge: Cambridge University Press 1996, Lecture 1.

²³ Gerald A. Cohen, *Rescuing Justice And Equality*, Harvard University Press, 2008; “Facts and Principles”, *Philosophy & Public Affairs*, 31, 2003.

principles governing the basic institutions of a society are best accounted for as a choice of hypothetical agents under the suitably specified constraints of the so-called “original position.”²⁴ This procedure of construction has to embed both theoretical considerations (the veil of ignorance, formal constraints on the concept of right, a concept of rationality, an ideal of person) and practical considerations (the role of morality in society). Moreover, the procedure has to respond to certain factual considerations, what Rawls called “Humean circumstances of justice” (namely, limited altruism of people and moderate scarcity of resources).²⁵

The denizens of this initial choice situation are deprived of the knowledge of their social status and natural abilities. Thus, being equally situated, they can choose those principles that could be hypothetically accepted by all. The original position is an ideal situation where a veil of ignorance hides both social and economic differences, since factors such as the social class one belongs to or family’s wealth depend on mere social luck, and so they are irrelevant from a moral point of view. Under these constraints, Rawls argues, moral agents would choose principles guaranteeing equal basic liberties and equality of opportunity, and a principle that allows for inequalities only if they are to the benefit for the worst off in society.

Rawls’s view of constructivism is very problematic, because one might find more than one understanding of it. In *A Theory of Justice*, he labels as “constructive” different ethical positions, such as utilitarianism and his own interpretation of contractualism.²⁶ The distinctive feature of these positions is the use of some procedure to solve moral problems. Indeed, in adjudicating claims of justice

²⁴ John Rawls, *A Theory of Justice*, § 4.

²⁵ *Ibid.*, § 22.

²⁶ *Ibid.*, § 7.

utilitarians apply a formula that allow to maximize some conception of general utility, while contractualists rely on a collective choice situation as the suitably social point view. On Rawls's account here, constructive theories oppose approaches such as intuitionism, understood as an approach that provides only a plurality of unranked principles, and therefore it is not able to resolve moral problems.

Later on, Rawls puts forward a narrower and more specific understanding of constructivism in moral theory (in "Kantian Constructivism in Moral Theory") and, then, in political theory (the latter stated in *Political Liberalism*). In these cases, constructivism refers to a method for justifying substantive principles, which does not appeal to people's desires or preferences. So, views that prioritize the good over the right are not defined as constructivist any longer. But, while the moral interpretation touches upon some ontological questions, Rawls's political reading of constructivism seems to be a form of metaphysical quietism. In his later works, Rawls deliberately leaves the metanormative debate aside. In the attempt to redefine his view in political terms, Rawls writes:

We try, then, to leave aside philosophical controversies whenever possible, and look for ways to avoid philosophy's longstanding problems. Thus, in what I have called "Kantian constructivism," we try to avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values. This form of constructivism neither asserts nor denies these doctrines.²⁷

I tend to disagree with Rawls on this point. I think that, on its political understanding, constructivism leaves open too many philosophical issues on the nature

²⁷ John Rawls, "Justice As Fairness: Political Not Metaphysical", *Philosophy and Public Affairs*, 14, 1985, p. 395).

of moral claims. Rawls possible reply to this could be that metaphysical issues are pointlessly conflict-ridden. For this reason, Rawls rules out the notion of moral truth from the political domain.²⁸ I think that stepping back from troublesome questions about the nature of morality is not the best *philosophical* strategy for finding a solution to practical problems. When we try to resolve a moral or political problem, usually we want to find the right solution, not a quite-right or all-satisfying solution. There still might be some space for a justificatory strategy that provides right answers, but does not commit to a bizarre metaphysics: a genuinely philosophical interpretation of constructivism. So while later Rawls's motto was "Justice as Fairness: Political Not Metaphysical," I titled my dissertation *Constructivism: Metaphysical Not Political*. I think, indeed, that a political reading of constructivism might be better suited for solving problems such as living together in a peaceful way, ruling out those deep reasons according to which one is actually abiding by some share norms. Nevertheless, if asked, one will still defend his or her own reasons for abiding by. By this one will still have to face those same deep questions that political constructivism rules out, while moral constructivism rules in.

Scanlon and Dworkin are strongly influenced by Rawls. Defending his view of reasons and moral obligations, Scanlon writes that "[a]n act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for

²⁸ "Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth. Holding a political conception as true, and for that reason alone the one suitable basis for public reason, is exclusive, even sectarian, and so likely to foster political division." John Rawls, *Political Liberalism*, p. 129.

informed, unforced general agreement.”²⁹ On Scanlon’s view, this is the procedure out of which the various principles of the morality of what we owe to each other issue. The idea of “reasonable rejectability” expresses Scanlon’s central idea. He grounds his moral view of morality on a classical liberal tenet: an action is morally wrong if it would be reasonably rejected by those affected by that action. The justifiability to others defines the content of the morality of right and wrong. There are no interesting metaphysical issues about which moral principles ought to regulate our conducts.³⁰

On Dworkin’s view, instead, moral claims have to withstand a procedure of scrutiny from the standpoint of public discussion.³¹ In his review of Rawls’s *A Theory of Justice*, Dworkin clearly illustrates two possible ways of theorizing: natural and constructive.³² According to the *natural* model, our moral intuitions about a particular case are to be considered evidence of a more general truth. Philosophers have to discover this truth starting from the available evidence. On the *constructive* model, theorists have to work out a conception of justice that best fits our considered convictions of justice. Dworkin makes this example: imagine we have a pile of bones from a prehistoric animal. While a *natural* historian would try to reconstruct the animal as it really was, a constructivist will create out of those bones the animal whose shape would result most appealing to people, even if that animal never existed. To set metaphor aside, natural theorists aim at truth; constructivists aim at the acceptability of norms from a

²⁹ Thomas M. Scanlon, *What We Owe to Each Other*, p. 153.

³⁰ *Ibid.*, Chapter 1, § 11.

³¹ Sharon Street formulates constructivism in a similar way in “Constructivism About Reasons” (in Russ Shafer-Landau (ed.), *Oxford Studies in Metaethics*. Vol. 3, Oxford: Oxford University Press 2008).

³² Ronald Dworkin, “The Original Position”, in Norman Daniels (ed.), *Reading Rawls*, Stanford: Stanford University Press 1989.

public standpoint. Moral theory does not have to account for truth or explain why we have the moral intuitions we have. Rather, being practical, it has to shape our first order convictions so that they can be presented and defended in a public discussion. Moral theory provides a general framework for justification.

This is just a concise overview of what are considered the classical constructivist views in the contemporary moral and political philosophy. Much more could, and probably should, be said. But this is not the place for a full-fledged introduction to the thought of these constructivist theorists. Rather, this dissertation concerns criteria of justification of moral norms and principles of justice. That is, it focuses on conditions of justifiability in moral and political theorizing, rather than on substantive moral norms or principles of justice. The topic of my dissertation is a rather *vexata quaestio* for philosophers: the question of objectivity of moral and political claims. My aim is to (try to) show that, in moral and political theorizing, constructivism can provide a robust notion of objectivity. Put in other words, constructivism can support the universality of certain moral and political claims. My project consists in defining constructivism in such a way that it could be possible to provide a robust conception of objectivity, which does not ground moral claims on the existence of ethical objects that are independent of us, but rather on a specific response of agents to plain facts of the world (even though without reducing moral facts to plain facts).

3. Constructivism and Objectivity

Constructivists claim that moral norms or principles of justice are justified (namely, there are reasons for endorsing those principles as guidelines and employing

them in our normative evaluations) when they are issued by a suitably specified procedure of construction. This procedure is thought as a device that allows for the selection of valid normative principles.

Constructivists share moral realism's aim of producing a robust notion of objectivity: both the constructivist and the realist admit the possibility of objective moral norms or principles of justice. But the realist and the constructivist disagree about the kind of mind-independence the subject matter of moral and political theorizing has, and about what makes objective our moral claims. While realism requires strong commitments to an order of moral facts or properties that exists independently of us, constructivism aims at ontological parsimony about these facts or properties. Constructivists claim that moral facts or properties exist, but they depend on our conception of them. In this sense, constructivism amounts to an anti-realist position.

Many non-cognitivist approaches to normative theory raise the same objection against the metaphysical commitments that realism implies. Consider theories that oppose realism like moral expressivism³³ or error theory.³⁴ Expressivists claim that our moral evaluations are expressions of some non-cognitive attitudes. Different people might have different attitudes towards the same object. And they might as well have different attitudes towards the same action or political institution. Accordingly, the same action can be considered right for some and wrong for others. What makes things

³³ Contemporary views of this kind include Simon Blackburn's quasi-realism and Allan Gibbard's norm-expressivism. Simon Blackburn, *Spreading the Word*, New York: Oxford University Press, 1984; *Ruling Passions*, Oxford: Clarendon Press, 1998. Allan Gibbard, *Wise Choices, Apt Feelings*, Cambridge, MA: Harvard University Press, 1990.

³⁴ John Mackie and Richard Joyce are the two main error theorists in moral philosophy. John L. Mackie, *Ethics: Inventing right and wrong*, Oxford: Penguin Books, 1977. Richard Joyce, *The Myth of Morality*, Cambridge: Cambridge University Press, 2001.

right and wrong, or just and unjust, depends upon processes of attitudes formation, influenced in their turn by processes of socialization, cultural elements, geographical circumstances and so on. Error theorists, on the other hand, claim that even if our moral discourse has some realist pretensions, these are just an illusion. If there were something like moral facts or properties they would be of a kind really different from other more familiar objects in the world. Realists have to prove how it is possible for such bizarre ethical entities to exist.

Constructivists share expressivists' anti-realist worries about the metaphysical extravagance of moral realism. They agree with expressivists on the fact that judgments do not refer to a pre-given order of moral properties. But constructivists do not renounce to the project of a cognitivist-objectivist account of moral and political theorizing. Constructivism represents an intermediate position since it partly accepts a realist claim (there are facts of the matter about morality) and an anti-realist claim (facts of the matter about morality are worked out by a function of our practical reasoning) at the same time. Constructivism, then, is a form of irrealist cognitivism.³⁵

Whether or not it is possible to keep these two claims together depends upon the definition of the procedure of construction and its criteria of objectivity. Here, the problem does not consist in defining what makes certain moral principles correct ones. As already said, it is the procedure that makes certain judgments correct. Rather, the issues are, first, how a procedure is able to yield justified moral principles, and, second, what makes a procedure the correct one for yielding justified moral principles. They are different problems, even if they are related.

The selection of a procedure has a bearing on the kind of principles we get,

³⁵ For a discussion of cognitivism and irrealism see John Skorupski, "Irrealist Cognitivism," *Ratio* 12, 1999

and, consequently, on the objective status of the claims we are going to make. Principles are valid if yielded by a correct procedure. There are different strategies to justify procedure of construction, as well as different forms of constructivism. We can have procedures embedding theoretical considerations (such as the coherence among the elements of an overall system of thoughts), empirical considerations (such as the factual circumstances in which agents perform morally relevant actions), or a combination of them. In this dissertation, I will take into consideration the most prominent examples of constructivist theory – or those so considered. My intention is not to provide a full analysis of all the possible constructivist theories, but rather to argue that constructivism is the most tenable strategy for justifying our normative claims in moral and political theorizing.

4. Some Caveat

It might be helpful to clarify some points in order to prevent misunderstandings about the kind of approach I am presenting and the way I use certain philosophical terms.

First of all, I take “constructivism” to be a theory about the foundations of moral and political theorizing. I do not provide any substantive normative theory. In this sense, my aim is quite narrow in scope: I claim that constructivism is a theory about the way we should think about the nature of claims and principles in moral and political theorizing, and not a theory about what one ought or ought not to do.

Second, my reading of constructivism is not to be associated with any relativist or skeptic view of morality. Such a joining would produce *social constructivism*,

namely the claim that moral norms or principles of justice are social conventions or something similar to norms of etiquette. On the contrary, I claim that the version of constructivism here defended can account for the objectivity of normative claims, but without commitments to any moral realist or platonic view of the foundations of ethics.

Third, for those who think that there is a distinction to be made between moral and political theory, I need to add the following caveat: I am well aware that moral theory and political theory constitute two different realms. Moral theory is concerned with what is right and wrong, or just and unjust. For simplicity we can think of moral theory as having two branches. On one side there is *ethical theory*, where questions of right and wrong apply to actions (behaviors performed on a particular occasion) and practices (behaviors done repeatedly over time) performed by individual agents. On the other side, there is *political morality* that I take to be concerned with the moral permissibility of political, legal and social structures, namely with the norms that regulate our public affairs, our living together as members of a society. I accept the idea that principles of justice apply to the basic structure of a society, while moral principles apply to individuals. But this kind of considerations, I believe, does not have any bearing on the foundations of both moral and political theorizing. My point here is a methodological one: I am concerned with the way in which we should think about what one ought to do, either at the social or individual level. So, I will keep referring to moral norms and principles of justice in order to account for the distinction.

Fourth, note that when I use the word “normativity”, and the correspondent adjective “normative”, I am not referring to any general theory of the practical reasons that people have for doing what they do, or to any general view. I limit my inquiry to

moral and political realm. Therefore, in the following pages, normative principles are guidelines for regulating our behavior on matters of social justice or general morally, while normative reasons are either moral reasons or reasons of justice, namely normative considerations in favor of action, respectively at the individual level and at the social level.

Fifth, other labels often associated to constructivism, namely *contractualism* and *proceduralism*, might be misleading. Constructivism is usually defined as a method that specifies in which conditions moral agents can work out justified moral norms and principles of justice. In some cases it is assimilated to social contract theories, in others it is used to qualify as ‘procedural’ a kind a practical reasoning. I do not deny these two options. Indeed, it is possible to find plausible theories that take constructivism in one or both of these interpretations. Contractualism is a type of ethical or political view that tries to justify moral norms and principles by some appeal to a rational or reasonable agreement among moral agents in suitable circumstances. The outcome of the agreement so achieved provides criteria of justification and hypothetical acceptance for moral norms and principles of justice. Forms of contractualism vary depending on the way the agreement is defined and the philosophical aims it has.³⁶ The focus of contractualism, then, is on what moral or political principles are or on whether they can be proved to be objective. The kind of constructivism I want to defend, instead, is a broader view. Not only it addresses the epistemological question about the justification of moral norms and political

³⁶ A taxonomy of the varieties of contractualism is not required in order to distinguish this view from the constructivist view I shall present. For a general discussion on this issue, see Geoffrey Sayre-McCord, “Contractarianism” in Hugh LaFollette (ed.), *The Blackwell Guide to Ethical Theory*, Oxford: Blackwell Publishers, 2000.

principles; it also aims at providing an ontological view about the existence and the nature of moral properties and facts, and about the related semantic issue concerning the moral discourse. Contractualists, instead, seem to remain silent on ontological questions.

Proceduralism, on the other hand, is a normative thesis about the content of principles of justice: moral agents elaborate principles that all can accept through an appropriate device of deliberation that minimizes the normative load of its premises.³⁷ Can constructivism be reduced to one or both of these substantive theories? Or, does constructivism constitute an independent position? Moreover, are there constructivist theories that do not necessarily endorse either contractualism or proceduralism?

Here, it suffices to say that, as far as I see, constructivism is a form of proceduralism: there are no constructivist theories that do not involve some procedure of construction. Some contractualists, then, are constructivist insofar as they rely on some procedure for finding an agreement on a set of principles. But not all of the contractarians are constructivist: for instance, John Locke holds that social and political institutions are created by an agreement, but the agreement itself does not fully justify institutions so constructed. On Locke's account, human beings have a special commitment to God to be taken into account for assessing the justice of social and political institutions.³⁸ This view might be defined as a combination of a contractualist epistemology with a realist metaphysics. On the other hand, not all constructivists are contractarian. Immanuel Kant, assuming he was a constructivist,

³⁷ On minimalism in proceduralism moral and political theorizing, see Emanuela Ceva, "Plural Values and Heterogeneous Situation" *European Journal of Political Theory*, 6, 2007.

³⁸ John Locke, *Two Treatises on Government*, 1690, in *Political Essays*, Cambridge, Cambridge University Press, 1997.

does not ground his view on a notion of agreement or contract in his a priori account of morality.³⁹

A last point. I must warn those political philosophers who think that metanormative questions are irrelevant for normative theorizing. In this dissertation I will enter what Gerald A. Cohen has sarcastically defined “realism/anti-realism/quasi-realism/a-little-bit-of-realism-here-not-so-much-of-realism-there controversy.”⁴⁰ I fail to see why political philosophers should remain silent on questions about the foundations of their conceptions, hiding themselves behind philosophically bizarre expressions such as “this is common sense” or “that is a shared intuition about justice” or “this conclusion would be counterintuitive”. Whose common sense is this? Shared by whom? For whom is it counterintuitive? Unfortunately, there are not plain vanilla thoughts or assumptions that cannot be challenged. I could probably fail in my attempt to establish firm grounds for moral and political theorizing, but at least I would not be embarrassed when somebody asked me why I think that what I think about morality is right.

5. Plan of the Dissertation

This dissertation is divided in six parts. Chapter One and Chapter Three are supposed to set the theoretical devices for the discussion that follows in Chapter Three and Chapter Four. Chapter One discusses two basic concepts, namely norms and reasons, and their constructivist understanding. Once provided these interpretations, it

³⁹ Immanuel Kant, *Groundwork of the Metaphysical of Morals*, 1785, Cambridge: Cambridge University Press, 1998.

⁴⁰ Gerald Cohen, “Facts and Principles”, p. 212.

is then possible to address one of the main points of this dissertation, that is, the question of objectivity (Chapter Two). Chapter Three presents a rough definition of constructivism and presents the materials out of which it is possible to construct moral norms and principles of justice. Chapter Four presents some criticism to classical constructivist views. Finally, in Chapter Five, I present a re-definition of constructivism and a possible argument supporting this view. In the Appendix, I defend constructivism from a new criticism pressed by Gerald A. Cohen against constructivism.

Chapter One

Norms, Reasons and Constructivism

1. Norms

Most of the people abide by some moral norms. Usually, we do not flip a coin when we make decisions about how to behave towards others. What we usually do is to take into account some general rule that guides our choices. This kind of rules plays a function similar to language's rules: they provide standard of grammatical correctness for sentences. All those speaking a certain language conform to its rules for holding a meaningful conversation. However, the rules that regulating our moral conducts do not seem to be as restricted in scope as rules of language: the grammatical

rules of a language X hold for the X-speakers and do not hold for the speakers whose mother tongue is not X. Nevertheless, the grammatical rules of the language X would hold for all if they were speaking in X. This means that the grammatical correctness of a sentence, for instance, does not refer to an ‘absolute’ truth, since it always depends on the language we are considering. Nevertheless, its correctness might be said to be *invariant* with respect to the speaker’s mother tongue or speaker’s attitudes.

Does the same apply to moral norms? Most of the people, if asked, would probably say that the rules of language are anything but a matter of convention created for practical tasks (such as communication). However, some of the people would be less inclined to think the same about rules that regulate our behaviors, namely moral norms. And the same argument can be made for those norms that regulate our affairs at the social level, namely principles of justice. Both moral norms and principles of justice seem to impact on people’s life in a way that other kinds of rules do not. Moral norms and principles of justice seem to claim a kind of authority and a degree of intersubjective validity that other standards of evaluation do not claim. What is so special about them?

Some people think that moral norms are as conventional as norms of etiquette or game’s rules:⁴¹ they are a product of socialization, culture, historical events and the like. On this view, one might say that people generally disapprove of a certain action in a given community, while would approve of it were they belonging to a different culture. Therefore, the fact that certain moral or political norms are universally valid is anything but an illusion. Accordingly, on this view to say that something is *objective* hold just within the context we are referring to when we affirm that something is right

⁴¹ Philippa Foot, “Morality as a System of Hypothetical Imperatives,” *The Philosophical Review*, 81, 1972, pp. 305-316.

or wrong.

However, this seems to contradict our intuitive understanding of the bearing that these kinds of norms have on us. In everyday evaluation we show ourselves to be confident in the principles adopted as general standard of evaluation, as if they were, without doubt, the most reliable. When we say that an action is *wrong* or a political institution is *unjust*, sometimes we are just presenting a personal opinion, but we are often claiming that the action in question is *objectively wrong*, or the political institution is *really unjust*. *Ceteris paribus*, anyone who performed that action, or support that political institution, would be doing something wrong. Thus to say that something is morally *objective* seems to be a matter of fact rather than opinion. At least, the judgment that something is morally wrong makes a stronger claim than other kinds of value judgments. Moral norms seem to be *universal in application*. But, what makes an action *objectively* wrong, wrong for everyone and not just for someone?

Showing up in shorts to a formal dinner; touching the ball with a hand for a striker in a soccer game; misspelling a word: they are all forms of violation of some rule. Thus, it could be said that I am behaving inappropriately, I made a foul or I am not competent doing this kind of things. Even if I am doing something wrong, these wrongs, arguably, will never be considered as bad as *moral* wrongs. If I punched the person with whom I am discussing because she disagrees with what I am saying, my action would not be just inappropriate, a foul or a matter of incompetence. The performance of such an action would be considered morally wrong.⁴² In other words, it would be something wrong from a general, moral point of view. At least intuitively,

⁴² Here I am assuming that the act of punching somebody is not an act of self-defense or aimed at preventing worse consequences. I take the action of punching my opponent as a deliberate piece of cruelty.

this seems to be something more serious and important than a matter of etiquette, game's rules or grammar competence. If somebody misspelled my name I would just think: "Come on! That's just a mistake...". But if somebody punched me in the face, or somebody enters my private residence, I would rather think: "This aggression will not stand... will not stand!" – unless I am a nihilist and I believe in nothing. Moral norms seem to be *overriding with respect to other (non-moral) considerations*. What makes some wrongs more wrong than others?

Probably, it is the fact that, if asked, I would not be able to justify my behavior to others; at best, I could come up with something like an explanation of what I have done, but this would not account for the justification of my behavior: the fact that I was really upset and angry with that person, for instance, could provide an explanation of why I did what I have done, but it would not account for the moral rightness or permissibility of resorting to violence toward that person who is disagreeing with what I am saying. I would not be able to offer any reason that makes my action morally acceptable or permissible. Put in other terms, the fact that somebody is disagreeing with what I am saying is not a good kind of consideration – *the reason* – that makes my punching her morally right or permissible. Moral norms seem to have a broader scope of application than other conventional rules. Everyone able to understand what morality requires her would be *justified* in affirming or believing it or acting on that norm and, if she does not, she would betray some confusion. Like in the language case, the objectivity of a moral claim can be considered as *invariant* with respect to, say, the moral agent's geographical origins or moral agent's attitudes. Thus to punch somebody in the face is morally wrong here as well as everywhere else.

Moral norms seem to be justifiable through certain moral reasons that make

them universally applicable (they apply to all that are able to understand the supporting reasons for a rule of conduct) and prevailing on other kind of norms (moral norms are seen as important when there are strong reasons for their endorsement). What are these moral reasons about?

2. Reasons

Consider again the judgment “to punch those who disagree with me is morally wrong.” Most of the people accept this judgment as correct independently of who is asserting it and of the circumstances in which the action is performed. What makes the case that to punch one’s opponents is to be judged as morally wrong by everybody?

One way to address this question is to formulate a general principle that universally applies to agents and from which to draw the conclusion that to punch those who disagree with me is wrong. So, Kantian-inspired deontological theories, for instance, would consider whether all rational persons could endorse this judgment, or whether to respect one’s humanity could require not harming people. Consequentialist theorists like utilitarians, instead, would judge whether actions such as harming people would make them happier or improve people’s wellbeing. And the fact that different sorts of theorists (except nihilism) converge on the same conclusion will not be surprising: to punch one’s opponents is morally wrong. Yet, the question of why things can be right and wrong seems to remain unresolved. Indeed, one can push further the question and ask: why to respect one’s humanity or to promote people’s happiness is right or morally required? Why is the adopted normative criterion the right one? Someone intrigued to know why these things are wrong, might keep asking: what is constitutive of

that action that makes it unacceptable from a moral point of view? Is it the mere capacity to think about it? Or something different, something independent of our capacity to think about questions of right and wrong, or just and unjust?

In order to address this question, we have to look for what Christine Korsgaard calls “the sources of normativity.”⁴³ Korsgaard’s philosophical inquiry moves from the “normative question:”⁴⁴ why must one do what moral norms prescribe? Why ought I to abstain from punching the person who is disagreeing with me if I can get better of her? This question is twofold. On the one hand, the normative question is concerned with motivation a person has for being moral. On the other hand, it can be a deeper question about the reason why moral norms hold for a person independently of what her motivations (for or against behaving morally) are. The normative question arises when one sees the objectivity of a moral norm, but fails to conform her behavior to that norm. On Korsgaard’s view, it is necessary to understand what makes a norm a *moral* norm. Or, in more Korsgaardian terms, we need to account for the authority of moral norms, inquiring the sources of normativity. We have to see how something, whatever it is, can become what one ought (or ought not) to do, namely the *reason* why something is morally right (or wrong). For instance, unless they are nihilists (and so, for them everything goes), people would say that there are no moral reasons whatsoever for punching those who disagree with me. What does “there are no moral reasons” mean though?

When something is morally right (or wrong) it means that there are moral reasons to do (or not to do) it. To say that there are moral reasons to do (or not to do)

⁴³ Christine M. Korsgaard, *The Sources of Normativity*, Cambridge: Cambridge University Press, 1996.

⁴⁴ *Ibidem*, p. 10-21.

something it simply means that there are (or would be) certain facts of the matter about morality that provide an agent with moral reasons for (or against) it. One might think that what is in need of explanation here is what is like for a plain fact to count as a moral reason (or as a reason of justice), that is, how something can be the relevant kind of consideration for or against something in the moral (or political) domain. What is problematic here is the same idea of a reason, which, as Thomas Scanlon argues, is a *primitive*, since it cannot be explained in any further terms, besides saying that it is a kind of considerations that counts for and against what we ought to do. And if one keeps asking, “how does a reason counts for something”, there is anything to say but invoking more reasons.⁴⁵ What might be in need of explanation is how a reason can be generated and when a reason can be a good reason.

One might think that reflecting upon all relevant available information about ourselves and the circumstances in which we are, and taking our reasoning to be – at least hypothetically – faultless, we should be able to recognize what moral reasons we have. But this might not be enough for an account of *good* reasons, namely those reasons that really count and count for all. After all, coming to see that I have a reason for doing something does not necessarily entails that I am acting on and from a good reason. But this way of proceeding, then, tends to conflict two related but different questions, namely justification and motivation. One thing is a consideration that shows the moral rightness or permissibility of an action (or the political rightness or acceptability of a political institution). Another thing is to be moved to act (or to abide by the terms of a political institution). And it might not be the case that justification and motivation

⁴⁵ Thomas M. Scanlon, *What We Owe To Each Other*, Cambridge, MA: Harvard University Press, 1998, p. 2.

rely on the same set of reasons.⁴⁶ To see that I have a reason to do something, namely to recognize the normative force of a particular consideration, does not explain *why* the normative force arises from that specific consideration at all. Indeed, I might fail to see that I have a reason not to punch those who disagree with what I am saying simply because I grew up in a very violent environment, where rhetorical skills and the force of the better argument are overruled by physical endowments. Thus, failing in being motivated by moral reasons because of bad up-bringing or because of other kind of non-moral considerations (like overwhelming subjective preferences), does not defeat the normative force of the reasons I was supposed to act upon in order to behave morally. The normative force is not a question of motivation, rather of justification, namely of what makes things right and wrong, and makes them so in an objective way. Again, what sort of reasons makes things objectively right and wrong? From where do these reasons come? How can they justify anything? In order to address these questions we have to understand how something can be a reason, whether what counts as a reason is some fact that belongs to the fabric of the world, and so independent of human beings, or whether a reason is a sort of consideration that depends on us, on our cognitive capacity to figure out what one ought to do. In more philosophical terms, we have to see what are the metaphysical commitments and the practical implications of the idea of a reason.

The capacity to resolve practical problems through reasoning is generally known as *practical reason*. “Practical” here refers to the fact that the cognitive process aims at work out what one ought to do, a form of reasoning that weights moral reasons for and against a certain action. Practical reason is used in opposition to *theoretical reason*,

⁴⁶ I will not address this point here.

which is a form of reasoning deputed to explain what happened and foresee what is going to happen. While theoretical reason is concerned with matters of fact and their explanation and the reasons we have for believing, practical reason is concerned with matters of value and the reasons we have to act. Both reasoning capacities can produce objective outcomes, but the reasons that make a belief true are not the same kind of reasons that make an action right. Both theoretical and practical reason are *attitudes*, but while theoretical reason relies on an impersonal point of view about how the world is (and it produces changes in our beliefs), practical reason endorses a first-personal point of view about how the world ought to be (and it produces changes in our intentions).⁴⁷

What provides practical reasons though? Reasons for beliefs are given by facts of the matter about how the world is. If practical reasons are different from reasons for believing, it might be the case that there is a set of facts (or some set of properties of plain facts) which are different from plain facts as we ordinarily conceive of and empirically know them, and provide this special class of normative considerations. On this view, our theorizing about what we ought to do should discover these facts and their properties, and so account for the objectivity of our moral judgment in the same way we account for the objectivity of judgments about the empirical world. Nevertheless, our empirically informed view of the world would push us in the direction of ruling out everything that cannot be empirically explained and known. So, we have to face these two strains of our theorizing: on the one hand, moral appearances show objective pretensions; on the other hand, they cannot go against our general empirical understanding of the world. So we need both internal (relative to

⁴⁷ Gilbert Harman, *Change in View*, Cambridge MA, MIT Press, 1986, p. 74-78.

moral domain) and external (relative to the world) accommodation for accounting for those reasons that make our moral claims objective.

Moral reasons make moral claims objective. In other words, what is prescribed or judged by the content of moral claims is made objective – *the thing that ought to be done* – by normative considerations, that is, *reasons*. There is an intuitive sense of reasons that refers to the one's interests in performing an action. In this sense, reasons are called hypothetical reasons, that is, reasons that depend upon what one wants. For instance, if you want to buy luxury goods do not study philosophy (your desire for luxury goods gives you a reason not to dedicate your life to a non lucrative activity). But there is another, more stringent sense of reasons that has to do with the moral domain. On this interpretation, reasons are categorical reasons, that is, reasons that hold independently of what one wants. For instance you ought not to punch those who disagree with what you are saying, even if you get better of them. The latter reading conveys the kind of authoritative, good, objective moral reasons we are looking for. Constructivists claim to provide a tenable account of the generation of moral reasons.

3. Constructivism

The historical roots of constructivism can be found in Kant's philosophy of mathematics. On Kant's view, mathematical truths are mental constructions. In his *Critique of Pure Reason*, Kant faces the question of the nature of these truths by asking how we can know them only thinking about them and, nonetheless, correctly apply them to the world. Moreover, we cannot do without them in order to grasp reality. His solution is notorious. First, all our experiences are possible in virtue of a priori

categories, namely space and time. This is not a fact of the matter about experience; rather it is a pre-condition for having any experience of the physical world, which is made up of facts and properties of facts whose existence does not depend on us. Second, while geometric laws structure the space, arithmetic laws structure the time. These laws are derived from the very nature of our thought. Therefore, they are a priori laws, and experience has to conform to them. Kant's view was famously defeated when Albert Einstein applied Bernhard Riemann's mathematics to the theory of general relativity. This proved not only that the physical world could be better described by non-Euclidean mathematics, but also, and more importantly, that we are capable of more than one pure geometry. Thus we are capable of different "constructions" of the world, reading Kant's a priori categories as examples of possible constructions.

The same problem applies to moral and political theorizing when we endorse a constructivist view. Now, it is not the aim of this dissertation to discuss whether Kant actually held a constructivist view in ethics.⁴⁸ To be true, constructivists of all kinds share Kant's autonomy ideal, namely that free and rational people are able to give norms to themselves and to regulate their behavior accordingly. Obviously, this is not enough for making the case for a constructivist view. The problem is, rather, how to account for the objectivity of moral claims on constructivist grounds.

Objectivity in moral and political theorizing has more than one meaning in the philosophical debate. In its intuitive sense, objectivity means non-subjective. When I say "x is objectively so and so", I mean that being so and so of x does not depend on my personal way of seeing things. Objectivity does not mean that merely "agreement."

⁴⁸ On this point see Larry Krasnoff, *How Kantian is constructivism?*, "How Kantian is Constructivism?", in *Kant-Studien*, 90, 1999, 385-409.

People might agree on something, but this is not enough to make objective the object of their agreement. For instance, many persons dislike Pasolini's movies, judging those movies absurd. Notwithstanding a large number of people think so, this is not enough to make their judgment objective. Indeed, some others think that Pasolini's movies are extraordinary, but inaccessible for those not competent about that kind of sophisticated movies. One may conclude that on this kind of evaluations objectivity is simply not achievable: "the beauty is in the eyes of the beholder". This might be the case for moral evaluations as well.

Moral non-cognitivists support the view that moral claims are not objective, because, similarly at other kind of evaluation they do not report facts but expressions of one's attitude of approval and disapproval.⁴⁹ Some philosophers might concede that moral claims are - in some narrow sense – objective. But they ground objectivity on facts about subjective desires or inclinations.⁵⁰ Quietists think that there are no interesting ways of distinguishing discourses in point of objective status. Constructivists deny all these positions.

Constructivists are concerned with the problem of what makes something objective, whether it is a matter of fact (if there is something in the world, somehow independent of us, that makes things right and wrong) or a valid method of moral thinking (the way we come to know when things are right and wrong). The first one might imply an ontological reading of the question of objectivity, whether the question of rightness and wrongness depends on moral facts or moral properties of facts whose

⁴⁹ See Alfred J. Ayer, *Language, Truth, and Logic*, London: Gollancz, 1936. Simon Blackburn, *Spreading the Word*, Oxford: Clarendon Press, Oxford 1984; Allan Gibbard, *Wise Choices, Apt Feelings*, Cambridge, MA: Harvard University Press, 1990.

⁵⁰ Michael Smith, *The Moral Problem*. Maldon, MA: Blackwell, 1994.

existence does not depend on one's conceiving about them. The second question focus on an epistemological sense of objectivity, whether the way we assess what counts as moral facts is not influenced by one's feelings and opinions. As I shall show in the next Chapter, the constructivist follows the second line of reasoning: there are objective moral facts and what makes them objective is a valid procedure of reasoning. On this interpretation, moral claims (things like judgments, utterances, beliefs, or propositions) are objective when they are advanced at the light of a general principle issued when issued by a suitably specified procedure of construction. And one is said to be justified in holding the principles she holds if the procedure working out principles is a valid one. What makes valid a procedure of construction is a more complex problem that I address in the next chapters.

In ethical and political theorizing, constructivists oppose both the ontological commitments of moral realism and the non-cognitivist pessimism about moral knowledge. Constructivism is the claim that the objectivity of moral claims is based on certain procedures of practical reasoning, which derive from our reason. According to constructivists, moral claims are about moral facts. These facts provide reasons for the objectivity of moral claims not because they are already moral, but because of a certain procedure. As a preliminary, constructivism is the claim that

some facts provide moral reasons or reasons of justice because certain principles, which are worked out by a suitably specified procedure of construction, confer reason-giving status to those facts.

The constructivist can introduce a conception of moral facts that is less com-

mittal from an ontological point of view than realism, without involving strange ontological assumptions or obscure accounts of properties. On the epistemological level, it provides a better ground for justifying moral claims, through a different conception of objectivity. Realists think that judging things right and wrong consists in describing or representing a moral reality. Accordingly, things are right or wrong independently of our thinking about them. So, the subject matter of ethics is independent of us, and claims about it are objective, in a quite strong sense. Anti-realists believe that such moral judgments are worked out by some function of our reasoning; they are expression of our attitudes towards a factual reality. Accordingly, the way in which things can be right or wrong depends on our thinking about them. So, the subject matter of ethics is dependent on us, and claims about it are objective, only in a minimal sense. On my interpretation, constructivism represents the view claiming that the subject matter of ethics does depend on us and on the kind of inquiry we are pursuing, but claims about it are objective in quite a strong sense. For this reason, constructivism is considered a very instable position.

Constructivism denies that there exist a pre-given moral reality but claims the possibility of an objective ethical procedure of justification. Constructivism represents a cognitivist position in ethics (since it claims that moral claims can be true and false and, more generally, that there is moral knowledge), but does not endorse any metaphysical commitment to a peculiar moral ontology. What constructivists are looking for is a single body of moral facts, worked out by some function of our reasoning. This function creates moral reality. And moral reality exists as far as agents of construction (reasoning creatures) exist. Put in other words, there are facts of the matter about morality, but these facts are not prior to, and independent of, our enquiring about them.

Thus, constructivism claims that there are moral facts, and they are the product of our functional reasoning for solving practical problems. In this way, constructivism tends to collapse the ontological question onto the epistemological one. Indeed, constructivists are objectivist on both the semantic and the epistemological levels, but not on the strong, ontological sense implied by ontological moral realism. This makes of constructivism a very problematic position.

Ontological and epistemological questions are detachable. Ontological questions regard the existence of moral facts, while epistemological questions are about what justifies moral claims. Indeed, one might affirm that justified moral claims are about moral facts whose existence does not depend on our knowledge. Realists claim that normative principles refer to real, non-constructed moral entities, properties or facts. Constructivists deny this and claim that principles have normative significance for us because they are the product of our reasoning about practical problems.⁵¹

Stated in this way, constructivism could represent a genuine and independent position in the metaethical debate. Obviously, its independence is given by the way the procedure of construction or the pattern of practical reasoning is defined. Rawls, the most prominent constructivist in the contemporary debate, defines the procedure of construction in terms of an “original position,” where the denizens of this initial choice situation are deprived of knowledge of their social status and natural abilities, hence equally situated in order to choose first principles of justice that could be accepted by

⁵¹ Samuel Freeman argues that “[a]ccording to constructivism, objectivity of judgment [...] precedes the notion of moral validity or truth. Moral statements are sound or true, not in representing a prior order of moral facts but when they accord with principles that could or would be accepted by fully rational persons in an objective procedure of practical reasoning.” S. Freeman, “Introduction”, in *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press, 2003, p. 28.

all.⁵² Unfortunately, Rawls is not clear on the metaethical view to which he is committed.⁵³ It is sometimes claimed that constructivism is a form of realism; sometimes it is associated with anti-realism. Korsgaard, for instance, defines her Rawlsian-inspired view as a “procedural realism.”⁵⁴ Ronald Dworkin reads Rawls’s *constructive* method as anti-realist.⁵⁵ Thomas Nagel discusses a form of normative realism often associated with constructivism.⁵⁶ Also, non-natural moral realists like Scanlon are often associated with constructivism. Other constructivists lie in between these views.⁵⁷ And there are other philosophers who present views similar to constructivism.⁵⁸

In order to unpack these rough statements about a constructivist view, we need

⁵² John Rawls, *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1999, § 4.

⁵³ Rawls does not define his theory as constructivist until his “Kantian Constructivism in Moral Theory” (*Journal of Philosophy*, LXXVII, 1980); later on, in *Political Liberalism* (New York: Columbia University Press 1996) he distinguishes between a moral and a political understandings of constructivism, claiming that the latter is independent of the metaethical view that one endorses. Whether his moral interpretation of constructivism constitute a metaethical view is matter of discussion.

⁵⁴ Christine M. Korsgaard, *The Sources of Normativity*, p. 10-21.

⁵⁵ R. Dworkin, “The Original Position”, in N. Daniels (ed.), *Reading Rawls*, Stanford University Press, Stanford, 1989.

⁵⁶ Thomas Nagel, *The Possibility of Altruism*. Oxford: Clarendon Press, 1970, chapter 8.

⁵⁷ See, among others, Ronald Milo, “Contractarian Constructivism”, in *Journal of Philosophy*, 99, 1995. Onora O’Neill, “Constructivism VS. Contractualism”, *Ratio*, 16, 2003; “Constructivism in Rawls and Kant,” in S. Freeman, (ed.), *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press, 2003. A new constructivist wave is represented by Aaron James (“Constructivism about Practical Reasons,” *Philosophy & Phenomenological Research* 74 (2007), pp. 302–325) and Sharon Street (“Constructivism about Reasons” in Russ Shafer-Landau (ed.) *Oxford Studies in Metaethics*, Vol. 3, Oxford: Oxford University Press 2008).

⁵⁸ Take, for instance, John Skorupski, “Irrealist Cognitivism,” *Ratio*, 12, 1999. See also, John Skorupski, “Reason and Reasons” in B. Gaut and G. Cullity (eds.), *Morality and Practical Reason*, Oxford: Oxford University Press 1997.

to have a better definition of what constructivism is about and its relations to other metaethical positions. In the next chapter I discuss the notion of objectivity a constructivist view can aspire at. Then I address the difficulties related to formulate a precise definition of constructivism as a genuine and independent view.

Chapter Two

Constructivism and Objectivity

1. The Question of Objectivity

The notion of objectivity in moral theory concerns the nature of our moral evaluations. When we say that moral claims (things like moral judgments, utterances, beliefs, or propositions) are objective usually we mean that they are unbiased or impartial. Notwithstanding its intuitive understanding, the notion of *moral* objectivity can assume three different senses, according to the level of inquiry we are pursuing. First, in the *semantic* sense, moral objectivity is concerned with the function of moral discourse, whether it states moral facts or it has some other non-descriptive role. On this level, objectivity is about the truth-aptness of moral claims. Second, in the *ontological* sense, moral objectivity is about the question of existence of moral facts, or moral properties of non-moral facts, namely those things that make a moral claims

objective in the semantic sense. Third, in the *epistemological* sense, moral objectivity is related to the method of justification of moral claims. On this level, objectivity is about the validity of our method for judging, affirming or believing something as right and wrong. Depending on the way we address the question of objectivity on one or more of these three levels, we define our view of the objectivity of a moral claim. Let us see how these notions apply in moral theory, following some of the classical approaches.⁵⁹

Suppose, for instance, that our ordinary moral claims state moral facts. On the semantic understanding, a moral judgment can be objective if it describes or represents some moral facts or some moral properties of facts. So judgments of the kind “x is F” (where ‘x’ is either a person or an action, and ‘F’ is an evaluative predicate – like ‘good’ – or a normative conclusion – like ‘ought to be done’) are objective depending on what ‘x,’ ‘F,’ and ‘is’ mean and whether, as a matter of fact, ‘x’ has the property of being *F*. For instance, judgments like “to punch those who disagree with what I am saying is wrong” state moral facts. In the case at hand, the propositional content of the judgment refers to a moral property, the one of being wrong, that is exemplified by the action of punching those who disagree with what I am saying. This thesis is usually labeled as *semantic moral realism*. But whether or not there is such a property, whether ‘F’ exists, and whether its existence is independent of the way we conceive of such a property, are questions that cannot be solved by semantic analysis. The question of

⁵⁹ In the following paragraphs, my aim is not to provide a complete and satisfactory summary of the contemporary metaethical debate. In the last years, the approaches that have been discussed are so many that is quite impossible to come up even with a rough overview. My aim is just to give some example of what (I think) are classical understanding of the notion of objectivity in moral theory. This will hopefully provide the basis for a better understanding of the constructivist view.

existence of moral facts and moral properties is a metaphysical or an *ontological* question.

Suppose, then, that there exist a pre-given moral reality. On this view, the way in which things can be right and wrong does not depend upon our thinking about them, or upon the attitudes that we form towards them. This view is generally labeled as *ontological moral realism*. Moral realists of this sort claim that there are moral entities (reasons), properties (rightness or goodness), and facts, and they are independent of people's evidence for them, that is, their existence does not depend upon the way we know them.⁶⁰ These moral facts make things right and wrong, and so provide agents with the justificatory reasons we are looking for. Moral facts constitute a single body of truths of the matter about morality. They are similar to the material objects of the outside world, as described by the fundamental laws of physics, i.e. something that cannot depend on one's conceiving of them. And the propositions that report those facts are *fundamental* because their validity is not derived from any other truths or any logically prior elements. If there are indisputable facts of the matter about morality, and they are independent of our conceiving of them, judgments will be objective when they track these pre-given (i.e. conceiving-independent) moral facts. Accordingly, moral facts are not the product of construction or social conventions; rather, they are discovered by moral agents and serve as moral constraints on one's possible actions.

All moral realists claim that there are moral facts, which are state of affairs where moral properties are instantiated. But they disagree about whether these facts

⁶⁰ There are many versions of moral realism. See Richard Boyd, "Hot to Be a Moral Realist", in Geoffrey Sayre-McCord (ed.), *Essays in Moral Realism*, Ithaca: Cornell University Press, 1988. David Brink, *Moral Realism and the Foundations of Ethics*, New York: Cambridge University Press, 1989. Russ Shafer-Landau, *Moral Realism: A Defense*, Oxford, 2003. Peter Railton, "Moral Realism", *Philosophical Review*, 95, 1986.

are either natural or non-natural. While the so-called naturalist realists believe that moral facts can be known by means of scientific inquiry (in other terms, there are moral properties and they are part of the fabric of world), non-naturalist realists claim that moral facts cannot be reduced to natural ones (so they are *sui generis*). In the first case, moral facts are the subject matter of a posteriori investigation: they can be discovered by the means of empirical analysis. In the second case, moral facts can be inquired a priori: they are analytical truths, known by conceptual analysis. Whatever these moral facts could possibly be, on this account the way in which something can count as a reason can be expressed by the following claim: *some facts provide moral reasons (or reasons of justice) because some basic moral properties confer a reason giving status to those facts.*

A strong form of moral realism reduces the third level of philosophical analysis, the epistemological one, to the ontological question. In other words, the epistemological question of the justification of moral claims and the kind of knowledge we can have of them is accounted for by the ontology of morals. For instance, on an ontological realist account of morality, a moral judgment is objectively justified if and only if there is some relation between a moral judgment and the moral independent reality that that judgment is supposed to represent or describe. Also, the semantic function of moral discourse is accounted for by the ontological question. The truth-aptness of our moral claims is made possible by the existence of moral facts and their properties tracked by moral claims. Thus, “x is F”, assuming that ‘F’ exists (in some sense), is true and we are justified in affirming and believing that “x is F.”

One worry about this view concerns its commitment to the existence of inexplicable metaphysical entities. The existence of moral entities is so peculiar as to

be quite obscure. John Mackie, for example, in his *Ethics: Inventing Right and Wrong*,⁶¹ argues powerfully against the “queerness” of entities such as objective moral values. “If there were objective values, they would be entities or qualities or relations of a very strange sort, utterly different from anything else in the universe”, and knowable through “some special faculty of moral perception or intuition, utterly different from our ordinary ways of knowing anything else.”⁶² Moral claims, he argues, do not describe or report moral facts. If they were, this would give rise to a double error: a *conceptual* error looking at plain facts as objectively prescriptive; and an *ontological* error thinking that such moral entities actually exist.⁶³ Mackie, then, argues that a realist view of morality is not able to account for the relation between facts and moral norms without commitments to an extravagant metaphysics:

What is the connection between the natural fact that an action is a deliberate piece of cruelty – say, causing pain just for fun – and the moral fact that is wrong? It cannot be an entailment, a logical or semantic necessity. Yet it is not merely that two features occur together. The wrongness must somehow be ‘consequential’ or ‘supervenient’; it is wrong because it is a piece of deliberate cruelty. But just what *in the world* is signified by this ‘because’?⁶⁴

In order to explain the meaning of the “because” in the above passage, moral realists need to commit themselves to the existence of queer entities and mysterious

⁶¹ J. L. Mackie, *Ethics: Inventing Right and Wrong*, Oxford: Penguin Books 1977, especially Chapter 1.

⁶² John L. Mackie, *Ethics: Inventing Right and Wrong*, p. 38.

⁶³ According to Michael Smith, arguments such as Mackie’s can be understood as a conjunction of different claims, a conceptual one and an ontological one. See Michael Smith, *The Moral Problem*, Oxford: Blackwell, 1994, p. 63-66.

⁶⁴ John L. Mackie, *Ethics: Inventing Right and Wrong*, p. 41.

properties. Suppose that we can describe the world as made from a set of natural properties. For simplicity, suppose that there are a finite number of properties {x, y, z}, and all the possible combinations of them. In order to account for moral norms, realists postulate the existence of moral properties; call them “m.” So, the moral realist world would be like this: {x, y, z, m}. These “m-properties” are different by definition from all the other properties. Error theorists argue that this just inflates ontology: if a certain state of affair is explained by some natural properties that can know by scientific inquiry, then it is not clear why one should add elements that do not exist, like other properties. The error-theorist’s world, then, does not contain any fact that is ultimately *moral*. Moral claims are a sophisticated manifestation of human beings’ capacity to articulate their non-cognitive attitudes and to project them onto natural facts. This projection creates the mirage of an objectivist account of morality through what Mackie calls “patterns of objectification” and leading us to make something similar to the so-called “pathetic fallacy,” (namely, the inclination to attribute human feelings to inanimate objects).⁶⁵ One could mitigate the pessimism of this view by admitting the possibility to talk about moral facts on the semantic level. But since there is no evidence for moral claims as we have for scientific ones, we have to conclude that moral claims are nothing more than the speaker’s attitudes of approval and disapproval. The origin of these attitudes is at least partly found in the social pressures, internalized by people.

Moral facts might not even have the explanatory function that some moral

⁶⁵ John L. Mackie, *Ethics: Inventing Right and Wrong*, p. 42. On this point, Mackie recalls Hume on the mind’s “propensity to spread itself on external objects.” (David Hume, *Treatise of Human Nature*, I. iii. XIV).

naturalists ascribe to them.⁶⁶ Some realists think that moral facts and properties play a significant role in the explanation of our experience, as physical facts do in scientific explanation. Gilbert Harman, argues that

observation plays a role in science that it does not seem to play in ethics [...] you need to make assumptions about certain physical facts to explain the occurrence of the observations that support a scientific theory, but you do not seem to need to make assumptions about any moral facts to explain the occurrence of the so-called moral observations [...] In the moral case, it would seem that you need only to make assumptions about the psychology or the moral sensibility of the person making the moral observation⁶⁷

Harman shows that when one see a deliberate piece of cruelty (like torturing an animal) we do not point at any property in order to account for the moral wrongness of the action at hand. Not figuring in the explanation of our moral conduct or moral beliefs, there is no reason for thinking that there are moral facts and properties at all.⁶⁸

Non-cognitivist theorists share a worry about an inflated ontology similar to error theorists' one. Expressivists, for instance, do not believe in the existence of moral properties ontologically exemplified in moral facts.⁶⁹ But they do not share error

⁶⁶ See, for example, naturalist like Nicholas Sturgeon, "Moral Explanations," in David Copp and David Zimmerman (eds.), *Morality, Freedom, and Truth*, Totowa, NJ: Rowman and Allenheld, 1985.

⁶⁷ Gilbert Harman, *The Nature of Morality*, New York: Oxford University Press, 1977, p. 6.

⁶⁸ I do not enter in the details of the argument here. My aim is just to point at the various objections pressed against moral realism. For Sturgeon's reply see "Moral Explanations," in Geoffrey Sayre McCord (ed.), *Essays on Moral Realism*.

⁶⁹ See Alfred J. Ayer, *Language, Truth, and Logic*, London: Gollancz, 1936. Simon Blackburn, *Spreading the Word*, Oxford: Clarendon Press, Oxford 1984; Allan Gibbard, *Wise Choices, Apt Feelings*, Cambridge, MA: Harvard University Press, 1990.

theorists' pessimism about morality. Moral expressivists claim that even if the moral discourse shows objectivist pretensions, beyond the surface grammar there is anything but expressions of ones' attitude towards a state of affairs. To say of something that it is right or wrong, it is just to express one's approval or disapproval of it. There is, of course, more than one form of expressivism. But most of the expressivists would agree with the claim that there are no facts of the matter about morality as realists conceive of them. All there is about morality are expressions of attitudes of endorsement, approval and disapproval shown by an individual towards a state of affairs (which is not itself a moral fact). All moral claims can do, therefore, is to express one's non-cognitive state (things like desires, sentiments, pro-attitudes) and project them onto plain facts.

Assertion of the kind "x is F" do not need to presuppose an independent realm of moral facts. Thus, on this account, moral claims cannot be true or false. And the possibility of genuine ethical knowledge is anything but an illusion. This approach is not as metaphysically committed as realist theories. Nevertheless, if somebody does not form the same attitude of others toward the same state of affairs, for instance, if one approves of an action while others disapprove of it, and there is not definitive answer to the disagreement, this approach will not get us to a robust conception of objectivity of an moral or political view.

Now, it would be hard for somebody to deny that ordinary moral appearances are objectivist. Moral non-cognitivism goes against this intuition. Nevertheless, it seems very demanding to postulate a realm of moral facts that moral claims are supposed to refer to. So, on the one side people like moral realists seem to be wrong. The only way to account for a cognitivist ethical view without a demanding ontology

of morals seems to be *error theory*. Error theorists like Mackie or Richard Joyce provide quite a pessimistic way to address the question of how things can be right and wrong.⁷⁰ They claim that when we judge things as right or wrong, we are talking about something (i.e. moral reality) that does not exist. Even if moral discourse shows objectivist pretensions (it aims at describing the world as it is), this is just an illusion. When someone says that “murder is wrong”, she is not pointing at a property (either natural or non-natural) of that action as realists think; all she is doing might simply be a projection of her emotions onto that fact. If we think that moral judgments describe moral facts, we are just making a mistake. Moreover, the fact that postulating a moral reality helps us to explain why people behave respecting certain rules does not account for the moral rightness of their actions. However, there should be less pessimistic ways to account for a moral view.

Is there a way to accommodate a robust, realist-like conception of objectivity while holding the ontological parsimony similar to non-cognitivist positions? The aim of this thesis is to prove that a constructivist approach to moral and political theorizing can achieve this aim. In order to do this, constructivism should be able to prove that moral claims do not point at intrinsically action-guiding moral facts or properties, but to ordinary facts that become relevant via categorically binding demands.

2. Objectivity in Moral and Political Theorizing

In order to address the question of objectivity on constructivist grounds, let us consider a comparison with its scientific understanding. Take, for instance, this

⁷⁰ Richard Joyce, *The Myth of Morality*, Cambridge: Cambridge University Press, 2001.

statement: “Jupiter has 63 moons.” We can say that this statement is *objective*. Indeed, on the intuitive understanding, it is not a matter of opinion whether Jupiter has 63 moons; rather, it is as a matter of fact. But, as said, “objective” can mean different things.

On the *semantic* level, this statement has a propositional content that can be assessed as true or false. The propositional content specifies how the world is according to the statement: how the world would have to be if the statement were true. Thus, the statement “Jupiter has 63 moons” is true (or objective on the semantic level) when it reports a fact of the matter about Jupiter (Jupiter’s having 63 moons). This fact is the truth-maker: it makes that statement true. On the *epistemological* level we can know that Jupiter has indeed 63 moons in many ways, for example, by observing them with a telescope, by means of astronomic calculation and so on. Note that, on the epistemological level, the objectivity of a statement does not depend necessarily on the same considerations that make it objective on the ontological level. One might believe that Jupiter has four moons only (the major ones), simply because he could see just the main ones given the limited power of the telescope’s lenses. In this case, one might be justified in affirming or believing that Jupiter has 4 moons. Nevertheless, this is not objective from an ontological point of view. Among the considerations that make a statement epistemologically objective we have to add the way we know things (in the case at hand the reliability of the device for observing Jupiter’s moons).

Now, when the corresponding event obtains, one might say that the statement is objectively *independent of* whether one believes, sees or thinks about it. In science, if a fact had obtained even if no human being had ever existed, that fact would be *mind-independent*. Mind-independence (whether something is ontologically objective

independently of our thinking about it) is a fundamental aspect of objectivity.

What about moral theory then? Take, for instance, this statement: “Murder is wrong.” We can say that this statement is *objective*. Indeed, on the intuitive understanding, it is not a matter of opinion whether murder is wrong. But, the moral case seems to be different from the scientific one. Sometimes philosophers take morality and moral facts in similar way natural scientists take natural facts. But moral facts and properties are not, at least intuitively, as real as other properties like the physical ones. Properties that make the case for facts to be objectively moral, like the willfulness of a murder, do not have a spatial-temporal collocation, for instance: they exist in thought but they do not have a physical or concrete existence. Or, in other terms, they exist but are not ontologically instantiated like other physical properties are. Therefore, they do not show the same mind-independency of physical properties. If we ask people whether they believe in something like moral values, they will answer in the affirmative (at least most of them will do); but it would have been odd if we further asked them whether they believe in the existence of moral values in the same way they believe in the existence of physical objects. But this does not mean they are not real.

Moral claims are cognitive propositions; they can be true or false. A possible objection goes like this: how can they be true or false if they do not describe the world? This question, with its positivist nuance, is in a way “odd,” since it presupposes a purely scientific-like view of the world. Most of us are inclined to hold a scientific or realist view about physical objects and their natural properties. Beliefs about physical objects depend on empirical observations. But can we say the same about moral claims? To talk about abstract moral entities and to think of them as provided of a

special form of existence, could sound like a form of Platonism. Moral values, for instance, could be considered as Plato's Forms.⁷¹ So ethical Platonism would be the claims that moral entities exist independently of our thoughts. This view deals with moral facts and properties in a similar way physical science deals with its subject matter. Now, this view is vulnerable to all the objections moved by error theorist about the queerness of these moral facts and properties. Moreover, on the epistemological level, some special cognitive faculty is required in order to know these facts. Indeed, it is not clear how we can be in touch with such facts, so different from anything else in the world.

Not having a spatial-temporal dimension for moral facts or properties does not necessarily involve any form of Platonism or bizarre ontology. To talk about properties and state of affairs that do not have a spatial-temporal collocation is not something special about morality. We use numbers and complex mathematical constructions like sets without questioning their existence.⁷² We say that it is a mathematical truth that "two and two are four", but we do not look for the occurrence of a fact, besides the fact that "two and two are four", if this is a fact at all. We can read novels without thinking that their characters are real. We are able to evaluate the soundness of mathematical reasoning, the quality of a novel or the cogency of a moral claim without committing our theorizing to, say, ontology of numbers, characters or values. Being non-concrete of subject matters of mathematics, literature or morality could constitute a problem if we believed that we hold a causal interaction with their subject matter as we do with the subject matter of empirical science. But this is an epistemological problem (how

⁷¹ Plato, *Republic*, Book VI.

⁷² See Paul Benaceraff, "What Numbers Could Not Be," in Paul Benaceraff and Hilary Putnam (eds.), *Philosophy of Mathematics*.

we deal with non-concrete subject matter), not an ontological one (whether non-concrete facts exist in the same way concrete facts exist).

One way to address the question of objectivity in moral and political theory could be to identify some facts of the matter about morality that make a certain state of affair morally right (or wrong) or politically just (or unjust). On this account we try to deal with the subject matter of morality in a similar way we deal with empirical sciences. Nevertheless, the question concerning moral facts – what they are, whether they exist and how we come to know them – represents a rather difficult issue in philosophy.

Few of us would say that murder's being wrong and Jupiter's having 63 moons are the same kind of facts. What makes the case for the objectivity of the statement about Jupiter is an empirical consideration about how the universe is. We can grant the objectivity of that statement on the basis of the evidence we have for it (for instance, by observing Jupiter's moons). One might think that what makes the case for the objectivity of the claim that murder is wrong is somehow similar to the scientific inquiry. The statement "murder is wrong" reports a fact of the matter about morality. Moral claims like this have as well a propositional content that can be assessed as true or false. The propositional content specifies how the world is according to the statement: how the world would have to be if the statement were true. Thus, the statement "murder is wrong" is objective, on the semantic level, when it reports a fact of the matter about murder. On the ontological level, there might be some moral properties instantiated in that fact that makes it objectively right or wrong. In the case of a murder, there should be some property about murder, like being an act of wanton killing, which can make performing it an indisputable moral fact. This fact makes the

statement “murder is wrong” objective on the semantic level.

But, contrary to the scientific understanding of objectivity, in moral and political theorizing the notion of *mind-independency* is more problematic. Indeed, to say that moral facts are as mind-independent as other kinds of facts sounds pretty bizarre. And the evidence that we have for the objectivity of moral claims would hardly be considered as independent of our conceiving of them, unless one accepts an extravagant metaphysics as moral realists – especially of the non-naturalist stripe – do.

Constructivists claim that there are moral facts and moral properties, but these facts are not independent of our thinking about them. What we call moral facts are a principled account of our ideal responses to non-moral features of an action or a trait of character and so on. The fact that the evidence we have for the objectivity of moral claims is not as mind independent as Jupiter having 63 moons does not constitute a problem. Moral claims can be objective in their own right. On the constructivist interpretation, a moral claim is objective when it is deduced from a general principle issued by a suitably specified procedure of construction. If the procedure of construction work out a general principle that prohibit killing people, then we can say that we ought not to kill people, or there are no reasons to kill people. This constructivist interpretation of objectivity need a revision of the notion of objectivity so far presented, and a clarification of its relation with the notion of truth.

3. Redefining Objectivity

Within the context of normative theorizing the concept of *objectivity* has a specific meaning. Unlike in empirical science, in morality objectivity

consists not in an accurate representation of an independent metaphysical order, but in universal demands imposed within an agent's practical reasoning. By insisting, on the one hand, that morality must be grounded in practical rather than theoretical reason, these views have stressed a discontinuity with science [...] By arguing, on the other hand, that there is such a thing as practical *reason* in which ethics can be grounded, they have tried to assure its objectivity. [...] What constrains our choice (insofar as we imaginatively adopt the point of view of the hypothetical constructors) is the necessity of adopting an objective (that is, impartial) point of view. Instead of allowing our beliefs to be constrained by an objective reality, we allow our will (and, through it, our moral beliefs) to be constrained by an objective point of view.⁷³

From the philosophical standpoint, scientific understanding of objectivity is achieved in a similar way. But while in science the adoption of an impersonal point of view is needed in order to figure out how the world is, in normative theorizing we are assessing how the world ought to be. Simply, objectivity in ethics means to abandon a parochial point of view in judging things as right and wrong. In the constructivist terminology this equals to endorse a procedure of *impartial* (that is, not subjective) practical reasoning. So in normative theorizing "objectivity is advanced when we step back, detach from our earlier point of view toward something, and arrive at a new view of the whole that is formed by including ourselves and our earlier viewpoint in what is to be understood."⁷⁴ But this might not be enough. This position, objectivity as non-subjectivity, might not be able to guarantee that what I have reason to do is really what everyone would have reasons to do if he or she were in my shoes. In other words,

⁷³ Steven Darwall, Allan Gibbard and Peter Railton "Toward a *Fin de Siècle* Ethics: Some Trends", in *Philosophical Review* 101, n. 1 (1992), reprinted in *Moral Discourse and Practice – Some Philosophical Approaches*, Oxford: Oxford University Press 1997.

⁷⁴ Thomas Nagel, "Value," in James Rachel, *Ethical Theory 1. The Question of Objectivity*, Oxford: Oxford University Press, 1998, p. 109.

whether the reasons one has are genuine reasons. Note that the question is not whether the kind of considerations for doing or not doing something is relative to some particular agents.⁷⁵ Rather, the question concerns the fact that the invoked reasons keep their normative significance whether or not a change in one's individual attitudes (beliefs, preferences, ends and the like) occurs or would occur. The idea is quite simple: one might have a reason for white wine simply because she prefers it; if she changes her mind and desires beer, she will have a reason for having beer instead of wine. This kind of reasons, reasons of taste, is usually considered subjective because it varies depending on one's attitudes. Moral reasons or reasons of justice, on the contrary, are usually taken to be objective in this sense, that is, because they do not depend on one's actual attitudes.⁷⁶ There must be some sort of consensus (at least at the theoretical level) on what counts as a reason. Here I am not invoking the role of an actual consensus, but the possibility for each and every human being, capable of practical reasoning, to come to see what really matters, that is, to understand what are, and to be responsive to, reasons.

This idea is similar to Hilary Putnam's idea of objectivity as "rational justification" as in *Reason, Truth and History*.⁷⁷ Putnam holds that what truths and facts are not independent of is one's conceiving of them in ideal, counterfactual situation. Indeed, it is meaningless to think and talk about an external world that exists

⁷⁵ I do not mean agent-relative reasons are not genuine reasons.

⁷⁶ See on this point Ronald Dworkin, "Objectivity and Truth: You'd Better Believe It," *Philosophy & Public Affairs* 25, no. 2 (Spring 1996), p. 80-2

⁷⁷ Hilary Putnam, *Reason, Truth and History*, Cambridge: Cambridge University Press, 1981. For the analysis of Putnam's argument and its application I am indebted to Lillehammer's essay and to Harry Adamson who drew my attention to it. See Hallvard Lillehammer, *Companions in Guilt*, New York : Palgrave Macmillan, 2007.

independently of some method of inquiry. By opposing metaphysical realist approaches, which involve a “God’s Eye point of view,” he defends the view that

‘[t]ruth’ is some sort of (idealized) rational acceptability – some sort of ideal coherence of our beliefs with each other and with our experiences *as those experiences are themselves represented in our beliefs system* – and not correspondence with mind-independent or discourse-independent ‘state of affairs.’⁷⁸

On this reading, truth is a function of claims made in ideal condition: true means *rationally justified*. Putnam’s view goes against a widespread distinction in metaphysics between the ontological question (about what there is) and the epistemological question (about justification). Now, his point on metaphysics has been largely criticized.⁷⁹ And in his later works, he himself rejects this claim.⁸⁰ Indeed, the kind of metaphysical anti-realism maintained in *Reason, Truth and History* was probably excessive. It is difficult to reject the same idea of a mind independent reality, as Putnam seems to do.⁸¹ But it is possible to maintain it in moral theory. In *The Collapse of the Fact/Value Distinction*, Putnam suggests the idea that in order to hold a strong conception of objectivity in ethics “we need not entertain the idea that something could be a good solution although human beings are *in principle unable to recognize that it is*. The sort of rampant Platonism is incoherent.”⁸² In order to avoid

⁷⁸ *Ibid.*, p. 49-50, his italics.

⁷⁹ See, among others, Ernest Sosa, “Putnam’s Pragmatic Realism”, *The Journal of Philosophy* 110, 1993; Simon Blackburn, “Enchanting Views”, in P. Clark and B. Hale (eds.), *Reading Putnam*, Oxford: Blackwell, 1994.

⁸⁰ Hilary Putnam, *Realism With a Human Face*, Cambridge, MA: Harvard University Press, 1990, especially Chapter 11.

⁸¹ See the above quoted passage, footnote 17.

⁸² Hilary Putnam, *The Collapse of the Fact/Value Distinction*, Cambridge, MA: Cambridge

Platonic-like or bizarre metaphysics, Putnam takes the idea of objectivity in ethics in a practical sense, namely as the correct solution to a moral problem, following the American pragmatist tradition. So, he keeps the same metaphysical view he had for the ethical case, rejecting the more general implications for non-ethical subject matter. Thus, he weakens the first condition of his metaphysical view according to which “truth is independent of justification here and now, but not independent of *all* justification”, while keeping the idea that “truth is expected to be stable or ‘convergent’; if both a statement and its negation could be ‘justified’, even if conditions were as ideal as one could hope to make them, there is not sense in thinking of the statement as *having* a truth-value”⁸³ As Putnam recognizes, “this may mean to giving up a certain metaphysical view of objectivity, but it does not mean giving up the idea that there are what Dewey called ‘objective resolutions of problematical situations.’”⁸⁴

My idea is to tackle the question of objectivity on Putnam’s line, where the test for the convergence is a procedure offered by a moral constructivist view. We have to note that the notion of objectivity we are looking for is not related with the explanation of moral phenomena (like the fact that people follow certain moral codes), as science does for physical phenomena. We are looking for the way in which moral reasons, considerations for and against the performance of certain actions, are generated and how they could really be the right sorts of considerations for all. Thus the question is not what is a reason, but how a reason can be generated and when it is a genuine

University Press, 2002, p. 109.

⁸³ Hilary Putnam, *Reason, Truth and History*, p. 56. For the relation between truth and objectivity see *Ibid.*, p. X.

⁸⁴ Hilary Putnam, *Realism With a Human Face*, p. 178.

reason.

4. Constructivist Objectivity

The constructivist looks at the problem of objectivity in terms of a valid method of moral thinking. When one says that a moral claim is objective she might mean two things. First, that the claim is impartial or unbiased. Second, that is a matter of fact.⁸⁵ In the first case the objectivity of that claim is achieved because of a valid method of reasoning. In the second case, we judge the claim as objective depending on its reference to a given reality. But, what makes a moral claim objective on constructivist ground? The constructivist solution is to read the second question in terms of the first one. This collapse of ontology upon epistemology is necessary in order to avoid what Putnam calls “a magical theory of reference.”⁸⁶

The problem of the objectivity of moral claims does not concern their lack of spatial-temporal dimension. The real issue, I think, is about what makes a method of moral reasoning *valid*. The ontological question about the existence of moral entities, properties and facts as independent of us has to be interpreted on epistemological grounds: whether the way in which we think about them is *valid*.

From a constructivist standpoint, the existence of moral facts is not to be interpreted as realists do. The existence of moral facts is relevant for moral theorizing in a normative way. Moral facts exist because there are moral agents who create them. Constructivism provides a philosophical account of this creation. In this sense,

⁸⁵ I take this point from Aaron James, *The Objectivity of Values: Invariance without Explanation*, *Southern Journal of Philosophy* 2006, XLIV, p. 584.

⁸⁶ Hilary Putnam, *Reason, Truth and History*, p. 51.

constructivism could be called “normative realism.”⁸⁷ On a constructivist account, objectivity is not derived from some external entity; it is shaped as a social creation. Intuitionists claim that we know principles through intuition, and emotivists reduce them to the speaker’s feelings and attitudes; constructivists, on the other hand, construct practical reasoning under different kinds of constraints.

The idea of constructivism is that in order to make moral claims we need some epistemological handle to their subject matter.⁸⁸ In the moral case, like in mathematics, this tool is a method of reasoning, able to make moral facts and properties *real*. Their reality, in a constructivist framework, is constituted by their relevance for us. So, for example, when we claim that “x is a reason to do y,” the objectivity of this judgment depends upon the possibility to find a process of reasoning that yields a principle P able to make ‘x’ a relevant consideration to perform the action ‘y.’ What makes a factual consideration a moral reason to perform an action or to bring about a state of affairs, the right-maker of the normative statement “x is a reason to do y” is not already contained in ‘x;’ there is nothing intrinsically right or good in ‘x.’ This is possible not because of an external reality but through of a valid method of reasoning, which works out P.

A procedure represents the formalization of a method of practical reasoning. The employment of a procedure is aimed to avoid any appeal to a peculiar moral ontology and to guarantee moral knowledge (against strong realist and non-cognitivist positions). Nevertheless, is not clear what objectivity means here. Indeed, one could end up with some sort of subjectivist view. For instance, we might take the procedure

⁸⁷ Thomas Nagel, *The View From Nowhere*, chapter 8.

⁸⁸ I take this idea from Thomas Scanlon, “Constructivism: What? And Why?”, unpublished manuscript.

to be an individual-based process of reasoning, which carries to a higher level of generalization one's subjective moral convictions. These moral convictions might be as well other-regarding. But there is still a puzzlement about the kind of independence norms so conceived can achieve. What is objective might be just in my mind; how can it be in yours? If it can be in everybody's minds, then it means that morality is somehow independent of us. In what sense though? The role of a constructivist procedure is to work out principles that make a plain fact a moral fact. Later on, I will address how this is possible. For the moment it might suffice to say that a principle (and, as a consequence, a judgment about reasons made on the basis of that principle) is objective because of the method of reasoning and not because of something else.

The subject matter of morality can be independent of us, and claims about it can be objective in at least three different ways.⁸⁹ In a first and trivial sense, moral claims can be objective if it is possible for us (at least individually) to be mistaken in our judgments about the subject matter.⁹⁰ In this sense, moral claims can be minimally objective. There is a more demanding notion of independence of us, which takes moral claims as objective if they are minimally objective and if the standards for assessing such judgments do not depend on what we have done, chosen, or adopted (and would be different had we done, chosen, or adopted something else). One might think that

⁸⁹ The three definitions are taken from Scanlon's unpublished manuscript. To be true, in his paper Scanlon is discussing the question of how the subject matter of mathematics can be independent of us. I take his point about mathematics and apply it to moral theory. At the end of the paper, Scanlon does apply it to moral theory but he defends his non-naturalist view. On Scanlon's view of morality see Chapter ???.

⁹⁰ "Minimal objectivity (judgment-independence) is not just a matter of *de facto* agreement, but the tendency of the judgments of different competent judges to converge, and the stability of our own judgments, supports our confidence that they concern judgment-independent truths." From Thomas M. Scanlon, "Constructivism: What? And Why?"

moral claims can be objective in an even more robust way: moral claims are objective if they are minimally objective, choice-independent and also independent of human nature, of what we are like.

As far as the last sense of objectivity is concerned, a constructivist would say that it is not *relevant* for moral reasoning from a *practical* point of view. If the subject matter of morality were independent of us in this sense, moral claims would refer to some Platonic-like entities. As said, the objectivity of moral claims depends not on an ontological reality, but upon the possibility of getting a correct result by correctly applying a procedure of moral reasoning. Similarly to the mathematical case, whether a calculation allows us to get the result “four units” by adding two units to two units, the correctness of that result depends neither on the nature of what we are summing, nor on the existence of entities such as numbers. It depends on the possibility of a valid method of mathematical reasoning that allows us to perform such a calculation. The judgment “two and two are four” is objective if a procedure of calculation (a piece of mathematical reasoning) has been correctly applied to what one is summing, leaving aside metaphysical issues about what is summed.

Moral constructivism faces the question of objectivity in a way similar to mathematical constructivism.⁹¹ On a constructivist account, the notion of objectivity in ethics, like in mathematics, does not depend upon the ontology of its subject matter.

⁹¹ Roughly, mathematical constructivism is the idea that the existence of a mathematical object depend on the a valid method proving its existence. For a overview of this idea see Douglas Bridges, “Constructive Mathematics”, *The Stanford Encyclopedia of Philosophy* (Winter 2003 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/entries/mathematics-constructive/>. Charles Parsons, “Mathematics, Foundations of”, in Paul Edwards (ed.), *The Encyclopedia of Philosophy*, New York: Academic Press 1977.

Moral facts and other ethical objects are products of our mind.⁹² Like in mathematics, moral constructivism can claim objectivity in the minimal sense. It would be absurd if it could not. And it can accept the idea that a conception of objectivity as independence of human nature is irrelevant. According to constructivists, the question about what moral reasons we have is meaningless without taking into account for whom those reasons are. In order to address this issue, it is necessary to consider a variety of factual elements, such as the circumstances to which a moral conception applies, how people see themselves in those circumstances, a general knowledge of facts of the world and so on.⁹³ But, unlike mathematics, the second notion of objectivity, objectivity as choice-independence, present more controversies.

5. Objectivity as Invariance

According to constructivists, moral claims are objective when they are made at the light of general principles worked out by a suitably specified procedure of construction. A procedure of construction is valid when, if suitably specified, it allows us to get an impartial and unbiased point of view. In this sense, we can conclude that objectivity is a function of the conclusions reached through a procedural device.

⁹² Another way of expressing this idea could be this: constructing moral facts makes them real. But this formulation, even if consistent with my understanding of constructivism, can be interpreted in a subjectivist way, according to which whatever is constructed is real. Accepting this formulation could imply that any value constructed by a moral agent is valid. But this is not my view.

⁹³ On this point Gerald Cohen criticizes constructivists because they ground their moral views on factual considerations. See Gerald Cohen, "Facts and Principles", *Philosophy and Public Affairs*, 31, 2004. I address Cohen's criticism in the *Appendix*.

Objective, therefore, are predications of claims when they refer to the procedure. It is clear that the definitive test for the objectivity of our claims depends upon the way we define the procedure. This point will be addressed in the next chapter. Here I want to address a more general point: what are the formal requirements for a procedure (whatever its definition) in order to get an impartial point of view on moral matters.

I argue that moral claims can be objective, but not independent of us; nevertheless, they are independent of our real attitudes. This means that whether a moral claim is objective does not depend on changing one's attitudes (beliefs, preferences, aims and the like). Instead of the three senses of objectivity as independence of us as stated above, I propose a view of the issue of objectivity as attitude-independence.

moral claims are objective if they are objective in the minimal sense and the standards for assessing such judgments do not depend on what we have believed, preferred, wanted (and would not be different had we believed, preferred, or wanted something else)

To be true, this is a minimalist conception of objectivity. All it claims is that for a moral claim to be objective is to be invariant with respect to one's attitudes. People might believe, prefer, or want different things about a given state of affairs. The rightness or wrongness of action or state of affairs does not rely upon the fact that I believe, prefer or want so and so. Its rightness derives from a procedure of thinking.

Nagel argues that a moral judgment is objective when one is reasoning *objectively*. To reason in an objective way is to reason in such a way that it rules out

one's personal inclinations and preferences. He claims that "ethical thought is the process of bringing objectivity to bear on the will, and the only thing I can think of to say about ethical truth in general is that it must be the possible result of this process, correctly carried out."⁹⁴ The process of reasoning to be correctly carried out is the procedure of construction. The procedure correctly carries out its task when it issues moral claims that are independent of the attitudes that is accidentally happens to have. Namely, it has to rule out certain attitudes, the subjective ones or those who cannot be universalized. Note that I am not claiming that a procedure of construction should rule out all attitudes. If it does, then a moral claim would be objective in an absolute way (*true* in the ontological sense, as strong realist would say). As we said, on the ontological level constructivism is the view that there are moral facts and properties, and these moral facts properties and facts are constructed out of human attitudes. And, on the semantic level, constructivism is the view that moral claims are objective, and their being objective is accounted for the appeal to human attitudes. But not all attitudes are good.

Ronald Milo provides an interesting way of tackling this issue, distinguishing between stance-dependence and stance-independence. A *moral* fact is stance-dependent "just in case it consists in the instantiation of some property that exist only if some thing or state of affairs is made the object of an intentional psychological state (a stance), such as a beliefs or a conative or affective attitude."⁹⁵ Note that this distinction does not imply the rejection of a stance-independent reality altogether, as Putnam seem suggests in *Reasons, Truth, and History*. It is restricted to the existence of moral reality. Therefore it rejects the existence of a moral reality apart from the

⁹⁴ Thomas Nagel, *The View From Nowhere*, p. 139.

⁹⁵ Ronald Milo, "Contractarian Constructivism", in *Journal of Philosophy*, 99, 1995, p. 192.

perspective we have toward it. Therefore, following Milo's distinction, moral facts and properties are *constructed out* of facts about human stances. Human stances are the set of attitudes. Among all the possible attitudes, the constructivist procedure should be able to rule out those that are merely subjective attitudes. This last normative condition is thought in order to avoid falling into some crude subjectivist view, according to which the rightness of an action, or the justice of a social institution, depends upon one's desires and preferences.

For a realist such stances are evidence for independently existing moral facts and properties. Following Milo, a genuine constructivist approach should consider moral claims as representing

correct cognitive responses to a reality that obtains independently of, and is capable of explaining, these responses, they nevertheless do not insist on grounding moral truths in [...] a *stance-independent* reality – that is, a reality that obtains independently of how we are disposed to respond to the world in terms of our affective or volitional responses.⁹⁶

Milo reads constructivism as a hypothetical proceduralist:⁹⁷ moral claims are expressed by hypothetical individuals in a suitably specified situation, or, in the constructivist terminology, they derive from principles worked out a by a procedure of construction. The objectivity of moral claim is a function of this procedure: “The objectivity of [...] moral principles consists [...] in their rational acceptability from an impartial point of view.”⁹⁸

⁹⁶ Ibid., p. 192.

⁹⁷ See Brian Barry, *Theories of Justice*, Berkeley: University of California Press, p. 268.

⁹⁸ Ronal Milo, “Contractarian Constructivism”, p. 184-185.

Chapter Three

Varieties of Constructivism

1. Introduction

The idea that moral norms or social and political institutions are not part of the fabric of the world, but they are rather the invention or creation of people, is not new in the history of ideas. In ancient philosophy, relativists like Protagoras claimed that “man is the measure of all things.” In modern political thought, social contract theorists grounded political obligation in the rationality of human beings as opposed to medieval conceptions based on the sacredness of political authority. In present-day moral and political theorizing, constructivism claims that standards of evaluation are product of a constructive process. These standards do not exist prior

to, and independent of, agents constructing and endorsing them.

In the contemporary philosophical debate, there is a growing discussion about constructivism. Constructivism is said to constitute a new and promising approach to moral and political theorizing, and several authors define themselves as “constructivist” or label other's positions in that way. Nevertheless, the use of this label is rather controversial. One might think that constructivism is just one of the many *-isms* made up by philosophers for classifying their theories. Indeed, it is quite difficult to define what constructivism is about, whether it represents a justificatory method, a genuine metaethical theory or something else.

The meaning of a term of art is given by the way it is used, how it fits the general theoretical framework, which position among the several ones is supposed to occupy and so forth. Constructivism is one of these terms. As it usually happens in philosophy, it is possible to find varieties of constructivism, but no precise statement of what it is about. Broadly defined, constructivism is the claim that certain things – like moral norms or principles of justice – are complex because they are composed or *constructed* out of other more basic elements.⁹⁹ This is definitely too vague a definition; indeed, so defined, many philosophical positions can be identified as constructivist. Merely saying that moral norms or principles of justice are constructed out of something else would not shed any light on the question of objectivity without an accompanying ontology of morals that I am trying to establish in this thesis.

Different philosophical theories have been labeled as constructivist. Let us take, for example, skeptical approaches such as conventionalism: they claim that moral norms are the product of socialization. On this reading, principles are constructed out

⁹⁹ See Onora O’Neill, *Constructivism in Rawls and Kant*, in S. Freeman, *The Cambridge Companion to Rawls*, Cambridge University Press, Cambridge 2002, p. 347.

of a number of judgments on particular cases, brought to a higher level of abstraction and presented in a more or less coherent set. Thus, a moral claim of the kind “x is right (or good)” is objective for a subject *S* if and only if *S* believes that x is right (or good), and *S* is a member of a social community where at least most of the people believes that x is right (or good). The standard of evaluation is fixed by, or constructed out of, a set of socially implemented and historically or instrumentally justified habits, codes, etiquettes, practices, and so forth. Put in other terms, the latter elements are the material of construction that once injected in a process of generalization and abstraction, lead to general principles. Thus, a moral claim is objective if it conforms to such principles. And principles are considered objective insofar as someone in a given social group endorses it.

So far we have *social constructivism*. In sociology, constructivism is the claim that there is nothing distinctive about ethics: ethical norms, like norms of etiquette, are nothing more than the generalization of social custom and habits. In this sense, to say that moral norms are constructed is tantamount to claiming that they are product of processes of historical development and socialization. So conceived, normative principles are conventional, since they do not have any validity beyond the society where they originated. On this view, the justification of moral norms depends upon the social consensus that underwrites a community’s moral practices. But this view does not get us to the conception of objectivity that moral constructivists look for. The concept of objectivity here is quite minimal. It is a sort of *relativized* objectivity: something is objectively right or good according to members of the society *A*, but it could not be so according to people belonging to the community *B*, where *A* and *B* are different societies. To say that something is right or good in this way is to say that

people approve of it, and to say that something is objective is to say that there is no more than an intersubjective agreement about it. This would be consistent with the constructivist claim that judgments do not derive their validity from an a priori order of moral values or facts. But, even if this is a fair sociological description of reality, even if it explains why people follow social codes, the question of a more robust notion of objectivity remains unsolved.

Besides the origin of normative claims, constructivism is a thesis about the objectivity of principles. In general, constructivism is the claim that moral norms or principles of justice are objective insofar as they are the outcome of a suitably specified procedure of construction, and not because they refer to some order of moral values independent of moral agents and prior to political institutions. So conceived, constructivism aims at opposing moral *realism* (the claim that judgments are objective of an independent moral order), moral *skepticism* (according to which there are no objectivity conditions for normative statements) and moral *relativism* (the view that there are no objective moral standards, or universally valid principles).

Constructivists believe in a conception of moral objectivity as universal validity of norms, which impose categorical demand on people and it is grounded in people's capacity of practical reasoning. From a methodological point of view, constructivism aims at providing an account of morality that places the sources of normativity within moral agents. There is no other source of moral rightness independent of moral agents as well as there is no justice outside the social and political institutions that embed values worked out by moral agents. All depends on the kind of procedure of construction endorsed by moral agents. To account for a constructivist position it is necessary to see what is constructed, what are the

materials of construction, whether they are themselves constructed or not and, in our particular case, how to construct ethical objects.

Firstly, what is constructed? Moral norms and principles of justice. Moral and political theories have normative judgments – judgments of the kind “X has a reason to do *y*” – as their target. Normative judgments are expressed upon more general principles. According to constructivists, these principles are justified if they can be accounted for as the outcome of a specific procedure of construction, namely a procedure of practical reasoning that leads moral agents to constructed principles starting from some materials of construction. The materials of construction are moral agents themselves, who respond to the circumstances in which they find themselves. Let us see in more details the implication of this position, starting from a very general definition so that most of the constructivists could (hopefully) accept it.

2. A General Definition

Recall the general definition given at the end of *Chapter One*. Constructivism could be defined as the claims that

(C) some facts provide moral reasons (or reasons of justice) because certain principles, which are worked out by a suitably specified procedure of construction, confer reason-giving status to those facts.

So defined, constructivism should represent an autonomous position. Neverthe-

less, it is not a plain vanilla statement. As all philosophical positions, this definition is highly controversial. The distinction between constructivism and other approaches clearly depends on the way we conceive of the procedure. To be sure, one could take a procedure as a heuristic device for discovering the moral values we have. Alternatively, the procedure constructing principles could serve for making explicit one's attitudes towards a state of affairs. In both cases, constructivism would be anything but a rhetorical move. However, those who endorse a constructivist approach generally claim that the procedure is something more than a mere heuristic device. In order to straighten out the problem, let us go into some more details.

Constructivism is a form of cognitivism. It maintains that moral claims (things like judgments, utterances, beliefs and propositions) can be objective, and their criteria of objectivity depend upon a proper procedure of moral reasoning. What constructivists are looking for is a single body of moral facts, worked out by some function of our reasoning. This function creates moral reality. And moral reality exists as far as agents of construction (reasoning creatures) exist. To put it in other words, there are facts of the matter about morality that provide reasons supporting ought-sentences, but these facts are not prior to, and independent of, our enquiring about them. Thus, constructivism claims that there are moral facts, and they are the product of our functional reasoning for solving practical problems.

I take a "fact" to be something that is definitely the case. A fact is a moral one if it provides some considerations about how things ought to be. And a plain fact becomes a moral one (that is to say, it is able to provide a reason, and so to make objective a moral claim) because a principle makes it so. "Principles" are general standards of evaluation of conduct or general guidelines about how social and political

institutions should treat people. They select which facts are relevant for the case at hand, but do not directly make a plain fact a moral fact. A “procedure” is the process of reasoning that leads moral agent’s practical thinking from given premises to conclusions, making plain facts moral facts. “Construction” basically refers to the fact that certain things are composed out of other more elementary or basic parts.

Obviously, this definition needs some clarification. In the next sections I focus on the material construction out of which moral norms and principles of justice are constructed, namely the conception of person implied by a constructivist approach and the factual considerations from which we need to move when we theorize about morality. Then, I move to the appeal to procedures and their relation with factual considerations.

3. Persons and Facts as Materials of Construction

A procedure is the theoretical device that leads moral agents’ thinking from basic elements to constructed principles. So, what are these basic elements that constitute the material of construction? The fundamental conceptions that constructivists take as theoretical starting points for laying out the procedural device are concerned with how we conceive of ourselves (the conception of the person) and a general knowledge about the world. The conception of the person can be either *real* or *ideal*. Realistic models inject into the procedural device considerations about how things are, taking into account natural and social differences that characterize people, and which depend on mere social luck.¹⁰⁰ Ideal models, instead, leave such differences

¹⁰⁰ David Gauthier holds view. For a discussion of Gauthier’s constructivism see Chapter Four.

aside, considering them irrelevant from a moral point of view.¹⁰¹ Both models take people to be equal under some respect. They differ in the way they take equality to matter in moral and political theorizing. “One approach stresses a natural equality of physical power, which makes it mutually advantageous for people to accept conventions that recognize and protect each other’s interests and possessions,” while “[t]he other approach stresses a natural equality of moral status, which makes each person’s interests a matter of common or impartial concern [...] expressing in agreements that recognize each person’s interests and moral status.”¹⁰²

According to constructivists, an inquiry on the nature of moral or political theory would be meaningless without taking into account the addressees of such a theory. In order to address this issue, it is necessary to consider a variety of factual elements, such as the circumstances to which moral theory applies, how people see themselves in those circumstances, a general knowledge about the relevant facts of the world and so on. Constructivists want to avoid a very demanding characteristic of many Kantian approaches, namely that theorizing about the norms that regulate our behaviors toward the others should be totally independent of the circumstances in which agents contingently finds themselves.¹⁰³ The fact that people have certain psychological tendencies like a limited altruism, for instance, or the facts that the amount of resources upon which members of a given society advance their claims are limited, should be somehow taken into account (at least, in order to avoid to come up with a conception of moral rightness or justice absolutely independent of who we are

¹⁰¹ John Rawls holds this view. For a discussion of Rawls’s constructivism see Chapter Four.

¹⁰² Will Kymlicka, “The Social Contract Tradition,” in Peter Singer (ed.), *A Companion to Ethics*, Oxford: Blackwell Publishers, 1991, p. 188.

¹⁰³ See G. A. Cohen, “Facts and Principles”, *Philosophy and Public Affairs*, 31, 2003. Cohen’s objection to constructivism will be addressed in the *Appendix*.

and what we are like).

Constructivists admit the possibility for some fact to be moral, but deny the existence of brute moral facts, that is, of facts that are inherently moral. Hence constructivism is the claim there are facts of the matter about morality, and they are product of some function of our reasoning. This view implies a rather substantive conception of the person. Moral agents are not simply *knowers*, rather they are the constructors of moral norms. It is constitutive of moral agency the fact that an individual can elaborate norms guiding her behavior and principles structuring the social institutions in which she finds herself, without appealing to external authority. Then, on a constructivist view, a person should be able to work out moral norms that all can accept, at least hypothetically, if situated in suitably conditions. The suitability of these conditions is defined by the procedure of construction. We do not need to test the validity of the norms regulating our affairs through an order of moral values that do not depend on the same idea of moral agency (conceived as the capacity to elaborate moral norms and principles of justice and regulate one's behavior accordingly). Indeed, constructivists claim that normative principles are the outcome of the moral agent's intentional conceiving of those principles. And the procedure through which agent's intentional conceiving of principles is carried out confer a reason-giving status to non-moral facts.

While reasons for belief are supposed to consist in some order of facts, what counts as practical reasons, for constructivists, does not depends upon some given moral reality, but on moral agents' intentional conceiving of principles that bestow a reason-giving status upon a fact. On this view, the capacity to reason does not concern an objective realm of (either natural or non-natural) moral facts, which possess certain

action-guiding features. If there were, then facts that are already moral, moral agents would have been considered as mere knowers. And the activity of practical reasoning would consist in finding out these moral facts and their properties. So, the conception of the person here would be quite thin and the notion of moral agency would be a straightforward question of compliance with norms.

However, constructivists oppose this moral realist view. Constructivists think that moral realism is objectionable for a number of reasons. Realists claim that moral rightness of actions, as well as justice of social institutions, have to be assessed against standards of evaluation that are independent of us, independent of our own making. Claiming this means to postulate the existence of a moral reality that is independent of moral agents. If moral realists were right, then it would be difficult to explain why people should care about this moral independent reality, that is, why people should be moral. On the contrary, if these standards of moral evaluation are product of our own reasoning, then the problem of compliance does not apply. Moreover, a realist conception of moral reality as mind-independent is highly problematic. First of all, it is not clear what this morality consists in. Second, even if we admit the existence of such a reality, it is not clear how it can have a bearing on people's choices. However, constructivists do not give up to the project of moral justification in ethics as other anti-realists do. Constructivists, as I try to show, have a better answer to these questions, and a clearer notion of objectivity.

Constructivists conceive of practical reason as the activity of the individual will to intentionally guide one's action, imposing some normative constraints on oneself.¹⁰⁴

¹⁰⁴ On this my view is close to Korsgaard's Kantian project as laid out in *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996) and *The Normativity of Instrumental Reason* (in Garret Cullity and Gaut, *Ethics and Practical Reason*).

This particular attitude here involved, namely intention, is different from the one of belief; indeed, it does not aim at representing the world as it is: if I have the intention to send my paper off to the up-coming conference before the deadline for submission, it is not that I should give up to that attitude once Friday comes and I did not finish to write it yet. Rather, having this intention makes me try to regulate my actions so that I can submit it on time. And the fact that the deadline is tomorrow gives me a reason to finish to write (instead of going for walk, for instance), given my aim to submit the paper for the conference, and my intention to do it on time and so on.¹⁰⁵

4. The Appeal to Procedures

If moral agents have to play a real role in the formulation of principles, we cannot start from an order of moral reasons that is independent from moral agents themselves. Realist says that normative principles are prior to, and independent of, moral agents. They are regarded as objectively valid when they conform to ultimate normative truths of the matter. If we ask why a reason counts for or against something, all we can do is to offer other reasons for showing that is a significant normative consideration. According to moral realists, if a reason has to have normative

¹⁰⁵ Note that on this account, practical reason does not move necessary on an agent's "motivational set", namely his desires, preferences, pro-attitudes and the like. The process of reasoning involved in having reasons does not rely merely on subjective prior motivations. In order to work out what it would be objectively right to do, one need to engage in a process of evaluative reasoning that considers not only the subjective motivational package, but also both normative and factual requirements on the process of reasoning. See Bernard A. O. Williams, "Internal and External Reasons", Reprinted in *Moral Luck*, Cambridge: Cambridge University Press, 1981.

significance, its normative significance must ultimately be grounded in some fact of the matter that is intrinsically normatively significant. Otherwise, its normative significance is not ultimate, but derived. Now, from where is it derived? According to moral realists, it rests on self-evident normative facts of the matter about morality, namely some moral entity whose validity does not require any further ground. But, constructivists, among others, argue that even if there were self-evident normative considerations, we should be able to explain why they are normative significant for us.

The constructivist appeal to procedures aims at escaping this theoretical *cul de sac*. The procedure of construction has to be defined in such a way that takes moral agents themselves and non-moral facts as the starting point. In this way the procedure can be considered as a method of justification: moral norms and principles of justice must be considered *justified* insofar as outcome of the procedure. But this might not be enough for accounting for the objectivity of norms so constructed. Indeed, their objective status can depend upon other normative criteria that are given independently of the procedure of construction. In this case, moral norms and principles of justice will be objective not because of being the outcome of the procedure, but rather because of some *ex ante* criterion.

For illustration, consider Rawls's case for what he calls "perfect procedural approach to justice." In the case of perfect proceduralism, the classic example is the cutting of a cake that is entrusted to the last one taking a slice, so that it is possible to get some even-handedness in distribution:

assuming that the fair division is an equal one, which procedure, if any, will give this outcome? Technicalities aside, the obvious solution is to have one man divide the cake and get the last piece, the others being allowed their pick before him. He will divide the

cake equally, since in this way he assures for himself the larger share possible. This example illustrates the two characteristic features of perfect procedural justice. First, there is an independent criterion for what is fair division, a criterion defined separately from and prior to the procedure which is to be followed. And second, it is possible to devise a procedure that it sure to give the desired outcome.¹⁰⁶

Perfect forms of proceduralism require that the results of choice conform to standards of evaluation that are independent of the procedure itself. Pure proceduralism, by contrast, requires no external criterion:

[P]ure procedural justice obtains when there is no independent criterion for the right result: instead there is a correct or fair procedures such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed. If a number of persons engage in a series of fair bets, the distribution of cash after the last bet is fair, or at least not unfair, whatever this distribution is.¹⁰⁷

In both cases, the justification of the outcome is achieved through the correct application of the procedure, but while in the pure form objectively justified outcomes are achieved by the simple application of the procedure, in the case of perfect forms of proceduralism it is required a further evaluation of the correctness of their outcomes, namely some *ex ante* criteria of objectivity. Pure proceduralism seems to be a promising strategy for spelling out a constructivist position. Indeed, if we want to

¹⁰⁶ John Rawls, *A Theory of Justice*, p. 85. Rawls considers as well cases of imperfect procedural justice. The difference between perfect and imperfect proceduralism is that, in the second case, we do not have a procedure able to guarantee a fair outcome. This distinction is not relevant here.

¹⁰⁷ *Ibid.*, pag. 86.

entrust moral agents – and moral agents alone – with the capacity to come up with objective moral norms without relying on moral entities given prior to them, the appeal to the procedure can achieve this aim.

The idea of proceduralism resembles our way of adjudicating conflicting claims in an impartial way. When we cannot adopt our particular point of view, what remains is to entrust a procedure to fix a series of steps and a shared set of rules leading parties to a fair resolution, whatever its content is. The fairness of the procedure should be transferred to the outcome, through the correct application of procedure. A procedure could be thought as a set of rules to be applied correctly in order to achieve an outcome. Consider, for example, a game: given some initial situation, where each and every player possesses certain initial endowments, the procedure governs their conduct until the end, when a person or a team wins. But a procedure is not a sort of algorithm that leads a person at the right solution of a problem by showing the logical inferences between one step and the other. It is a process of reasoning that should be able to produce principles that are not themselves contained in the premises of the argument.¹⁰⁸

Constructivism is usually identified with a form of “hypothetical proceduralism:”

[The constructivist] endorses some hypothetical procedure as determining which principles constitute valid standards of morality. The procedure might be one of coming to agreement on a social contract, or it might be, say, one of deciding which moral code to support for one’s society. A proceduralist, then, maintains there are no moral facts independent of the finding that a certain hypothetical procedure would have such and an

¹⁰⁸ Indeed, the set of rules of a game regulates players’ behaviors and adjudicates conflicting claims. But this set does not determine who is going to win before the match has begun.

upshot.¹⁰⁹

So framed, constructivism plays a justificatory role in normative theorizing: whatever it is constructed by the procedure has to be considered as justified. This implies that what counts as a moral reason cannot be determined *ex ante*, that is, before the application of principles issued by the procedure of construction.

Constructivism expresses the attempt to develop norms through the use of procedures of deliberation, choice, agreement or fair judgment. But the procedure is not a moral theory; rather, it is given to moral theory from a theory of practical reasoning to justify standards of evaluation. It must incorporate relevant criteria of practical reasoning that take into account the rationality of people and their tendency to pursue their own interests. Constructivism, in its pure procedural version, focuses on the need to elaborate principles without influences of particular normative conceptions, whose correctness does not depend on the application of the procedure itself. This is a very problematic point for constructivism. To be sure, it seems that the pure form of proceduralism is the most appropriate way a constructivist theory should endorse: the absence of controversial normative considerations apart from the procedure itself would make it a strong position, since there are no problematic assumption. But is it possible to have a pure form of proceduralism? In the last section, I develop this issue.

5. The Choice of the Procedure

As said, according to constructivists, moral norms and principles of justice are

¹⁰⁹ Stephen Darwall, Allan Gibbard, and Peter Railton, "Toward a *Fin de Siècle* Ethics: Some Trends", *Philosophical Review*, 101, 1992 p. 140.

justified if they can be accounted for as the outcome of a specific procedure of construction, that is, the theoretical device that leads moral agent's practical thinking from basic elements to constructed principles; rather than being constructed, the procedure has to be chosen on some further grounds. So, what are these further grounds? Do these grounding elements ultimately provide the standard of correctness for the constructive procedure? If so, these further (normative) considerations need to be somehow justified. The problem is whether they can be justified with a constructivist maneuver.

Constructivism is the claim that there are no basic moral facts or basic moral properties of facts, that is, facts that are objectionably moral. Certain facts count as moral facts, as reason-giving facts, because a suitably specified procedure bestows a reason-giving status on plain facts. Now, what sort of procedure can guarantee the objectivity of our moral claims?

In his defense of moral realism, Russell Shafer-Landau draws the distinction between realism and constructivism on the facts that moral realists's account of the objectivity of moral claim does not depend on any preferred perspective (which is provided by the procedure of construction): "*the moral standards that fix the moral facts are not made true by virtue of their ratification from within any given actual or hypothetical perspective.* That a person takes a particular attitude toward a putative moral standard is not what makes that standard correct."¹¹⁰

On this interpretation, moral realism is said to be *stance-independent*, since, on Ronald Milo's account, it is the claim that moral reality is "a reality that obtains independently of how we are disposed to respond to the world in terms of affective and

¹¹⁰ Russ Shafer-Landau, *Moral Realism. A Defence*, Oxford: Clarendon Press 2003, p. 15.

volitional responses.”¹¹¹ So, constructivism has to be rejected because it implies a very impoverished moral reality.¹¹² Taking moral facts as merely as the object of an intentional a stance cannot gets any strong conception of objectivity. The status of moral claims always depends upon people’s subjective way to look at things. The procedure just play a heuristic role in carrying at higher level of abstraction what, at the end of the day, is a parochial approach to morality.

On the philosophical level, this means that even if moral agents’ attitudes played a role, what makes objective our moral claims does not depend upon a process of reasoning. Shafer-Landau’s critique of constructivism goes on arguing how heavy is the burden of proof on the constructivist side, by showing that any process of reasoning must incorporate some theoretical constraints in order to get objective outcome. In the moral case, these constraints have to guarantee both the moral status and the objectivity of claims.

Now, as said, a procedure is a theoretical device that works out principles and describes our process of moral reasoning. This procedure is supposed to have an actual role in the construction of principles: it has to produce principles going beyond the materials of construction, and the same conception of the person. Constructivists understand objectivity as grounded not on the existence of a moral external world, but on a *proper* construction. What makes a construction “proper” depends heavily upon normative assumptions, which cry out for further arguments. According to Shafer-Landau these assumptions can be moral or non-moral ones. If they are non-moral in

¹¹¹ Ronald Milo, *Contractarian Constructivism*, p. 182.

¹¹² Recall Milo’s definition: a standard of moral evaluation is stance-interdependent is “just in case it consists in the instantiation of some property that exist only if some thing or state of affairs is made the object of an intentional psychological state (a stance), such as a beliefs or a conative or affective attitude.” Ronald Milo, *Contractarian Constructivism*, p. 190.

kind, “there is no reason to expect that the principles that emerge from such a construction process will capture our deepest ethical convictions.”¹¹³ On the other hand, if constructivists take these assumptions to be moral ones, they have to “acknowledge the existence of moral constraints that are conceptually and explanatorily prior to the edicts of the agents doing the construction. These constraints are not themselves products of construction, and so there would be moral facts or reasons that obtain independently of constructive functions.” And he sarcastically glosses: “This is realism, not constructivism.”¹¹⁴ This critique pressed against constructivism is a variation of the so-called *Euthyphro dilemma*: Are principles objective because of the application of the procedure, or because of some further objective premises upon which the procedure is selected?

On a constructivist theory objective moral norms or principles of justice are constructed out of materials of constructions (a conception of person and the circumstances in which moral agents find themselves), via a procedure of justification. Certain procedure of construction starts from moral premises, others do not. Now, the constructivist has to face the following problem. If the procedure takes as material of construction some moral elements like a moralized conception of the person, we can get moral element as its outcome. This maneuver, one might protest, is not justified on constructivist ground unless we are able to provide a procedure that justifies those starting elements. But in this way we end up with a regressum ad infinitum: a procedure P needs a procedure P₁ justifying P’s outcome; then, P₁ needs a procedure P₂ justifying P₁’s outcome. And there is no a procedure P_n that does not need further justification. Even if we found such a procedure P_n, then it would be difficult to

¹¹³ Russ Shafer-Landau, *Moral Realism. A Defence*, p. 42.

¹¹⁴ *Ibid.*

explain the need of a set of procedure $\{P_{n-1}, P\}$. Simpler story might be available for accounting for the objectivity of morals.

A possibility could be to start theorizing from moralized elements that are considered sufficiently shared among moral agents. These elements could be moral beliefs and practices shared by people. In this case we get moral outcome. But they could vary according to different moral codes and social arrangements. Therefore, there is not robust objectivity. If the procedure starts from moral elements, we get objective moral outcome; nevertheless, this is not a form of constructivism. On the other end, if we start from non-moral elements, we get non-moral outcome. So, is there any way to save constructivism?

Before proceeding in facing this challenge and to analyze different sorts of procedure of construction, I should add that not everything could be constructed. For instance, I am not endorsing any view that sees the facts of nature as an object of creation. Also, the way persons see themselves, what are their cognitive capacities and their psychological tendencies might be influenced by several elements. Nevertheless it is not clear how these things can be constructed. We should start theorizing from somewhere, and there is no possible construction to be so radical to construct even its own materials of construction. The point it is not whether or not the materials of construction can be themselves constructed; rather, what sort of procedure leads us from these basic, non-constructed, elements to constructed principles that bestow a reason-giving status on plain facts. In the next chapter, I critically discuss classical constructivist views, distinguishing among them according to the kind of premises from which they start.

Chapter Four

Constructivism and Its Premises

1. Introduction

In moral and political theorizing, constructivism is a view that attempts to justify morality by appealing to some suitably specified procedure. There are different possible formulations of constructivism. We have different definition of constructivism depending on the way the procedure is specified. Different definitions of constructivism have diverse philosophical aims.

All constructivists agree that moral norms and principles of justice are constructed out of more elementary elements; but they disagree on what is a correct procedure of reasoning. For instance, Hobbesian constructivist approaches – such as David Gauthier’s – conceive of practical reasoning in terms of rational choice, where

moral agents are to maximize the satisfaction of their desires and make up for social arrangements in such a way that everybody could pursue one's aims in most rational and effective way, given his or her own "bargaining powers." On this view, the procedure of construction responds to non-moral considerations. Its aim is to find out what reasons one has or could have to abide by moral norms and principles of justice. Kantian versions of constructivism, instead, regard practical reasoning as involving both rational and reasonable constraints. For constructivist like Rawls or Scanlon, the procedure has to respond to moral considerations; while for constructivist like Dworkin the procedure express one's attitudinizing toward facts. This variety of constructivism addresses the question about the justification of moral norms and political principles. In this chapter my aim is to survey some of the classical constructivist views, questioning whether they really are constructivist at all. I will distinguish between constructivist theories that start from non-moral promises and those that start from moral premises. I argue that forms of "constructivism without moral promises" are better equipped for accounting for the metaphysical parsimony, but they fail in justifying moral norms and principles of justice. On the other hand, forms of "constructivism with moral promises" can justify moral norms and principles of justice, but they do not represent a real form of constructivism.

2. Constructivism Without Moral Premises: Gauthier

Hobbesian constructivism does not take moralized premises as the starting elements for selecting the procedure of construction. On this view, a procedure of reasoning that starts from people's actual desires and preferences as its material of

construction. So, moral claims are objective when made at the light of principles issued by a procedure, and the procedure is objective when it issues principles maximizes the satisfaction of individual desires and preferences through some bargaining process. Stated in other way, the grounding reasons for selecting this kind of procedure is some form of individual utility maximization. The resulting moral theory is shaped as a theory of rational choice, based upon the identification of a set of constraints influencing effective mechanisms for the creation of a desirable society, given the preferences of its members. In order to maximize the possibility of satisfying their interests, free and equally rational individuals agree on a set of principles imposing constraints on the means that can be legitimately employed for achieving individual aims. Gauthier defends this view *Morals by Agreement*.¹¹⁵In this case we can restate the constructivist claim (C) in the following way:

(C2) some facts provide moral reasons because certain principles, which are worked out by a suitably specified procedure of construction *responding to some non-moral considerations*, confer reason-giving status to those facts.

The considerations to which a procedure is supposed to respond are some non-moral facts. These are a conception of the person as purely *a-social*, *self-interested* and *non-cooperating*. Gauthier rules out any *ex ante* moral constraints, since their inclusion would require further justification. The question is whether Gauthier's procedure of construction – a process of bargaining among individuals¹¹⁶ – could possibly make

¹¹⁵ David P. Gauthier, *Morals by Agreement*, Clarendon Press, Oxford 1986.

¹¹⁶ Gauthier procedure is the “minimax relative concession,” according to which “the equal ra-

relevant other non-moral facts in the moral and political domain.

For Gauthier has to make assumptions in order to make the initial bargain possible, that is, to make the procedure constructing principles work. So, even if he does not take any *ex ante* criterion of morality, the initial situation of choice has to be constrained in some way. First of all, he needs a *Lockean Proviso*, which “prohibits worsening the situation of others except where this is necessary to avoid worsening one’s own position.”¹¹⁷ The market (as a morally free zone of interaction) has to be constrained limiting the initial acquisition of resources, in order to make cooperation an available answer to market failures. This Proviso does not concern natural endowments (such as mental and physical capacities): they are seen as those elements able to put a person in a bargaining position. Improving one’s position does not create a problem in itself, but we may say that, since endowments depend on mere natural luck, there are morally significant differences upon bargainers: “wise” and “foolish” people, for instance, will reach different results because of their natural endowments.

Of course, the Proviso does not ask for an egalitarian treatment of people and does not require the bettering of other people’s situations even if it has no excessive costs. Natural endowments, as far as inherited social advantages are concerned, can be used for tailoring principles in an individual’s favor.¹¹⁸ In order to obtain greater

tionality of the bargainers leads to the requirement that the greatest concession, measured as a proportion of the conceiver’s stake, be as small as possible.” David P. Gauthier, *Morals by Agreement*, p. 14.

¹¹⁷ *Ibid.*, p. 203.

¹¹⁸ Gauthier contends that “no one deserves her natural capacities. Being the person one is, is not a matter of desert. But what follows from this? One’s natural capacities determine what one gets, given one’s circumstances, in a condition of solitude. One’s natural capacities are what one brings to society, to market and cooperative interaction. Why should they not determine, or contribute to determining, what one gets in society? How could a principle determine

benefits, each individual can use all the available devices; but such a cooperative system is not *impartial* at all. Therefore, why should people abide by principles worked out by this bargaining procedure? Impartiality is achieved through a second constraint: an “Archimedean Point,” the suitable point of view for assessing the outcomes of the choice. It consists in an “ideal actor” evaluating the terms of cooperation or action-guiding principles, without being aware of his own individual interests: “although she may identify with no one, everyone may identify with her.”¹¹⁹ This actor possesses all required information for behaving rationally (i.e., maximizing individual utility), but she does not possess direct access to her own preferences and resources. So, from the Archimedean viewpoint, everyone, not just a few people, must be made better off. In other words, Gauthier is taking a Pareto-efficiency conception of economic behavior. This however does not fully address the question either: the problem does not consist in bettering everyone’s condition, but in conceding that relevant differences affect the outcomes. What does Gauthier mean by *impartiality*?

The mere “applicability to all” cannot be sufficient for achieving “acceptability for all.” Moreover, why should one accept Gauthier’s principles if she obtained more benefit in a non-cooperative society? He addresses this point by distinguishing between “*constrained maximizer*” and “*straightforward maximizer*”, respectively if agents maximize utility undertaking a cooperative behavior or they do not. In a cooperative society straightforward maximizer behavior leads to sub-optimal outcomes

impartially how persons are to benefit in interaction, except by taking into account how they would or could benefit apart from their interaction?”. *Morals by Agreement*, p. 220.

¹¹⁹ “[T]he ideal presents a rational actor freed, not from individuality but from the content of any particular individuality, an actor aware that she is an individual with capacities and preferences both particular in themselves and distinctive in relation to those of her fellows, but unaware of which capacities, which preferences.” *Ibid.*, p. 233.

(as Prisoner's dilemma-like case shows). Gauthier thinks that if a *constrained maximizer* believed that all (or the majority of) the members of society would behave as he does, he could have reasons for cooperating. But it is trivial to say that if all members cooperate, they will have more advantages. Why should we expect such a society? Some authors criticize this view, noting that it is difficult to explain how people can choose psychological propensities (such as respecting rules or not).¹²⁰ Imagine that there is someone who could make his situation better if he refused to cooperate, and who is certain that nobody can discover him: is it rational to behave as a *constrained-maximizer* in this case?¹²¹ Gauthier arbitrarily assumes that if two thirds of the people cooperate and they do not succumb in at least four fifths of the cases to other straightforward-*maximizers*, cooperative society will have acceptable outcomes. The problem however still remains: if personal interests always moved us, why then should we accept a sub-optimal outcome? This is completely unjustified. Gauthier adds a third normative assumption, stating that all human beings are equally provided with rationality in the initial situation of choice.¹²² This assumption does not refer just to the bargainers' capacity of reasoning, considering different solutions and calculating consequences. He thinks that all individuals reason in the same way; but, if it were the case, all bargaining problems could be resolved by game theory. Maybe Gauthier has in mind societies made up entirely of mathematicians!

Human beings are different in all relevant aspects. They share only the tendency to obtain *advantages* from bargaining. Thus, differences between, say,

¹²⁰ Alan Nelson, "Economic Rationality and Morality", in *Philosophy and Public Affairs*, 17, 1988, p. 158.

¹²¹ Like in the case of the "Rational Foole" in Thomas Hobbes, *Leviathan*, 1651, Ch. XV.

¹²² David P. Gauthier, *Morals by Agreement*, Ch. IV.

‘strong’ and ‘weak’ people is a significant matter in grounding those norms that regulate our life together. Now, Gauthier could reply that taking into account morally relevant differences involves *ex ante* moral conceptions (introduced without any justification): normative principles would violate “the integrity of human beings as they are and as they conceive themselves.”¹²³

A situation where bargainers have direct access to relevant information justifies nothing more than present inequalities among individuals. Gauthier tries to amend the initial situation avoiding the use of inequalities for imposing coerced consensus: he tries to make the situation of choice impartial ruling out any acts of *predation* in the ‘state of nature’, not admitting the improvement of one’s position by fraud and force. So, Gauthier’s ideal of justice as mutual advantage is achievable only by constraining the choice; these constraints – the premises of the constructive procedure – are the actual justifying devices. Are these constraints merely rational? Or are there some moralized conceptions that make things better? By the end of the day, if the initial situation of choice is to be to everybody’s advantage, it cannot be that unfair. If they are not, and normative principles can be genuinely constructed out of a process of bargain, one might still legitimately ask whether the outcome of the theory is really moral.

3. Constructivism With Moral Promises: Rawls, Scanlon and Dworkin

When we select a constructive procedure starting from non-moral premises, we

¹²³ *Ibid.*, p. 254. For a similar argument see Robert Nozick, *Anarchy, State, And Utopia*, Ch. VII.

run the risk to end up with principles whose foundation does not invoke any ex ante criterion of morality, but we might not get moral upshot. Consider then a different sort of grounding reason for the choice of the procedure. For this reason we might think to restate the constructivist claim (C2) in this way:

(C3) some facts provide moral reasons because certain principles, which are worked out by a suitably specified procedure of construction *responding to some moral considerations*, confer reason-giving status to those facts.

The considerations to which a procedure is supposed to respond are some facts of the matter about morality. Their function is to make relevant other non-moral facts in the moral and political domain. These moral facts are not themselves constructed; rather, they represent those fundamental elements to be embedded into the procedure constructing principles.

One might wonder whether this approach is really a form of constructivism. Independently of where they come from and of the way in which we know them, they are a priori elements of the constructive procedure. Therefore, they are prior to the moral principles. To be sure, this could represent just a weak form of constructivism. Indeed, principles are constructed out of more elementary components. And, since principles are outcome of a procedure, they are to be considered as justified. But their justification clearly depends on some non-constructed, moral premises. These premises can be some particular aspects of human beings, like the fact that people have a priori rights or fundamental basic needs. In other words, some universally shared properties.

A procedure able to take these considerations into account yields can make moral claims objective.

It is clear that the criteria of objectivity for the procedure are different from the criteria of objectivity for moral claims. (C3) considers claims as justified when they are yielded from a correctly applied procedure. And a procedure is said to be “correctly applied” when the process of reasoning, which leads moral agents from the premises to conclusion, is faultless.¹²⁴ But the correctness of the procedure is given by the capacity to respond in the appropriate way to considerations that are given prior to the procedure. Suppose, for example, that there are universal rights; then, the procedure would be correct when moral claims expressed on the basis of principles yielded by such a procedure protected those rights. As an alternative, suppose that the relevant kind of considerations is based upon the fact that people suffer when subject to certain treatments; then, the standard of correctness for procedure of construction would be provided by the responsiveness of the procedure to the fact of human suffering. It is clear that the criterion of correctness for principles is given by the correct application of the procedure. But the criterion of correctness for the procedure of construction relies upon considerations that are, first, prior to the procedure itself, and second, independent of our conceiving of them. They are realist elements. If there are elements prior to the procedure itself, we have a realist approach rather than a constructivist one. Of course, for a constructivist theory not all elements are necessarily constructed. However, if the elements that make something right and wrong are independent of moral agents’s intentional conceiving, it follows that this strategy is loosely constructivist, since the procedure does not play any actual role in

¹²⁴ Of course, I am assuming that a moral agent is capable of faultless reasoning at least in hypothetical cases.

making facts relevant from the moral point of view.

Let us see how this problem applies moral and political theories. Take Rawls's theory as the most prominent constructivist view in contemporary debate. My aim is not to discuss how the original position, Rawls's favorite interpretation of the constructivist procedure, is characterized. The central idea I want to point at is that according to Rawls, first principles of political morality are the outcome of a procedure of reasoning, which incorporates certain requirements of practical reasoning, such as the concept of a person (as reasonable and rational) and the social role of morality. The concept of a person serves to bind ethics to moral agents. Moral norms are meaningless without their constructors. As Rawls puts it,

[constructivism] sets up a certain procedure of construction which answers to certain reasonable requirements, and within this procedure persons characterized as rational agents of construction specify, through their agreement, the first principles of justice.¹²⁵

Rawls's constructivism aims at providing a method of justification: the outcome of this procedure of construction has to be considered justified. The materials of construction are the conceptions of person and society, and the role of a conception of justice. Persons are characterized as having two moral powers, namely a capacity for a sense of justice and the capacity to have, form, revise, and pursue a conception of the good. The role played by a conception of justice is to provide a public basis of justification in a society marked by permanent disagreement about moral and political

¹²⁵ John Rawls, "Kantian Constructivism in Moral Theory", in *Journal of Philosophy*, 77 , 1980, p. 516.

views. So conceived, principles are not derived from an independent order of moral values; rather, they are *constructed* out of these grounding elements. For this reason, Rawls labels his justificatory method as *constructivist*.¹²⁶ Rawls's moral constructivism is the claim that

the order of moral and political values must be made, or itself constituted, by the principles and conceptions of practical reason [...] by the activity, actual or ideal, of practical (human) reason itself.¹²⁷

In other words, these principles are not imposed upon them from an external (or heteronomous) source. Principles of justice are the outcome of an agreement among free and equal moral agents. In this way, principles can be considered as autonomously selected, since practical reason alone “constitutes” or creates the order of moral values (to which we refer in our practical decisions).¹²⁸ The central claim of Rawls's constructivism is summarized in this key passage:

Apart from the procedure of constructing these principles, there are no reasons of justice. Put in another way, whether certain facts are to count as reasons of justice and what their relative force is to be can be ascertained only on the basis of the principles that result from the construction. [...] it is important to notice here that no assumptions

¹²⁶ While in *A Theory of Justice* Rawls makes reference to a liberal comprehensive view, in *Political Liberalism* he draws on implicitly shared values present in the public political life of a democratic society. Indeed, in the later works, his aim is to come up with a political conception of justice that could possibly be accepted by adherents of reasonable comprehensive doctrines, which are the many religious and philosophical beliefs characterizing a complex society. For the reason why I do not consider Rawls's political constructivism see *Introduction*.

¹²⁷ John Rawls, *Political Liberalism*, p. 99

¹²⁸ *Ibid.*

have been made about a theory of truth.¹²⁹

Larry Krasnoff argues that this is an overstatement “because there are clearly moral considerations that support Rawls’s conception of the person as rational and reasonable, as well as his design of the original position as a constructive procedure. It could not be that *these* moral facts are constructed by the original position”¹³⁰. Maybe Krasnoff is right. But there are other alleged “overstatements.” Take these, for instance:

Whether certain facts are to count as reasons of justice and what their relative force is to be can be ascertained only on the basis of the principles that result from the construction.¹³¹

It is not that, being impartially situated [in original position] they have a clear and undistorted view of a prior and independent moral order. Rather (for constructivism), there is no such order, and therefore no such facts apart from the procedure of construction as a whole; the facts are identified by the principles that result.¹³²

Elsewhere, Rawls declares to want to remain agnostic about metaethical issues.¹³³ But in the above passages he is defending a (maybe tentative, but nonetheless) metaethical position. Here Rawls is arguing that it is a procedure that

¹²⁹ John Rawls, “Kantian Constructivism”, p. 565.

¹³⁰ Larry Krasnoff, “How Kantian is Constructivism?”, *Kant-Studien*, n. 90 (1999), p. 391.

¹³¹ John Rawls, “Kantian Constructivism,” p. 465.

¹³² John Rawls, “Kantian Constructivism,” p. 568. See also on this point John Rawls “Themes In Kant’s Moral Philosophy”, in Eckart Förster (ed.), *Kant’s Transcendental Deduction*, Palo Alto: Stanford University Press, p. 101.

¹³³ See *Introduction*.

makes moral claims objective, and not independently objective claims that make a procedure objective. But one might ask: which procedure is the right one? To address this point we have to go back to the theory and its justificatory devices, namely the *reflective equilibrium* method. Rawls's version of constructivism alone is not sufficient. If the validity of principles does not depend upon a queer metaphysical order of moral entities, this is not because of the constructivist approach, but rather because of other normative arguments. If constructivism can be reduced to other approaches, then it does not play any role in moral theory, or just a rhetorical one.

The reflective equilibrium method represents the end of a process, when we revise on due reflection our system of beliefs in a given area of inquiry, evaluating its overall coherence. This method consists in working back and forth between our considered moral convictions,¹³⁴ moral norms and principles of justice, and relevant background theories (the theoretical considerations that we believe to have a bearing on the acceptance of these considered convictions and principles).¹³⁵ When

¹³⁴ For Rawls considered convictions are “those rendered under conditions favorable to the exercise of the sense of justice, and therefore in circumstances where the more common excuses and explanation for making a mistake do not obtain when one is well informed about the matter in question.” The favorable conditions are those which rule out all irrelevant elements with regards to the fairness of the agreement: individuals must not be influenced by *anger* or *fear*, or by the possibility of *winning* or *loosing* something and so on. So, “the person making the judgment is presumed to reach a correct decision (or, at least, not the desire not to).” John Rawls, *A Theory of Justice*, p. 42. See on this point the figure of the “competent moral judge” in John Rawls, “Outline of a Decision Procedure for Ethics”, in *Collected Papers*, Cambridge, Mass.: Harvard University Press, 1999, pp. 1-19.

¹³⁵ Obviously, principles of justice (as part of a moral theory) and relevant background theories cannot be constructed starting from the same set of considered convictions. It is therefore necessary to assume that there are at least two far from empty and distinct subsets of considered convictions, say (s_1) and (s_2), so that (s_1) is the basis for the principles and (s_2) is the basis for background theories. If (s_1) were the same as (s_2), reflective equilibrium would be

inconsistencies arise, we should revise those elements. The equilibrium is achieved when one is no longer inclined to revise claims, principles, and theories, since they have attained the highest degree of acceptability and credibility for us.¹³⁶

Now, the characterization of the initial the situation of choice as laid out in the original position has to match our considered convictions. If it does not, we can revise the constraints on the initial situation, until we arrive at a stable equilibrium. Note that Rawls does not assume that a set (or a subset) of basic elements is foundational. There are no objective points as self-evident beliefs or self-justified principles, but only starting points always under adjustments. Of course, everyone will be more confident in some intuitions, but they are not inalterable and foundational.

If the original position has to pass the test of the reflective equilibrium method, then it seems that the procedure of construction possesses just a heuristic role: it tells us which principles we should choose among competing ones, without justifying the choice. It can be a device for externalizing and carrying our moral intuitions to a higher degree of abstraction. But the justification of those principles is definitely given by the reflective equilibrium.

One might object to this line of criticism claiming that the reflective equilibrium method highlights the presence, in complex societies, of competing

trivially circular. See on this point Norman Daniels “Wide Reflective Equilibrium and Theory Acceptance in Ethics”, in *The Journal of Philosophy*, vol. 76, , 1979, p. 258 and Thomas Scanlon “Rawls on Justification”, in Samuel Freeman, *The Cambridge Companion to Rawls*, Cambridge: Cambridge University Press 2002, pp. 142-143.

¹³⁶ “[b]y going back and forth, sometimes altering the conditions of the contractual circumstances at others withdrawing our judgments and conforming them to principle, we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted.” John Rawls, *A Theory of Justice*, p. 18.

conceptions of justice; the original position procedure chooses among them those fitting coherence requirements of reflective equilibrium. So, people comprehend justice in different ways, but only in favorable conditions they can make a correct deliberation. If this were a correct interpretation of Rawls's reflective equilibrium, it would have weak justificatory force, since it describes, and does not select among, competing conceptions of justice. The choice is made in original position.¹³⁷ But one can wonder why, at least on the epistemological level, we need reflective equilibrium at all.

On a different interpretation, the reflective equilibrium method possesses a deliberative role:¹³⁸ seeking coherence, it consists in deliberating on what we ought to do when doubts arise. First, the procedure of construction can help us to identify those principles that best account for our intuitions. Then, the method of reflective equilibrium is involved in both construction and justification. Reflective equilibrium gives prominence to moral intuitions. Constructing principles without such elements is tantamount to building them on nothing. But if our intuitions are merely the result of historical accident and bias, if they are just what people think, we can argue that there is no justificatory force to the procedure of construction itself if we model this procedure so that it yields principles able to match our considered convictions of justice.

¹³⁷ This interpretation is presented by Scanlon. On the "descriptive interpretation," reflective equilibrium gives a philosophical account of our moral sensibility. See Thomas Scanlon, "Rawls on Justification", p. 142.

¹³⁸ This is the other possible interpretation presented by Scanlon. On the "deliberating interpretation," reflective equilibrium takes considered convictions about morality or justice as the most adequate intuitions for moral deliberation. See Thomas Scanlon, "Rawls on Justification", p. 142.

Hare argues that Rawls is an intuitionist and a weak foundationalist: at the root of Rawls's theory there are normative premises (such as concepts of fairness, equality, and rationality) shaping the entire theory.¹³⁹ So, these are the actual theoretical devices justifying the choice. These premises do not rely on the natural world or a metaphysical reality; they come from our everyday understanding of morality and claiming that such premises are provided just with initial credibility does not change the question.¹⁴⁰ A person under appropriate conditions (*original position*) opts for a set of principles accounting for her considered convictions; these principles have to be coherent with the sense of justice (*reflective equilibrium*); but it is the same sense of justice that features the procedure of construction, namely the original position. Now, it seems that Rawls works out a theory where he suggests how we ought to think our thoughts about justice: perhaps, in original position there is just Rawls, sitting on the throne of Kantian reason!¹⁴¹

Intuitions are not merely people's opinions, as Hare could argue, but, like scientific hypotheses, they are *conjectures*, which can be transformed in a theory through a series of tests, namely theories of justification. All critics however are right in noting that without an egalitarian framework, Rawls' theory collapses. Why should

¹³⁹ Richard M. Hare, *Rawls's Theory of Justice*, in Norman Daniels (ed.), *Readings Rawls: critical studies on Rawls' A theory of justice*, Oxford: Basil Blackwell, 1975. See also Joel Feinberg, *Rawls and Intuitionism*, in N. Daniels, *Readings Rawls*, and Gerald Gaus *Justificatory Liberalism – An Essay on Epistemology and Political Theory*, Oxford: Oxford University Press, 1996, especially Chapter 6.

¹⁴⁰ See Gerald Gaus *Justificatory Liberalism*, especially pp. 101-102, and Brad Hooker B. Hooker, *Intuitions and Moral Theorizing*, in Philip Stratton-Lake (ed.), *Ethical Intuitionism. Re-evaluations*, Clarendon Press, Oxford 2002.

¹⁴¹ “[T]here is no theoretical reason to posit more than one party in the original position.” Jean Hampton, “Contracts and Choices: Does Rawls Have a Social Contract Theory?”, *The Journal of Philosophy*, vol. 77, 1980, p. 334.

someone be committed to Rawls' principles if he did not endorse his egalitarian premises? We can conclude contending that constructive procedure has a weak justificatory force in Rawls' theory, since reflective equilibrium seems the actual justificatory device together with a substantial interpretation of the Rawlsian-egalitarian sense of justice.

Another example of this variety of constructivism is Scanlon's view of morality. Scanlon tries to endorse some form of agnosticism about metaphysical issues, but there are passages where he seems to reject moral realism, claiming that there are no interesting ontological questions about morality. His account is worked out through a peculiar interpretation of the social contract in order to avoid any metaphysical issue. The contract here is to be interpreted as that valid method of reasoning, namely a procedure of construction, able to yield principles that all (at least hypothetically) are expected to endorse without commitments to any ontology of morals. As Scanlon puts it,

[i]f we could characterize the method of reasoning through which we arrive at judgments of right and wrong, and could explain why there is good reason to give judgments arrived at in this way the kind of importance that moral judgments are normally thought to have, then we would, I believe, have given sufficient answer to the question of the subject matter of right and wrong as well. No interesting question would remain about the ontology of morals – for example about the metaphysical status of moral facts.¹⁴²

When Scanlon says that there is no “interesting question,” he can mean two

¹⁴² Thomas Scanlon, *What We Owe to Each Other*, Cambridge, MA: Belknap Press, 1998, p. 2. See also Chapter 1, § 11 (especially pp. 63-64); Chapter 8, § 6 (especially p. 355).

things. On the one side he can be interpreted as invoking a form of quietism. On the other side, Scanlon might be seen as a constructivist. Indeed, there are passages where he might suggest this reading. Discussing the property of “being wrong” he argues that

moral wrongness is not a natural kind; but it is what might be called a normative kind. That is to say, the property of moral wrongness can be identified with a certain normatively significant property which is shared by actions that are wrong and which accounts for their observed normative features, such as the fact that we have reason to avoid such actions, to criticize those who perform them, and so on.¹⁴³

At a first, ingenuous sight, Scanlon might sound like a constructivist. Indeed, in order to detect the property of being right or wrong, one might focus on the role of agreement invoked by Scanlon: hypothetical agents in suitably specified conditions develop certain attitudes that allow them to judge things as right and wrong. Scanlon himself, then, might lead to think that he is endorsing a constructivist maneuver. In an endnote,¹⁴⁴ he claims that his view is closer to what Korsgaard defines “procedural realism,” according to which “there are answers to moral questions *because* there are correct procedures for arriving at them.”¹⁴⁵ If this were Scanlon’s view, then he would be a constructivist and not a realist. A moral realist would claim that “there are correct procedures for answering moral questions *because* there are moral truths or facts, which exist independently of those procedures, and which those procedures track.”¹⁴⁶ Many philosophers have been reading Scanlon as a constructivist. Here I am going to show how Scanlon can be considered a sort of constructivist on moral principles, but

¹⁴³ Thomas Scanlon, *What We Owe to Each Other*, p. 12.

¹⁴⁴ Note 48, p. 380.

¹⁴⁵ Christine M. Korsgaard, *The Sources of Normativity*, pp. 36-37.

¹⁴⁶ *Ibid.*

not on moral reasons.

In his discussion of the nature of normativity, Scanlon sees the difficulty in grounding ethical claims on objective basis, without the ontologically demanding commitments of moral realism. In a recent paper, he says that:

Reasons are not a special class of entities. The kinds of things that can be reasons are facts or propositions of other kinds. So what is at issue does not seem to be an ontological question about the existence of reasons.¹⁴⁷

We cannot choose what reasons to have. We choose the moral principles we choose because we have reasons for choosing them and not vice versa. In this sense reasons are choice-independent. But one might wonder: what are reasons? The notion of a reason, being primitive, cannot be explained in further terms. Reasons are considerations that count in favor of something. “Counting in favor of” is qualified by Scanlon as a non-natural relation between facts and the wrongness of actions.

Many are mistaking in focusing on Scanlon’s notion of agreement. The key notion is “reasonable rejectability,” which does not depend on the fact that people agree or could agree if they were in ideal conditions on a set of principles telling us what is right and wrong. If a principle is “reasonably rejectable”, it means anything but that there are considerations that reasonably counts against its (hypothetical) endorsement and that those considerations hold for all those affected by such a principle. When there are reasons for not doing something, it means that there are no facts of the matter that make that thing morally permissible.

If this is a fair reconstruction of Scanlon’s view, he is not a constructivist at all.

¹⁴⁷ Thomas M. Scanlon, “Constructivism: What? And Why?”, unpublished manuscript.

There are facts of the matter about morality that are prior to the construction of principles. Therefore, one can say, first, that Scanlon's approach is not contractualist in the classical understanding of this label, since the idea of agreement does not play any role. People do not make agreement for finding the reasons they have; rather, they already have reasons for making an agreement. Moreover, his view is not constructivist, since what counts as reasons does not depend upon principles originated from the constructive procedure. If the elements that make something right and wrong are independent of moral agents' intentional conceiving, it follows that this strategy is only loosely constructivist.

Another strategy we might consider deploys a maneuver about the elements upon which the procedure is selected, which is less committal from a metaphysical point of view. This other approach would ground the choice of the procedure on our attitudinizing towards a (non-moral) state of affair. So, (C3) could be restated as the claim that:

(C4) some facts provide moral reasons because principles, which are worked out by a suitably specified procedure of construction *expressing one's attitudes towards those facts* confers reason-giving status to those facts.

This view holds the same semantic claims of the strong form of moral realism, but is obviously less committal from the ontological point of view. So, the moral property "F" does not exist independently of the way we know, perceive or think about

it; its knowledge is the outcome of an account about our attitudinizing toward x. The set of attitudes injected into the procedure of construction constitutes the body of truths of the matter about morality. As for (C3), their function is to make relevant other non-moral facts in the moral or political domain.

In this case, we know where these grounding elements come from: they are expressions of our attitudes of approval or disapproval. As in (C3) normative principles are justified when outcome of a procedure, but the question of objectivity remains open. Indeed, one might ask: on what ground can objectivity be granted? What if people affected by the endorsement of those normative principles so constructed, develop different attitudes towards the same state of affairs? It seems that all we have here, is a mere process of generalization of one's attitude.

For (C4), the criteria of objectivity for the procedure and for moral claims come to coincide: moral claims are considered as justified when they are made on the basis of principles yielded from a correctly applied procedure. And a procedure is said to be "correctly applied" when the process of reasoning correctly expresses one's attitudes.

But this version of constructivism can claim a quite minimal notion of objectivity: objectivity here means no more than correct representation of subjective attitude. One of the desiderata of a constructivist theory is to hold metaphysical parsimony and a robust conception of objectivity. But in this case, the metaphysical parsimony might be achieved at the price of a robust conception of objectivity.

Dworkin defends this kind of view.¹⁴⁸ According to Dworkin, a moral or political theory has to work out a conception that best fits our considered moral

¹⁴⁸ R. Dworkin, "The Original Position", in N. Daniels (ed.), *Reading Rawls*, Stanford: Stanford University Press 1989.

convictions. Being practical, theory has to shape our first order convictions so that they can be presented and defended in a public discussion. On this reading of constructivism, the aim consists in the acceptability of norms from a public standpoint. The theory provides a general framework for justification, which is represented by the procedure of construction. Objectivity is achieved by those moral claims that *better* withstand public scrutiny. But, what does “better” mean here?¹⁴⁹

“Better,” as a comparative term, needs a normative qualification. In order to avoid the need for a metaphysical order, Rawls tries to push back this question to normative arguments, remaining silent on second-order questions. But Dworkin seems to go further than Rawls’s metaethical agnosticism. He might be interpreted as saying not simply ‘leave truth aside,’ but rather ‘truth is not the appropriate test for the objectivity of moral claims. The sole test for objectivity is given by acceptability in the public arena: the coherence between a moral claim and the overall system of beliefs of the moral agents affected by that claim. The objectivity of a claim is given by its capacity to solve a practical problem, by its efficacy on the practical level. If the test for objectivity is practical efficacy, it follows that the constructive model of moral and political theorizing is a non-realist position: “we could say that constructivism is the view that the truth of such a theory is determined solely by its ability to perform the practical task.”¹⁵⁰ Unfortunately, Dworkin does not say much about this in his writings.

This variety of constructivism faces a problem common to all coherence

¹⁴⁹ As in the case of the animal mentioned above, what is the “best” possible shape?

¹⁵⁰ Larry Krasnoff, “How Kantian is Constructivism?”, p. 391. What seems clear, anyway, it is the fact that he takes constructivism to be the grounding approach to practical philosophy. Krasnoff admits the possibility of reading Dworkin as both metaethically agnostic and anti-realist. I think that the anti-realist reading is better-supported by textual evidence in Dworkin’s essay.

theories of justification. Even if a set of moral claims were perfectly coherent in itself, there would be no guarantee that that set was the correct one. There could be multiple sets of claims that stand up to public scrutiny equally well but that are mutually exclusive, leaving us no criteria for deciding which one is correct or objective in this higher sense.

One might consider a further way of defining constructivism. It could be the naïve claim that some facts provide moral reasons because principles, which are worked out by a suitably specified procedure of construction *reporting moral practices of a society* confers reason-giving status to those facts. This form of constructivism is naïve since it treats moral claims in a realist-like fashion, but the notion of objectivity is quite minimal and, most of all, quite restricted in scope. Indeed, it is evident that moving from a society to another, some – if not all – of the political practices will change. Therefore, objective is that moral claim conforming to what people approve of *locally*. Again, this is social constructivism, not moral constructivism.

4. What Constructivism Could Possibly Be?

So far we have seen some of the main understandings of constructivism. The kind of constructivism underpinning Hobbesian contractarian theories starts from non-moral premises, but does not get moral outcome. On the other side, the more Kantian interpretation of constructivism – as stated in (C3) and (C4) – gets moral outcomes, but one might wonder whether they really are forms of constructivism (as for C3) or they defensible form (as for C4). We should find a way to combine (C2)'s responsiveness to non-moral facts, with (C3)'s capacity to work out moral reasons.

This is the aim of the next chapter.

My aim is to try to redefine constructivism as not ontologically committed but to the simple fact that facts are product of human actions and other kinds of events. These facts are not guided by an external authority, but by reflections about how to face matter of facts. On this interpretation constructivism could be the claim that the objectivity of moral claims is a matter of whether or not those claims withstand a procedure of scrutiny from the standpoint of public discussion. To have reasons for selecting a specific procedure of construction, then, should to speak about the facts that account for the practical activity of constructing principles. This move adopts a constructivist device. It acknowledges that factual considerations matter in selecting principles that shape the way we think about how to regulate our behavior. In conclusion, a final remark on the notion of objectivity. As Samuel Freeman argues in a recent paper,

On a constructivist understanding of moral correctness, objectivity or objective moral judgments are prior to morally true or correct (or the most reasonable) moral principles. ‘Objectivity is prior to the object’ of truth. By contrast, Realism of all kinds [...] says that [...] moral facts exist prior to and independent of reason and judgment, and that objective judgment conforms to (corresponds to) these moral facts or prior moral truths. (On a realist understanding, ‘the object of truth is prior to the objectivity of judgment.’).¹⁵¹

So, it is not because there are moral facts that we can have objective moral claims. Rather, it is an objective procedure that makes moral claims objective on the basis of principles worked out by a procedure responding to non-moral facts.

¹⁵¹ Samuel Freeman, “Constructivism”, unpublished manuscript.

Constructivism claims that there are moral truths or facts, but that they do not stem from an independent metaphysical order of moral things. Constructivism should be an anti-realist position, denying a fundamental condition for moral realism, that is moral facts are so independently of the evidence for them. Constructivism should admit the possibility of objectivity in moral theory, since it presents ethics as concerned with matters of fact, without falling into realist argument. Constructivism should maintain an anti-realist because it claims that moral truths depend upon our moral beliefs. For constructivism, moral claims would be different if our moral claims were different. And our moral claims would be different if the condition to which the constructivist procedure is supposed to address were different.

Chapter Five

Re-defining Constructivism

1. Constructivist Desiderata

As seen, constructivists aim at a conception of objectivity in moral and political theory as robust as the one held by moral realists, while holding the same ontological parsimony of moral anti-realist positions. This makes constructivism a very problematic position. In fact, one could concede too much to either realist or anti-realist side, losing the specificity of such a position. The aim of this final chapter is to highlight those realist and anti-realist elements that constitute a constructivist view, and possibly, to find the right balance between them.

Let us recapitulate the structure of a constructivist theory. Moral and political theories have moral claims – claims of the kind “X has a reason to do y ” – as their

target. Moral claims are expressed upon more general moral principles. According to constructivists, these moral norms and principles of justice are justified if they can be accounted for as the outcome of a specific procedure of construction. A procedure constructing principles is not itself constructed; rather it has to be chosen on some further grounds. Now, what are these further grounds? Do these grounding elements ultimately provide the standard of objectivity for the constructive procedure? If so, these further considerations, which are normative in their character, need to be somehow justified. The problem is if they can be justified with a constructivist maneuver.

2. A Re-Definition of Constructivism

These grounding elements are those considerations for the choice of the procedure. First of all, they are *grounding* because they are the most fundamental in moral theory. They are not constructed elements of the theory and are not the outcome of a procedure of construction. Moreover, they are not derived by other principles. These grounding elements are the right-makers of the procedure. How can we take the grounding elements to be the correct one though?

The fact that there are non-constructed elements before the procedure does not represent a problem for constructivist. Also, they might be moralized conception. The fact that are non-constructed and moralized conceptions could represent a problem just in the case that the moral worthiness of these grounding elements did not depends upon the procedure. To put the same idea in other words, if the property of being moral depends upon something else respect to the procedure of construction, then we do not

have a constructivist approach at all. This requirement comes from the idea of pure proceduralism – as illustrated in Chapter Three – according to which there should be no moral criteria given before the procedure that determine the rightness of actions or the justice of social institutions.

One might object that if we do not start from moral elements, then we are necessarily starting from non-moral elements. Otherwise, we are trying to get moral outcome from non-moral inputs, which is an option that I rejected in the last chapter. This is cannot be the case. In order to address this last challenge, I need to clarify how these grounding elements acquire moral worth.

In general, when we judge something as right or wrong, or as just and unjust, we are usually driven by some sort of unreflective attitude of approval or disapproval toward that thing, on the one side, and in turn we think about this unreflective responses in some sort of ‘cool hour.’ This is the reflective attitude that distinguishes us as moral agents.¹⁵² Obviously, these two attitudes might lead to contrasting outcome. Might we immediately approve of a certain action or state of affairs when, upon reflection, we come to disapprove. Now, besides the issue related the change of one’s attitudes, we want to find out which attitudes are the correct one, so that we get objective moral claims.

What happen when we revise our claims? The answer is quite simple and straightforward: we are checking whether or not our claims withstand a procedure of scrutiny that considers our normative claims altogether. According to constructivism, the criterion that determines objectivity of our moral claim is given by further normative claims endorsed by us. For example, the claim that “the fact that a virtue is

¹⁵² Christine M. Korsgaard, *The Sources of Normativity*, Cambridge: Cambridge University Press, 1996, especially Lecture III.

difficult to possess makes it morally worthy” entails the claim that “The virtue of honesty is morally worthy” if this virtue is difficult to possess.

In the moral and political domain, this process of control about the sets of claims that one can possibly make is carried out by moral agents when one considers how a moral claim withstands some procedure of scrutiny accounts for the relation of entailment between the two claims in the above example. This procedure is selected on the basis of further normative claims endorsed by moral agents. Note that these grounding elements are not moral claims themselves, but rather they are claims about the value or moral worthiness of claims. When we morally value something we display a tendency to unreflectively endorse a moral claim. Then, we judge whether there are overriding reasons to refuse to endorse such a claim. If the moral claim passes this test, we have reason for endorsing the claim at hand.

On a constructivist account, moral claims are claims about what really matters. And what really matters is defined by what one takes to matter. But crude moral relativists also claim this. The standards for determining what really matters are defined by one’s moral claims about what matters. In other words, the criteria for defining one’s moral reasons are given by the moral claims about what really matters. The key point for constructivist is that there are no standard apart from this. The question has to be formulated always from a point of view that is internal to the moral domain. It does not make any sense to ask what is like to have the capacity to have reasons. It cannot indeed be formulated in further terms besides in terms of reasons to have reasons. But this is quite pointless. What makes sense instead it to step back and ask us what is like to have good reasons for us. And this is possible only evaluating the other moral claims to which we are committed. Then, as the fundamental step for

getting objective moral claims, is to step back and ask us what could be endorsed by all moral agents affected by those claims.

Time has come to provide a definition of constructivism. This definition will not provide a full-fledge description of what is going to happen once the materials of construction are injected into the procedure. My aim is to set up the conditions that, on my view, any kind of procedural approach to moral theory has to respect in order to be constructivist. So, constructivism claims that

i. There are facts of the matter about morality, but these facts are not prior to and independent of our thinking about them. Rather, they are product of a cognitive constructive process of enquiring about the moral (or political) domain.

ii. These facts provide moral agents with moral reasons (or reasons of justice).

iii-a. What counts as moral reasons (or reasons of justice) depends upon principles worked out by a procedure of construction.

iii-b. Some facts provide moral reasons (or reasons of justice) because certain principles, which are worked out by a suitably specified procedure, confer reason-giving status to those facts.

iii-c. These facts have to be taken into account by the procedure. In other words, moral agents elaborate moral norms and principles of justice endorsing a procedure of practical reasoning that is able to respond to these facts.

From this, it follows that

iv-a. The reasons that count as moral reasons (or reasons of justice) do not depend on any *ex-ante* normative criterion of justification, but only on the correct application of the procedure.

To put it differently,

iv-b. It is reasoning that is performed correctly that makes moral judgments correct; judgments are not correct in virtue of some external and superior authority. (Accordingly, whatever is constructed by the appropriate procedure has to be regarded as justified).

Therefore

iv-c. The source of justification of moral claims relies ultimately on moral agents' correct application of a procedure of reasoning.

In the first place, constructivism is the claim that moral facts possess an epistemological relevance, but not an ontological one. There are no moral facts independent of us, of what we are like, as expressed in (i.). Moral reasons are that kind of considerations that we offer when we have to justify our moral claims to others. Moral claims are expressed on the basis of some general moral principles. These

principles (iii-a) are not given a priori, but are outcomes of a constructive process. And the principles (iii-b.) Select, through a procedure, some facts relevant from a moral point of view. In other words, there are no mind-independent moral facts. Some facts are moral, and so they provide us with moral reasons, because a certain cognitive process makes them so. A procedure of construction, then, is a conceptual device that takes into account some factual (non-moral) considerations (iii-c.). Having this in mind, we can formulate the conclusion (iv.) that the justification of principles, upon which moral claims are made, does not derive from some independent order of truths, but from some form of practical reasoning.

Now, one might protest that (iv.) does not follow from (i.) because while (i.) is about the nature of moral facts, (iv-b.) is about the constructivist justificatory method. A strong realist, for instance, could deny (i.) while accepting (iv-b). A moral realist might think that the justification of moral claims is possible through the application of a procedure, even if they correspond to or represent some independent reality. Then, if one possesses the knowledge of some moral truth without the application of any procedural device, we could say that it is a mere fluke. So, what is the relation, one might ask, between a theory of moral truth and a theory of moral justification on a constructivist account? Roughly, a constructivist would say that, at least in the moral domain, truth and justification coincide, because of the ontological minimalism, as expressed in (i.). An objective or correct moral judgment is tantamount to moral truths; and moral truths are no ontological but epistemic. Moral realists claim that moral claims refer to real, non-constructed entities. Constructivists deny this and claim that moral principles have normative significance for us because they are the product of our reasoning about practical problems.

This way of re-defining constructivism is not ontologically committed but to the simple fact that facts are product of human actions and other kinds of events. These facts are not guided by an external authority, but by reflections about how to face matter of facts. To have reasons for selecting a specific procedure of construction is to speak about the facts that account for the practical activity of constructing principles. This move adopts a constructivist device. It acknowledges that factual considerations matter in selecting principles that shape the way we think about how to regulate our behavior and model the political institutions in which we live.

3. Constructivism As Non-Reductive Naturalism

This account of constructivism is close to Korsgaard's non-reductive naturalist account of moral obligation. In a passage of *The Sources of Normativity*, she writes:

the account of obligation which I have given in these lectures is naturalistic. It grounds normativity in certain natural – that is, psychological and biological facts. I have traced the normativity of obligation to the fact of reflective consciousness and the apparent normativity [...] My account does not depend on the existence of supernatural beings or non-natural facts, and it is consistent with although not part of the Scientific World View. In that sense, it is a form of naturalism.¹⁵³

Korsgaard provides an analysis of different conceptions of the sources of normativity or reasons, defending a Neo-Kantian conception of normativity grounded in autonomy. On her view we can accept the realist idea of objectivity of moral

¹⁵³ Ibid., p. 160.

reasons, but she rejects the ontological commitments of moral realist. As already seen, she distinguished between *substantive* normative realism and *procedural* normative realism. According to substantive realism “there are correct procedures for answering moral questions *because* there are moral truths or facts, which exist independently of those procedures, and which those procedures track.” Procedural realism, instead, claims that “there are answers to moral questions *because* there are correct procedures for arriving at them.”¹⁵⁴ This view rejects moral naturalism, that is, the view that there are moral facts and properties, they do not depend on anyone’s attitudes, and they are natural facts and properties. For constructivists, instead, there are moral facts and properties and they do depend on one’s attitudes. The procedure of construction then rules out from these attitudes desires, preferences and other subjective attitudes, granting the objectivity of moral claims. Thus, moral claims have objective values, but not because of the existence of any ontological moral realm.¹⁵⁵ Moral claims are objective because of a process for solving practical problems.

This approach is not to be confused with a form of reductive moral naturalism, since it does not reduce the reasons we have to natural facts (even if the procedure is said to respond to natural facts). In fact, the reduction operated by moral naturalists represents one of the main criticisms moved by constructivists to moral realism. Moral naturalism, reducing moral facts to plain facts on the ontological level, does not address the question of normativity. As already George E. Moore made clear with his “open question argument,” the analysis of the issue of normativity is begged and confused with other issues. Thus, we can keep asking the same question to moral naturalists. What motivates the thesis according to which the term “good” cannot be

¹⁵⁴ Christine M. Korsgaard, *The Sources of Normativity*, p. 36-37.

¹⁵⁵ See Chapter Two.

defined by non-moral terms and cannot be reduced to non-moral properties, is the need to address question of moral reasons in different way. In a similar way, Korsgaard argues that the question about the sources of normativity cannot be addressed by a reductionist analysis. But constructivists do not follow Moore's solution: moral intuitionism is not an option answer given its peculiar non-natural metaphysics.

Constructivism opposes this view, claiming that the objectivity of moral claims is not prior to and independent of the procedures of reasoning that get them. Thus, according to a metaphysical reading of constructivism, there are no actions we ought to done or social and political institutions that we ought to build up independently of some hypothetical procedure – a procedure that scrutinizes moral claims ruling out subjective attitudes that might play a role in their formulation.

Constructivism is not only an epistemological approach. Many philosophers tend to agree about the fact that we employ some epistemic tools to find out what moral facts are, and so what reason we have. And they even agree on the fact that a procedure justifies our moral convictions. What makes the difference between constructivism and other procedural approaches is the idea that according to constructivism, a procedure does track objectively moral facts. Rather the procedure creates moral facts, or constructing moral facts. For this reason, constructivism represent more than an epistemological thesis. Rawls's method of reflective equilibrium or Dworkin's public standpoint test might be looked as an epistemological reading of the constructivist procedural approach: their procedures serve to determine what are the relevant moral facts the ground moral claims. Nevertheless they do not go further then this.

Constructivism is the claim that about the objectivity in the moral domain is the

view that there are no moral facts that are independent of a procedure, on both the epistemological and ontological level.

4. A (Possible) Argument

In conclusion, I want to propose a tentative argument supporting the idea that a procedure has to respond to plain facts, without reducing moral facts to plain facts. As we have seen, moral and political theories have moral claims as their target. This task is accomplished by a procedure of construction, selected on the basis of further grounding elements. Thus, the question is, what are these elements?

It is possible to provide a strong philosophical account of these reasons without falling into realist-like traps. My argument can be displayed in the following steps.¹⁵⁶

(a) We are moral agents if we can autonomously choose how to regulate our conduct and our affairs.

(b) Even if we are free at the metaphysical level, our practical choices (about which principles we should adopt to behave and about how regulate our affairs) are constrained by the circumstances in which we find ourselves involved into at that moment.

(c) According to constructivists, moral norms and principles of justice respond to these circumstances.

¹⁵⁶ I am indebted for this argument to a conversation with Benjamin A. Schupmann.

(d) These circumstances are a product of the choices made in the past (additionally, the choices we make now will affect future circumstances in which we will find ourselves).

(e) Since principles determine which facts count as moral reasons or reasons of justice, it follows that the reasons we have are determined by the responses to facts we make. In turn, those possible responses are determined by choices we made in the past.

The first step is an assumption about the capacity of moral agents to come up with norms and regulate their conducts and political institutions accordingly. The second step is a classical argument about the set of possibilities we can have according to what we have decided in the past.¹⁵⁷ The third step refers to the point (iii.b) in the above stated re-definition of constructivism, according to which what counts as moral facts depend upon a procedure. Then it follows the appeal to the procedure, at step four as in (iii.c). At fifth step is a consequence of the constructivist tenet, expressed in the former steps. So we can formulate the conclusion that

(f) By embedding those reasons into a procedure of practical reasoning, we are not referring to any independent order of moral values, we are just working out principles that rely on facts that are a product of our past choices.

¹⁵⁷ For this argument see Derek Parfit, *Reasons and Persons*, Oxford: Oxford University Press, 1984, p. 472-5.

Does this argument account for an anti-realist position? It does (or, at least, I hope so) since it is not ontologically committed but to the simple fact that facts are product of human actions other kinds or events, what I called “circumstances” in the above stated argument. These circumstances are not determined by an external authority, but by reflections about how to face matter of facts. Understood in this way, constructivism serves three purposes: a *normative* purpose, since it tells us what morals reasons or reasons of justice there are; an epistemological purpose, providing a method of justification of moral claims; and, finally, a metaphysical purpose by opposing moral realism.

In defending or challenging constructivism, many authors focus on the normative and epistemological aspects of constructivism, but remain silent about the last and most controversial one, namely its metaphysical side. In this dissertation, I tried to highlight the relevance of this third aspect by showing how normative and epistemological understandings of constructivism are not enough to serve the three above stated purposes. Of course this reading goes against a classical interpretation of constructivism, which relies on Rawls’s aim to ground principles of justice in a *practical* conception of objectivity. Rawls aimed to opposing a theoretical conception of objectivity, for which moral claims are objective if they refer to a prior and independent order of truths, known through intuition. Morality, on this theoretical reading, would be independent of moral agents and its role in society. For Rawls, instead, moral claims are objective insofar as rational persons in appropriate circumstances reasonably choose them. I hope to have shown that we do not need to set aside the theoretical or metaphysical debate in order to match the Rawlsian-

constructivist desiderata.

Constructivism can be metaphysical.

Appendix

Facts-Free Principles. The Rawls-Cohen Debate on Constructivism

1. Introduction

In “Facts and Principles”, Cohen proposes a new criticism concerning the foundations of Rawls’s thought, namely his *constructivist* perspective.¹⁵⁸ According to

¹⁵⁸ Gerald A. Cohen, “Facts and Principles”, *Philosophy & Public Affairs*, 31, 2003. Cohen’s criticism of Rawls’s paradigm covers many aspects. In *A Theory of Justice* (rev. ed. Cambridge, MA: Harvard University Press, 1999) Rawls proposes a principle of fair distribution – the so-called difference principle – according to which differences in the distribution of social primary goods are admitted only if they are to benefit the most disadvantaged in society. From a methodological point of view, Rawls applies the principles of justice to the basic structures of a society, namely the set of rules that shape political institutions, which in turn regulate the people’s life. Gerald A. Cohen criticizes Rawls’s paradigm. According to Cohen, a theory of justice should equalize the effects of bad luck upon society in the distribution of social goods, since this distribution often depends on factors (such

Rawls and, in general, to moral and political constructivists, fundamental principles of justice are worked out by a procedure of construction. No further justification is required about these principles, besides the correct application of this procedure, which is supposed to embed basic criteria of practical reasoning.

In *A Theory of Justice*, Rawls claims that *first* principles of justice are “responses” to facts of economics and human psychology.¹⁵⁹ “To respond” for principles means that “the choice of principles is relative to these facts.”¹⁶⁰ This set of factual claims binds Rawls’s political conception of morality to existing societies. Rawls goes on claiming that the choice of his principle of a fair distribution of social primary goods, the *difference* principle,

as one’s social class or the natural talents that a person possesses) that are arbitrarily distributed among people. Since people cannot be held responsible for these social and natural endowments, they have to be compensated when bad luck plays against them. Moreover, on Cohen’s view principles apply directly to interpersonal relationship.

It is impossible to summarize the debate about luck-egalitarianism here. Moreover, it is not my aim here to discuss Cohen’s view of distributive justice. For the definition of the “difference principle”, see John Rawls, *A Theory of Justice*, p. 266. For a discussion of the difference principle see Sebastiano Maffettone, *Justice and Pluralism: An Introduction to Rawls*, Chapter 4. On Cohen’s view see Gerald A. Cohen, “Incentives, Inequality, and Community,” in *Tanner Lectures on Human Values*, 13, 1992; “The Pareto Argument for Inequality”, *Social Philosophy and Policy*, 12, 1995; “Where the Action is: On the Site of Distributive Justice,” *Philosophy and Public Affairs*, 26, 1997. For criticism of Cohen’s luck egalitarianism see Andrew D. Williams, “Incentives, Inequality, and Publicity,” *Philosophy and Public Affairs*, 27, 1998; Samuel Freeman, “Rawls and Luck Egalitarianism,” in *Justice and the Social Contract*, Oxford: Oxford University Press, 2006

¹⁵⁹ “The fundamental principles of justice quite properly depend upon the natural facts about men in society. This dependence is made explicit by the description of the original position: the decision of the parties is taken in the light of general knowledge.” John Rawls, *A Theory of Justice*, p. 137.

¹⁶⁰ *Ibid.*

relies on the idea that in a competitive economy (with or without private ownership) with an open class system excessive inequalities will not be the rule.¹⁶¹

Cohen wonders what “relies” and “excessive” mean and imply in the above passage. Cohen argues that the nature of principles of justice lies in their ability to guide people’s actions. Cohen argues that the primary task of a philosophical enquiry is to analyze purely normative concepts, such as *justice*, rather than to elaborate substantive conceptions about *which principles are just*. Thus, a genuine philosophical question – such as “What is justice?” – will concern *justificatory* principles, and not *regulatory* principles about “What principles should we adopt to regulate our affairs?”¹⁶² Justificatory principles provide a normative framework for regulatory principles and are *fact-free*: their validity does not depend upon factual considerations. It follows that problems such as difficulty of implementation of a conception of justice do not defeat the validity of such a conception of justice, since its impossibility to be realized in practice (for instance, to be implemented in a constitutional system) does not affect the soundness of a theory’s principles. Criticizing Rawls's view, Cohen writes:

Rawls believes that [fundamental principles of justice reflect facts], because he misidentifies the question “What is justice?” with the question “What principles should we adopt to regulate our affairs?” For facts undoubtedly help to decide what principles of regulation should be adopted, that is, legislated and implemented, only if because facts constrain possibilities of implementation and determine defensible trade-offs (at

¹⁶¹ Ibid.

¹⁶² Gerald A. Cohen, “Facts and Principles”, § S.

the level of implementation) among competing principles. The distinction between principles of regulation and the principles that justify them illuminates what is at stake in normative controversy.¹⁶³

On this basis, Cohen argues that Rawls by “relies” means that if conditions were different, the denizens of the original position would not choose the difference principle, but a different one. Therefore, Rawls’ principles are no fundamental, justificatory principles, but principles of regulation.

To be true, Rawls does not deny this possibility. On Rawls’s view, actual conditions determine what principles we would agree on if we were in original position. Cohen might object that if it were the case, one could argue that the theory is affected by empirical conditions so that it results quite contingent the fact that we have principles we have. Rawls can easily rebut this objection. Indeed, he writes:

Some philosophers have thought that ethical first principles should be independent of all contingent assumptions, that they should take for granted no truths except those of logical and others that follow from these by an analysis of concepts. Moral conceptions should hold for all possible worlds. [...] From the point of view of the contract theory it amounts to supposing that the persons in the original position know nothing at all about themselves or their world. How, then, can they possibly make a decision? A problem of choice is well defined only if the alternatives are suitably restricted by natural laws and other constraints, and those deciding already have certain inclinations to choose among them.¹⁶⁴

If the denizens of the original position could not rely on the knowledge of those

¹⁶³ Gerald A. Cohen, “Facts and Principles”, p. 244.

¹⁶⁴ John Rawls, *A Theory of Justice*, p. 138.

general facts, they would not be able to decide anything at all. Hardly could somebody decide what principles of justice to endorse if she does not know the condition to which those principles apply and, upon this consideration, why the chosen principles are better than others. But Cohen's criticism goes deeper than this. It claims that the constructivist procedure (in Rawls's case, the original position) is not able to justify anything because of its fact-sensitivity. A constructivist procedure could at most provide heuristically help to select which facts are relevant in the application of principles of regulation. But the justification of these principles does not depend upon a constructivist procedure. Thus, constructivism is doomed to fail in its main task, namely the justification of regulatory principles.

As far as the qualification "excessive" is concerned, Cohen notices that there might be a different kind of assumption – which is normative *all the way down* and not factual at all – which remains unarticulated. It is something like a general principle of equality, according to which we ought not to cause *excessive* inequality in a society.¹⁶⁵ According to Cohen, this assumption plays the role of a further principle – which is normative *all the way down* and whose validity does not rely on factual circumstances like the one that lead the denizens of the original position to choose the difference principle – explains why those facts of economics and psychology ground the difference principle.

How can the constructivist face to this challenge? The importance of this objection is not simply related to Rawls's argument for his conception of distributive justice. Indeed, Cohen attacks all constructivist theories. In this *Appendix*, I challenge Cohen's view. Indeed, if moral norms and principles of justice are action-guiding, as

¹⁶⁵ Gerald A. Cohen, "Facts and Principles", p. 236.

Cohen maintains they are, this means they have to satisfy a general principle of realizability. In order to be realizable, a theory must take general fact-dependent elements into account, like conceiving of the persons endorsing that theory and conceiving of the circumstances in which moral agents find themselves. However, it is these fact-dependent elements that Cohen tries to rule out. If these elements were accounted for, it would remain unclear which regulatory principles Cohen's justificatory principles are supposed to justify. If justificatory principles are to justify particular regulatory principles, can they really do so without factual considerations?

2. Cohen's View

The constructivist maintains the idea that the justification of moral claims does not require a reference to an order of truths or principles that prior to, and independent of, moral agents. Principles of justice are created through a rational choice of individuals and are not present in nature or given by a deity. And the reasons for their construction are to be found in the need to adequately respond to what Rawls calls "Humean circumstances of justice," namely scarcity of resources and limited altruism of people.¹⁶⁶ According to a constructivist approach, the question "what is justice?" has no meaning if one does not take into account the target of a conception of justice. To take into account the target of a conception of justice means to consider both theoretical and factual elements like what the circumstances to which such a concept apply, the persons as they see themselves in those circumstances, a general knowledge of the facts of the world and so forth.

¹⁶⁶ John Rawls, *A Theory of Justice*, § 22.

Cohen, by contrast, argues that this kind of considerations does not have a bearing on the philosophical analysis of the question of justice. In order to address the question “what is justice?”, the philosopher should not consider principles whose justification depends on factual considerations.

According to Cohen, a normative principle is

a general directive that tells agent what (they ought, or ought not) to do, and a fact is, or corresponds to, any truth, *other than (if any principles are truths) a principle*, of a kind that someone might reasonably think supports a principle.¹⁶⁷

Some of the principles that govern our social and political institutions are selected on non-purely normative basis, that is, on considerations sensitive to facts. But not all principles are sensitive to facts. Indeed,

it cannot be true of *all* principles that they are sensitive to fact, and that it is true of *some* principles only because it is false of other, *fact-insensitive*, principles, which explain why given facts ground *fact-sensitive* principles. [...] *a principle can reflect or respond to a fact only because it is also a response to a principle that is not a response to a fact*. To put the same point differently, principles that reflect facts must, in order to reflect facts, reflect principles that don't reflect facts.¹⁶⁸

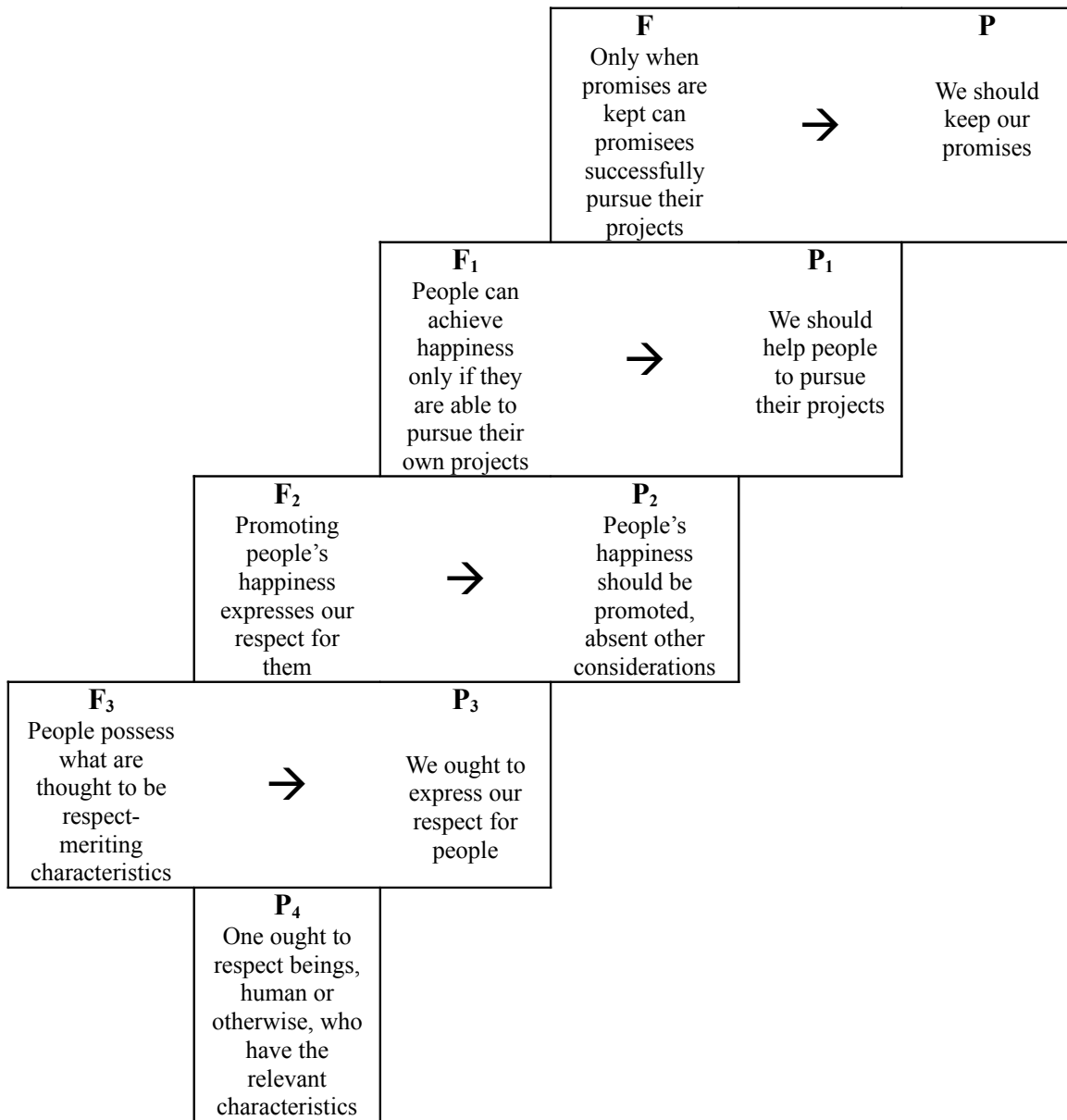
In simpler terms, a normative principle (P) is justified by a fact (F), which is non-normative by definition, because another principle (P') different from (P) establishes a relationship between (P) and (F). By iterating of this way of reasoning for

¹⁶⁷ Gerald A. Cohen, “Facts and Principles”, p. 211.

¹⁶⁸ *Ibid.*, p. 214.

all those principles that respond to facts, we should be able to arrive at a principle or a set of principles that is “pure,” that is, fact-insensitive. These pure principles or first principles of justice justify all relationships between facts and non-pure principles. Pure principles possess a different epistemological status compared to other principles, such as those of regulation. Principles of regulation have a minor counterfactual robustness compared to justificatory principles, since their justification depends on the truthfulness of factual assumptions upon which they are grounded. Justificatory principles, instead, respond to a single fundamental value or a single set of values or moral truths and their task is the one of justifying principles of regulation. Cohen makes the example I represent in the outline below, where P₁-P₄ are principles, and F₁-F₃ are facts in which there are grounded.¹⁶⁹

¹⁶⁹ Gerald A. Cohen, “Facts and Principles”, p. 216-217.



(P₄) is not sensitive to any fact, its validity does not depend upon and it is not affected by the existence of beings who possess these characteristics. All those principles, whose choice is not based on factual considerations, are first principles. The opposite view, according to Cohen, would be the idea that

our beliefs about matters of normative principle (including our beliefs about the deepest and most general matters of principle) should reflect, or respond to, truths about matters of fact: they should, that is, – this *is how I am using “reflect” and “respond to”* – include matters of fact among the grounds for affirming them.¹⁷⁰

As said at the outset, Cohen’s polemical target is Rawls’s theory in particular and, more generally, constructivism. Opponents of constructivism argue that the moral claims derive their objectivity from some independent order of *first* principles or moral truths.¹⁷¹ These first principles or moral truths are self-evident: their validity is not derived from any moral agents’s cognitive activity or practice. In this theoretical framework, first principles may be knowable through some cognitive faculty. Therefore, no complex notion of moral agency is required, since the objectivity of moral claims does depend neither on moral agents nor the role played by morality in a society.

Drawing the distinction between *justificatory* principles and *regulatory* principles, Cohen reconciles his thesis with a broader analysis of different normative theories. Now, one may suppose that two parts form normative theories, each one addressing different questions. The first part addresses the question “what is justice?” This question is logically prior to and provides the conceptual basis for the second one, which addresses the question “what principles should we adopt to regulate our affairs?” The two parts might be seen as mutually enforcing: the first part, made by justificatory fact-free principles, *justifies* the second part, which expresses and realizes the action-guideness of the former. So, the regulatory principles should be the

¹⁷⁰ Gerald A. Cohen, “Facts and Principles”, p. 213.

¹⁷¹ See Chapter One and Chapter Two.

necessary consequence of justificatory principles.¹⁷² However, Cohen does not seem to endorse this position. Indeed, a few lines below, defending luck-egalitarian views from Elisabeth Anderson's criticism, Cohen claims that:

difficulties of implementation, just as such, do not defeat luck egalitarianism as a conception of justice, since it is not a constraint on a sound conception of justice that it should always be sensible to strive to implement it, whatever the factual circumstances may be.¹⁷³

Cohen rebuts Anderson's criticism on the basis that she does not distinguish between justificatory principles and regulatory principles. Even if her point presents a challenge for regulatory (luck-egalitarian) principles, Cohen argues, her criticism does not undermine the validity of justificatory (luck-egalitarian) principles. Justificatory principles are fact-insensitive and independent of their supposed implementation. Thus, justificatory fact-insensitive principles cannot be criticized through factual arguments (for instance, arguments appealing to the feasibility of principles). Leaving aside the question about luck egalitarianism, this passage clearly shows that factual elements have no role in establishing what justice requires on Cohen's view. One might think that justificatory principles are logically prior but somehow linked to the regulatory ones. One may say, for instance, that a fact-independent conception of justice lies at the basis of every claim of justice. But Cohen's point seems different. He is not only distinguishing between justificatory and regulatory principles according to their functional roles, but he is keeping them separate from one another since they

¹⁷² Mason has a similar idea about the division of labor for normative theories. See Andrew Mason, "Just constraints", *British Journal of Political Science*, 34, 2004 pp. 265-8.

¹⁷³ Gerald A. Cohen, "Facts and Principles", p. 244.

belong to two independent spheres of normative theorizing.¹⁷⁴

As seen, on Cohen's account for each principle whose justification appeals to facts, there is always a more ultimate principle that justifies the relationship between facts and less ultimate principles. The ultimate principle (in the case at hand, the grounding ideal of justice) must be pure. And the task of *political philosophy* is therefore to investigate the pure concept of justice, while the task of normative political theory is to apply the concept of justice of a particular social context. This does not mean that factual considerations do not play any role. To be true, the facts of the world, the circumstances in which to apply a certain conception of justice, are essential to give meaning to the same idea of justice. Rather, the point is that the question of application is not a genuine *philosophical* question for Cohen. All those theories that take into account factual elements, like constructivist theories do, are therefore unfit to provide firm philosophical grounds for a theory of justice. Recall Cohen's criticism of Rawls's difference principle: facts about human psychology and economics (F) justify the difference principle (P), and this justificatory relationship is accounted for by a principle of equality (P'), which explains why (F) can justify (P), and (P')'s validity does not depend on the occurrence of (F). A general concept of equality is, therefore, the actual justificatory device of the theory. Thus, the principles of justice Rawls, in the end, justified on the circumstances of justice, are valid not because of the constructivist approach, but because of a principle insensitive to facts (such as the idea of equality).

¹⁷⁴ Another way of interpreting his point could be the sort of distinction between ideal and non-ideal theory. Ideal theory would only contain justificatory, fact-independent principles, while non-ideal theory would be made up of regulatory, fact-dependent principles. However, even this interpretation does not represent Cohen's view.

Now, I already expressed my puzzlement about Rawls's constructivism.¹⁷⁵ But Cohen's argument applies to all constructivist approaches. If Cohen is right, constructivism is able to provide no more than a contingent and arbitrary justification. Cohen could argue that a constructivist maneuver can be put in place when the political theorist spells out which principles should regulate the relationships between individuals in a society, given the circumstances. Indeed, one could hardly deny that the application of principles to social and political institutions can do without considerations about how people see themselves and their historical, political, social, economic and cultural background. However, when the question becomes strictly philosophical, that is, when we inquire into the foundations of a theory of justice, the purpose of the inquiry should not be the definition of some regulatory principles, but principles justifying regulatory principles.

It seems that here Cohen, in an old-fashioned Platonic spirit, is supporting a thesis of this kind: there is a higher order principle or a higher order set of principles that is purely normative, whose task is to justify an empirically underdetermined set of lower order principles. Although the application of higher order principles is determined by the circumstances in which these principles are applied, their justification is not derived from further considerations. Higher order principles are self-evident. Cohen thinks to prove in this way the mistake made by constructivists, who think that the justification of principles depends on a process of construction that incorporates certain requirements dependent on facts. Is Cohen's criticism really successful? Are Rawls and constructivists really the targets of his criticism?

¹⁷⁵ See Chapter Four.

3. Rawlsian Objections

Outlining his conception of political philosophy, Cohen writes this view:

suppose that, like me, you think that political philosophy is a branch of philosophy, whose output is consequential for practice but not limited in significance to its consequences for practice. Then you may, like me, protest that the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference.¹⁷⁶

In this passage, Cohen's claim is twofold. First, he claims that political philosophy has a bearing on practice, but its task is not limited to the practical consequences stemming from the application of a theory of justice to a given social reality. Second, Cohen maintains a stronger argument claiming that political philosophy is not mainly concerned with what we ought to do, rather with what we should think, regardless of its practical consequences. This is coherent with his distinction between justificatory and regulatory principles. But Cohen's position is far from being uncontroversial.

Cohen claims that the justificatory principles do not respond to facts. Therefore, they cannot be criticized by means of non-normative considerations (for example, considerations about the feasibility of these principles, since their validity does not derive from their possible implementation in an actual social and political system) because they would be factual considerations, that is, they apply to a different

¹⁷⁶ Gerald A. Cohen, "Facts and Principles", p. 213.

level. On this point, it seems that Cohen is confusing two different levels: the justification of a principle, from the one hand, and the application of a principle on the other. The justification of a principle consists in affirming its validity on the basis of an argument (which, on Cohen's view, is not sensitive to facts). The application of a principle, instead, requires the selection of plain (i.e. non-normative) facts that makes a certain principle relevant. If in the latter case, facts are always required, in the former case they are not (or at least not necessarily). But the question of justification and application are not the same thing. While in the case of application facts there are no fact-insensitive principles, in the case of justification principles are (or could be) fact-insensitive. Unfortunately, Cohen does not explore this distinction.

One might think that justificatory principles are logically prior to regulatory principles, even if the two kinds are somehow related. One could say, for example, that a fact-insensitive concept of justice lies at the basis of every claim or principle of justice. Cohen's argument seems problematic for several reasons. First, one might ask what role would principles of justification have but to justify principles of regulation. In other words, what would be the sense of taking principles of justification as independent of facts, if then they are not practical? Cohen explicitly supports this position: the purpose of a philosophical inquiry is primarily to define what one must be thinking, not what one ought to do. For instance, one can argue that this idea is contrary to the initial assumption about the nature of normative principles (the one of being action-guiding). Suppose luck egalitarians (like Cohen) say that justice requires "to extinguish the influence on distribution of both exploitation and brute luck."¹⁷⁷ In order to know what brute luck and exploitation are, we must allow some factual notion

¹⁷⁷ Gerald A. Cohen, "On the Currency of Egalitarian Justice", *Ethics*, 99, 1999, p. 908.

to enter into the process of formulation of those normative principles, which provide standard of moral evaluation. Cohen foresees this possible criticism:

A principle can be said to be “fact-insensitive” in a different use from mine of the quoted expression, in that, absent certain facts, the principle lacks an intelligible sense.¹⁷⁸

Even if Cohen believes “that ultimate principles are fact-insensitive [...] also is in [this] further sense”, unfortunately for us Cohen decides to “defend only the former claim in the present article”.¹⁷⁹

Towards the end of the essay, Cohen argues that

Justice is not the *only* value that calls for (appropriately balanced) implementation: other principles, sometimes competing with justice, must also be variously pursued and honoured. And the facts constitute the feasible set that determines the optimal point(s) on a set of fact-independent indifference curves whose axes display packages of different extents to which competing principles are implemented.¹⁸⁰

Cohen’s idea seems to be this: firstly, one should define first principles of justice independently of facts. Secondly, in conceiving of their application, one must face the problem of competing values, whose implementation could possibly give rise to opposite consequences. Facts provide a set of constraints through which we can find the optimal point of intersection between the curves of values. At this point, the problem of trade-offs arises. On this point Cohen seems to think that political

¹⁷⁸ Gerald A. Cohen, “Facts and Principles”, p. 213, footnote 1.

¹⁷⁹ Ibid.

¹⁸⁰ Gerald A. Cohen, “Facts and Principles”, p. 244-245.

philosophy is not concerned with trade-offs. Yet, regulatory principles are at stake here: to evaluate whether different values come into conflict, we have to consider how different values raise different claims having practical relevance. Cohen might agree on this conceptual reconstruction of his arguments.

Again, if the role of philosophy is merely to speculate about concepts without considering whether they are practically conflicting, we will infringe the normative requirement about principle (i.e. the prescriptive nature of normative concepts). If political philosophers do not take position about the potential or actual conflict among values, the theory fails to attain its action-guiding role.

By adopting a rigid separation between the justificatory principles and principles of regulation, Cohen generates confusion on the very meaning of normativity. Cohen rightly argues that the justification of the principles do not coincide with their application. But the level of “purity” required for justificatory principles could lead to a level of abstraction from the real situation in which people live as to be devoid principles of meaning. Perhaps what Cohen means is that there are some principles that apply both to men on earth is to hypothetical moral agents who live on another planet. A genuinely philosophical analysis of these pure principles therefore cannot be based on elements linked to contingent considerations about facts of the matter about the Earth. The task of political philosophy, Cohen argues, is therefore not to answer the question “what should we do?”. Rather, the philosophical question to answer is: “how should we think about what we should do?”. And the first should is strictly normative.

If this characterization of Cohen’s thought is correct, then one could simply ask from where these principles come. Cohen, however, does not want to go that far, since

this would require making explicit his metaethical view. A second set of questions concerns the criterion by which you can choose a pure principle over another, without falling into a *regressum ad infinitum*. But this question remains unanswered.

If one keeps the priority of the action-guiding requirement for principles, there will be a different set of competing claims as a result. In applying principles, or at least in conceiving of their mutual relations, we need some guidance. In order to solve the problem of action-guiding requirement in case of moral uncertainty, we have two possible options. On the one hand, one might endorse a monist approach, like the one endorsed by utilitarians; in this case, different values can be reduced to a single fundamental value, which is the source of validity for all practical norms. Alternatively, one might adopt a *priority* rule, capable of ranking different competing normative conceptions, such as Rawls's lexicographic principles.¹⁸¹

Cohen takes none of these options. But in this way, the implementation of values runs the risk of being left to “judgments of facts”, as if the factual constraints turned out to be the final criteria of value priority. In this way political philosophy is derogatory and fails in its essential *normative* role.

So far we have two kinds of problems. First, the independence of the justification of normative principles from their realization; second, the problem of trade-offs, which displays the issue of the relationship between justificatory and regulatory principles.

On the first point, following Andrew Mason, it is possible to endorse Cohen's position loosening the deontic basic assumption, according to which “ought implies

¹⁸¹ Or one may take a mixed and pluralist principle, such as Goodin's concrete judgment on weighting the possible outcomes of trade-offs. See Robert Goodin, “Political Ideals and Political Practice,” *British Journal of Political Science*, 25, 1995.

can”. There could be an abstract meaning of “ought implies can” if one claims that:

in particular judgements when these are intended to draw attention to some morally relevant feature of a situation, rather than express an all things considered judgement about what should be done. When this is the case, ‘A ought to do X’ means something like, ‘A has a moral reason to do X’. [...] In a similar way it permits the claim that there are circumstances when we ought not to establish just institutions because of the costs in terms of other values of doing so [...] So I think we should understand the claim that justice is the first virtue of institutions in such a way that it attributes considerable weight to justice but nevertheless allows that it can be traded against other values.¹⁸²

According to Mason, an account of infeasibility does not directly undermine the value of moral ideals, but makes pointless those ideals that are “inherently unworkable.” Mason’s defense is largely acceptable, and I tend to agree with Cohen on the assumption that moral ideals cannot be directly excluded on the basis of their non-applicability to concrete situations. However, they would count as broad prescriptions, i.e. as moral reasons for endorsing a principle not related to actual circumstances. It would be so vague to be something like: promote the good! Nevertheless, this defense cannot solve Cohen’s problems. Indeed, Mason’s idea seems to be the one we have ascribed to Cohen: justificatory principles would be fact-insensitive, serving logical justification of regulatory principles that would face the problem of factual constraints. This position would be an idea common to many other normative theories, according to which there is a division of labor between ideal and non-ideal parts of normative theorizing. But in this way one part of theory would still functionally serve the other, whereas in Cohen’s paper the justificatory part seems to be detached from the

¹⁸² Andrew Mason, “Just constraints”, p. 257.

regulatory one, and the latter seems to be excluded from the purely philosophical enterprise.

Summing up, Cohen claims (i.) normative principles are action-guiding¹⁸³ but (ii.) political philosophy should engage only with what one should think and not with what one ought to do.¹⁸⁴ (iii.) Different values call for application, but the problem of trade-offs among competing values is external to the philosophical inquiry.¹⁸⁵ This problem has to be solved by looking at factual constraints. One might wonder how Cohen could possibly keep together claims such as (ii.) and (iii.) with his initial assumption about the action-goodness of principles (i.). If political philosophy does not show us how to face the trade-offs among values, but only that there are different values, how can political philosophy accomplish its prescriptive task?

Then, Cohen argues that (iv.) impossibility of implementation does not undermine the soundness of fact-independent principles.¹⁸⁶ Combining this claim with his conception of political philosophy (ii.), Cohen provides us with a strange idea of normative theory. How should philosophers conceive of a normative point of view? Is it just the one provided by fact-independent principles or the whole of fact-dependent and fact-independent principles? It is true that the soundness of a normative claim is not defeated by the pure inapplicability of the theory, but the theory is a complex set of pure and mixed normative principles, and of factual considerations. If not so, it would be irrelevant for us.

Other ideal theories might share the (v.) distinction between fact-independent

¹⁸³ Gerald A. Cohen, "Facts and Principles", p. 211, and here footnote 168.

¹⁸⁴ *Ibid.*, p. 213, and here footnote 177.

¹⁸⁵ *Ibid.*, p. 244-245, and here footnote 181.

¹⁸⁶ *Ibid.*, p. 244, and here footnote 174.

justificatory principles and fact-dependent *regulatory* principles.¹⁸⁷ *Per se*, the distinction is not particularly problematic. But in Cohen's argument it results in an untenable position that leads us to this question: what is the role of political philosophy if not that of giving regulatory principles, suited to be a guide for our actions? Justificatory principles are logically prior to the regulatory ones, but what is their sense if they are not the basis for the latter?

Concluding, Cohen, trying to save the independent value of the *normative* from the influence of the *factual*, seems to leave the normative in a pure and abstract space in which it loses its action-guiding nature. One might ask: what is the role of justice if not being a criterion to criticize and promote practices for people like us, living in a world like ours?

4. Two Different Views

In conclusion, Cohen's position is neither a criticism of Rawls's theory, nor a knock-down objection to constructivism. If anything, it is a different view. In fact, Cohen misunderstands Rawls's view. Indeed, it is not among Rawls's (and in general, in constructivist's) aims to formulate a conception of justice that does not consider the circumstances in which its principles apply. Rawls reject this position. He starts from a Humean (and certainly not Kantian) idea about how to construct a normative theory. The Humean circumstances of justice, which are limited altruism (the psychological characterization of people) and moderate scarcity of available resources (the economic characterization of the world) are not mere factual considerations. Rather, for Rawls,

¹⁸⁷ Gerald A. Cohen, "Facts and Principles", p. 244, and here footnote 164.

they are those elements that make the virtue of justice for social institutions that regulate people's lives necessary.

Obviously, there is a fundamental difference between the circumstances that require justice as a virtue of social and political institutions and the contents of a conception of justice. On this point, Cohen and Rawls diverge. According to Cohen, the justification of a normative theory does not depend on considerations sensitive to the facts. On this basis, he charges Rawls to select the relevant facts for the choice of his principles of justice, at the light of normative premises that are remain unarticulated. In other words, Rawls is applying a conception of justice without providing a philosophical justification.

Now, the distinction between what Cohen calls “regulatory principles” and “justificatory principles” would not be denied by Rawls. Quite the contrary, this distinction can be found in Rawls’s writings. Regulatory principles are developed and justified on the basis of justificatory principles (which, for Rawls, are the veil of ignorance, the five formal constraints to the concept of right and the concept of person); these principles of justification do not directly express the content of Rawls’s conception of justice, they do not tell people what they should do. Rather, they provide normative guidance on how to think what to do in certain circumstances (they supply the conceptual framework that makes the construction of regulatory principles possible).

Without this combination of theoretical considerations (the principles of justification, on Cohen’s view) and empirically oriented considerations (the Humean circumstances of justice) is not possible to develop a theory of justice for beings like us. Cohen might like the idea that political philosophy deals with theoretical

considerations only. Even if political philosophy comes up with principles of justice that are valid but not applicable (i.e. not implementable in a system of rules for a particular group), for Cohen there is no problem at all. But this is not an objection to the thought of Rawls, simply because Rawls is making a totally different point.

Rawls, in fact, is elaborating a *practical* and *social* conception of justice. It is a *practical* conception because it provides normative guidance for people like us; it is a *social* conception because it provides the basis for discussion and public justification. Cohen, on the other hand, has in mind a purely theoretical conception of justice, whose aim is the search for an ultimate principle, that is a moral truth whose validity is not determined by moral agents.¹⁸⁸ While Cohen's political philosophy must seek the truth beyond its practical significance, for Rawls we always need to start from the individuals who develop a conception of justice and from the circumstances in which they are. Thus Cohen and Rawls simply have two different positions. *Pace* Cohen, his criticism is not addressing the theory of Rawls.¹⁸⁹

¹⁸⁸ Samuel Freeman has a similar point in "Constructivism, Facts, and Moral Justification", forthcoming.

¹⁸⁹ For the arguments criticism to Cohen's view contained in this *Appendix I* indebted to Federico Zuolo. The analysis presented in this appendix draws on a paper published in Italian titled "Principi senza fatti. Riflessioni sulla critica di G.A. Cohen a J. Rawls" (*Teoria Politica*, 1, 2008) and a paper presented at the *Brave New World Conference 2007*, Manchester University, titled "From 'What is Justice?' to 'For Whom is Justice?' Critical Remarks on G. A. Cohen's 'Facts and Principles.'"

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