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Peter J. Taylor
peter.taylor@umb.edu

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Reconstructing Rawls

and exposing the implicit social embeddedness
of theories of justice

PETER J. TAYLOR
Abstract

This essay prods moral philosophy towards more explicit attention to the political constructions of injustice. I do not appeal to practical or political relevance, but advance a particular kind of constructivist interpretation of moral argumentation (constructivism+) in which our interpretive horizons are extended to include the implicit views of social action, broadly construed—from the macro- to the micro-social, and from the past to the present and the possible—built into philosophical arguments. I challenge the idea that, in order to oppose injustice, we must first articulate and justify a coherent conception of justice and then theorize the social, constitutional, legal, or cultural arrangements through which such justice could be implemented. My argument moves through three levels: 1. contesting the separability of these steps by demonstrating that views of social action are embedded in, not merely derivable from, the well-known formulations of John Rawls in *A Theory of Justice*. (Thus reconstructed, Rawls is more coherent than most moral philosophers have considered him to be); 2. giving priority to moral justification while leaving the social context in the background, scarcely analyzed, burdens our thinking about in/justice; 3. in order to oppose injustice, it is not the case that we must first articulate and justify a coherent conception of justice.
Introduction and self-positioning

Moral philosophy has traditionally positioned itself at some distance from the problem of counteracting actually experienced injustice. Real-world compliance is often defined to be outside the ambit of ideal moral theory. There are, of course, counter-currents, such as feminist analyses of real-life ethical issues (e.g., Holmes and Purdy 1992), which highlight practical relevance and support struggle aimed at limiting the powerful in their making and breaking of social rules. In this essay I also prod moral philosophy towards more explicit attention to the political constructions of injustice, but by a less direct path than appealing to practical or political relevance. I advance a particular kind of constructivist interpretation of moral argumentation, which leads me through three levels of argument to challenge a position that may seem obviously true, namely, that in order to oppose injustice, we must first articulate and justify a coherent conception of justice.

Let me refer to what I question as two-step moral theory. Whenever a set of fundamental principles is formulated from which justice can be derived and justified, a second step is implied, namely, theorizing the social, constitutional, legal, or cultural arrangements through which such justice could be implemented. Although we could challenge moral philosophy’s emphasis of the first step over the second, my first level of argument will contest the very separability of these steps. I develop my argument by considering a key work of a dominant figure in moral theory, John Rawls. I demonstrate that views of social action are embedded in, not merely derivable from, his well-known formulations in A Theory of Justice (TJ) (Rawls 1971). Rawls in TJ—and two-step moral theory in general—should not be taken just literally. Instead, we should extend our interpretive horizons to include the implicit views of social action, broadly construed—from the macro- to the micro-social, and from the past to the present and the possible—built into philosophical arguments. I call this interpretive position constructivism+ (“constructivism plus”). A reconstructed Rawls is more coherent than most moral philosophers have considered him to be.

As we shall see, however, my reconstructed Rawls is not fully coherent. This provides an entry point into the second level of argument: giving priority to moral justification while leaving the social context in the background, scarcely analyzed, burdens our thinking about injustice. The third level of argument follows: in order to oppose injustice, it is not the case that we must first articulate and justify a coherent conception of justice. A fourth level of argument would be to present a complete constructivist+ account of how to counteract actually experienced injustice. This level, however, lies beyond the scope of my essay. Yet, even without that level, I hope to have indicated the necessity for reconfiguring the project of moral philosophy.
Constructivism+, to be consistent, must be applicable to its proponents' own arguments. Let me help readers begin to develop an interpretation of the social location of my project here by giving a sense of its history and motivations, and of my intended relation to the essay's audiences. My formal introduction to moral philosophy, a faculty seminar on "Global Environment and International Justice," is recent, and it was as a discussion paper for that seminar that this essay was drafted. I deliberately position myself here as an outsider and newcomer, whose naivete might protect him from being drawn inside a picture that holds career moral philosophers captive (to borrow an image from Wittgenstein). I enjoy having an outsider's freedom to write without attending to the fine points of argument and counter-argument in the literature. (Notice the absence of footnotes and the small number of parenthetical asides.) This expository position should ensure my accessibility to non-specialists; I hope my reconstruction of TJ will speak more directly and concretely than most accounts to their concerns about injustice. My intention, however, is also to address specialists, an audience who I hope will be challenged both by the coherence of my reconstructed Rawls and by my critique of two-step moral theory.

Of course, in the eyes of specialists, the freedom of being an outsider and a newcomer brings serious disadvantages: a lack of engagement with the intellectual and professional activities of the discipline; inevitable overgeneralizations and inexpert use of terms; and an inability to elaborate a replacement philosophy of justice. Some readers might see room for themselves to thresh out my arguments and weave selected pieces of them into their own work. In light of my disadvantages, however, most specialists will be inclined to discount this intervention. They might see it simply as a colonizing attempt by a constructivist from another field, namely, social studies of science, or, perhaps as an attempt by a political activist turned academic to achieve some sense of command of the world by puzzling out issues until the pieces can be fitted together in a way that makes sense—in short, to find some satisfaction in philosophy. While these last two readings would not be unjustified, they nevertheless reinforce the central contention of this paper. Representations can be more richly interpreted by paying attention to the authors' embedded views of their action in the world.

1. Contesting the separability of moral justification and social context

1.1. From constructivism to constructivism+

A convenient route for me to begin to develop a constructivist+ perspective and its implications is opened up by the distinction between natural and constructivist theories of justice (see Dworkin [1973], 1989, p.28 ff). Taking the conventional scientific method as a model, natural
accounts seek a firm foundation in the observed world, where the observations here consist of intuitions about widely accepted moral standards. Principles underlying those intuitions are proposed, their consequences deduced, and, if discrepancies or contradictions between those consequences and subsequent observations emerge, deeper principles need to be discovered to restore coherence—just as Einstein proposed relativity to resolve problems in the accounts of classical physics.

Constructivist theories, on the other hand, seek coherence without postulating the existence of moral bedrock. Moral observations or intuitions are not sufficient, by themselves, to justify the theory proposed. Instead, any new interpretation of justice, developed, say, in response to new circumstances or challenges, is constructed from principles underlying previous theories, analogous to the use of precedents in law. (Notice that two different senses of the word construction are implicated here, namely, building and interpretation.) Moreover, the modifications and extensions must be made in a way that can be justified to the community of concern. Attention to this context of reception, together with coherence, characterize constructivism.

At one level the natural/constructivist distinction is not significant; the difference in practice is negligible and the formulations can be readily inter-translated. For example, if the community of concern is seen as the community of other moral philosophers, then both schools seek to articulate a set of fundamental principles and reasoning that support the rules making up the theory of justice being proposed. Appeals to intuitions about widely accepted moral standards are made in both cases; for the natural theorist and constructivist alike the "wide acceptance" implies a community that shares their concerns.

At another level, however, the distinction is significant. Natural theory directs our attention inwards to the foundational moral observations, while the constructivist perspective opens our view outwards. The constructivist emphasis on justifying a theory to a community readily leads us to admit that the descriptions of moral observations or fundamental principles are not innocent. Instead, descriptions are formulated or reconstrued with a view to justifying by deduction or derivation the theory of justice already in mind, at least in broad outline. The context of reception also enters in the imperative to build on precedents. The practice of building on precedents is not a natural route to coherence, but relies on acknowledging that the community to be convinced has already a sense of reliable knowledge, familiar categories, and plausible beliefs. To carry that community along to a new consensus it is a matter of practicality, not a logical or natural necessity, that modifications should build upon the existing structure. (That is not, of course, to
deny that some dismantling and reconstruction of that structure may also be required—questioning what is plausible, undermining what is reliable, and reshaping distinctions.)

At this point, the constructivist perspective can be readily extended. Once we acknowledge philosophers' active role in shaping arguments in order to move some community, why not analyze the rhetorical strategies employed? For example, consider the natural theorists' rhetoric. Moral intuitions, they claim, form observations upon which an objective theory can be built. These theorists know that their argument depends on some community accepting those intuitions, but they can push this conditionality out of view by inventing the idea that the fundamental principles of their theory are universal or given by nature. Rhetorical analysis, once begun, requires us to distrust the literal version of an argument and to include in addition how the selection of relevant considerations relates to the context of the philosopher-rhetoricians and their audiences. Of course, for an audience of philosophers, the context seems to be dominated by the contemporary analytical problems and debates in terms given by the history of the field. Yet—and this is the case even for an audience of philosophers—there is a background of unspoken or unexamined factors against which any audience experiences arguments and evaluates them as valid, clear, interesting, and so on. Coherence for some audience derives not only from the structure of the argument, but also from the background they share with the philosopher.

The warrant to examine the situated construction of philosophical rhetoric does not, however, indicate how we might go about doing this, nor how it helps us to make sense of Rawls. Let me postpone these questions one paragraph longer, while I extend the constructivist perspective yet further.

By opening up our interpretations, at least in principle, to incorporate implicit and taken-for-granted considerations, we have rendered problematic the conventional boundaries of moral philosophical discourse. Following the constructivist line leads us to note that, when philosophers are constructing their arguments with the community they strive to convince in mind (consciously or otherwise), they are also rhetorically constructing that very community. Moral philosophers give the appearance of addressing other philosophers—to whom else would the obtuse technical terms, e.g., “The Difference Principle,” and detailed exegeses of arguments be intelligible? Yet there are, of course, much broader communities, consisting of people on whose behalf the moral philosophers undertake their work of reasoning, people who, in turn, the philosophers hope to influence with tightly justified rules of justice. What renders arguments, or, more importantly, conclusions plausible to members of those extended communities? What background elements of the wider society are thus implicated in the philosophers' building of arguments?
These questions take us into the realm of social constructivisms. The plural is important because, at least in the interpretation of science, construction is construed in several ways (Sismondo 1993). The relativist position that representations of reality are mere social constructions is only one variant. In fact, hoping to avoid any automatic association of my arguments with relativism, I will use here the term constructivism+. What I draw from social constructivism is the sociological perspective that representations of the nature of things are bound together with interventions in social worlds (Clarke 1991), arenas of discourse and action encompassing the particular work situation, the relevant scholarly communities, and the different arenas of sponsorship and reception. The coherence of ideas making up some theory cannot be disentangled from the feasibility or desirability of actions that follow from and, in turn, reinforce those ideas (Taylor 1992, 1995).

1.2. A reconstruction+ of Rawls, phase 1

To apply a constructivist+ perspective to Rawls in TJ requires reinterpretation of his work so as to include reference to its social background. Moreover, given that I want to engage an audience interested in moral philosophy, this interpretation should provide greater coherence than previous constructions of TJ undertaken within moral philosophy. My reconstruction is separated into two phases. First, I focus on Rawls' general framework in TJ, including his rules of justice. Once I have made plausible the idea that Rawls' framework in TJ builds on implicit references to unstated background social considerations, I can then more easily interpret the more complex and difficult derivation and moral underpinnings of his framework.

I should emphasize that my interpretation is quite provisional, subject to reworking after further research into Rawls' social location over the period in which he developed the framework in TJ. But, for this essay, I do not have to claim that my interpretation of TJ is the unique, correct and complete one. My argument is that there is no a priori reason to read TJ (and moral theory more generally) literally; all I need to do to establish that is possible to render plausible one potential social constructivist interpretation of TJ. The onus is then on those who want to interpret moral philosophical arguments without reference to unstated background social elements; they have to establish that this and any other constructivist+ accounts can be replaced by one that is more coherent and still purely internal.

Let me begin my first phase by reinterpreting Rawls' stated method of achieving a coherent conception of justice. Rawls advocates that we move back and forward between our considered convictions about justice and fundamental principles that yield rules of justice, revising the convictions and the principles until the convictions and the rules coincide, a state he
calls reflective equilibrium (TJ, 19 ff). Undoubtedly Rawls uses some method of reflection and modification but, I propose, his convictions and principles are not so tightly circumscribed.

As I have depicted in figure 1, the process of reflection and modification can be reconstrued as extending well into the social realm (region A). In fact, Rawls' reflection and modification appears to be grounded in a central observation, namely, that the existing system is characterized by large inequalities of wealth (or, more generally, possession and access to resources) that allow the wealthy (resource-rich) to perpetuate inequality (point A1). An obvious way for rules of justice to have a role in transforming this system is for the rules to endorse some redistribution of historically generated inequalities. This specification for a theory of justice follows from the observation that in past and present societies the wealthy have been able to exert disproportionate influence on social decisions and, in general, privilege themselves and their heirs in social transactions. From the same observation it also follows for Rawls that large inequalities cannot be allowed to re-accumulate after any redistribution. This necessitates some equalizing action to compensate for any future inherited inequalities. These two specifications constitute point B, which in turn constrain the moral philosophical framework Rawls develops (point C). Other aspects of the social background also give shape to his framework, as shall emerge shortly.

In the tradition of two-step moral theory, however, a framework must be built in which the desired rules appear to be derived from more fundamental principles. In other words, the direction of construction in my interpretation (A→B→C or A→C) is reversed in moral theoretical rhetoric so that point C appears based on some point D. Rawls' TJ presents one version of his framework and its derivation from fixed points (i.e., principles that Rawls claims are widely accepted) and other considered convictions. In other versions of Rawls' work, however, his framework and its derivation differ significantly (see Barry 1989, 320ff), but the rules of justice remain relatively unchanged. We could interpret this discrepancy internally to moral philosophy, claiming merely that Rawls changes his analysis to answer better the objections of critics. Nevertheless, the fact that Rawls' derivation can vary while his rules remain invariant confers some plausibility on the direction of derivation I proposed above (A→B→C).

At the same time, however, the variability of Rawls' frameworks among different versions means we need additional reasons to account for the particular framework advanced in TJ. The framework in TJ may be summarized as the Original Position with the Veil of Ignorance, plus a concern not to generate intolerable Strains of Commitment, and rules of justice consisting of the Priority of Liberty, Equality of Opportunity and the Difference Principle. I want to be charitable to Rawls, that is, to assume that his account has an underlying coherence. (This does not mean
Figure 1. Extending Rawls’ process of reflection and modification (between C and D) into the social realm.

that I must restrict my interpretations to what Rawls literally says; this would constitute an interpretive positivism. Issues and terms, therefore, given to Rawls by the history of moral philosophy and its contemporary debates, are relevant to our interpretation, but should not exclude other themes.) In this spirit of seeking coherence, we can interpret each element of Rawls’ framework by paying attention to existing social arrangements and processes (i.e., the path from A->C) while still respecting the philosophical requirement of a logical structure of argumentation.

The Original Position (OP) corresponds to a requirement that institutions of social justice be established (at least in broad outline) in an initial contract and not subject to repeated renegotiation in conflictual circumstances. (By analogy with interpretation of the Constitution of the United States, the OP provides a strict constructionism.) The social understanding embodied here is that some parties to any current dispute will have a negotiating advantage (born of greater information, power etc.) and, moreover, that the choices presented in particular situations can be too narrow to permit justice—preparatory action is needed to ensure the possibility of justice. For example, some corporations are giving women between menarche and menopause
the choice of sterilization or losing their jobs. In formal terms the women are free to choose sterilization or not, but, given their economic circumstances, the choice is made under duress. The choice could become less constrained only if, well in advance, there had been developed a countervailing power to the corporations’ prerogative to determine the availability, range, and conditions of employment opportunities.

The Veil of Ignorance is readily interpreted as a means of blanking out interests born of historically generated and current advantages. This element is needed because, whatever we believe about the relative influence of self-interest and moral motivations on the actions of individuals, we know that, at least for now, social life resounds with the pursuit and defense of interests—community, corporate, and national—against the conflicting interests of others.

The Priority of Liberty over material concerns or welfare constrains the transactions governed by Equality of Opportunity and the Difference Principle. Notice first that welfare is central to Rawls’ thinking: almost all of his formulations are in terms of the welfare of the different parties; he considers the “worth of liberty” (i.e., the welfare accruing from liberty, see TJ, 204-5); and he does allow liberty to be constrained at least in order to achieve a minimum level of welfare. So why could he not allow liberty to be totally foregone in favor of welfare? One interpretation stems from Rawls coming to maturity with the defeat of fascism and under the specter of communism. Recall that fascist and totalitarian systems have at times proved quite successful at raising social welfare, and, moreover, have sometimes done so with less inequality of distribution than evidenced in systems guaranteeing greater personal liberty. The Priority of Liberty was originally needed, therefore, for Rawls to maintain his philosophical distance from such systems; it has been retained since.

Equal Opportunity and the Difference Principle (DP) form a complementary compensatory pair, each constituting a safeguard if the other does not operate reliably. Suppose that, in each generation during people’s upbringing, opportunities to develop talents were equalized (Equal Opportunity) so that inherited advantages were discounted before people commenced transactions as adults. The strict constraints on transactions ensured by the DP, namely, that only those transactions benefitting the least well-off be allowed, would then hardly be necessary. Similarly, if (after some initial redistribution) the DP operated consistently, large inequalities would probably be slow to accumulate and so compensation against inherited advantages would be less necessary.

In any case, whether on their own or as part of this pair, the two principles follow readily from social observations: The wealthy do provide their heirs with greater educational opportunities and more lucrative employment opportunities. So, if inequality is not to be self-
perpetuating, Equal Opportunity is needed to discount inherited advantages. Given the tendency of wealth to breed more wealth and poverty more poverty, Rawls has to temper in some way the effects of inequality in current transactions. The principle of maximizing utility (in its pure form) does not address the issue of inequality, so a different principle is needed. The wealthy cannot be relied upon to use their power to divide the cake fairly. So, leave it to someone acting on behalf of the most disadvantaged (if not the disadvantaged themselves) to decide whether some transaction tempers inequality—in short, follow the Difference Principle.

Finally, Rawls’ concern not to generate intolerable Strains of Commitment by citizens to the system of injustice tacitly acknowledges the resistance of the wealthy to constraints on their power. In the other components of Rawls’ framework there is no logical limit to redistribution and to measures to ensure Equality of Opportunity (except if it can be argued that some measure violates individual liberty). Considerations of Strains of Commitment serve to moderate (to a somewhat arbitrary degree) the unconstrained application of the other rules of justice. Although Rawls speaks of Strains of Commitment for the general person, the greatest risk to the implementation of these rules is that wealthy people would not abide by them. It is this risk that he is tacitly moderating, and in doing so the difficulty of implementation or transformation—a feature of the non-ideal realm Rawls’ claimed to exclude from his analysis—clearly enters his theory.

1.3. Taking stock of where we have got to

At this point I have introduced in broad outline a reinterpretation of the general framework derived in Rawls’ TJ. By no means has every aspect of this work been rendered coherent by extending the referents outwards to implicit aspects of the social realm. I have yet to discuss the arguments in support of this framework which make up the bulk of Rawls’ presentation (D→C in figure 1). On the other hand, within moral philosophy there exist hundreds of critical accounts and revisions of Rawls’ arguments within moral philosophy (Daniels [1975], 1989). Other moral theorists have claimed, for example, that the Difference Principle would not be chosen by participants in the Original Position (Lyons [1973, 1989]) or that liberty and welfare should be jointly subject to the Difference Principle. By departing from strictly moral philosophical terms, however, my reconstruction affirms the coherence of Rawls’ framework.

What, it may be asked, is the value of seeking a coherent interpretation of Rawls, especially since my attempt to give coherence to Rawls involves me departing significantly from what Rawls literally says? Moreover, what is the value of coherence of Rawls’ general framework alone, when TJ is much more, namely, an elaborate derivation of that framework? How can we
make sense of all the detail of that derivation? Why not stay within the confines of moral philosophy, dispute and revise Rawls' arguments, and, on the terms in which it was stated, attempt to build a better framework?

My response has two thrusts: 1) If Rawls' theory can be given coherence by referring to implicit background social considerations, then, in principle, any moral philosophical framework is open to a constructivist+ interpretation. The conventional boundary of moral philosophical interpretation (enclosing points C, D, and sometimes B in figure 1) should no longer be assumed, but must be justified, and even that justification is open to reinterpretation. 2) Constructivist+ reinterpretation abandons the pretense that issues of justice can be resolved by abstract philosophical arguments that make scant reference to social considerations. As a consequence of moving beyond abstract, asocial arguments, more concrete and direct statements about justice can be made. Table 1, which summarizes my reinterpretation of Rawls thus far, would be readily accessible to a non-specialist inquiring about Rawls' principles (and, given the topic of the faculty seminar in which this essay arose, about their relevance to justice among nations).

Table 1. Summary of reinterpretation of Rawls' framework.

<table>
<thead>
<tr>
<th>Element of framework</th>
<th>Reinterpretation</th>
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<tbody>
<tr>
<td>Original Position</td>
<td>Institutions of justice once established are not subject to repeated renegotiation in conflictual circumstances [1].</td>
</tr>
<tr>
<td>Veil of Ignorance</td>
<td>Blank out interests born of historically generated and current advantages [2].</td>
</tr>
<tr>
<td>Priority of Liberty</td>
<td>No tradeoff between liberty and welfare (contra totalitarian and fascist systems) [3].</td>
</tr>
</tbody>
</table>
| Equal Opportunity & Difference Principle | Each is a safeguard in case the other is not operating reliably. EO: Discount historically given advantages in current transactions [4].  
DP: Temper transactions so that wealth and poverty are not self-reinforcing. Allow someone acting on behalf of the poorest to decide what measures are acceptable. |
| Strains of Commitment         | Moderate the unconstrained application of the preceding principles to reduce the risk of the wealthy and powerful undermining them.               |

Notes (mostly in relation to international justice)
1. Consistent rule of international law, instead of "Might makes Right."
2. Also geographically given advantages.
3. Transactions, e.g., investment, cannot be conditional on suppression of political rights.
4. Also geographically given advantages.
Stated so baldly, Rawls’ rules of justice, it may be objected, can seem reasonable and even desirable, but are still in need of greater justification. Let us delve deeper, therefore, into Rawls’ theory to consider the foundation he builds for his framework. Here, however, a constructivist+ perspective will lead to a much less generous assessment of Rawls’ coherence.

1.4. Rawls’ reconstruction+, phase 2

Two central components of Rawls’ derivation of his framework concern me here, one explicit and the other less so: 1) Self-interested participants in the Original Position would, Rawls argues in TJ, if sheltered behind a Veil of Ignorance, choose Equal Liberty, Equality of Opportunity, and the Difference Principle as their rules of justice, and give Priority to Liberty; 2) In order to use the Original Position with the Veil of Ignorance as a means of deriving rules of justice, the (hypothetical) participants must give equal concern and respect to the other participants (Dworkin [1973], 1989, 46ff).

The second component constitutes a deep premise of equality (point E in figure 2). From this premise it follows that advantages obtained prior to making agreements in the Original Position cannot be assumed, whether these are historically given advantages or derive from inborn (pre-social) talents. This denial of natural merit (i.e., of claims to benefits not pre-agreed to) forms one of Rawls’ considered convictions (point D). Equality becomes the benchmark; the only acceptable inequalities are those that benefit everyone’s long term prospects (the Difference Principle).

Both these components—self-interested individuals in the Original Position and equal concern and respect—are necessary for Rawls to derive his framework. In important respects, however, they work at cross purposes. We need to make sense of their coexistence in Rawls’ theory. Coherence can be given to these two components; in doing so, however, progressively more serious incoherencies will be exposed.

The first component constitutes an argument of so-called rational choice, wherein reasons must be couched in terms of self-interest. Rawls does not want his rules of justice to be based on assuming widespread altruism (TJ, 188ff) because they would be vulnerable to the possibility of some people free-riding on the altruism of others. The second component, on the other hand, constitutes a strong assumption of moral motivation, that is, "the desire to be able to justify one's actions to others on grounds which they could not reasonably reject" (Scanlon 1982, 116). The second component is a morality that cannot be equated with self-interest; in fact, equal respect is readily seen as a check on the motive of self-interest. By implicitly including a moral
motive at the base of his derivation, Rawls undermines the assumption that self-interest would govern the hypothetical contractual position, the Original Position. But once this assumption is loosened, the Veil of Ignorance need no longer be so strict and Rawls' derivation unravels. He cannot overcome the problem by dispensing with the moral component of his theory, because self-interest alone is insufficient to establish Rawls' framework of justice (Barry 1989).

This is an uneasy combination for Rawls to have as the foundation for his theory. In fact, our difficulties in reconstructing Rawls are now even greater. As Rawls hints towards the end of TJ, equal respect for others is not so much an assumption as a "natural completion" (TJ, 509) of his theory, an ethic that would develop among people working according to his rules of justice. Why, we might ask, does Rawls not admit openly this ethic-building motive, instead of smuggling equal respect in at the "foundation" of his theory? Furthermore, once he acknowledged that he wanted to build an ethic that is new, or at least one that is not currently central to our dominant social institutions, why not set his sights higher? Why not work towards an ethic of responsibility, in which people view talents as giving them the responsibility to employ them productively, without the need for material incentives? In fact, why does he even need to accept inequalities
that benefit everyone's long term prospects (his Difference Principle)? Why not derive egalitarian rules of justice from a deep premise of equality?

Some coherence can be restored to Rawls' two-part foundation for his theory if we turn our attention again to the social background. The wealthy have power to perpetuate inequalities in wealth (point A1). They can promote institutions that they do not have to justify on grounds that the less well off "could not reasonably reject." If morality is to be a resource for transforming this situation and checking the power and wealth of the wealthy, a powerful morality must be built. Equal respect and concern is the morality Rawls chooses for the job. Similarly, the denial of claims to benefits from historically given advantages or "inborn" talents, which follows from the deep premise of equality, makes some sense in the light of the same transformative project. Points D and E are thus connected to the central aspect I have identified in the social background, point A1.

This transformative project is a difficult one, potentially opposed by the wealthy. In my constructivist+ interpretation this leads Rawls to invoke considerations of Strains of Commitment, and it also enables us to understand why Rawls derives the Difference Principle and not egalitarianism from his deep premise of equality. Rawls believes, as do the vast majority of his society, that material incentives are necessary and of prime importance for ensuring that we put our talents to productive use. The plausibility of the Difference Principle is enhanced if we "see life's values primarily in terms of ownership and consumption" (Watt 1988, 6). The weight given in economics and popular social theory to material incentives also leads Rawls, the moral philosopher, to highlight the rational choice/self-interest component of his derivation over the deep moral foundation.

Some coherence has been restored to Rawls' theory by referring to more of its implicit social background, but a deeper incoherence has now opened up. If Rawls' project is transformative, and building a new ethic of equal respect is central to this project, then why proceed as if a theory of justice can be built upwards from fundamental, widely accepted moral principles? If social background is connected into moral philosophical theorizing, perhaps even grounding it, why construct arguments as if questions of justice can be posed and answered in reference to a foundation of "some extra contextual, ahistorical, non-situational reality, or rule, or law, or value" (Fish 1989, 344)? Why not dispense with two-step rhetoric and instead tackle the difficult theoretical and methodological challenge of analyzing the web of social and moral cross-connections that I have just begun to draw attention to in this section (see figure 2)?

Again, ironically, a contribution to explaining the two-step structure can be made by referring to the social background of Rawls' work, in this case the more direct context of the
immediate audience Rawls' writes for, namely, Anglo-American philosophers. This is an audience with a long tradition of appealing to the common experience of like-minded people, usually men of the same station in life (as became central to seventeenth century natural philosophy; Dear 1991). The complex interconnections making up social and economic arrangements are filtered out in favor of abstract and unspecific propositions. Analyses of philosophical arguments of previous centuries are considered more important than examination of historical changes in meaning (Williams 1983; some relevant exceptions are Hacking 1975, who analyzes change in the very meaning of meaning, and MacIntyre 1984, whose argument centers on historical changes in what it means to do philosophy). Given the discipline's adherence to this tradition of universal, timeless issues it makes pragmatic sense for a professional philosopher to employ two-step tropes, whether in natural or constructivist guise, when constructing an argument about justice.

**Interlude: Constructivism+ in relation to other Critiques within Moral Philosophy**

The constructivist+ interpretation I have been developing is broadly sympathetic with feminist formulations of moral theory (Card 1991, Kittay and Meyers 1987), with post-modern, anti-foundationalist critiques of moral theory (Engelhardt 1989), and with feminist ethical analyses of real-life issues (mentioned in the introduction). Each of these forms of critique incorporates constructivist references to social background. Feminist moral theory finds male bias in the foundations of conventional theory. The post-modern argument that moral foundations cannot be universal is primarily made on philosophical grounds, but subsequently interprets claims for universality as privileging some particular social group or moral community. And, likewise, feminist analysts of real-life ethics are being constructivists when they argue that applications of moral principles should be situational, requiring a great deal of attention to social conditions (Purdy 1992).

A thoroughgoing constructivism+ differs, however, from each of these critiques in interpreting moral foundations, principles, and applications to be jointly constructed, in which the content and weight of each level is influenced by the social background of the particular moral philosophical project. Feminist moral theory has in general been motivated by and drawn critical insight from opposition to the male domination of society and of the profession of philosophy. But, more than this, its alternative foundations, such as, caring and interdependency among people, has been most plausible to those who have this oppositional orientation and promote the values traditionally or rhetorically associated with women, such as attention to relationships. The
receptivity of post-modernists to pluralism in moral principles and to standpoint relativity of applications, and the emphasis of certain feminists on specific applications rather than abstract foundational argument both invite social interpretation as well, although generalizing about the social background of these projects in more difficult.

A further development in the constructivist perspective follows from the multiplication of connections among foundations, principles, applications, and social background that began to appear in the previous sections (see figure 2). On one hand, an idea of direct causality of ideas is connoted by the links drawn in figures 1 and 2, the emphasis on society-writ-large, and the language used in my interpretations of Rawls: Because Rawls wanted, I proposed, to distance his project from fascism and communism he insisted on the Priority of Liberty; liberty could not be foregone or denied in return for greater welfare. On the other hand, a less direct view of causality of ideas is suggested by the multiplication of connections, by invoking of society at more micro-levels, e.g., of a person making a career in philosophy, and by the tensions displayed among various elements of Rawls' project. Developing this second emphasis, constructivists+ might talk less of causes and influences and instead of heterogeneous resources (Latour 1987, Taylor 1995) that are harnessed to support a theory of a course of action—citations, reputations of colleagues, authority of the classics, metaphors, logical tightness of argument, funding, rhetorical devices, career considerations, and so on.

My original interpretive proposition, that views of social actions are built into philosophical arguments, can now be re-expressed: Philosophers are always acting or intervening in multi-levelled social worlds when they construct their representations, and thus views of possible or desired social action are woven into these representation-interventions. The actions facilitating and facilitated by the problems chosen, the categories used, the relations inferred, the evidence required, and so on invites analysis and interpretation. To propose, in contrast, that the harnessing of resources does not affect the content of theories, becomes a strong claim, obliging the claimant, I believe, to demonstrate that no changes in the resources would have produced a significantly different theory.

The specter of relativism haunts social constructivisms, even though there is nothing in the idea of heterogeneous construction that implies all networks (Latour 1987) or webs (Taylor 1995) of resources are equally strong or coherent. It is the case, however, that the greater the complexity we discern these webs to have, the more difficult the analysis of their causal structure (Taylor 1992, 1995). No one resource in a construction stands alone; each tends to reinforce or link to others. Together with the contingency and particularity, sometimes idiosyncrasy, of any web supporting a theory or action, this difficulty of analysis invites, for those so inclined, a
relativist stance. However, it is possible to adopt a non-relativist approach to social constructivism, although the practice of this is not well developed. We can, in a thought experiment or in actuality, consider the practical implications of a critic or opponent attempting to modify or dispute the connections making up a theory/action supporting web (Taylor 1992, 1995). In this manner we can expose the resources involved, and their relative weight and interrelations. The way we are able to conduct the thought experiment or the actual intervention depends on our own web of resources, and once we acknowledge our own standpoint, or take stock of our web (Taylor 1990), we can hardly persist in giving equal credence to all theories or action. The objection that no one theory or action can be proven decisively to all parties to be strongest or most coherent loses weight, remaining relevant only to the extent that we attempt to discount or deny our dependency on particular other social actors for acceptance or implementation of our theory or course of action. I will return to this point in the conclusion, but now let me return to my interpretation of moral theory.

2. The burdens of moral justification

My reconstruction+ of Rawls’ TJ has led us to a place where questions can be raised that challenge moral theory more generally. The inferred justification for foundationalist rhetoric given before the interlude, namely, the power of traditional expectations of the discipline of philosophy, is not so powerful or satisfying to someone outside the discipline, not socialized in its tradition. A political activist, for example, might justify redistribution and equalizing opportunity quite directly, without constructing an argument from moral foundations: "I have decided to ally myself with the most disadvantaged people," the activist could say. "I support their struggle against those exploiting them, their aim of ending this exploitation and ensuring that it is not reconstituted." An obvious moral philosophical response to the political partisan's stated sympathies is that they are not a justification. The activist's synthetic statement must be broken down into basic principles so that it is clear what "exploitation" and "alliance" mean, and what forms of "struggle" are acceptable. How, moral philosophers would conclude, can we oppose injustice without a justifiable account of justice?

Let me agree for now that a definition of justice is needed to oppose injustice. Indeed, making any argument without recourse to foundationalist rhetoric is, in general, quite difficult. Nevertheless, giving priority to moral justification while leaving the social context in the background, scarcely analyzed, burdens our thinking about injustice in several ways. In
identifying these burdens or limitations my aim is to build a check-list of alternative requirements for an account of in/justice that departs from two-step moral theory.

1) Individualism vs. socio-economic analysis. One reason given for unpacking synthetic statements about injustice and for justifying rules of justice in terms of fundamental moral principles is that, when these principles are clarified, people are able to base their actions and design their institutions upon those principles. This reasoning implies a belief that action originates in individuals, that people's actions are internally driven rather than shaped by the structures of social life. In contrast to this individualist assumption, we might develop analyses of how economic and social arrangements, including those related to gender, structure possibilities for effective action, and of how those structures are reproduced (always imperfectly) through the actions people take (Sewell 1992).

The significance of the contrast between individual and social based analysis can be illustrated by criticizing a thought experiment that seems typical of moral philosophy. Feinberg ([1975], 1989, 113) claims that we would decline the devil's offer to live in utopia if the offer were conditioned on accepting the eternal torture, even if out-of-sight, of just one individual. However, every day we consume the fruits of labor carried out in political circumstances that involve coercion, repression, and at times torture. In the devil's bargain the consequences are clear and we can imagine being that one tortured individual. However, contrary to Feinberg's thought experiment, when our view of the suffering individuals is obscured or refracted through complex socio-economic pathways, our moral principles do not seem to be translatable into clear courses of action.

2) Human nature vs. moral situatedness. The focus on individuals as the source of action also tends to lead to an emphasis on the fundamental nature of people. We find elaborate discussions of whether justice or, more generally, social cooperation can be based on self-interest, or instead require some moral motivation irreducible to self-interest (Barry 1989). In accounts where some moral motivation is needed, anxiety about the vulnerability of justice to disruption by egoistic free-riders can be detected. Barry (1989), for example, bolsters his use of a moral motivation by claiming that the dependency which every baby and child experience makes it natural. From a different angle, communitarian and feminist moral theorists argue that self-interest does not exist prior to and independently of the community we live in (Held 1987). Thus, self-interest is not human nature; interdependency is fundamental and so morality and cooperation are possible if the community creates the right circumstances.

The argument against equating human nature with self-interest can be extended, however, in a way that shifts the emphasis away from human nature. Suppose we admit that
societies are morally ambiguous, that self-interestedness and self-sacrifice are both observable and we will not be able to find one original, later distorted, moral essence. This requires us to examine the circumstances in which people act. For example, instead of explaining Mother Theresa's charitable activities in terms of her saintliness, we might examine the institutions of the Catholic Church in India that make a life of service to others possible. We might analyze the forces pushing peasants from rural villages to urban slums that create the need for such charity. Similarly, consider Lech Walesa, the trade unionist who risked his freedom and maybe his life in the heyday of Solidarity, and compare him with Lech Walesa, who, as President of Poland became increasingly autocratic. If we assumed that a fundamental change in personality accounts for the shift, we would miss the opportunity to make sense of the enormous charges in the situation in which Walesa has been acting. Of course, some people are generally more egoistic than others, or seek out situations in which their self-interestedness predominates. Nevertheless, speculating about some ahistorical, asocial human nature steers us away from an interesting challenge, namely, to explain the existence and persistence of situations that inhibit or facilitate moral actions.

3) Universality vs. partisanship in conflicts. Another reason for philosophical justification of a conception of justice is to give it greater weight than our mere personal opinion. If rules of justice can be shown to be based on widely held moral principles, then it would seem easier to gain support for the implementation of justice. Indeed, the successes of organizations such as Amnesty International and of campaigns for human rights lend credibility to the strategy of non-partisan, universalist appeals to justice. Universality is, however, a more complex issue. The search for universality often yields abstract and quite unspecific principles. These have little power of implementation and provide little insight about how to face the conflict of interests that characterize social life (see, in contrast, Young 1990). Moral theory is weak on justification for taking sides and on examining whose interests are spared from dispute by intellectuals attempting to stand apart from partisanship. From a constructivist viewpoint, it would be interesting to examine the recent historical record to discern the extent to which appeals to universal values gain significance only when direct challenges to dominant interests are untenable, having been suppressed or persistently ignored. In those circumstances, but not more generally, non-partisanship, universality, individualism, and lack of socio-economic analysis might be an appropriate political tactic, albeit representing a substantial accommodation to power.

4) Possessions vs. activities and relationships as the source of satisfaction. A further accommodation, in this case to the prevailing patterns of ownership, production, and
consumption, is evident in moral theory's emphasis on distribution of social goods. Rawls and most of his critics are aware of the non-material sources of satisfaction and self-respect, yet the model emerging from most moral theory is one of quantifiable, possessable and thus distributable goods. Satisfactions embedded in activities and relationships, such as making collective decisions, developing skills, and living healthily, are not well-addressed within the "distributive paradigm" (Young 1990). Yet activities and relationships help generate the conditions in which individuals can be said to have rights, to be given opportunities, and to be able to exercise capacities. The static, ahistorical notion of possession of rights, opportunities, capacities, when combined with the reduction of social and economic complexity to transactions among individuals (or analogous units), provides little guidance about how to analyze on-going social processes. The unitary materialist metric (embodied, for example, in the Difference Principle) privileges self-interested choice, so that it can appear to be a fundamental consideration in defining justice, even in accounts where self-interest is conceived of as an obstacle to justice. Rawls' TJ framework, even after my reconstruction, reflects the dominance of the model of possessable goods and economically "rational" individuals. (See Roberts 1979, Marginson 1988, Watt 1988 and Young 1990 for more detailed critiques.)

5) Ideal speech situations vs. the blocking of inquiry. There is an affinity between moral philosophers expounding fundamental moral principles to which all reasonable people could agree, and Habermasians building social theory around an ideal of a power-free speech situation (Habermas 1990; see also Ackerman 1980). The participants in the ideal speech situation are free to bring any underlying commitments to the surface, into the dialogue; the participants in Rawls' Original Position would have their particular interests blanked out by the Veil of Ignorance. In both cases we are asked to imagine what it would be like if power were removed from negotiations or transactions between people. The burden of this orientation is that our attention is drawn away from the ways that people use their power to block inquiries into their particular interests. Instead of developing an analysis of the intricacies of power-infused interactions, such interactions become seen merely as a departure from the desired ideal situation, which remains the focus of the moral/social philosophizing.

3. Toward a political theory of injustice

In listing of the burdens of building a theory of justice upon a basis of moral justification I have foreshadowed alternative approaches to questions of justice and injustice. This by no means amounts to an alternative theory, but it does indicate some of the dimensions of the
project required. It should be clear that our attention needs to turn outwards, away from the individual moral or rational actor, towards the processes of social production and reproduction that facilitate or constrain action. The boundaries of relevant inquiries expand enormously, perhaps disappearing over our intellectual horizons. The appropriate concepts and methodologies for exploring the heterogeneous complexity of considerations are not obvious or well developed. Furthermore, in the spirit of social constructivism, any claims of "appropriateness" require us to consider the location, background, and favored actions of the theory's expositor. The complexity of considerations then multiplies further.

This complexity leads me to withdraw my earlier concession that a definition of justice is needed to oppose injustice. Clearly, it is not very helpful to command a football team simply to move toward the touch-down line. There are many different sequences of coordinated moves by the players that may achieve the same end result, each depending on the coordinated responses of the other team to these moves. Similarly, once we accept that social and economic arrangements are complex, involving conflict and the exercise of power, and that change requires changes in social processes not just in possession of social goods, then a definition of justice will not be very helpful. There can be no pre-set instructions for climbing a hill with justice at the summit, for not only do individual actions and their collective summation change the shape of the many-peaked landscape, but actions have manifold consequences, reverberating out along different webs. Even the most abstract and elegant theory has little impact without its expositor building in their work on diverse social and institutional arrangements, and, thus, at the same time reproducing those arrangements. To march steadily toward an ideal of justice requires us to ignore the web we are walking on and the baggage we are carrying. In fact, the most general burden that moral philosophers carry may be a commitment to unitary rationality, for this obstructs their appreciation of diverse and contingently constructed subjectivities. (Anti-foundationalists, such as Fish 1989 advance a similar critique.)

Clearly these are bold, bald statements, and are unlikely, without a great deal more argument, to move moral theorists to retool and alter radically their chosen enterprise. After all, what I have called burdens can be interpreted as facilitating the actions of most moral theorists. Moreover, overcoming the burdens of moral theory is not a matter of voluntarily choosing to adopt the alternatives outlined here. Instead, it requires social reconstruction. Living, working, and representing require any agent—intellectual or activist—to face many practical issues. From the perspective of heterogeneous constructivism, we must harness many, diverse resources in order to act and any resource, in turn, constrains future possibilities. Changing our lives, work, and representations requires mobilizing different resources (Taylor 1992, 1995; contrasting with
Fish’s 1989 resistance to a normative position). The project(s) of illuminating what you want to call injustice, so you can oppose and undermine it, may be better served by articulating the many interconnected practical issues. Given the political construction of injustice, substitution of moral for political analysis mystifies the diverse processes involved in social change. And whom, to end on a moral tone, does that serve?

Postscript

The essay was accepted for publication in the journal *Social Epistemology*, but various contingencies delayed my submission of the final revised version. By the time this was ready, the journal had changed its format to focus on book reviews, not articles; the essay remains unpublished. The gap between acceptance and completion of revisions had provided more than enough time for me to draw on a wider literature and refine my position, but I decided to preserve the rhetorical position of newcomer-outsider. I drew reinforcement from Alisdair MacIntyre, who in *After Virtue* (a work also criticizing moral philosophy for abstracting “arguments from social and historical contexts of activity and enquiry”) observes that "much contemporary analytic writing [consists of] passages of argument in which the most sophisticated logical and semantic techniques available are deployed in order to secure maximal rigor alternate with passages which seem to do no more than cobble together a set of loosely related arbitrary preferences" (MacIntyre 1984, 267).

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References


