

Political and Distributive Justice

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ABSTRACT: To most philosophers, unmet claims based on distributive justice imply a political injustice — some have a complaint of justice against their political system. This article explores a variety of views about how this connection may be grounded or qualified: political institutions may be one tool among others to realize an independent good, distributive principles might regulate the distribution activities of political institutions, or distributive principles might apply in light of a special relation of a political institution and its members. We also consider a view prevalent in the social contract tradition that, in light of reasonable disagreement, one cannot demand that shared political institutions conform to one's own contentious distributive theory; members must seek terms with which all can live even though such term may not be anyone's most preferred possibility.

KEY WORDS: disagreement; distributive justice; institutions; political justice; social contract.

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A devotion to distributive justice seems to inevitably involve the political, i.e., social institutions creating and coercively enforcing authoritative rules. To most philosophers, unmet claims based on distributive justice imply a political injustice — some have a complaint of justice against their political system. But how are claims arising from distributive justice linked to claims about the justice of the political? This chapter is divided into two main parts. In part 1, we consider a variety of ways that distributive justice has been coupled with justice in the political sphere. Starting with instrumental accounts that view the justice of the political largely in terms of securing independently-defined requirements of distributive justice, we move to accounts that more intimately couple the distributive and political, such as those depicting distributive justice

as arising out of certain types of political arrangements. Having analyzed a variety of ways of coupling political and distributive justice, part 2 argues the tie between political and distributive justice should be greatly weakened. A justified polity with legitimate authority cannot be required to conform to any specific theory of distributive justice.

1. Coupling Distributive and Political Justice

1.1. DISTRIBUTIVE JUSTICE AS AN EXTERNAL END OF THE POLITICAL

1.1.1 The Exogenous Instrumental View

It is widely supposed that political institutions ought to secure distributive justice; but there are different ways that they might do so. On the simplest view, the requirements of distributive justice are identified entirely independently of facts about political institutions, which are viewed as means for securing the end of distributive justice. So we can identify:

The Exogenous Instrumental View: The requirements of distributive justice, *DJ*, can be known apart from facts about political institutions, including their existence. Political institutions and norms are modes of regulation that are justified as contextually appropriate means to achieving *DJ*.

Understood thus, distributive justice is an exogenous or external good (in relation to political institutions), while political institutions are just only if they advance distributive justice. On this Exogenous Instrumental View, distributive justice is similar to a good such as health. It may be supposed that a just state promotes the health of its citizens, but we can identify the good of “health” independently of any facts about political institutions. To be sure, a state’s policies might be causes of good or ill health, but a conception of “health” is not endogenous to political

institutions, as if health was a good different in democracies and dictatorships. Politics and political institutions do not figure into identifying the nature of the good.

G. A. Cohen provides a quintessential instance of this Instrumental View. Distributive justice, according to Cohen (2000: 132), “consists in a certain egalitarian profile of reward.”¹ The state of affairs itself, the actual possession of benefits and burdens, is just or unjust. It is irrelevant to distributive justice, on this understanding, whether that profile of advantages was specifically produced by a political policy or by natural chance. It is also irrelevant on this account whether those holding the advantages are co-members of a single state or lack political relations with each other.

It is important to realize that the Instrumental View is compatible with:

Distributive Justice is Not Definitive: An institution or policy can be politically justified even if it sacrifices satisfaction of the requirements of distributive justice for other political values.

Some may hold that distributive justice (or more generally, justice) is the first and overriding virtue of political institutions (see §1.3), but Cohen does not. He upholds Distributive Justice is Not Definitive, as he insists that distributive justice is merely one value among many that a political institution must accommodate; consequently “unjust inequality” may “be part of a package of policy that is, all things considered, superior to any other (because *values other than justice* weigh in its favor) or even ... more just than any other (because considerations of

¹ Cohen (2008: 7) holds that “an unequal distribution whose inequalities cannot be vindicated by some choice or fault or desert on the part of (some of) the relevant affected agents is unfair, and therefore, *pro tanto*, unjust, and that nothing can remove that particular injustice.”

nondistributive justice weigh in its favor)” (Cohen, 2008: 7, emphasis added). Even if a policy that involved forced labor and gross violation of freedom of occupation would bring about the correct egalitarian distribution, Cohen maintains that it is important for the state to respect these basic freedoms.² It thus seems clear that on Cohen’s account, even if one aspect of political justice involves advancing distributive justice, that is not the only aspect; the justice of political institutions involves more than the distributions of benefits those institutions bring about or fail to bring about. That would not entail that the society is not unjust, but that it had moral reasons to not do everything in its power to pursue distributive justice. Though the political institutions are justified in maintaining the inequalities, the society “cannot be through-and-through just” (Cohen, 2008: 7). Distributive justice also might require more than any political institution can accomplish. Just as a state may be unable to prevent some illnesses no matter how much of the state’s resources are devoted to health, the state may face insoluble problems in promoting distributive justice.

Just as a state policy can be merely one factor among many in determining health, state actions might be simply one factor affecting the justice of the final distribution of advantages.³ Thus Cohen also upholds:

The Non-Uniqueness of the Political: Political means are not the only ways to secure distributive justice; they are not generally sufficient and might (eventually) not be

² Cohen (2008: 186) writes that, “old-style Stalinistically inclined egalitarians might have responded by setting their faces against freedom of choice of occupation.... But my own inclinations are more liberal, so that way out is not for me.”

³ Christiano (2008: 53) similarly holds that political institutions are not logically necessary, but are “one way in which individuals attempt to establish justice among themselves.”

necessary.

Beyond any political requirements, Cohen (2000, chs. 8-9) argues that distributive justice requires individuals to guide their private decisions by an “egalitarian ethos.”⁴ Such an ethos would lead individuals to accept their highest productivity career prospects while forsaking any income beyond what distributive justice would allot them. Indeed, ultimately distributive justice should not require the political at all:

In the ideal socialist society, equal respect and concern are not projected out of society and restricted to the ambit of an alien superstructural power, the state. If the right principles are, as Marx thought, the ones that are right for everyday, material life, and if they are practices in everyday life, as the socialist ideal utopianly envisages they will be, then the state can wither away (Cohen, 2008: 1).

1.1.2 Pure State-Driven Judgments

The Exogenous Instrumental View initially appeared to couple distributive and political justice in a simple and compelling way. Distributive justice is understood as a good independent of the political, and so the task of the political seems crystal clear: to promote distributive justice. When distributive injustice is discovered, we can proclaim: “Something should be done, the political task is to secure distributive justice!” However, we have seen that even on this Instrumental View matters are more complex: the political may have other goals that override distributive justice (Distributive Justice is Not Definitive), and there may be requirements of distributive justice that cannot, or should not, be achieved through the political (The Non-Uniqueness of the Political). Notice that both of these additional claims attenuate the link

⁴ Cf. Neufeld and Van Schoelandt’s (2014) discussion of the relation between political and ethos justice.

between distributive justice and political justice. This attenuation reduces the clarity of the political task.

This attenuation becomes much more severe when we add a third claim characteristic of Cohen's analysis:

Distributive Justice as Pure State Judgments: A judgment of distributive justice is the judgment of whether the distribution of some good (*G*) in a state of affairs (*S*) corresponds to the requirements of distributive justice (*DJ*).

Because, on this view, judgments of justice are purely judgments about states of affairs concerning *G*, there is no necessary connection between judgments of justice and what is to be done (Cohen 2000: 132). But recall that according to the Instrumental View, political institutions and norms are modes of regulation that are justified as contextually appropriate means to achieving distributive justice. Now that we have added our three additional claims the connection between the political institutions and achieving distributive justice becomes rather too attenuated to say anything definite about the appropriate political institutions. In principle, an account that understands judgments of distributive justice as purely state-oriented judgments might have nothing to say about what to do politically, or might not yield actual imperatives, policies, or interpersonal claims, should it be the case that there are no realistic options that produce just conditions without excessive costs to other politically relevant values. Provocatively, David Estlund (2008: 264) defends such "hopeless visions of justice":

Consider a theory that held individuals and institutions to standards that it is within their ability to meet, but which there is no reason to believe they will ever meet.... It would be morally utopian if the standards were impossible to meet, but, again, by hypothesis, they

are not. Many possible things will never happen. The imagined theory simply constructs a vision of how things should and could be, even while acknowledging that they won't be.... So far, there is no discernable defect in the theory, I believe. For all we have said, the standards to which it holds people and institutions may be sound and true. The fact that people will not live up to them even though they could is a defect of people, not of the theory. For lack of a better term, let us call this kind of theory a version of *hopeless realism*.⁵

In a similar vein, Cohen (2008: 20) insists that the infeasibility of a vision of justice does not “defeat the claim of a principle.”⁶

Such theories might be described as conceptions of “cosmic justice.” Charles Larmore (2013: 292n) contrasts views of cosmic justice with his own concern for “justice insofar as it has some import for social life.”⁷ Aaron James (2013: 104) similarly contrasts such cosmic justice with a political philosophy that we expect to be “normative for us.” Elizabeth Anderson (2012: sect. 1) also criticizes such views, insisting that justice is fundamentally relational and tied to interpersonal accountability. We might also understand justice as having functions, such as adjudication of competing claims and facilitation of cooperation among people pursuing diverse,

⁵ For an extended analysis, see Estlund (2011). Christiano (2008: 36) likewise holds that distributive justice “does not obey the ‘ought implies can’ principle entirely[,]” and may thus present an infeasible ideal.

⁶ At times Cohen seems to go beyond even Estlund in the defense of the hopeless; while Estlund is a firm defender of “ought implies can” (and so the vision cannot be *impossible* to meet), Cohen (2008: 20, 250-54) is ambivalent about the principle.

⁷ For criticism of this project, see Cohen 2000: esp. 302ff. Many will find “cosmic justice” to be a misnomer unless there is some agent who culpably ordered the cosmos in these unjust ways, be that entities a god or perhaps the cosmos itself as a pantheistic agent.

often conflicting, ends.⁸ Accounts of Distributive Justice as Pure State Judgments are unsuited for fulfilling that function, given their conceptual independence from our actual moral and physical circumstances. All these complaints pick up on the gulf between judgments of distributive justice and judgments about what a just state must do, require, or prohibit.

1.2 DISTRIBUTIVE JUSTICE AS WEAKLY ENDOGENOUS TO THE POLITICAL:
AN ALTERNATIVE INSTRUMENTALIST VIEW

1.2.1 An Endogenous Instrumentalist View

Recall that we commenced with an apparently attractive view of the relation between the political and distributive justice: a critical aim of the political was to pursue distributive justice. The problem with the exogenous account we have explored is that, seeing distributive justice as a good entirely external to the political that describes states of affairs rather than actions or policies, it becomes possible that distributive justice might be a hopeless aspiration, which is beyond the ken of the political. There is, however, an alternative conceptualization of the instrumentalist idea that assures an instrumental link between the political and distributive justice. Arash Abizadeh (2007: 324) identifies a view along the lines of:

The Political as a Condition for Distributive Justice: A requirement (DJ) of distributive justice is justified only when (a) there is a current political institution that can secure DJ or (b) it is feasible to create an institution that can secure DJ.

The Political as a Condition for Distributive Justice takes seriously Michael Blake's point that "states of affairs that are open to human control are, morally speaking, distinct from those that are not" (2001: 273). The general upshot is that a principle of distributive justice can only

⁸ Rawls 1951: 1-2 and 1999: section 23.

condemn a state of affairs that is “in some sense amenable to control by human agency” (2001: 273). Though being subject to human control seems a weak condition, it is an important qualification imposed by the Political as a Condition for Distributive Justice on any proposed principles of distributive justice. Let us consider two ways in the literature that the common sort of proposals for distributive justice seem to instrumentally require institutions and may be shown inapplicable when the necessary institutions cannot legitimately be established.

1.2.2 Institutions to Coordinate Distribution Efforts

Supposing a minimally-complex principle of distributive justice and a large-scale society, it is implausible that a just distribution can be secured by the decentralized efforts of uncoordinated individuals. “Given the scale of a modern economy,” Samuel Scheffler (2010: 115) writes, “the establishment and preservation of background justice requires far too much information and is far too complex a task to be accomplished by any set of rules that might plausibly guide individual conduct.” Even if there was a shared substantive understanding of what distributive justice required, the uncoordinated efforts of individuals are unlikely to achieve it. Any proposed distributive standard will be informationally demanding if it involves relative shares, more so if those are shares across time (e.g., requiring equal lifetime income, as opposed to such equality at each moment), and further demanding yet if what the principle demands is at all choice sensitive. These informational demands prevent individuals from reliably even knowing what changes would be moves toward or away from distributive justice. The lack of coordination in action amplifies the problem, for the actions of diverse people changing the distribution may cancel each other out or even create a less just distribution.

Considering the need to gather information and coordinate activity, it seems that most

distributive principles will require institutions, and most likely political institutions empowered to command the relevant actions. We note that clause (b) of the Political as a Condition for Distributive Justice (§1.2.1) allows that demands of distributive justice may arise even for agents when they do not currently have the instrumentally necessary institutions. In such a case, it can be added that political justice demands that, if within some range of feasibility, they bring about the required institution. Even so, there are a number of reasons we may find that the relevant political institutions are infeasible. Most obviously, they may not be feasible given resource scarcity or other basic physical limitations, or because they would be unstable or morally dangerous. For example Rawls (2001: 36), following Kant, argues that a world state would be either likely to break up from the disputes between different nations within it, or would become despotic.⁹ If Kant and Rawls are right on that point, this gives us some reason to believe that cosmopolitan principles of distributive justice requiring a world state are not justified.

We should also note that many proposed principles of distributive justice must be rejected because some information gathering and coordination is infeasible even with political institutions. Rawls (1999: 81), for instance, argues that the “currency” of justice cannot be utility because interpersonal utility comparisons are infeasible. He proposes instead the metric of “social primary goods” such as income, in part because these resources are measurable in a way likely to produce inter-subjective agreement. We can effectively rule out any principles that use criteria we cannot reliably assess.

If no institutions for coordinating distributions are relevantly feasible, then no principles

⁹ Many anarchists argue that the threat of despotism applies also to all states. For instance, Mikhail Bakunin ([1873] 1972: 328) writes: “Every state power, every government, by its very nature places itself outside and over the people and inevitably subordinates them to an organization and to aims which are foreign to and opposed to the real needs and aspirations of the people.” We can thus see the outlines of an anarchistic case against distributive justice.

of distributive justice at all may be justified. For instance, Hayek (1945: 528-9) argues that we rely on decentralized decision-making within a market order not only for economic growth, but simply to maintain our economic position through changing conditions (cf. Mises [1920] 2009: 105-6). Drawing on decentralized decisions, he argues, results in distributions that fail to match any substantive distributive principles, and attempts to make the distribution satisfy those principles are destructive of the market order. We can thus see Hayek as arguing that we have sufficient reason to reject institutions that would attempt to coordinate the realization of almost any distributive principles. Such principles, having no acceptable means for their realization, would all be invalidated. Distributive justice is shown to be, as Hayek put it, a mirage.

1.2.3 Assurance

Among the conditions most difficult to satisfy is that a proposed principle of justice must be such that, should we seek to realize it, we can solve the assurance problem.¹⁰ According to Rawls (1951: 236), “reasonable” people are motivated to do their part in a fair system of cooperation “when we believe that others, or sufficient many of them, will do theirs.”¹¹ Though other aspects of morality may be unconditionally binding, for Rawls and many others, distributive justice assumes only the disposition to conditionally comply with fair cooperative schemes: it does not demand leaving oneself open to exploitation through unilateral compliance. Principles of justice, then, organize cooperative relations among those whose cooperation is conditional on the expectation of the cooperation of others. As Paul Weithman (2013: 47) writes, if “citizens are to

¹⁰ For example, Rawls (2005: 49-50). Cf. John Thrasher and Kevin Vallier (2013).

¹¹ For empirical evidence about the importance of empirical expectations, see Cristina Bicchieri and Alex Chavez (2010).

act from their sense of justice consistently, each must have some assurance that others will consistently act justly as well.” Assurance problems do not arise simply because people are self-interested; if one cannot advance distributive justice alone, then complying with norms of distributive justice simply wastes resources that could have been devoted to mitigating poverty, promoting virtue or saving souls (James, 2013: 108). Solving the assurance problem for any proposed principle is a part of showing that the principles could be stable for the right reasons — stable through the ongoing rational and reasonable acceptance of, and compliance with, the principles, rather than mere stability through force or manipulation. As James (2013: 104) argues, “proposed principles must credibly address the available human means for the public resolution of problems of assurance.”

This line of reasoning leads to:

Distributive Justice as a Distinctively Public Duty: Securing distributive justice is a political, or social project, that generates duties for an institutionally organized collectivity, and only derivatively to individuals as members of such a collectivity.

Thomas Nagel (1981: 200) endorses this claim, maintaining that individuals might not be morally obligated to privately do what it would be appropriate for the state to force them to do, in part because of the need for assurance. Interestingly, Cohen seems attracted to a version of this claim. He argues that, assuming an egalitarian conception of distributive justice, “no one is obligated to sacrifice so much that she drops to a level *worse* than what she would be at in an egalitarian society” (Cohen, 2000: 176). Without assurance that others will maintain the egalitarian distribution, however, anyone who privately brings herself down to the egalitarian level risks being driven below that level by “the buffetings of uncompensated bad luck” (2000: 176). So, he concludes, “what goes for the public domain need not go for the private. One might

say that for assurance reasons, equality is, necessarily, a *social project*” (2000: 176).¹²

1.3 DISTRIBUTIVE JUSTICE AS STRONGLY ENDOGENOUS TO THE POLITICAL:
THE JUSTICE OF DISTRIBUTING SYSTEMS

1.3.1 From Skepticism to the Justice of a Distributor

A strand of skepticism about the scope of distributive justice common in the classical liberal tradition advances a view nearly the opposite of Distributive Justice as a Distinctively Public Duty (§1.2.3); to such classical liberals, *all* rules of justice apply primarily to individual acts, and only derivatively to distributional matters. Robert Nozick’s famous slogan, “From each as they choose, to each as they are chosen,” expresses this individual decision-based understanding of “distributive justice” (1974: 160). According to Nozick, there is no correct pattern of distribution of goods except the actual pattern that happens to emerge from the decentralized decisions of people exercising their individual rights and respecting those of others. One could, of course, point to a current distribution as unjust and indicate what distribution would be just, but such claims would be based on the history of transactions, both rights-respecting and rights-violating, and not merely the distributive pattern. Judgments of the distribution, then, are fundamentally judgments of the just or unjust actions of individuals.

Hayek essentially agrees, insisting that the justice of a distribution is generally derivative of the justice of the individual decisions that led to it, where the justice of the action is determined by compliance with social rules and does not reference the distributive outcomes.¹³ A

¹² Though Cohen does not think this need mean a specifically political or institutional project, given his support for an egalitarian ethos.

¹³ See Hayek 1976: ch. 10, particularly pp. 117 and 122. Cf. Lister (2013).

fundamental pillar of Hayek's (1976: 117) argument is that the specific distribution emerging from a market order has "not been brought about deliberately." As he argues, the distribution that emerges is unplanned and not the result of anyone's intentional choice. The closest we can get to questions of distributive justice for the unplanned market order is to ask whether the system of rules in which individuals make their choices is a good system in that it provides each with good *ex ante* prospects, though there is no guarantee of how they will eventually do.

1.3.2 Distributive Justice as Norms for Political Distributors

The classical liberal critique of distributive justice leaves open the possibility that distributive requirements do indeed apply when there *is* a distributor of resources, such as a state. Hayek (1976: 32-3) is clear that the rules of justice, as well as the concept of distributive justice, apply to governments and their actions. Consider, for instance, a state official allocating resources controlled by the state, such as police or education services. We may scrutinize the distribution the official chooses, and rightly criticize her if she distributes the resources disproportionately without some appropriate justification. She may not, for instance, favor her family and friends with the public resources, though she may appropriately do so with her private finances.

Stanley Benn advances an account of distributive justice that takes as central this idea of the state as distributor. He bases his analysis on:

The Principle of Equal Consideration of Interests: "To justify discrimination in the attention accorded to the interests of different persons, one must be able to point to a difference between them relevant to the discrimination being made. This might be formulated negatively as the principle that there cannot be first-class and second-class persons..." (1988: 117).

This principle regulates decisions and actions, and is not in the first instance a criterion for evaluating states of affairs in terms of the degree to which the interests of different persons are satisfied. (Thus it is very nearly the opposite of Distributive Justice as Pure State Judgments, §1.1.2) According to Benn (1988: 118), the Principle of Equal Consideration of Interests does not apply to every decision, but only when “the decision maker had an obligation in this case to deal fairly — to set aside his preferences for the sake of universally acceptable reasons.” So, for example, he tells us that Caroline need not justify the “discrimination” she expresses in choosing to marry one person rather than another on the basis of personal preference. The fact that the interests of other potential spouses are affected is not sufficient to generate claims against Caroline. For Benn liberty is the default and the demands of impartial treatment are a special case.

On Benn’s analysis, far-reaching requirements of distributive fairness arise for modern states only because discharging the tasks they have undertaken, as a matter of history, brings into play the Principle of Equal Consideration of Interests. “Where everyone now, as a moral person, had a right to vote, and economic management and income distribution became a regular and recognized feature of State policy, everyone’s need became a subject of claims on State consideration, and this as a matter of just distribution...” (1988: 250). Instead of seeing just distributions as an independent good that the state can or should promote, Benn argues that these matters of justice only arise for political institutions that have taken up the tasks of managing and allocating resources. If a state is to take up such tasks, extending beyond the “night-watchman state,” it must do so in a way that gives equal consideration to the interests of each citizen.¹⁴

¹⁴ According to Benn, “Human welfare rights arise, not directly from a right that one’s needs, even one’s basic needs, be satisfied, but rather from a right to fair treatment, to the equal consideration of one’s interests along with

Benn's equal consideration principle creates only a limited scope for principles of distributive justice. Mere distributions in the world are of no special concern. As Hayek and Nozick stressed, the distributions that emerge unintentionally from the decentralized decisions of individuals exercising their rights, including the right to show partiality, are not appropriate objects for judgments of distributive justice. Distributive justice in the guise of the Principle of Equal Consideration of Interests applies only to those distributive activities for which impartiality is required. Indeed, Benn's principle is a norm governing organizational actions, including those of the state, and only indirectly about securing distributions. Distributive justice thus arises as a problem within politics, not as an external problem for politics to solve.

1.3.3 The Existence of Political Institutions and the Value of Distributive Justice

A special claim of distributive justice arising from the activity of states can be grounded in other ways. As Nagel (2005: 120) puts it

On the political conception, sovereign states are not merely instruments for realizing the preinstitutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity; an institutional relation which must then be evaluated by the special standards of fairness and equality that fill out the content of justice.

The dispute within this family of views regards what, more precisely, is the institutional relation

those of every other beneficiary in the social distribution of goods. *If there are to be institutions allocating resources which can take account of needs in the distributive process, then no one's needs for the less basic goods should be satisfied before everyone's need for the most basic...*" (1988: 250, emphasis added).

that triggers those special demands of justice. For instance, some claim that the special standards arise because political institutions demand “allegiance and obedience” (Dworkin 2002: 6), create “a coercive network of state governance” applying specifically to members, claims that a political institution that demands from citizens (Blake 2001: 258) “allegiance and obedience to its laws, must take up an impartial, objective attitude toward them all....” In a related way, endorses a “concern with relative economic shares... when those principles are applied to individuals who share liability to the coercive network of state governance.”¹⁵ On Blake’s account, each state systematically coerces people within its own borders, including coercively enforcing a system of property rights. It is because of this particular activity, and the way coercion prima facie conflicts with the status of people as free and equal, that the state must meet a special justificatory standard in which relative shares matter. Nagel, in contrast, argues that the relative shares between co-citizens matter specifically because the state — most obviously, the democratic state — claims to rule in their name. It is, for Nagel, the fact that the laws are claimed to arise from the citizens that gives rise to egalitarian requirements, but only as applied among citizens. Since the state does not claim to rule in the name of those outside its borders, relative distributions of shares with and among those people do not require justification.

These views exhibit important disagreements about what, precisely, triggers the distributive demands, but they concur on the core claim that paradigmatic political institutions, because of the particular way they relate to their own citizens or denizens, are under special demands of justice that do not arise for most private action. They thus endorse Distributive Justice as a Distinctively Public Duty.¹⁶ The overall point for philosophers such as Benn, Blake,

¹⁵ Cf. Scheffler, 2006: 124-5.

¹⁶ Blake (2001: 258ff.) and Nagel (2005: 118) each endorse principles of assistance for alleviating absolute, as

Dworkin and Nagel is that the demands of distributive justice only arise for certain existing distributors or political agents engaged in activities that make distributive justice matter. On this view, demands of distributive justice are not simply about the way diverse people happen to have advantages, or even how the fruits of cooperation are distributed through markets, international trade, or other types of social institutions.¹⁷

1.3.4 The Distribution of Political Rights

A special case of distributive justice being strongly endogenous to the political may be the distribution of political power itself. Political institutions, particularly in coercively imposing a unified legal system on all, potentially embody public subordination or domination independent of other distributive issues. For instance, Thomas Christiano (2008: 78-9) holds “mere mutual impacts among people is not sufficient to ground democratic institutions[,]” (ibid: 83) but that co-members of a unified legal system must have equal voice in shaping that system. Imposing a legal system on people who do not have equal political rights, Christiano argues, publicly expresses disregard for the fundamental interests of the marginalized. Phillip Pettit (2012: ch. 3) likewise argues that a political state, even one otherwise promoting justice, practices public domination by leaving some under the power of political elites unless each member equally shares in the control of the state. For these theorists, the distributions that affect the justice of the political institutions are perhaps maximally endogenous to the political in that they regard goods, like voting rights, that are not only distributed by the political institutions, but furthermore are

opposed to relative deprivation, but they distinguish such principles from the distributive principles for co-members of a society.

¹⁷ On such an account, immigration restrictions plausibly bring people outside of state’s borders into the scope of distributive justice for that state. Cf. Abizadeh (2007: 348ff.), Gaus (2011: 478-9), and Huemer (2010).

themselves part of those institutions or at least matter for the sake of controlling those institutions.

2. Loosening Political Justice's Coupling to Theories of Distributive Justice

We have surveyed a variety of ways that theories of distributive justice have been coupled to judgments of the justice of states and their policies, from the attenuated to the conceptually constitutive. Even the more attenuated accounts, however, suppose that there is typically an important tie between the moral requirements of a theory of distributive justice and judgments of the justice of a state. In the remainder of this essay we argue that this is an error. Under contemporary conditions of moral disagreement, one's conception of a politically just state should be largely uncoupled from one's conviction about the best account of distributive justice.

2.1 THE POLITICAL AUTHORITY OF MORAL CONVICTION — AND ITS PROBLEM

2.1.1 The Political Authority of Moral Conviction

Suppose you have come to a principle of distributive justice, *DJ*, which determines whether the distribution of some critical good in your society is just. Suppose according to this principle it is not. This is a judgment you believe is supported by sound and impartial reasoning, and is intended to provide (as James says) normative guidance and to be (as Larmore says) relevant to social life. Given this, your moral judgment leads to a moral imperative or requirement that your society's distribution be brought into compliance with *DJ*; call this "Conform to *DJ*!". Because, further, on your view distributive and political justice are coupled, you claim that insofar as your society now fails to conform to *DJ*, a politically just state is one that acts on the imperative "Conform to *DJ*!", say by enacting the relevant legislation. If your state does not obey that imperative it is characterized by significant injustice. It has failed in its duty to promote

distributive justice. To be sure, as Cohen stresses (§1.1.1), there may be other morally-relevant considerations in determining whether your state is, overall, morally justified (or even, overall just), but it is a serious injustice of your state that it fails to obey the imperative (remember, we are examining the distributive justice of a critical good). This is a prevalent attitude. Recall the back cover of Rawls's 2001 *Justice as Fairness*: "Rawls is well aware that since the publication of *A Theory of Justice* in 1971 American society *has moved further away from the idea of justice as fairness.... This book demonstrates that moral clarity can be achieved even when a collective commitment to justice is uncertain*" (2001; emphasis added). It is extraordinarily difficult not to interpret this condemnation as based on the supposed failure of American society to better conform to Rawls's "second principle" of justice, dealing with distributive justice. Regarding the protection of the "first principle" basic liberties, it is hard to see any obvious retrograde movement between 1971 and the turn of the century (quite the contrary: think of the great advances made during this period in civil rights, especially in the south, and gender equality).

Underlying this line of thinking is something like the following idea:

The Political Authority of Moral Conviction: If Alf conscientiously and sincerely believes that principle of distributive justice *DJ* is morally justified and that *DJ* deems his society's distribution unjust, then he is committed to accepting that, *pro tanto*, his current state should, as matter of justice, employ its political authority (or legitimate political power) to move the distribution into alignment with the requirements of *DJ*. If it fails to do so, his state exemplifies serious injustice.

If Alf continues to hold a well-reasoned belief that *DJ* is violated, then (at least *pro tanto*) he must also hold that justice requires that the state use its authority or legitimate power to do something about it. Note that Alf has moved from a judgment of justice to a claim that political

authority should advance his judgment about justice.

To be sure, Alf may seek to attenuate this transition from personal moral judgment to claims on political authority. He might be uncertain whether his judgment about *DJ* is correct, and so draw back from calling on the state to act on it. Of course, for the same reason, he might make other moral judgments and refuse to issue any imperatives or demands based on them. Yet if Alf requires certainty in his judgments before he issues imperatives, the practical nature of distributive justice, so stressed by Anderson, James and others, would be undermined. At some point, if reasoning about distributive justice is to give us practical moral guidance, there must be agents who have reasonable confidence that *DJ* calls for some action, and be prepared to call on others to heed this. If, as we think is the case with most political philosophers, something along the lines of the Political Authority Of Moral Conviction is accepted, this ultimately leads to calls on the state to make all citizens act in conformity with *DJ*.

2.1.2 Whose Judgment?

Suppose that Alf has thought things through, identified what is the best principle of distributive justice, and demands policy α ; Betty has thought things through, identified what is the best principle of distributive justice, and she demands the state use its authority or power not to enact α , but instead the incompatible β . And there is also Charlie, Doris and everyone down to Zedra, each with their judgments and demands. Well-intentioned, thoughtful people come to divergent conclusions about the fundamental requirements of distributive justice. As Rawls (2005: xlvi-xlviii, 5ff., 54ff.) argued, the exercise of reason under free conditions leads to diversity in views of philosophy, religion, the nature of the good life, and even of justice. The last forty years of philosophical reflection on distributive justice — as this very *Handbook* attests — has resulted in

a rather astounding array of competing theories, calling for different and often opposite movements in state policy. Whose judgment is to guide the state?

The answer seems easy: the correct one. Let us grant that. Yet this is of no help at all, for our disagreement is about *whose* judgment is the correct one, so our problem remains. But perhaps this is too quick. To many philosophers, this really is no problem at all for Alf. Having reasonable confidence that he is correct, he must insist that the just state conform to his judgment, for he has identified the correct policy α . So, he asks, “what’s the problem?” And since Betty, Zedra and all the rest will reason in precisely the same way, they won’t see any problem either. And so no one will see any problem, so we might be tempted to conclude that there is no problem.

Hobbes provided perhaps the earliest and most incisive analysis as to why there truly is a problem. In this dispute Alf (and the same holds for each of the others) thinks himself “wiser than all others,” and clamours and demands “right reason for judge, yet seek no more but that things should be determined by no other men’s reason” but his own. But this, says, Hobbes ([1668] 1994: ch. 5, ¶3), is “intolerable in the society of men,” for our collective problem is that we seek to live together under a common framework (e.g., the state), but our use of our reasoning to decide what “right” or correct reasoning requires of the state lands us in interminable disagreement. For someone to seek to resolve *this* fundamental social and political problem by saying that others should do as he says, since his reason is right reason, betrays his lack of right reason by the very claim he lays to it; he fails to grasp what the social and political problem is, and would have us take his errors, prejudices and appetites as the dictates of right reason — even when he is in dispute with others about what right reason is. As Rawls (2005: 61) observed, “of course, those who do insist on their beliefs also insist that their beliefs alone are

true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make; it is also a claim that cannot be made good by anyone to citizens generally.”

The problem is that political justice concerns a social and political life under common rules and policies, and this requires significant decoupling of personal convictions about morality from the rules and policies of our common social and political existence. Kant ([1797] 1999: 116 [§43]) understood the state of nature as one in which each claims “the right to do what *seems just and good to him*, entirely independently of the opinion of others” (emphasis added). In such an apolitical condition, each can simply insist on following her own judgments, and can even insist that all others do as she says. But unless she gathers great force on her side, others will not obey, for their moral judgment leads them in other directions. Kant ([1797] 1999: 116 [§43]) believed that such a condition of pure individual moral guidance would be one of endemic conflict in which people “can never be certain they are secure against violence from one another.” For Kant the state is constructed to resolve this problem of discordant moral judgment; but if each marches under the banner of the Political Authority of Moral Conviction, the state becomes simply a site of our conflict, not its resolution.

2.2 THE NORMATIVE AUTONOMY OF POLITICAL JUSTICE

The social contract tradition always recognized that moral judgment is an exercise of private reason and, consequently, widespread and intractable dispute about the claims of morality are inevitable. Hobbes’s ([1668] 1994: ch. 18, ¶1) preferred solution is as unappealing as it is elegant: to nominate the personal reason of one of us as the mark of right reasoning, and to “*authorize* all the actions and judgments, of that man, or assembly of men, in the same manner, as if they were his own.” The idea of accepting and authorizing *the judgment* of the sovereign

occurs repeatedly in *Leviathan*. It is important that for Hobbes ([1668] 1994: ch. 7, ¶2) while the *will* concerns deliberation about action, *judgment* is “the last opinion in the search of the truth.” Hobbes identifies public reason with the judgment of the sovereign, and so the sovereign provides a public determination of the truth, for example, of a claim that a miracle has occurred ([1668] 1994: ch. 37, ¶13). Even “when it comes to confession of ... faith, *the private reason must submit to the public*” ([1668] 1994: ch. 37, ¶13, emphasis added).¹⁸

For Hobbes, because *any* dispute arising from differences in private judgment can lead to conflict, we must always be prepared — on any issue — to take the judgment of the sovereign as the mark of right reason, and so the correct judgment. This requires that each be prepared to abandon acting on her personal judgment whenever the sovereign deems it necessary: “we are not every one,” says Hobbes ([1668] 1994: ch. 37, ¶13), “to make our own private reason, or conscience, but the public reason, that is, the reason of God’s supreme lieutenant, judge.” This sort of radical abandonment of reliance on personal conscience in favor of the sovereign’s is not quite so anachronistic as one might think. More radical theories of democracy, which are attracted to the maxim *Vox populi, vox dei* (“the voice of the people is the voice of god”), advocate a similar deference to public judgment, albeit of the majority. Not much is changed if we add that the democratic process has significant epistemic tendencies to be correct; as long as the epistemic properties of democracy are not so overwhelming that only a rationally flawed person would refuse to change her judgment in the face of its pronouncements, a person would still be committed to taking its output as, for public purposes, the correct judgment even though

¹⁸ Although the sovereign cannot directly command us to believe a proposition since belief is not under the control of the will, Hobbes appears to hold (i) the sovereign has authority to declare public truths from which we are obligated not to dissent; (ii) we can be obligated to publicly affirm these truths; and (iii) the sovereign has authority to shape the environment in which opinions are formed ([1668] 1994: ch. 32, ¶5, ch. 37, ¶13).

her best personal reflections lead her to disagree.¹⁹

Hobbes's view is so radical in the social contract tradition, not because he thinks that a just political life requires abandoning private judgment, but because he insists that one is committed to abandoning private judgment on *any* issue the sovereign decides public judgment is required.²⁰ It is almost always overlooked that Locke agrees with Hobbes that personal moral judgments about civil matters must be excluded in a just political order. He concurs that diversity of private judgment about not only religion, but the dictates on natural law, is a fundamental social fact that must be reconciled with the demands of social order. Peace and justice, Locke ([1689] 1960: §87) concludes, can only be secured by “*all private judgment of every particular Member being excluded, [so that] the community comes to be Umpire[d] by settled standing Rules, indifferent, and the same to all Parties*” (emphasis added). It is the task of government to serve as Umpire — the voice of public reason; it yields a common judgment that provides a definitive, public, understanding of the demands of morality.

It should be stressed that a political justice that requires abandoning private judgment about public morality in no way precludes distributive justice from being part of political justice. If that is what the “umpire” (the sovereign, the majority) decides, then that is what public morality requires. If the political process determines that principle *DJ* is part of *political justice*, then so be it. This view does, however, reject at its very root the Political Authority of Moral Conviction: no private citizen can claim that political justice requires *DJ* because according to her own moral conscience *DJ* is correct. That is precisely the claim that the social contract is

¹⁹ Christiano (2008: 55, ch. 3) and Pettit (2012: ch. 2) each argue that citizens must respect democratic processes as a means of publicly recognizing their equality despite substantive moral disagreement.

²⁰ Cf. Gaus (2015)..

intended to eliminate. More than that, though, on Hobbes's view, should one's private conscience determine that *DJ* is correct and *DJ* deems distribution x to be unjust, while political justice based on public reason declares x just, as a citizen seeking to be politically just one must uphold the public justice of x . Thus we are led to:

The Normative Autonomy of Political Justice: Alf, who believes that on the best view of morality, some distribution x is unjust, can reasonably endorse x as politically just, or just from the political point of view.

Unless the Normative Autonomy of Political Justice obtains, political justice cannot be decoupled from personal judgments of justice. The social contract/public reason solution to the problem of disagreement requires that a reasonable person must be able to admit the normativity of the requirements of public justice, while holding contrary views based on her personal deliberations and her preferred "theory of distributive justice." Yet many will ask: how can anyone coherently conform to such a principle?

2.3 THREE ROUTES TO THE NORMATIVE AUTONOMY OF POLITICAL JUSTICE

2.3.1 Hobbesian Self-Effacing Authorization

As has already been mentioned (§2.2), at the center of Hobbes's account was a contract in which one authorizes another's judgment as if it were one's own. This authorization is self-effacing in the sense that one's own personal judgment about morality becomes irrelevant to political justice. It is important that Hobbes insisted that the sovereign could violate the laws of nature, and a citizen could be correct in her judgment that the sovereign did so ([1668] 1994: ch. 31, ¶7, ch., 26, ¶24, ch. 28, ¶¶22-23, ch. 30, ¶15). But because of the social contract the judgment of the subject has no public standing, and so is no complaint against the sovereign; more than that, the

subject has authorized the judgment of the sovereign on this matter, and so (political) justice demands conformity to (indeed public endorsement of) his decision.

Reasonable people could only be driven into such a thoroughly self-effacing authorization if, as Hobbes appears to insist, it is absolutely necessary for any stable social existence. In the face of the eruption of diverse moral and political judgments and political conflict in the seventeenth century, the only solution Hobbes saw as viable was for each to renounce all implications for political, public, justice of one's personal moral and religious judgments. *Pace* Hobbes, early modern citizens were not prepared to purchase social stability at this price, and, most emphatically, neither are twenty-first century liberals.

2.3.2 Rawlsian Political Constructivism

The power and originality of Rawls's (2005: xlii, 12) political constructivism in his political liberalism project was to seek a distinctively public, political, understanding of justice that was free-standing in relation to the diverse moral views and comprehensive theories of justice.²¹ As Rawls said in his first version of his Dewey Lectures²² ([1980] 1999: 306-7), the aim is to:

search for reasonable grounds for reaching agreement rooted in our conception of ourselves and in our relation to society.... The task is to articulate a public conception of justice *that all can live with*.... What justifies a conception of justice is not its being true to an antecedent order to and given to us, but its congruence with our deepest

²¹ As the reader will have noted, we have included Rawls's thinking under more than one category. This attests not only to the development in his theory over his career, but to the radically different ways in which his theorizing from the same period is interpreted by the philosophical community. We do not seek to resolve these controversies here.

²² *Political Liberalism* was presented as a revised and expanded version of these lectures.

understanding of ourselves and our aspirations, and our realization that, given *our* history and the traditions embedded in *our* public life, it is the most reasonable doctrine *for us*.

We can find no better basic charter for our social world [emphasis added].

The aim is to construct a public conception of justice out of the common elements of the public culture. Unlike Hobbesian public reason, this political conception would be one that we all (or at least the overwhelming majority) could endorse, as it is the view that can be derived from what we share. Thus Rawls does not require us to be nearly so self-effacing as does Hobbes; the public conception is one that, from the public point of view, we all share.

Rawls originally thought that from these distinctively public, shared, materials a public conception of distributive justice could be constructed. Such a political conception has precious little in common with a view such as Cohen's (§1.1.1): it is not seeking to develop the morally correct theory of distributive justice, but one that can serve as the basis of public life and normative order in a diverse society. As is well-known, as Rawls's thinking about this distinctively public, political, conception developed, he became increasingly skeptical that there was a uniquely justifiable public criterion of distributive justice. Given the deep disagreements about distributive justice, his original aim could only be seen as extraordinarily optimistic. Instead of establishing the unique reasonability of his two principles of justice as the criterion of public justice, Rawls ultimately concluded that the public construction identified a family of "liberal conceptions of justice." Although he believed all members of the family issued requirements concerning the provision of resources, the family as such was not committed to any criterion of distribution, though he still believed that his "difference principle" was part of one such reasonable public construction (Rawls, 2005: xlvi-xlviii, 5ff.). It is, though, hard not to be skeptical that in our highly diverse societies the nearly-universally shared elements are thick

enough to build the rather robust political constructions (fair equality of opportunity, the difference principle, and restrictions on advertising!) that Rawls (2005: 365) envisaged.

It is important to stress that not only did the free-standing argument seek to show that endorsement of political justice did not require citizens to be self-effacing, since they concur on the elements of the construction, but, crucially, once they considered their entire set of moral and religious commitments, they would continue to endorse the conception of political justice. At least, he hoped that such an “overlapping consensus,” providing further support for the free-standing political conception, would occur (2005: Lecture IV). Notice that if such an overlapping consensus — in which each continues to endorse the political conception given her full set of moral and religious commitments — occurs, Rawls could establish the Normative Autonomy of Political Morality *without requiring citizens to be self-effacing at all*; they all endorse the political conception while drawing on their full set of moral judgments. This would be an especially happy result; Rawls could avoid both the public moral anarchism of the Political Authority of Moral Conviction (§2.1.1) while avoiding any hint of Hobbesian self-effacement to public reason. However, as some of the current generation of Rawlsians have recognized, if political justice really needs to be endorsed by the full moral and religious commitments of citizens, the prospects of a robust egalitarian distributive liberalism being justified as part of political justice look pretty slim. In the eyes of Jonathan Quong (2011: 167-9), Rawls’s claim that overlapping consensus is required for full justification holds political justice “captive” to those with inegalitarian moral commitments.²³ Quong thus eliminates overlapping consensus as a test for the acceptability of the outcome of Rawls’s free-standing argument from the original position. Quong, then, seems to acknowledge that a liberal political justice with commitment to a

²³ Cf. Rawls 2005: 389.

robust criterion of distributive justice requires many citizens to be significantly morally self-effacing; classical liberal citizens, for example, must set aside their wider moral and philosophical commitments to endorse public justice (cf. Gaus 2012: 7-15).

2.3.3 Convergent Normativity

Quong seems to present Rawlsian liberals, upholding the Normative Autonomy of Political Justice (§2.2), with something of a dilemma. On the one hand, the Rawlsian can stay true to her robust egalitarian theory of political justice (including, say, fair equality of opportunity and the difference principle), but only at the cost of eliminating the idea that political justice must be supported by an overlapping consensus. Thus citizens are required to be significantly self-effacing with respect to their wider moral views: they must set aside their personal moral convictions (including their preferred theories of distributive justice) in order to endorse the normativity of political justice. Quong, as we have seen, takes this more Hobbesian-inclined path. The alternative is to accept Quong's conclusion that the Rawlsian cannot have her robust egalitarianism and overlapping consensus too, but to pursue overlapping consensus. On this view, the aim is to try to minimize the extent to which a political conception of justice requires citizens to set aside their moral and religious convictions when they participate in a common, moral, political life.

The aim of what we might call "convergent normativity theorists" (Gaus 2011; Vallier, 2014) is to show that a very wide range of moral and religious perspectives can converge on endorsing a set of political institutions and basic rules as normatively acceptable ways to live together. Given our moral disagreements, we will not agree on what rules and institutions are best. When one is building a house alone, one can follow only one's judgment about the optimal

house (consistent with feasibility qua budget constraints); but when building a common dwelling, each cannot go about building her optimal house, nor insist that all work together to build *her* optimal house. What we seek is a common structure — there are perhaps many that, as Rawls said, “all can live with” — that all can see as sufficiently answering to their important moral concerns, and which does not violate their moral integrity by insisting that they be self-effacing when deciding on what they can live with. That was always the aim of the social contract tradition: to devise rules and institutions that all could agree sufficiently promote their concerns to make the institution worth the willing endorsement of each. The institution, while not best in the eyes of all, is something each could live with.

This means, though, that an adequate theory of political justice will not present inspiring ideals. It will not be aspirational, or paint pictures of a society with perfect distributive justice — perfect, that is, on one vision. Rather, it will seek to investigate the types of arrangements and structures that allow those in a diverse society to live together in ways that all (or, at least, as many as is compatible with a moral order) endorse as normatively acceptable, a normative structure that allows each to seek to flourish as she understands that protean ideal. We all are free to think through the moral world for ourselves, and our collective political justice should not require ignoring these reflections. But neither can an ordered and cooperative social life exist when each elevates her own “theory of justice” into the authoritative blueprint for all.

Conclusion

More than half a century ago Bertrand de Jouvenel (1956: 139) described “social” or “distributive” justice as the “obsession of our time.” It has certainly been the obsession of political philosophy. For the most part this obsession has manifested itself in rather intricate and

controversial “moral theories of distributive justice” that seek to shape political justice. We have analyzed the many different ways these theories have been coupled with the political, but in our view they all fail to appreciate the fundamental requirement of a moralized political life in a diverse society — that political justice must be significantly autonomous of controversial moral “theories” as well as religious convictions. The moral theorist of distributive justice has far too often taken on the role of the high priest, sending down from her ivory tower instructions for political authority.

Although it is too often — we fear, usually — overlooked, the genius of Rawls was his realization that such moralized political theory is inappropriate as a basis of political justice in our diverse society. His proposal was striking: we must follow the social contract tradition in recognizing the relative normative autonomy of the political, yet we can construct a distinctively political standard of distributive justice that all can endorse. As we have argued, we believe this project failed, and those who appreciate his genius must now choose what to pursue: their devotion to a theory of distributive justice, or the ideal of a conception of political justice that all good-willed, free and equal, citizens can endorse without self-effacement.

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