# Political Constructivism

Peri Roberts

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*Political Constructivism* is concerned with the justification of principles of political justice in the face of pluralism. Contemporary accounts of multiculturalism, pluralism and diversity have challenged the capacity of political theory to impartially justify principles of justice beyond the boundaries of particular communities.

In this original account, Peri Roberts argues that political constructivism defends a conception of objective and universal principles that set normative limits to justifiable political practice. *Political Constructivism* explores this understanding in two ways. First, the author engages with constructivist thinkers such as John Rawls and Onora O'Neill in order to lay out a basic understanding of what constructivism is. Second, the author goes on to defend a particular account of political constructivism that justifies a universal primary constructivism alongside the many secondary constructions in which we live our everyday lives. In doing so, he outlines an understanding of principled pluralism that accepts diversity whilst at the same time recognizing its limits.

This volume will be of particular interest to students and researchers of political theory and political philosophy.

**Peri Roberts** is a Lecturer in the Politics Department at Cardiff University.

# Routledge innovations in political theory

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# 1   Introduction

Political constructivism is a theory that has developed comparatively recently which is centred on a set of ideas primarily about the justification of principles of political justice, and so also about justifying political actions and institutions. Everyday, we find ourselves in situations that require us to justify principles and our actions, either to others or to ourselves. We are faced with questions such as 'Why did you do that?' or 'Was that the right thing for me to do?' or 'Should we have treated those other people in the way that we did?' These questions demand answers that attempt to make transparent the reasons for our actions and principles. In addition, these answers often make claims about what reasons other people have or should recognize. The answers that we give in this questioning process might themselves be open to question, and these further answers may in turn be worthy of examination. A key question for justification is to ask whether this regress of questions ever comes to an end or are our reasons subject to an infinite regress of questions and answers and questions again. Justification is usually taken to consist in identifying the stopping point, or foundation, of such a regress, the 'unmoved mover' that anchors a chain of reasons.[1] This foundational reason is regarded as an 'unjustified justifier' that necessarily occupies a position of authority in justificatory argument and is therefore the ground of our reasons and justifications.[2] Identifying a foundational reason prevents further questioning and underpins the authority and objectivity of our reasons and principles.

Sceptics about justification usually agree that this is what justification is all about, that a justified reason either is, or is grounded on, a foundation. However, sceptics dispute whether any such foundations are available to us and thus whether objective and authoritative reasons are identifiable. Either, they argue, the regress is infinite (so that it is always open to significant question whether and when something counts as a reason) or the chains of reasoning stop in different places for different people (perhaps dependent on subjective tastes, beliefs or experiences or perhaps on the perspective of a certain society, community or culture). These positions frame some of the central questions for this book: is objective justification possible and, if so, what form does this justification take?

The basic and traditional model of justification is foundationalist. Identifying a foundation for justification involves claiming that some certain reasons have a

special status independent of further consideration. Foundations are what we check our everyday reasons against to reassure ourselves that our actions and principles are justifiable. The foundational reason functions as a sort of 'moral fact' that can be pointed to in order to verify a normative claim. On this account, when asked 'Why should I limit my actions in this way?' an answer that justifies would show that this is what is required by a foundational principle and that foundational principles provide reasons for everyone. As such, foundations constitute an 'independent moral order' that grounds legitimate normative reasoning and thereby underpins claims about the objectivity and authority of our reasons. A useful and formal statement of the core of foundationalist justification is provided by Timmons.

> If the propositions of a set A of ethical propositions can be justified … then:
> i   there is a subset A* of A such that each member of A* can be justified independently of (i.e., without appealing to) any other member of A;
> ii  all other members of A (all non-A*s) must include in their justification … some member of A*.[3]

For the foundationalist, a principle is justified either if it is a foundation in itself or if it can be grounded in a foundation by some plausible chain of reasoning.

Foundations are often taken to be 'undeniable and immune to revision' as is fitting in their role as the moral facts constitutive of an independent moral order.[4] There have been many suggested foundations for normative reasoning. Foundations for principles of political justice have been variously regarded as intuitively correct, self-evident, appealing to the authority of God, embodying fundamental accounts of human nature, constitutive of the common values inherent in a way of life; or existing in some transcendental or supernatural realm. Examples of prominent types of foundational justification, but by no means a definitive list, might be Platonic foundationalism that justifies principles of justice by reference to an eternal and unchanging set of facts or ideas that are more real than the transient world in which we find ourselves. For Plato, these foundations are the Forms and ultimately the Form of the Good.[5] We are generally more familiar with this sort of foundational account when it is understood in religious terms as an account of the word of God or of natural law. We are also familiar with what can be referred to as economic foundationalism.[6] Here, the foundation is a particular understanding of human nature and the structure of human reasoning and motivation. Reason is understood instrumentally as a tool for the efficient satisfaction of pre-existing and motivating desires or preferences rather than as critically assessing which desires we ought to have. Here, our desires function as a foundation for reasons and justification must be grounded on these desires in order to be successful. Some desires, such as the desire for security, might appear to be motivating for everybody. On this account, perhaps as exemplified by Hobbes, we cannot give reasons for our desires, only for our actions in pursuit of their satisfaction.[7] Desires are the 'stopping points' for chains of justificatory reasons. We are also familiar with cultural foundational-

ism in which the fundamental values of a way of life are regarded as authoritative for members of the associated culture. Actions and principles are justified if it can be shown that they are required by 'our way of life' or by an account of our shared understandings of social meanings.[8]

Each of these foundational accounts of justification identifies foundations as the basis of an explanation of why certain sorts of reasons are objective and thus authoritative for us; they are God's will; we have the relevant desire or we have been born into and shaped by the relevant way of life. Each of these foundational strategies for justification has been subject to long-standing questioning. However, the idea that reasons can be objective at all has also been subject to fundamental examination. Scepticism about the possibility of objective reasons focuses on the partiality of proposed foundations. Sceptics might draw our attention to the many 'cultural anthropologists ready and waiting to unveil exotic tribes and bizarre rituals' in order to question the self-evidence of our intuitions or our confidence in the universality or objectivity of our claims about abstract moral facts.[9] What we regard as intuitive or self-evident may not be as evident to others as it is to us and may fail to exhibit Platonic or theological 'deep connection with the fabric of the universe'.[10] That this is the case explains our widespread experience of disagreement about basic principles, even about those that are supposed to be self-evident. On this account, the partiality of our principles of justice and conceptions of the good is highlighted by our experience of multiculturalism and the normative and political pluralism and diversity that underpin it. Our reasons and principles may come to be regarded as historical artefacts of a local history and a particular way of life.[11] In this way, reasons and justifications are understood to be always partial, always reflecting the local and particular rather than the general and universal. While, strictly speaking, some of these accounts may be structurally foundationalist (they are often forms of cultural foundationalism), they are concerned to undermine the traditional, foundational understanding of objectivity. Instead of objective reasons providing reasons for everyone, reasons can only ever provide reasons for 'people like us' and 'people round here'. The environment for normative justification is always limited by necessary theoretical, practical and motivational limitations on the relevance of our reasoning.

This understanding of reasoning is familiar to us in critiques of universalism from postmodernism and from the mainstream of communitarian and multiculturalist literature.[12] Common to each of these accounts is an understanding that the sources of authoritative reasons are plural and probably incompatible with each other. The argument goes that our continuing experience of pluralism and disagreement implies that it is not possible to subsume these diverse reasons under a single account of reasoning or reasonableness. Reasons are therefore often regarded as incommensurable in that they cannot be either translated into each other or compared by reference to some common value. Pluralism appears irreducible and this in turn implies a broad conceptual relativism (in that reasons and values count as reasons and values only relative to one of a plurality of ways of life or to one amongst several conceptual frameworks, for example).

Irreducible pluralism is considered to undermine any claim that particular principles or reasons might be objective and universal. Claims to have identified universal and objective values are regarded either as justified on the basis of a mistaken overconfidence in the foundational character of what are actually partial assumptions or as not justified at all.

Much of contemporary political theory accepts that the contexts for reflection and action are plural; indeed, pluralism is often regarded as a background condition against which theorists work. However, contemporary theory also witnesses consistent attempts to demonstrate that some sort of universalist account of justified political principle is possible, in spite of a general acceptance of the 'fact of pluralism' and the reasonableness of our disagreements.[13] These accounts have tended to be 'thin universalist' conceptions that try to minimize partial and controversial claims, perhaps by justifying on a thin, rather than a thick, set of universal principles. Although the term thin universalism is Walzer's, which he contrasts with the various 'thick' or 'maximal' cultures we inhabit, his own account is not as useful as we might hope.[14] As is discussed below, in the final chapter of this book, Walzer's account does not justify objective and authoritative universal reasons or principles. Instead, his thin universalism is a matter of the contingent overlap of our extended sympathies, an expression of solidarity firmly rooted in our various maximal moralities. To a significant degree, Walzer's is not an account of universal reasons or justification at all, but an explanation of how it is possible that situated persons might come to identify sympathetically with others who do not, initially, appear to be very much like them.

Constructivism is an alternative account of what a thin universalism might be. Whilst accepting both the fact of pluralism and the reasonableness of disagreement, constructivism continues to be committed to the idea of objective and authoritative justification. Where objective justification has traditionally been foundationalist, constructivism attempts to show that it does not have to be. Constructivism need not reject the possibility of a successful foundationalism but does demonstrate that foundations are not a necessary element in any objective account of reasons and principles. Part of this task involves working out what an appropriate conception of objectivity is where normative judgements are concerned. We might ask if there is something about the circumstances in which persons find themselves, in the relations between them and in the way they reason practically, which enables us to regard objective standards for normative judgement as a human construct.[15] As will become clear, in exploring these possibilities, constructivism will draw heavily on an everyday understanding of objectivity as involving unbiased and impartial universal reasons for everyone. Constructivism argues that at least some universal reasons of this sort are justifiable. In sharp contrast with the perspectivism of particularists such as the communitarians and many multiculturalists, which regards a demonstration of pluralism as the end of an argument about justification, constructivists regard pluralism as the start of an argument, as an invitation to reflection and critical reasoning.

Not surprisingly, given its title, this is a book about constructivism in political theory; however, it is about constructivism in two different ways. In part, it focuses on prominent constructivist positions, most notably those of John Rawls and Onora O'Neill, in an attempt to better understand what political constructivism involves. Here, we find that there is a broadly shared account of constructivism's key features and that these can be drawn out in a general account of what constructivism is and of what it entails for the justification of political principles. This book also takes the first steps in a more ambitious project. This involves providing an independent set of arguments, related to but markedly distinct from those of Rawls and O'Neill, which develops and justifies a constructivist approach to principles of political justice in a simple but plausible way. Both of these tasks are important. Although ideas of constructivist justification have been prominent in contemporary political theory for several decades they have been the subject of few extended studies and only a small number of important papers.[16] On the one hand, taking a detailed and systematic look at several constructivist positions is a contribution to this much-needed discussion. On the other hand, developing an independent argument for an innovative constructivist position shapes the way that this discussion must develop in the future.

Chapters 2–4 form a distinct group focused on the constructivism of Rawls's *A Theory of Justice*, on the constructivism of Rawls's *Political Liberalism* and on O'Neill's constructivist writings, respectively. The main body of each chapter is concerned to refine our understanding of what constructivism might involve by examining a prominent constructivist position. This necessitates fairly detailed textual engagement, and there are times when this process is unavoidably pedestrian. However, just as pedestrians make real progress towards their destination with their small steps, so will we. It becomes clear that a general understanding of constructivism develops and that, importantly, something like this basic position holds steady throughout the breadth of both Rawls's and O'Neill's positions.

In *A Theory of Justice*, Rawls outlines a constructivist project where objective principles of justice are justified by subjecting uncontroversial assumptions to reflective examination in an account of practical reasoning based on a conception of reflective equilibrium. Chapter 2 lays out a straightforward and largely mainstream account of Rawls's justice as fairness and shows how its justification is consistent with this basic constructivist account. However, it also becomes clear that Rawls expects too much of his constructivism as he tries to over-determine its conclusions. His constructivism cannot bear all the weight that justice as fairness appears to require.

Rawls attributes this failure to a lack of awareness concerning the extent of pluralism and the implications of this for justification, a mistake he attempts to rectify in *Political Liberalism*. Chapter 3 examines this reworking of constructivism in order to proof it against continued failure. He proceeds by explicitly outlining a conception of political constructivism that draws on ideas fundamental to the public political culture of democratic society as resources available to

constructivist justification, notably ideas of society and the person. This move has encouraged many commentators to regard political liberalism as a local and particularist theory that accepts broadly communitarian limits on justification. This chapter innovatively demonstrates that a continued universalist account of justification can be maintained by Rawls if he recognizes his implicit distinction between two levels of constructivism, a universal primary construction and many local and secondary constructions. It also becomes clear that much of *Political Liberalism*, and the criticism that it draws, is focused on Rawls's account of a specific form of secondary construction suitable for democratic societies and ignores the possibility of a universal primary construction. The chapter concludes by briefly showing that Rawls's secondary constructivism tries, as he did in *A Theory of Justice*, to over-determine constructivist outcomes and so is legitimately subject to criticism.

Chapter 4 deals with O'Neill's constructivism as laid out predominantly in *Towards Justice and Virtue* and *Constructions of Reason*. Her reworking of Kantian philosophy encourages us to focus more closely on a constructivist account of practical reasoning and its objectivity and on its necessary presuppositions. In doing so, we find that not only does O'Neill recognize the distinction between primary and secondary constructivism but also her account of a universal primary constructivism is very similar to the general account we found in Rawls. However, like Rawls, O'Neill may push her constructivism too far. Whilst she outlines a broadly convincing account of the justification of objective principles of justice, her attempts to fill out the space between these principles with an account of virtue may not be so successful.

Whereas Chapters 2–4 make progress towards a general account of constructivism by building from Rawls and O'Neill, Chapters 5 and 6 develop an independent set of arguments for the political constructivist position. Chapter 5 concentrates on developing a constructivist account of practical reasoning, its necessity, authority and objectivity within the constraints of practicality. Chapter 6 deploys this account of practical reasoning to underpin an account of the limits of reasonable practice, a theory of political constructivism. This is used to show that at least some universal principles of political justice can be justified and goes on to explain how these are related to the many secondary constructions that are the contexts for our everyday lives. It becomes clear that, rather than pluralism setting limits to the scope of principles of justice as many have argued, primary constructivist principles of justice set the limits of a justifiable understanding of *principled pluralism*.

As well as the usual thanks to family in the development and writing of this book, I have incurred several further debts of gratitude that demand recognition. First, I must thank Mark Evans and Roland Axtmann of Swansea University's Department of Politics and International Relations for allowing me the use of their facilities in 2006. I would also like to thank Cardiff's School of European Studies, specifically David Boucher and Paul Furlong, for arranging some very necessary research leave. I must acknowledge with gratitude the continued encouragement of Mike 'Hong Kong' Foxy, a number one super guy. Thanks

# 2 Constructivism and *A Theory of Justice*

Rawls's *A Theory of Justice* is an important constructivist response to a concern with pluralism. On first reading, this may not be immediately obvious as his explicit intention is to provide a systematic alternative to the dominance of utilitarianism as the moral doctrine forming the basis of a constitutional democracy. Dissatisfaction with utilitarianism is most often expressed by pointing out the many ways in which its conclusions appear to directly contradict common moral sentiments or intuitions; that it cannot provide a satisfactory account of basic rights and liberties, that it does not take seriously the claim that we all lead separate lives and that we should therefore not be sacrificed for the benefit of others, that its characterization of the good is overly simplistic, for example. Rawls takes our moral intuitions very seriously. If a principle consistently contradicts our intuitions, then this is a good reason to look closely at its justification. As we shall see, matching our considered intuitions is not what he takes justification to consist in, but his constructivism takes intuitions seriously as starting points for justification. As we shall also see, he does so in a way that avoids regarding these intuitions as foundational.

If we are to understand the justification of our political principles and institutions, Rawls claims that we might think that we are forced into a choice between utilitarianism and intuitionism, the 'doctrines which have long dominated our philosophical tradition'.[1] Utilitarianism, Rawls accepts, forms a tacit, if not always explicitly acknowledged, background against which principles and institutions are justified. Whereas utilitarianism provides a systematic and unified account of moral and political justification, the intuitions opposing utilitarian conclusions are many and varied. We have a range of intuitions about the injustice of utilitarianism, but it is difficult to subsume them in a unified account providing a systematic and powerful alternative to utilitarianism. Intuitionism posits an irreducible pluralism of basic intuitions or first principles that may conflict in particular cases. As we have neither the 'supreme' intuition that acts as an organizing principle nor an obvious set of priority rules that would establish ordered relations between intuitions, each intuitive principle must be regarded as a separate first principle. Different priority relationships between principles could be established by different people accepting different relative weightings of principles dependent on their conflicting interests. In this way, pluralism and

conflict at the level of intuitions are reinforced in a more concrete pluralism and conflict at the level of political and personal relations. It is this political and social pluralism that is understood to underpin the circumstances of justice and for which conceptions of justice propose principles of regulation. This pluralism of its basic principles prevents an intuitionist conception of justice from providing a systematic justification for any particular set of political principles or institutions and therefore prevents it from being a proper and effective alternative to utilitarianism.

Rawls's response to the problems of pluralism and conflict is to propose his conception of 'justice as fairness' as just such an alternative to both utilitarianism and intuitionism. Whilst he does not at this stage describe the justification of justice as fairness as constructivist, he is explicitly motivated by the identification of 'constructive' criteria or principles that would establish the appropriate priority and emphasis between conflicting intuitions.[2] Whereas the plurality of first principles undermines the ability of intuitionism to provide clear guidance in difficult moral circumstances, the aim of justice as fairness is to provide determinate principles with definite priorities established that can in turn provide the necessary guidance despite intuitional and political pluralism. Rawls's constructivism is therefore at least partly motivated by the search for determinate principles in response to moral and political pluralism. It will become apparent that aiming for determinate principles is precisely what endangers the success of that constructivist project.

For intuitionism, the plurality of intuitions as first principles function as a set of independent moral facts that principles must 'match' or 'fit' in their attempt to establish priority rules between them. These moral facts are independent of the rules that establish their relative weighting and therefore hold a special status; we do not establish them but intuit them as independent of our engagement with them. Intuitionism regards these intuitions as foundations that must be accounted for in any acceptable set of principles. In this way, the priority problem can be regarded as a side effect of dealing with the 'complexity of already given moral facts which cannot be altered'.[3] Rather than accepting this foundationalist approach that posits an independent moral order that we must recognize, Rawls takes as his point of departure the central ideas of the 'traditional theory of the social contract as represented by Locke, Rousseau, and Kant'.[4] Just as social contract theorists used the idea of people in a state of nature in the identification of political principles, so Rawls outlines his idea of parties in an original position. As we will explore in some detail, rather than have principles fit a given and independent order of moral facts, 'the moral facts are determined by the principles which would be chosen in the original position' and it is up to the parties to that choice 'to decide how simple or complex they want the moral facts to be'.[5] Rawls appears to be rejecting the foundationalist understanding of moral and political justification altogether. Principles are not to be established by reference to a set of facts with special status; there are no moral facts outside of our justifications.[6] This claim means that we will have to pay particular attention to the way in which Rawls's constructivism outlines an appropriate conception of the objectivity of principles in the absence of foundations. If we begin to understand the

relationship between principles, intuitions and the conception of objectivity integral to Rawls's justification of justice as fairness, we will have made significant progress in our attempt to understand constructivism.

In working through *A Theory of Justice*, we will inevitably concentrate on some aspects of this lengthy book rather than others.[7] We will not systematically engage with the direct argument with utilitarianism, for example (or with the huge volume of scholarship that accompanies it). We will instead concentrate on laying out Rawls's alternative account of the justification of principles of justice and political institutions. Recognizing the successes and setbacks of this account will significantly further our understanding of the possibilities for objective justification beyond foundationalism.

## Understanding *A Theory of Justice*

> The intuitive idea of justice as fairness is to think of the first principles of justice as themselves the object of an original agreement in a suitably defined initial situation. These principles are those which rational persons concerned to advance their interests would accept in this position of equality to settle the basic terms of their association.[8]

As this quote highlights, justice as fairness is initially characterized as having two fundamental parts: first, an interpretation of the initial situation of equality that he refers to as the original position and of the problem of choice faced by its inhabitants, and second, a set of principles that would be agreed to by the inhabitants of that original position.[9] This bipartite division of labour is subsequently supplemented by a procedure that becomes the third part of justice as fairness, the procedure of reflective equilibrium. As we shall see, the idea of seeking reflective equilibrium is an understanding of practical reasoning that instructs us, once the original position has issued in a set of first principles, to check the principles of justice against 'our considered judgements duly pruned and adjusted'.[10] These three parts of the structure of justice as fairness can be roughly but usefully superimposed on the three distinctive 'points of view' within the theory that Rawls draws to our attention in his 'Kantian Constructivism in Moral Theory'.[11] These three points of view are

1    that of the parties in the original position (this corresponds to the initial choice situation),
2    that of the citizens of a well-ordered society (it is for such a society that the parties in the original position are to choose the principles of justice) and
3    that of ourselves considering the basis of a conception of justice (it is us who employ the procedure of reflective equilibrium).

It is these parallel three-way distinctions that will usefully structure our brief but necessary exposition of justice as fairness and that will help us to better understand Rawls's constructivism.

### *The original position – structure and parties*

Rawls is very clear that the original position does not describe a situation in which human beings could ever find, or indeed have ever found, themselves, nor is his description of the parties that inhabit that position ever offered as an account of the psychological or cultural possibilities for actual people. Rather, it outlines a hypothetical or imaginary situation that is populated by hypothetical or imaginary people which, if properly understood, aids in our identification of principles of justice.[12] Rawls argues that we should take the choice made in this hypothetical choice situation very seriously in any critical reflections. However, the hypothetical nature of the original position is often the source of uneasiness, with the broad thrust of Rawls's argument. Someone might feel generally uneasy with the idea of this sort of hypothetical argument in any form, but this uneasiness is misplaced. We are often comfortable with hypothetical argument, especially in moral and political contexts. For example, we think it is a fair move in discussion to ask someone, 'How would you like that if it was done to you?' 'How would you react if you were in their shoes?' 'What would it be like if everybody did that?' or 'What would society be like if our laws were slightly different?' These are ordinary and familiar examples of the everyday use we make of hypothetical argument without discomfort, and we are not at all surprised if we are confronted with these sorts of questions ourselves. Perhaps, rather than this general concern with hypothetical argument, we should be more concerned with Rawls's specific imaginings. As the original position is hypothetical rather than real might Rawls's characterization of this situation and its inhabitants be arbitrary or contingent? Can we imagine just any sort of original position and have it play an important role, or are there particular limitations that make one imagined position better than others? The only way that Rawls can address this concern is to lay out his very specific understanding of the original position and the parties that inhabit it, confident that we can endorse this understanding on due reflection.

The structure of the original position and the description of the parties that inhabit this hypothetical choice situation are inextricably linked.[13] It is in these that what Rawls refers to as the 'main idea of the theory of justice' is laid out; the main idea being that the principles of justice 'are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality'.[14] The structure of the original position outlines an initial position of equality within which the parties (regarded as 'free and rational people') choose principles. Although it is difficult to separate the parties from the conditions of their situation, it is possible to make a few descriptive points.

Rawls makes a range of 'motivational assumptions' about the parties in the original position. They are described as 'rational and mutually disinterested' and as each having their own 'rational plan of life', their own conception of the good.[15] Their rationality is interpreted in the 'narrow' and 'economic' sense of 'taking the most effective means to given ends'.[16] As instrumental reasoners,