POWER IN SOCIAL ORGANIZATION AS THE SUBJECT OF JUSTICE

BY

AARON JAMES

Abstract: The paper suggests that the state is subject to assessment according to principles of social justice because state institutions or practices exercise forms of power over which no particular person has control. This rationale for assessment of social justice equally applies to legally optional or informal social practices. But it does not apply to individual conduct. Indeed, it follows that principles of social justice cannot provide a basis for the assessment and guidance of individual choice. The paper develops this practice-based conception of the subject of justice by rejoining G. A. Cohen’s influential critique of Rawls’ focus on the “basic structure” of society.

If anything is to be assessed and guided according to canons of social justice, it is surely the political, legal, economic, and social institutions of the modern state. State institutions, perhaps along with other major institutions of society, are the paradigm subject of social justice.

It is understandable, then, that state or major institutions have pre-occupied Anglo-American political philosophers. Theorizing first about the paradigm subject of justice is sound methodology. That is not to say, of course, that there aren’t non-paradigmatic subjects of justice as well. But Anglo-American political philosophers such as John Rawls and those under his influence have tended to be uncertain or ambivalent about whether social conditions other than those that impinge directly on the character of state or major institutions are properly assessed according to principles of social justice, in the core sense of “social justice” that applies paradigmatically to the state. Although few would deny that considerations of social justice apply to institutions or practices that include or define the state, such as the state system, the conventions of international law, and practices of “globalization,” liberal political philosophers have
often been silent about the status of social conditions typically found within or across the state or major institutions. For example:

(i) Men commonly sit on a bus bench with arms out and legs spread, without suffering social scorn. Women are expected to sit leaning forward, with knees touching, and arms folded in their laps. If women sit as men do, they are viewed as “loose.”

(ii) The norms of conversational distance in a certain linguistic community recommend standing two feet away from one’s interlocutor in face-to-face conversation between adults. This is recommended unless a person is ugly or unfashionable, in which case one is required to speak at twice the ordinary distance.

(iii) When you and I meet for dinner, we originally agreed that you would cook and I would clean, since you hate cleaning and love cooking, and I hate cooking and don’t mind cleaning. Over time, I clean up less and less well, leaving more and more of a mess for you to clean up later on. Our practice becomes one in which you always cook and I merely help you clean. You often plan to complain, but never do so for the sake of keeping things pleasant.

Although it is natural to speak of social injustice in such social conditions, independently of their relations to state or major institutions, liberal political philosophers have mainly deemphasized them, given them secondary place, or simply set them aside.

The issue whether to speak of justice in such cases can appear to be little more than a “verbal” issue. One may quite naturally say that a competition, social club or network, university, church, school system, hospital, family, or other social practice is “unjustly organized,” and one will be perfectly well understood in calling a deceptive or exploitative action “unjust” (or even in calling a cheating or manipulative man or woman an “unjust person”). Why deny that such talk can be appropriate? If the issue were merely when to use the words ‘just’ and ‘unjust’ then I think wide usage could be readily conceded. The scope of the concept of social justice that applies paradigmatically to state institutions is, however, another matter. The question remains whether or how far this core concept and the principles for its application (hereafter simply “social justice” or “justice”) provide a proper basis for the guidance and assessment of informal or legally optional practices and individual conduct. (I leave to one side assessment of persons.) That is, what forms of human activity, other than state or major institutions, are to be assessed and guided by principles of social justice?

Any answer to this question – any account of the “subject” of social justice – needs to negotiate the opposing pressures of two explanatory requirements. On the one hand, there is pressure toward exclusiveness: in
each non-paradigmatic social context, there will be reasons why the social reality in question does not fit the paradigm, a difference that may appear to render it inappropriate to apply principles of social justice in the core sense of “social justice” applicable to the state. For example:

State or major institutions are centrally defined and command wide compliance. But global and international institutions and practices are decentralized, and (with the exception of the state system) they mainly earn fragile compliance if not limited support.

Coercively enforced state institutions are unavoidable. But participation in social practices sanctioned only by praise and blame is often easy and relatively costless to avoid, and therefore more likely to be fully voluntary.

State or major institutions only exist because people by and large comply with them. Yet, any established institutions will exist much as they do regardless of any one person or action.

An account of the subject of justice must tell us how to treat such dissimilarities. In particular, it must specify some features of state or major institutions that mark applicability of principles of social justice and demarcate the scope of justice according to whether these features or marks are shared. On the other hand, there is pressure towards inclusiveness: the scope of social justice must include the full range of social conditions we take to be socially just or unjust. Here the burden of proof is against any view that would limit the scope of social justice to state or major institutions; we need to include non-paradigmatic cases such as the state system, the conduct of war, and social conditions (i)–(iii), or else plausibly explain why such social realities are only properly assessed according to standards of a different kind.

Liberals have traditionally seen the coercive power of the state as what marks state institutions as a subject of appraisal of social justice. Recently, G. A. Cohen, in his critique of Rawls’ focus on the “basic structure” of society, has argued that this conception of the mark of justice is insufficiently inclusive, that it unduly narrows the range of social realities that can be socially just or unjust. This is quite right in my view. But the upshot is not what Cohen suggests – that the appeal to coercion is fundamentally misguided – but rather that the appeal needs to be made more inclusive. I want to suggest that the notion of state coercion can be replaced or interpreted in a commonsensical and attractive way by the idea, more familiar outside of Anglo-American political philosophy, of power in social organization. I’ll be recommending a practice-based framework with the following broad contours. Social practices are subject
to assessment according to principles of social justice because they exercise forms of power in ways that must be justifiable to each person they affect. But principles of social justice, seen as the terms according to which a particular exercise is justifiable to everyone, cannot directly guide the conduct of individual agents, since the exercise of power in a social practice in never in any particular individual’s control. There must therefore be principles other than those of social justice by which individual agents are to regulate their behavior, and principles of justice must directly imply only that the group of people organized as the relevant social practice is collectively responsible for their organization. State or major institutions are constituted by complex systems of social practices, and so exercises of power in such institutions are subject to principles of social justice. But appraisal of social justice also applies to social practices within, across, or including state institutions, in any context in which the action or behavior of different persons is coordinated in a regularized way, and such coordination wields forms of power in need of justification to each person.

This is naturally called a “practice-based” conception of the subject of social justice, because it limits appraisal and guidance according to principles of social justice to organizational relations between the actions of different persons. That is to say, such principles never apply to or properly guide the particular actions or patterns of action of persons taken by themselves. This limitation to social practices is in accord with John Rawls’ insistence that his Two Principles apply only to the basic structure of society and not to everyday action and choice.\(^5\) It is also incompatible with the main thrust of Cohen’s critique, that Rawls’ exclusion of individual action and choice from the purview of his Two Principles is unsustainable.\(^6\) In defending my practice-based account, I will therefore use Cohen’s critique as my foil. The resulting positive framework will provide a foundation for Rawls’ focus on the basic structure and explain why Cohen’s critique is unsuccessful.

**I. Cohen’s critique**

Cohen’s argument against Rawls’ insistence that his Two Principles apply exclusively to the basic structure of society, and so not to the actions of persons within the basic structure, has two main stages. The first claims that the only hope of restricting the application of the Two Principles to the basic structure is to identify the basic structure with coercively enforced institutions. The second stage raises the cost of accepting this identification, by urging that it ignores forms of social injustice that any theory should take into account.

The first stage of the argument questions what exactly the “basic structure” is supposed to be. On a broad interpretation of the basic structure,
it includes practices that are legally optional, such as much of the internal organization of the traditional family. Cohen claims that once Rawls admits that his Two Principles apply to such practices, he is forced to admit that they are also a proper basis for the assessment and guidance of individual choice. Cohen admits that there is some hope of finding a morally relevant distinction between a practice and the actions that sustain it when the practice is enforced through coercion (although he expresses doubts even about this). But, he argues, when a practice is not sustained by state coercion, it would not exist but for the choices its practitioners routinely make, and in that case, Cohen claims, we cannot appraise a practice as just or unjust without similarly appraising the actions that sustain that practice’s existence.

The upshot, if Cohen is correct, is that Rawls can exclude particular actions from the purview of the Two Principles only if he identifies the basic structure with practices that are enforced by coercion. But, Cohen claims, this narrower specification of the basic structure unduly restricts the scope of social justice. Cohen assumes the plausible claim that there can be genuine social injustice in the internal structure of the traditional family, for example, in its sexist division of labor. On this narrow interpretation of the basic structure, the internal structure of the family is not part of the basic structure, and so the Two Principles (which, again, only apply to the basic structure) provide no basis for taking this injustice into account.

Of course, if the scope of the concept of social justice is ultimately in question, then it is not clear why there should be an issue about how exactly the boundary of the basic structure is delineated. In particular, little turns on whether Rawls treats the family as constitutive of the basic structure. In Rawls’ view, kinship practices are a full fledged part of the basic structure to the extent that they have reproductive and civic educational functions essential for any society’s continuing existence. Feminists often level the charge of social injustice against oppressive familial practices that might exist even when the institution of the family fulfills any such wide civic and educational state roles. Rawls denies that the Difference Principle provides an appropriate standard for state action with regard to the family’s internal structure; but he provides no positive suggestion as to how the appearance of injustice in such structure is to be taken into account. One response to this injustice is to take the scope of the basic structure to encompass both state institutions and the internal structure of any kinship practices, and, contrary to Rawls’ insistence, to allow the Difference Principle as an appropriate basis for the evaluation and guidance of state intervention in families’ internal affairs. But this merely postpones the question whether there can be injustice within the basic structure, however it is construed. After all, if the idea that a society has a basic structure is not to be vacuous, a society must also have
some “non-basic” structures, and there will be a question whether such social structures can be just or unjust, independently of their relations to the basic structure. It will still appear, for example, that there is social injustice in cases (i)–(iii), and Rawlsians will need to take the appearance of such injustice into account.

A severe reaction is simply to deny the appearances and insist that a having just basic structure suffices for having a just society. Rawlsians can also draw the less revisionist conclusion that, because non-basic social structures can be genuinely socially unjust, there must be principles of justice other than the Two Principles, which, unlike the Two Principles, apply to practices within the basic structure and explain how there is indeed injustice there. Rawls himself often seems to suggest that there are various principles of right, some of which might be seen to apply to the basic structure, others of which might apply within it, for example, to the internal structure of the family. Rawlsians can naturally take these as principles of social justice.

The thought is that the Two Principles are appropriate only for a particular social context, and that instead of applying them to other social contexts we can suppose that there are other, more appropriate principles. Thus, the Two Principles can be understood as the constraints beyond requirements of state legitimacy that any democratic constitutional government must meet in order for its distinctive forms of power to be justified to its subjects. The Principle of Equal Liberty constrains the extent to which such a state may wrest control from individuals over their own lives and the extent to which it can discriminate between persons in doing so. Fair Equality of Opportunity limits state power to favor or exclude types of persons from holding offices of increased power and reward, either by discriminating in appointments or procedures of selection, or in depriving groups of prior access to required training and education. The Difference Principle enjoins fair operation in the mechanisms that control the distribution of the general goods realized in a legal scheme by its general coordination of behavior. It constrains the power of the state or political authority to exploit the cooperating activity of particular persons by failing to ensure that they enjoy a fair share of the public goods their cooperation helps to realize. Insofar as there is injustice within the basic structure, however, it is not obvious that these requirements are appropriate. Parents coerce and punish their children. But it is not clear why family life should be subject to precisely the same constraints that limit the state’s activity of coercively enforcing the law against adults. Each form of coercion has its own requirements. Similarly, circles of friends and social networks exercise exclusionary power over non-members. But it is not clear why the specific terms of just social exclusion should be the same as those which apply to the state’s practice of awarding public offices only to persons of certain qualifications. The
state is to exclude people from positions of increased power and reward according to its own appropriate standards of fairness, merit, and utility. Similarly, practices of patriotism, say, of conspicuous flag waving or of muting dissent, can be extremely dangerous; politicians often fuel unjust foreign policy by stoking patriotic sentiment with nationalistic rhetoric and silencing their opposition as “unpatriotic.” Also extremely dangerous are governments that lack a balance of powers among their branches. But it is not clear why the requirements of justice for practices of patriotism among citizens should come to anything like the requirements of justice for major state institutional organization. The design of government is subject to its own standards of due care.

What we can say in general about principles of social justice is, first, that their subject is always some social practice, in Rawls’ sense of “any form of activity specified by a system of rules which defines offices and roles, rights and duties, penalties and defenses. . . .” This is meant to exclude activities such as a single individual’s practice of putting pants on with the left leg first, as well as more disciplined activities that are not essentially interpersonal, such as a practice of candle making. The relevant activities are social practices. The practices that comprise the system of legal, political, economic institutions of the state are only one example, as Rawls indicates in mentioning as examples “games and rituals, trials and parliaments, markets and systems of property.” The rules or norms of a practice can be merely implicitly understood by its participants, as in the case of certain games and rituals. And practices can exist even when interpersonal activity is coordinated not by norms but other mechanisms, as with the coordinative mechanisms of markets. What is essential, I take it, is that the activity or behavior of multiple persons is indeed coordinated, and that coordination is not haphazard or irregular, but more or less systematic and regularized. There is perhaps no hard and fast way of individuating social practices, but if our commonsense individualizations are any guide, they are diverse and often overlapping – including the practices that constitute the state and activities of state governance, and, within and across state borders, kinship structures, social networks, circles of friends, cultural traditions, forms of patriotism, various markets and reliance on markets, gender roles, religious life, recreational activities, and much more.

A second general claim we can make about any principle of justice as applied to social practices is that any such principle expresses a term or condition that must be met in order for a particular practice to treat every person as a “free and equal moral person,” or, in other words, in order for a practice’s structure to be justifiable, at least in principle, to each and every person it affects. This is all we can presume about principles of justice as applied to practices, however, because the substantive terms that indicate when a practice meets this general standard may well be as
various as the practices themselves. For a practice will have the status of being justifiable or unjustifiable to everyone only in virtue of the reasons concrete persons could give in favor of or against the relevant coordinative structure, and such reasons will vary depending on what a practice and its circumstances are like. The reasons one could give as a defense of or complaint against a practice may vary according to the aims of coordination as it is generally understood, the limitations of feasibility and practicability in the organizational options, the promises and deficiencies of available alternative schemes, conditions of scarcity or plenty, the degree to which hardships could be foreseen and prevented or known retrospectively and compensated, and so on.\textsuperscript{16}

Cohen seems to assume that Rawls must hold that his Two Principles are the only principles for assessing a society as socially just or unjust.\textsuperscript{17} It is only provided such an assumption that Cohen can treat a restriction of the Two Principles to the coercive basic structure as a restriction on the scope of justice itself. However, Cohen’s argument does address the possibility of applying the Two Principles within the basic structure, and it may not make any difference whether the principles of justice in question are the Two Principles or any of a plurality of practice-specific principles. This is the stage of Cohen’s argument at which he doubts that principles of justice could be applied to informal practices without also being applied to the actions that constitute or support those practices (again, because those practices would not exist but for their supportive actions). It is this consideration that must bear the weight of Cohen’s critique. If Cohen is mistaken that a distinction between principled assessment of practices and principles assessment of actions is only plausible, if possible at all, in cases where compliance with practices is extracted by coercion, then his critique loses its teeth. He will not have undermined the possibility that various practice-specific principles apply both to the basic structure and to legally optional or informal practices within it, but not to individual choice.

I will now argue that principles that apply to the structure of a practice are not a proper basis for assessing the choices or actions of individuals. I assume that an agent’s choice or action can be assessed under a principle only if the agent could possibly have regulated or guided his or her choices according to that principle. What I will show is that principles that apply to the structure of a social practice cannot have this guiding or regulatory role for an individual agent.

\section{II. Individual choice and its guidance}

A practice-based conception implies that what is to be appraised according to canons of social justice is some way people are organized, not any

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particular action taken by itself. A particular action can, however, be
guided and assessed according to principles of a different moral kind. In
the case, say, in which one is faced with the choice whether or not to com-
ply with a practice, that the decision will not be based on principles of
social justice, properly speaking, but on principles with regard to our con-
duct within just and unjust practices or structures. These are principles
that tell us not when the structure of a practice is just or unjust, but how
situated persons should act given that a just or unjust social structure is
in place – that is, when and how far some agent should comply, whether
he or she should ignore a practice or seek to undermine it, whether he
or she should initiate a new practice instead, and at what cost. An exam-
ple is Rawls’ “natural duty of justice,” the duty “to support and to com-
ply with just institutions that exist and apply to us,” and to “further just
arrangements not yet established,” at least “without too much cost to
ourselves.” This principle (or family of principles) concerns our relation
to practices, but it is not a principle of justice according to the practice-
based conception. It is no different in fundamental status from principles
that apply in the absence of regularized interpersonal coordination, such
as principles that specify duties of mutual aid between individuals who
interact only upon chance encounters.

The question is of course why principles of justice should be thought
to have a role different from principles that apply to the actions of indi-
viduals. In general, the answer is that each kind of principle entails a dif-
f erent kind of responsibility. It will be the individual responsibility of each
person to govern him or herself by the “principles of individual right” that
apply to his or her conduct. But the structure of a practice cannot be
entirely any individual’s responsibility, since the character of regularized
behavior within a group is not something over which individual agents
typically have direct control. This is not to say that the organization
of a practice is no one’s direct responsibility. Rather, it is, in the first
instance, the collective responsibility of all those organized into a social
practice to bring their organization into conformity with the relevant
principles. It is only the individual responsibility of any particular member
of the collectively responsible group to change a practice depending on
his or her position and powers within the social structure. A group of
people presumably will never have a locus of consciousness that can, in a
single mental act, bring its organizational structure in accord with prin-
ciples of justice as a flesh and blood person might regulate their behavior
according to a principle. But this is not to say that actual groups are
never collectively responsible. It is enough for an appropriate form of
collective responsibility, I take it, if the behavior of a set of agents is co-
ordinated and the group can, over time, change the pattern of coordination.
In that case, the group can be said to have a responsibility to adjust its
organization in accord with justice’s demands. The role of principles of
justice is to provide a common reference point for evaluating a practice, which may coordinate and empower many different individuals’ efforts of reform.

Principles that apply to the structure or organization of a practice can indirectly contribute to the guidance of individual action. When one needs to know how to vote, what to protest, what laws to legislate – when it is one’s duty as an individual to promote the justice of some practice, on some occasion – one of course needs to know what the relevant principles of justice require. Here principles of justice guide indirectly: one is guided directly by principles that tell one to vote, protest, or legislate with justice in mind. What principles that apply to the structure of a practice cannot do is directly provide a basis for the guidance and assessment of individual conduct within a practice, whether action of compliance or resistance.

In general, principles of justice alone are not sufficient to directly guide the particular actions of individuals, because an agent’s relying on such principles alone does not indicate what she is morally required or permitted to do. This is for at least two reasons.

The first concerns the fact that agents are not necessarily required to resist an unjust practice. Suppose that the present practice of driving automobiles is unjust because the resulting pollution irreparably degrades the environment; the immediate benefits of driving, let us say, do not justify the practice in the face of the serious costs to either non-polluting groups or the next generation. Now, one might be required to stop driving when the cost of getting by without a car is tolerably low, because most others are also willing to hang up their keys, make workplace and lifestyle changes, and rely on alternative modes of transportation. But to hang up one’s keys while most others clutch theirs would be extremely costly for most people, so it is not something most people are required to do. Perhaps one would be required to incur serious costs in resistance of a practice of slavery, but in the case of driving even small costs of non-compliance may cause one to “suffer for nothing.”

Here the crucial matter is when the expected costs of not driving are sufficiently low such that one is required to resist the unjust practice. But principles of justice do not provide this information. Such principles are sensitive to costs to persons only insofar as these bear on the practice’s being just or unjust. Even when a practice is unjust in part because of the costs it imposes on us, we may have much more to lose in resisting the unjust practice. Individual agents need a basis for taking these further costs into account. Since principles of justice do not provide this basis, it is only provided by principles that concern just and unjust practices. To illustrate the role of such principles with a different example, suppose that an unjust regime will collapse under widespread revolt. Still, a subject of the regime is left with the question, “Must I revolt?” We already know
that the regime violates principles of justice, since it is an unjust regime; it will not add anything to know what those principles require. The question can only be answered by a principle that indicates when the expected costs to the agent of resisting the regime are acceptably low (because, say, massive and peaceful revolution is certain). This is the special role of principles concerning our relation to just or unjust practices.

A further reason that principles of justice are not sufficient by themselves to guide action is that such principles specify requirements no particular person could possibly meet. If a principle of any kind is to guide a particular agent’s choice, it must meet the following condition: when you, the agent, understand what it recommends, taking it, correctly, to require some action of you, it must be in your power to realize what the principle requires. For example, a principle can require you not to murder or not to neglect the needy; but it cannot require you never to cause anyone injury, something that is not always in your power to avoid. However, no one has the power, on his or her own, to meet the demands of justice. To see this, try to imagine that a principle that applies to a way agents are organized is also to guide choices of a participating agent. In that case, it must be in your power, as the agent, to fulfill the principle’s requirements, simply in understanding the principle and seeing how the practice must be accordingly altered. You would have the power to determine the structure of a practice. Since this always depends on what many people do, you would have the power not merely to influence but to determine, at your will, what actions many others perform. But in fact, individuals, by themselves, don’t have any such power. Although the judge, legislator, and non-officials such as the charismatic leader, celebrity, novelist, or editorialist often influence what many people do, they do not determine the structure of a practice independently of what others themselves choose. Except in special cases of brainwashing or hypnotic suggestion and other forms of mind control, no one has power to determine what others choose.

In light of these considerations, what should we say of Cohen’s stated reason for denying that there could be a relevant difference between practices and actions? Cohen doubts that we can distinguish principled appraisal of a practice from principled appraisal of particular actions, because any practice exists only because of its supportive actions. While it is quite true that for any practice there is a set of actions whose non-performance means that the practice would not have existed, there is nevertheless a crucial difference between

-the total set of acts that realize a practice, whose absence means that the practice would not exist,

and,
a *given* act whose absence *wouldn’t* undermine the practice, because the widespread compliance of others is sufficient to sustain it.

Cohen acknowledges this difference in allowing that we may “exonerate” those who participate in unjust practices because of the conditioning effect of widespread compliance or the cost of acting against general expectations. But, as I’ve just argued, attention to this difference has the much stronger implication that principles that apply to practices cannot directly guide individual action, in which case they cannot provide a basis for the assessment of individual action either. First, the power of each agent is limited to the determination of his or her own action. Since no one can adjust the pattern of compliance at his or her will, no one can make it the case, at will, that compliance will not be widespread. So, if there are principles that apply to the structure of practices, there must be other principles — principles concerning our relation to practices — which direct persons’ actions in light of the power persons do enjoy. Second, the fact that agents can’t adjust the pattern of compliance and non-compliance at their will means that they are open, against their will, to costs when there is in fact widespread compliance. But, as I claimed above, only principles concerning just or unjust practices could guide action in such situations, since only such principles tell agents how to act in light of the costs of their options.

**III. The question of rationale**

Cohen has not, then, demonstrated that a practice-based conception is unsustainable. Even so, he has, I think, pointed to something of a lacuna in Rawls’ own position. We said above that any complete account of the scope of our concept of social justice will include a regimentation of various concepts of right or justice. Yet for this it is not enough to simply trace the contours of “ordinary language.” An account of the subject of justice must also resolve a more substantive and largely non-conceptual issue — what might be called the issue of *rationale*. Why is it *ever* appropriate to go beyond speaking of what is right or wrong, beneficent or unlovely, efficient or impracticable and take principles of social justice as the standard of judgment? State institutions warrant such appraisal, not because they are institutions rather than another social form, but because they have *features* of particular importance for us. In that case, any form of human activity that shares these important features will also merit assessment according to standards of social justice. Consequently, the justification for any view about the scope of application of the concept of social justice and its principles — whether it is a view that limits application to the paradigm institutions or one that broadens application to...
other institutions, practices, or particular actions – must take a particular form: it must be a thesis about the nature and scope of this underlying form of importance. As I’ll explain presently, Cohen’s argument displays the fact that Rawls has failed to explain why social practices in general should be thought to have a special or distinct kind of importance, and it poses a challenge to Rawlsians to explain what this importance might be.

Cohen’s skepticism about whether there could be a morally relevant difference between a practice and the particular actions that sustain it is quite warranted within what might be called a distribution-based conception of the subject of justice. According to a distribution-based conception, what is fundamentally just or unjust according to a principle of distributive justice is the state of the world with respect to the distribution of benefits and burdens among persons. Rawls’ Difference Principle, on such a conception, is seen as claiming that the state of the world with regard to certain benefits and burdens is just if any only if inequalities are distributed so as to be of the greatest possible benefit to the worst off person. The status of the major institutions of society, or its basic structure, then turns on its relation to the just distribution: the basic structure is just if it realizes the just distribution, and unjust if it fails to do so. Supposing that a distribution-based conception is correct, Cohen’s argument can be seen as the claim that, since institutions are subject to assessment as just or unjust simply because they have a propensity to promote or hinder the realization of the just distribution, any form of activity with this propensity is also subject to assessment as just or unjust. Then, not simply social practices such as kinship practices, but also particular actions such as buying a fuel-consumptive car or writing a check to aid the destitute will be just or unjust, because such forms of human activity commonly determine whether an equal or unequal distribution is realized.

Rawls’s own conception is not distribution-based, but practice-based, which means that there is no clear argument that individual choice must fall under the purview of principles of justice as much as institutions and practices. For Rawls, since justice is fundamentally concerned with the structure or organization of some informal or institutionalized joint undertaking or collective activity, it is not so concerned with the distribution of benefits and burdens among persons as such. When the terms of justifiability include distributive requirements, as the Difference Principle does, how relevant benefits and burdens are distributed is at most an indicator or signal of something else. We can say that inequality that violates the Difference Principle is socially unjust, but it is socially unjust only because it implies, under the circumstances, that the basic structure cannot be justified, for potentially many and various reasons, to the particular persons who wind up with lesser shares. The fundamental injustice lies in the faulty organization of the practice, in the fact that
the practice violates the terms according to which its organization is justifiable to each person.

In other words, since Rawls does not believe that the mark of justice in human activity is its propensity to change the distribution of benefits and burdens among persons, he can admit that particular actions often affect the distribution of benefits and burdens without thereby admitting that they count as socially just or unjust. But even if Rawls is not committed to including particular actions within the scope of justice for the specific reason Cohen seems to think he is committed to this, Rawls may be so committed for some other reason. What Cohen’s critique has exposed is that Rawls has never fully explained why he isn’t so committed. Rawls characterizes the basic structure as having a complex role of setting terms of cooperation, coercing, pervasively affecting life prospects, and regulating inequalities that arise even from free and fair transactions of individuals that they, by themselves, cannot foresee or otherwise be expected to prevent.25 It is by appealing to this complex of functions that Rawls asserts that his Two Principles apply only to the basic structure.26 Yet, none of the basic structure’s characteristics, so specified, could be what distinguishes the basic structure from particular action, since each characteristic can be and often is shared by what people do to or for each other. The basic structure sets terms of cooperation; but people manage to cooperate by themselves. It coerces; but so do bank robbers. It has pervasive effects on life prospects; but so do gender expectations.27 Rawls claims, plausibly, that unjust “background inequality” will arise however an individual might feasibly or reasonably act on his or her own. But many persons, working together, might greatly reduce if not eliminate such inequality over time if informal norms and expectations coordinate their career choices, wage bargaining, consumption, and giving.28

Now, for the reasons provided above, such considerations do not show that Rawls’ Two Principles must apply to individual choice. My discussion thus far can be summarized in the claim that the Rawlsian position has a two-stage structure. The first stage explains why any practice is the subject of justice by indicating how all practices matter distinctively as compared to the actions of individuals. This is only supposed to explain why a given practice is subject to some principles of social justice or other; it is not to say that any particular principles apply. It is at the second stage that Rawlsians will claim that certain principles apply to certain practices, for example, that the Two Principles apply to the basic structure of institutions. Here the basic structure is not the sole subject of social justice, but rather especially important among various practices (as is implied when Rawls calls the basic structure the “primary” subject of justice29), for the several reasons Rawls provides. None of these ways in which the basic structure is of particular importance among practices must explain why the Two Principles do not apply to particular actions.
At this second stage the basic structure’s relation to individual action is irrelevant. All Rawlsians must show is that the basic structure’s importance is distinctive as compared to other practices.

What Cohen’s argument does bring out is that Rawls, in his preoccupation with the basic structure, has never filled out the second stage of his practice-based conception of the subject of justice. Rawls has never addressed the issue of rationale: he has not identified the form of importance characteristic of social practices in virtue of which we treat the class of principles for their guidance and assessment as a class of principle of a special moral kind. In the remainder of this paper, I explain how this lacuna in Rawls’ account can be filled by appeal to the notion of power in social organization.

**IV. Power in social organization**

Consider several ways the state exercises power. There is little point in having a state but for its **creative power** to realize, through the creation and facilitation of coordinated action, various goods that are otherwise unavailable – goods such as protections, freedoms, all-purpose resources, ease of coordination, and increased efficiency. Yet the state’s exercise of creative power is largely centralized, in a system of legislative, judicial, and administrative bodies, and, being generally unrivaled, it enjoys *de facto* jurisdiction over other ways people might conduct or organize themselves, in the name of a right to non-interference from internal and foreign powers. The state therefore enjoys several more specific forms of what might be called **power as control**. In coordinating action through the enforcement of laws, it exercises **behavioral control**. It penalizes with fines and sentences, physically constrains with jails and psychiatric wards, and its police and military commit acts of violence. The standing threat of penalty, constraint, or violence coerces even those who would otherwise willingly respect the law. The state, in defining the terms of coordination in one way rather than another, also exercises what might be called **exclusionary control**. The state determines who has access not simply to highly desired roles such as offices of authority but to positions of most kinds, including that of being a voter, student, guardian, employer or employee. It also enjoys substantial **distributive control**. The state determines the costs and rewards of participation in any particular role, and so the distribution of benefits and burdens of coordination generally. Finally, the state creates or exercises what might be called **dangerous power**. Officers readily abuse or usurp the prerogatives of positions of increased power and reward required for state operation, as power charms even the most high minded into corruption. Even when policy is well intentioned, it often imposes unforeseen hardships, which either remain unrecognized or become known but can scarcely be redressed. In
other cases the detriment is foreseeable and avoidable, but political bodies are hampered by the conundrums of collective will and judgment. Even when hardships are widely seen as unnecessary and unjust, institutions are typically slow to reform, and so disposed to perpetuate mistreatment.

While state organization is in many ways unique, other ways behavior can be regularly coordinated among a group of people involve the exercise of similar forms of power. Most any kind of social organization has its point only because coordination has creative power to realize goods that are unavailable to persons acting on their own. When you cook and I clean, we each get to both eat and have the kitchen clean in return for doing something we can tolerate. A group’s adherence to norms of etiquette co-ordinates expectations and minimizes personal offense. Unionizing gives workers clout. Voting as a block allows us to swing the vote’s outcome.

While the state claims an exclusive right to the use of violence, it is hardly unique in its use of collective behavioral control. Religious cults control their members though threats veiled in general admonition and stories of past punitive action. More generally, coercion, whether used by the state or a religious group, is simply a means to power as control, a means to collective power over particular persons or outcomes that affect them. Although a state coercively enforces the centralized definition of social roles in order to have exclusionary control over who can occupy social positions and distributive control of what benefits and burdens fall to participants, neither form of control requires coercion. A hyper-cooperative society would enjoy similar powers, even if most people comply out of good will, and even if the terms of cooperation are not centrally administered but set by social expectations formed through tradition, common sense, and familial or tribal adjudication. The group’s definition of social roles, over time, would distribute social goods among participants, for example, in assigning fair or unfair shares of labor to women. And it would determine, fairly or unfairly, who is included or excluded from particular positions or the social scheme as a whole, for example, by demonizing the disabled, or banishing the abnormal.

An organized group does not have to constitute a society to exercise similar forms of power as control. An airline flight attendant who does not report co-workers that derelict their duties, but who would readily do so but for the real possibility of being ostracized, is not obviously being coerced, let alone threatened, by his colleagues. Most attendants will shun a “snitch” simply out of unreflective distaste, not for the purpose of social control. Yet the ostracizing group, in raising the cost of conscientiousness, exerts what is for the conscientious attendant a kind of control over his options and choices. We find control in its specifically exclusionary form on a small-scale in schoolyard cliques, business and academic networks, and neighborhoods, all of which exist only insofar as some are excluded from association. Any communities offer or refuse membership...
based on implicit standards of worthiness, normalcy, and sanity. We find control in its specifically distributive form in sexist dating practices. Women are discouraged from dating substantially younger men, while men of comparable age are permitted to and even rewarded for dating much younger women. This places upon women a greater burden in the selection of partners.

Finally, though operations of the state are particularly perilous, any group, in being organized, lays hold of dangerous power. Organizing, even in loose forms, is often an ultra-hazardous activity, not unlike rearing vicious dogs, or operating heavy machinery in public spaces. In “slam dancing,” for example, participants aggressively and indiscriminately bounce against one another with raised elbows in a small area, which tends to injure participants and bystanders alike. Similarly, the flight attendants’ practice of ostracizing snitches makes attendants more likely to violate flight regulations and jeopardize flight passenger safety. On a larger scale, the markets that emerge from the coordination of particular exchanges can imperil access to life-sustaining goods. This is the case, for example, when floods make rice in a rural community scarce, and famine ensues because the rice-dependent poor can no longer pay its vaulted price.

In all of the above cases, the behavior of many different agents is willingly or unwillingly, consciously or unwittingly, coordinated in a regular way, into a social practice. In each case, it is the activity of the group as a whole, independently of the activity of any of its particular members, that creates the possibility of exercising any of the above forms of power in some specific way. Any such exercise of power is created or exercised by the structure of coordination, and, as explicated above, the structure of coordination is never subject to the will of any particular agent. In other words, healthy adult persons have various powers to directly regulate their behavior – capacities to regulate their attitudes, words, and bodies according to their judgment, and, through such regulation, to manipulate instruments and their environment. When a group of agents is organized as a social practice and exercises a form of power, no particular agent has power to directly regulate the structure of coordination and the way in which the relevant form of power is exercised. Even in the case of the state, officials such as legislators, governors, or presidents have limited discretion over the state’s exercise of power, and they have any discretion at all only because a large number of agents are coordinated into patterns of deference, responsiveness, and so on.

Here, I suggest, we find an answer to the question of rationale. The question is why we might treat principles for the assessment and guidance of social practices as principles of a special moral kind. We have said that principles of social justice express conditions that must be met if some social practice is to be justifiable to each person it might affect. The question, then, is why the occasion for justification to persons in the context
of a social practice might have a distinctive kind of significance in virtue of which a distinct concept of right is appropriate. In response, we can say that the occasion for justification of a social practice to some person is, in part, that he or she is or might be subjected to some form of power – whether coercion, constraint, exclusion, inadequate or unequal provision, or inadequate precaution or protection. What distinguishes the occasion for justification in being subject to a form a power in the context of a social practice from the occasion for justification in being subject to a particular reckless driver, careless doctor, threatening or overpowering person is that no particular person can directly regulate how the relevant form of power is exercised. The reckless driver, careless doctor, threatening or overpowering person can ordinarily directly regulate his or her behavior, and so we can appropriately imagine someone addressing such a person in a request for a justification for his or her activity. But since no particular person can directly regulate the organization of a state, social clique, dating or market practice, an imagined request for a justification of an exercise of power in the collective activity cannot be addressed to any particular person. Someone subject to an organized group’s exercise of power must demand justification from the organized group as a whole, from the set of agents involved in social practice who are, collectively, in a position to change the structure of coordination. For the purposes of making and assessing such demands, we have a special category for the moral assessment of social practices, the category of social justice.

In other words, we would have little use for the concept of social justice as a special moral concept under certain counterfactual conditions. Suppose that behavior is not in fact coordinated in regular ways, say, in a Hobbsian “state of nature.” Then, there is no occasion for speaking of social justice or injustice. Or suppose that coordination does exist, but a single person burdened by some exercise of power in the relevant social organization has direct regulative control over the structure of coordination. Then, as far as his or her burden is concerned, he or she can at most be charged with imprudence. Finally, suppose that a group of people constitute a single locus of consciousness that has direct regulative control over the structure of organization among many particular sub-agents. Then, a complaint by someone burdened (say, some outsider) would at most be the kind of complaint or demand for justification that one person can make against another, even in the absence of social coordination.

We said above that any account of the scope of our concept of social justice that applies paradigmatically to state institutions should include a broad range of social conditions aside from state institutions. The present suggestion is inclusive in this way. All it requires for appraisal of social justice is that the behavior of more than one person is regularly coordinated and that such coordination creates or exercises some form of power that is in need of justification to some person. What the present
practice-based conception precludes, as emphasized above, is application of principles of justice to particular actions. To be sure, we sometimes speak of “unjust action,” and I take it there is little issue as to whether this is appropriate. When superior bargaining position, physical or intellectual superiority, or favorable circumstances allows one person to coerce or exploit another, and when the agent could not possibly justify his or her action to the person coerced or exploited, we can readily admit that the action is “unjust.” It is unjust in the sense of being unjustifiable. This admission is compatible with the present suggestion, because even if the genus “right” is constituted in whole or in part by terms or principles that specify when a relevant form of human activity can be justified to each person it potentially affects, different moral concepts of right may still apply to different species of human activity. I am suggesting that it is not arbitrary to treat the concept of social justice, seen as one such concept of right, as applying to the collective activity of being organized as a social practice, but not to the conduct of individual agents. The suggestion is merely that principles of right that apply to the conduct of individual agents are principles of a different moral kind.

The main reason such regimentation is non-arbitrary or well-motivated is the reason provided above, that the exercise of power in a social practice creates a special occasion for justification, because such an exercise of power is subject to no particular person’s direct regulative control. But we can confirm with examples the thesis that particular actions do not fall under the concept of social justice that applies paradigmatically to state institutions. In particular, consider two cases in which we are initially inclined to call action “unjust,” or even “socially unjust,” but matters are clarified by settling on an alternative moral description.

Consider a case in which it is natural to say that actions that comply with and support socially unjust practices are also unjust. We may say, for instance, that it would be “unjust” to participate in a practice of slavery. But if we insist that such an action is unjust in the same sense as, or insofar as, the practice itself is unjust, then we have to allow the odd implication, in other cases, that such conforming actions can be unjust but morally permissible. For it is very plausible to believe that the wrongness of an action depends on its costs to the agent. Women disposed to traditional intimate relations are not, for example, morally required to spend their lives lonely and miserable when they rightly believe that getting married and having a family in the traditional ways will support romantic and kinship practices that unjustly disadvantage women. Women aren’t simply free from blame, because the burden of non-compliance is very great; they aren’t blameworthy for reluctant compliance because compliance, under the circumstances, is morally permissible. There is a similar difference in concept, at least in principle, in the case of slavery. Arguably, one would always be morally required not to hold slaves even in a society in
which the practice is widely followed and accepted, in part, for the reason that the burden of non-compliance is merely that of passing up a profitable opportunity to save on labor costs. But this requirement holds precisely because such reasons are in play; it is not “unjust” to hold slaves simply because the practice of slavery is unjust.

Consider also a case in which action promotes outcomes required for a just practice. We might say of John Kamm, the American businessman who uses his connections and savoir-faire to win the release of political prisoners in China, that he is deeply concerned to see justice done, and that his actions are “just” actions. This can seem natural because his efforts lead the regime to silence and constrain fewer of its subjects. While Kamm does help to realize a state of affairs that must obtain if the Chinese regime is to be more just, the difficulty is that the regime itself bears the wrong relation to this outcome. Chinese officials release prisoners merely to grant personal favors to businessmen, hoping also to curry favor with the international community, an outcome that makes little difference to whether Chinese state structures are arranged in an unjustly oppressive way. It is for this reason that some human rights groups describe Kamm as engaged in mere “humanitarian” work. It would be odd to call his actions “unjust,” but they are not clearly “just” either (not least because China’s improved public profile may simply facilitate further unjust incarceration).

In closing, let me offer several comments about the role of the notoriously vexing notion of power. In claiming that social practices are important for purposes of assessment of social justice because of forms of power they exercise, I do not mean to deny that there can be many reasons why social conditions are socially unjust. The character of interpersonal coordination, insofar as it bears on social justice, is of course significant for very different reasons in the context of tax law, elections, militaries and police forces, patriotism, wage negotiation, ordinary exchange of goods and services, family life, forms of personal relationship, etiquette, codes of dress, and personal ornamentation. What is wanted is not a substitute for the many reasons such coordination matters, but rather an identification of a more general kind of importance that sets a background for the many ways coordination ordinarily matters for us. This is the role of the various forms of power mentioned above. They provide the general occasion for speaking of social injustice in a practice, but there may be many and various reasons why a practice and its creation or exercise of power can or cannot be justified to everyone it affects.

I have appealed to the idea that there are “forms of power” that a practice may exercise without offering a precise specification of the relevant concept of power. One might object that I have thereby dodged the task of identifying the unified form of significance that corresponds to our concept of social justice, which, in this case, would require settling on
power of a specific form. 31 Though such a specification would make an account of the subject of justice more interesting, it is, I take it, unnecessary for present purposes. There is no need to decide with regard to state power whether the mark of justice is its consistent use of violence, its standing coercive posture, or its potentially non-coercive exclusionary and distributive control. Each of these is naturally described as a form of power and a matter of social justice. If this is so despite their important differences, then there is no need to insist that practices within, beyond, or across states share power of any one kind.

One might also object that without a more specific and unified identification of the nature of power in social organization the account of the subject of justice is excessively vague or indeterminate. This would be a serious objection were determinateness crucial, and for some purposes a highly articulated conception of power may be required. 32 Our aim, however, is to identify a general form of importance that provides the basis for our development and maintenance of a certain special moral category for the assessment of practices. This limited aim would not be well-served by the present suggestion if the concept of social justice were highly precise. It would hardly be progress to put forward a vague form of importance in order to underwrite a highly precise moral concept. However, even if particular principles of justice may impose highly specific requirements, I take it that, as with most any evaluative concept, there is nevertheless substantial indeterminacy of application in our general concept of social justice. For present purposes, the idea of power in social organization and the special occasion for justification it creates needs only to be as articulated or unified as our core concept of social justice itself. What appeal to the idea of power in social organization does is add a substantive characterization of the general mark of importance corresponding to appraisal of social justice across diverse contexts. But it does so, I submit, without adding indeterminacy that does not already exist in the concept of social justice itself. The call for specificity is a call for specific principles of social justice, not a call for a specific account of the kind of importance with which all such principles are concerned.

V. Conclusion

There are perhaps various reasons why Rawls and political philosophers under his influence have been reluctant to admit that informal practices are a subject of justice in their own right, independently of their relation to state institutions. It may have appeared that this would detract from the state’s particular importance, or that the state would be licensed to intrude into our lives, or that we, as individuals, might be saddled with the state’s responsibilities. The practice-based framework I have described
shows that there are no such implications. State institutions may be more important than other practices, it may be unjust for state institutions to eliminate injustice in informal practices, and any principles that apply to state institutions cannot be applied to individual conduct. Those who otherwise find much of their concerns of justice spoken for in Rawls can direct their concern and attention, without reservation, to the practices that pervade our informal social lives.33

Department of Philosophy
University of California, Irvine

NOTES

1 The trend was set by John Rawls, who in A Theory of Justice (Cambridge, Mass.: Harvard University Press, 1971) doubly restricted his attention to (i) a single society and (ii) the “basic structure” of institutions within a society.


Rawls could propose to revise our concept of social justice; he could propose that we henceforth refrain from speaking of justice or injustice in internal family structure. But, as Cohen points out, this proposal conflicts with one of Rawls’ stated reasons for the basic structure’s distinctive importance – namely, that it has pervasive effects on life prospects. Instead of excluding the family, this reason includes the family. For kinship structure and the basic structure are often fateful for life prospects in many of the same ways. Cohen (1997) “Where the Action Is: On the Site of Distributive Justice,” pp. 21–2.


This is the suggestion made by Susan Moller Okin (1989) Justice, Gender, and the Family, New York: Basic Books.


For Rawls, the test for general justifiability is what parties to a suitable original position would accept. An alternative is Scanlon’s requirement of “reasonable unrejectability.” T. M. Scanlon (1998) What We Owe to Each Other, Cambridge, Mass.: Harvard University Press. Neither constructivist interpretation is essential for a practice-based conception of the subject of justice. One could also be a Platonist or intuitionist with regard to truths about when practices are justifiable to each person.

A master principle of justice may nevertheless apply to all practices. In that case, one might insist that Rawlsians need to explain why they insist on a variety of first principles. But this ignores the presumption against a master standard within the Rawlsian conception of what a principle of justice is. For example, to defend a requirement on all practices to promote an equal distribution of resources or well-being one would have to show that this follows from the various reasons concretely situated people have for and against particular organizational forms, and that such reasons in the range of cases that need to be explained cannot be accommodated with subject-specific requirements. I doubt that such a case would be compelling. At any rate, within the present Rawlsian framework, the case must be made before acceptance of a master standard is necessary.

It may be that Cohen makes this assumption because he conflates different principles of application for the same concept of justice with different “senses” or concepts of justice. See, for example, Cohen (1997) “Where the Action Is: On the Site of Distributive Justice,” p. 22.


This is one interpretation of Rawls’ claim that citizens have “the capacity to understand, to apply and to act from . . . the principles of justice.” John Rawls (1980) “Kantian Constructivism in Moral Theory,” The Journal of Philosophy 88, p. 525. This is weaker but to my ear no less natural than the interpretation of Rawls Cohen offers at one stage of his critique – the interpretation that people apply principles of justice “in their daily life,” outside of special

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This is abundantly clear in Rawls (1999) The Law of Peoples.

Rawls says, “Unless we are prepared to criticize [the basic structure] from the standpoint of a relevant representative man in some particular position, we have no complaint against it.” Rawls (1971) A Theory of Justice, p. 88.


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REFERENCES


