

A NON-IDEAL THEORY OF JUSTICE

By

Marcus Samuel Arvan

A Dissertation Submitted to the Faculty of the

DEPARTMENT OF PHILOSOPHY

In Partial Fulfillment of the Requirements
For the Degree of

DOCTOR OF PHILOSOPHY

In the Graduate College

THE UNIVERSITY OF ARIZONA

2008

THE UNIVERSITY OF ARIZONA
GRADUATE COLLEGE

As members of the Dissertation Committee, we certify that we have read the
dissertation prepared by Marcus Samuel Arvan
entitled A Non-Ideal Theory of Justice
and recommend that it be accepted as fulfilling the dissertation requirement for
the Degree of Doctor of Philosophy

Thomas Christiano Date: 8/14/08

Gerald Gaus Date: 8/14/08

Michael Gill Date: 8/14/08

Date:

Date:

Final approval and acceptance of this dissertation is contingent upon the
candidate's submission of the final copy of the dissertation to the Graduate
College.

I hereby certify that I have read this dissertation prepared under my direction
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Dissertation Director: Thomas Christiano Date: 8/14/08

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SIGNED: Marcus Samuel Arvan

ACKNOWLEDGEMENTS

I thank my mother, father, and brother for their love and support; Thomas Christiano for his guidance, patience, and the lessons I learned from him about how to be a better philosopher and colleague; Gerald Gaus for sharing his understanding of Rawls, and for the mountains of comments he provided me; Michael Gill for his thoughts and encouragement; Mark Timmons for some important advice; L.A. Paul for her work as Graduate Placement Director; the dissertation reading group, particularly Jason Matteson, Annie Baril, William Oberdick, David Speetzen, Nicole Hassoun, and Matt Bedke, for taking the time to read and discuss my work, and for being patient when I gave them “Chapter 1” for the seventh, eighth, and fifteenth times; Lee Shepski for our experience on the job market; Chris Brown for being a good friend throughout graduate school; my commentators (Helena DeBres and David Rasmussen) and audience at the 2007 Eastern Division Meeting of the American Philosophical Association; audiences at the Rocky Mountain Philosophy Conference and Northwestern Philosophy Conference for enduring an early version of Chapter 3; Dan Dennett for getting me started on the road of philosophy, for warning me about graduate school, and for imparting to me the fundamentals and optimistic philosophical outlook that I have carried with me ever since his introductory philosophy class at Tufts; John Hawthorne for reminding me that serious philosophy can and should be fun; Steffan Borge and Alyssa Ney for being good friends and philosophical disputants in my early graduate school years at Syracuse; and, of course, the rest of the Faculty and Graduate Students of the Department of Philosophy at the University of Arizona for the friends and colleagues that they have been over the past seven-odd years. Finally, I thank Maryana for always believing in me, for keeping me well-fed and well-hydrated despite my strong proclivities to the contrary, and for the love and happiness I have been so lucky to have found with her.

I dedicate this work to my family,

George, Julie, and Chris Arvan

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ABSTRACT

This dissertation defends a “non-ideal theory” of justice: a systematic theory of how to respond justly to injustice. Chapter 1 argues that contemporary political philosophy lacks a non-ideal theory of justice, and defends a variation of John Rawls’ famous original position – the Non-Ideal Original Position – as a method with which to construct such a theory. Finally, Chapter 1 uses the Non-Ideal Original Position to argue for a *Fundamental Principle of Non-Ideal Theory*: a principle that requires injustices to be dealt with in whichever way will best satisfy the preferences of all relevant individuals, provided those individuals are all rational, adequately informed, broadly moral, and accept the correct “ideal theory” of fully just conditions. Chapter 2 then argues for the *Principle of Application* – an epistemic principle that represents the Fundamental Principle’s satisfaction conditions in terms of the aims of actual or hypothetical reformist groups. Chapters 3-5 then use these two principles to argue for substantive views regarding global/international justice. Chapter 3 argues that the two principles establish a higher-order human right for all other human rights to be promoted and protected in accordance with the two principles of non-ideal theory. Chapter 4 argues that the two principles defeasibly require the international community to tolerate unjust societies, provided those societies respect the most basic rights of individuals. Finally, Chapter 5 argues that the two principles imply a duty of the international community to ameliorate the most severe forms of global poverty, as well as a duty to pursue “fair trade” in international economics.

INTRODUCTION

Suppose you accepted some theory of justice according to which that some set of conditions, J , is fully just. Suppose next that J could be brought about from actual (i.e. less-than-fully-just) conditions in either of two ways:

Scheme 1: Would impose mild to moderate costs on people (e.g., daily inconveniences, public protests, etc.) over the course of 20 years.

Scheme 2: Would impose severe costs on people (e.g. massive unemployment, poverty, etc.) over the course of only 5 years.

You would presumably want to know whether either, both, or neither, of these schemes is permissible or required by justice.¹ If you lacked this kind of knowledge, you would lack something of great importance. You would know which kinds of social conditions would be fully just, but you would not know how those conditions could be justly brought into existence from the world as it presently is.

It might come as a bit of surprise that contemporary political philosophy is in roughly such a predicament. Political philosophers have defended a variety of “ideal theories” – theories of which kinds of social conditions would be fully just, or at least more just than the conditions in which we find ourselves. John Rawls famously argued in *A Theory of Justice*, for example, that a just society would conform to two principles: a principle of equal basic liberty, and a principle of equality of opportunity that requires society, more generally, to be to the

¹ It seems at least a conceptual possibility that there might be no just ways to bring about an otherwise just end. All paths toward an otherwise just end might impose costs upon people that are simply too severe for any means to that end to be permissible.

maximum advantage of its worst off members.² Robert Nozick argued in *Anarchy, State, and Utopia* that a just social order would be one in which individuals' natural rights were respected by others.³ A variety of human rights theories argue that people have human rights to all sorts of things, such as rights to life, means to subsistence, freedom of speech, religion, association, and often, many other things as well.⁴ And so on. None of these theories include a fully general analysis of what it is just to do, however, in order to bring about the sorts of conditions they describe. On the contrary, a number of important figures in political philosophy draw attention to the fact that they, and political philosophy more generally, lack such a theory. Rawls, for example, draws attention to the idea that a theory of justice should have two parts: a part specifying fully just conditions, and a part specifying how to bring about those conditions. He says,

The intuitive idea is to split the theory of justice into two parts. The first or ideal part...works out the principles that characterize a well-ordered society under favorable circumstances. It develops the conception of a perfectly just basic structure and the corresponding duties and obligations of persons under the fixed constraints of human life. My main concern is with this part of the theory. Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen...[it]

² Rawls (1999a): 53, 266.

³ Nozick (1974).

⁴ See e.g. Griffin (2001, 2008), Nickel (2007), and the Stanford Encyclopedia of Philosophy's entry, "Human Rights," at <http://plato.stanford.edu/entries/rights-human/>.

consists of the principles for governing adjustments to natural limitations and historical contingencies, and...principles for meeting injustice.⁵

When it actually comes to non-ideal theory, however, Rawls only deals with “a few special cases” – the cases of civil disobedience and conscientious refusal – stating, of non-ideal theory more generally, “I shall not attempt to give a systematic answer to these questions.”⁶ Rawls is not the only philosopher to draw attention to non-ideal theory, only to set it aside. Robert Nozick has said, referring to non-ideal theory, “I do not know of a thorough or theoretically sophisticated treatment of such issues.”⁷

It only takes a brief survey of the philosophical literature to see that contemporary political philosophy lacks anything like a fully systematic non-ideal theory of justice. Although some philosophers, such as Ronald Dworkin, have attempted to grapple with a wide range of issues within non-ideal theory, such as the question of how to reform health care and the ethics of affirmative action,⁸ whereas others have attempted to understand the compensatory justice, or how to rectify past injustices,⁹ political philosophy simply lacks any account of the most general principles that ought to govern how we deal with injustice. Philosophers do of course have various moral theories at their disposal, such as utilitarianism, Kantian moral theories, and virtue theories. None of these sorts of theories seem well suited to the task, however (at least without a great deal of

⁵ Rawls (1999a): 216.

⁶ Ibid.

⁷ Nozick (1974): 152.

⁸ Dworkin (2000): Part II.

⁹ See Roberts (2005) for a number of papers on the topic.

development). Relatively few philosophers are utilitarians, for one thing, and it is not clear, on the other hand, how a Kantian theory, or a virtue theory, could resolve important questions of non-ideal theory (it is hard to see how either kind of theory could help us decide, for example, between Schemes 1 and 2 mentioned earlier).

This dissertation aims to rectify this situation. It defends a particular method for investigating non-ideal theory, defends two general principles of non-ideal theory, and finally, applies those principles to some important matters of global/international justice. Chapter 1 argues that a variation of John Rawls' famous "original position" – the *Non-Ideal Original Position* – is, for two reasons, a uniquely compelling method for investigating non-ideal theory. First, I maintain that the Non-Ideal Original Position embodies an appropriate philosophical response to the unusually deep and pervasive disagreements that philosophers have about fundamental issues of non-ideal theory. I argue that because philosophers disagree on so many levels about what is relevant in non-ideal theory, it is reasonable for them to adopt a method that represents persons who accept the correct ideal theory of justice (whatever it might be) as "free and equal" to one another with respect to choosing principles of non-ideal theory. Second, and more importantly, I argue that the Non-Ideal Original Position leads to a *Fundamental Principle of Non-Ideal Theory* that, in virtue of its sheer generality, political philosophers in general should find compelling. The Fundamental Principle of Non-Ideal Theory states simply that we are to respond

to injustice in whichever way will best satisfy the collective class of preferences¹⁰ that individuals would have if each of them were rational, adequately informed, broadly moral, and accepted the correct ideal theory of justice (whatever it might be).

Chapter 2 recognizes that the Fundamental Principle of Non-Ideal Theory raises a number of difficult philosophical questions – questions concerning the nature of rationality, “adequate informed-ness,” morality, and so on. Rather than attempt to provide theoretical answers to these questions – questions that large numbers of other accomplished philosophers have not yet definitively (or in some cases, satisfactorily) answered – Chapter 2 instead defends a purely practical solution. Chapter 2 argues for a *Principle of Application*: an epistemic principle that, or so I claim, embodies the best available method for applying the Fundamental Principle given the very fact that we lack fully satisfactory theoretical answers to the aforementioned issues. The basic idea behind the Principle of Application is that even though we lack theoretical solutions to various problems, we have an adequate enough grasp of the relevant issues to apply the Fundamental Principle with some justified confidence. The Principle of Application, at any rate, instructs us to take the aims of various “reformist groups” – actual or hypothetical bodies of individuals who we have reason to take to be concerned with meeting injustice – to represent the Fundamental Principle’s satisfaction conditions (and therefore, what justice requires), depending on how well those groups satisfy an important class of desiderata.

¹⁰ As readers will see in Chapter 1, I wish to understand this class of preferences in terms of a “social preference ordering”, or a *single* preference-ordering representing the collective “will of the people” (so to speak).

Chapters 3-5 then argue from these two principles to substantive conclusions within the domain of global/international justice. Chapter 3 argues that the two principles of non-ideal theory imply a higher-order human right: the right to have all other human rights promoted, and violations of human rights eliminated or rectified, in ways that conform to the two principles of non-ideal theory. Chapter 3 also argues that this higher-order human right (via the two principles) implies a strong presumption in favor of the priority of two “basic” rights – the rights to life and freedom from severe suffering – over all other rights. Chapter 3 also argues, finally, that the higher-order human right illuminates, and plausibly resolves, some “hard cases” where it is not clear what justice and human rights require. Specifically, I argue, by reference to the Principle of Application, that there are two reasons why justice forbids violating the human right against torture in order to protect the human right to life of even very large numbers of people. I argue, first, that the Principle of Application requires us to judge this case by reference to international law (which forbids torture), as well as (in addition) by reference to the moral *values* of the very people whose lives torture might be utilized to protect. If, as I argue, many people oppose torture in principle – if, that is, many people would not want torture to be utilized to protect their lives (which, I argue, is plausibly the case) – it follows from the Principle of Application that torture is unjust for the simple reason that it undercuts the values, and preference, of the very people it would be utilized to protect.

Chapter 4 then argues from the Principle of Application the conclusion that justice defeasibly requires foreigners to tolerate unjust societies up to the

point that those societies violate the most basic human rights of individuals. My argument for this conclusion is that our best empirical evidence, both historical and in the present-day, indicates that those reformist groups that have the strongest claim to satisfy the Principle of Application's desiderata – “local” reformist groups in unjust societies themselves – tend to prefer foreigners to tolerate their society up to the point that basic human rights are violated.

Finally, Chapter 5 argues from the Fundamental Principle of Non-Ideal Theory to a duty of the international community to ameliorate poverty resulting in great human suffering, and from the Principle of Application to the conclusion that other economic injustices should be dealt with via “fair trade.” I argue that because there is no single reformist group that can claim to best satisfy the Principle of Application's desiderata, only a number of opposing groups, the Principle implies that we have a duty to pursue a *fair compromise* between those groups' aims. I conclude that fair trade practices best approximate such a compromise.

CHAPTER 1

GROUNDWORK FOR A NON-IDEAL THEORY OF JUSTICE

This chapter argues (in §1) that political philosophy presently lacks a “non-ideal theory” of justice – a theory, that is, of what it is for persons and institutions to respond justly to injustices. It then argues (in §2) that due to the nature of non-ideal theory, political philosophers ought to adopt a variation of John Rawls’ famous “original position” – a “Non-Ideal Original Position” – to investigate non-ideal theory. §3 explicates and further defends the Non-Ideal Original Position. Finally, §4 argues from the Non-Ideal Original Position to what I call the Fundamental Principle of Non-Ideal Theory – a principle that not only illuminates non-ideal theory, suggesting further avenues of development, but which also, in virtue of its theoretical neutrality, should once again appeal to liberal political philosophers generally, irrespective of whatever their wider commitments may be.

§1.1. NON-IDEAL THEORY: AN UNDERDEVELOPED DOMAIN OF INQUIRY

There are many “ideal theories” of fully just or legitimate social conditions in contemporary political philosophy. Here is brief sampling of some of the central claims of some of these theories:

John Rawls’ theory of domestic justice: The basic structure of a fully just domestic society would conform to the following two principles:¹¹

¹¹ This is Rawls’ (2005: 5-6) final statement of his principles. See Rawls (1999a: 266) for earlier, and slightly different, versions. Note also that Rawls takes the First Principle to take priority over the Second, and the first part of the Second Principle to take priority over its second part (Rawls

First Principle: Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.

Second Principle: Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.

Rawls' theory of international justice: A fully just international order would be a Society of Peoples: a world of independent liberal-democratic societies and illiberal-undemocratic but “decent” societies that, roughly speaking, respect one another’s autonomy.¹²

Rawlsian-Cosmopolitan theories of global justice: A fully just global social order would conform to global analogues of Rawls’ two principles of domestic justice.¹³

1999a: 53-4, 130-1).

¹² See Rawls (1999b), especially p. 37.

¹³ Although there is some disagreement over the content that the appropriate global analogues should have (because the global order is so different than a domestic society), Beitz (1983: 595; 1999: Pt. III, 2000), Buchanan (2000), Caney (2005), Kuper (2000; 2006), Moellendorf (2002) Pogge (1989: 247; 1994; 2001; 2002: 104-8; 2006), Richards (1982), Scanlon (1973), and Tan

Ronald Dworkin's theory of distributive justice: A just social order would distribute social resources equally among persons against a background of equal liberty.¹⁴

Nozick's Libertarian Theory: A just social order would respect individuals' natural rights to life, liberty, and private property.¹⁵

Desert theories of distributive justice (three variants)¹⁶

Contribution: A fully just social order would reward people for their work activity according to the value of their contribution to the social product.

Effort: A fully just society would reward people according to the effort they expend in their work activity.

Compensation: A fully just society would reward people according to the costs they incur in their work activity.

(1998; 2004) all agree that moral consistency requires applying the original position to the global order and that a global original position as such implies principles reasonably close to Rawls' domestic principles. Of these theorists, Pogge is probably the most cautious, noting, "...it is too early to tell how [Rawls'] idea of the original position...should be best adapted to the complexities of our interdependent world." (1994: 197).

¹⁴ Dworkin (2000).

¹⁵ Nozick (1974). See also Cohen (1995), Hayek (1960), and Lomasky (1987).

¹⁶ See e.g., Dick (1975), Feinberg (1970), Lamont (1994, 1995, 1997), Miller (1976, 1989), Riley (1989), Sadurski (1985), and Sher (1987).

It is noteworthy that the proponents of these theories typically concede that they lack anything like a general, systematic non-ideal theory (a theory, once again, of how to deal with injustice). So, for instance, when it comes to the issues of “how well [his two principles of domestic justice] apply to institutions under less than favorable conditions, and whether they provide any guidance for instances of injustices”, Rawls states, “I shall not attempt to give a systematic answer to these questions.”¹⁷ Similarly, Nozick says of the issue of how to deal with injustice quite generally, “I do not know of a thorough or theoretically sophisticated treatment of such issues.”¹⁸ This is not to say, of course, that all theorists have set non-ideal theory aside. On the contrary, as we will now see, at least a few theorists have attempted to deal with non-ideal theory in a more or less systematic manner. Let me try to explain, however, how I think the theorists that have dealt with non-ideal theory have ignored something critical: namely, the question of what constitutes a just distribution of the total costs and benefits associated with social progress.

I want to focus on what I take to be two fairly representative approaches to non-ideal theory: the approach that Ronald Dworkin adopts in *Sovereign Virtue*, and the approach that Allen Buchanan adopts in *Justice, Legitimacy, and Self-Determination*. Buchanan’s approach, insofar as it focuses on human rights, seems to me to be particularly representative of the way in which contemporary philosophers have grappled with non-ideal theory. Human rights discourse and law has not only evolved, as the Universal Declaration of Human Rights put it, to

¹⁷ Rawls (1999a): 216

¹⁸ Nozick (1974): 152.

prevent the sorts of “barbarous acts which have outraged the conscience of mankind” over the course of history”, and to “promote social progress and better standards of life”; human rights have also come to the forefront of contemporary political theory.¹⁹ Dworkin’s approach also seems to me representative of a very natural way of thinking about non-ideal theory as well, however – so let us begin there.

Dworkin explicitly devotes nearly half of *Sovereign Virtue* to non-ideal theory. His general approach to non-ideal theory is, however, somewhat curious. His general strategy is to analyze what ought to be done here and now in the real world by reference to hypothetical claims about what fully just conditions would be like. So, for example, when it comes to the question of how much health care ought to cost under some class of unjust economic conditions, Dworkin’s answer is that health care should cost how much it would cost if social resources were justly distributed.²⁰ The problem is that while something about this seems right – health care would presumably be more affordable to those who suffer injustice if it were made to cost what it would cost under fully just conditions – Dworkin’s analysis makes no reference whatever to the issue of transition-costs. The very process of changing health care prices might impose significant (and to some extent hidden) burdens on people, after all, particularly people who are already disadvantaged by injustice. Changing a health care system takes time and resources, and the requisite changes will presumably happen over months or years, not overnight. It might require raising taxes on everyone, for instance,

¹⁹ <http://plato.stanford.edu/entries/rights-human>

²⁰ Dworkin (2000): Ch. 9.

something which might increase the economic hardships people face (not only by increasing their tax burden, but perhaps by negatively affecting the economy, causing people to lose their jobs and ability to afford health care in the interim). Offhand, an adequate non-ideal theory will have to tell us what justice requires given the sorts of transition-costs we can reasonable expect different policies to impose on people. Dworkin's hypothetical approach to non-ideal theory – his attempt to analyze what ought to be done now in terms of what just conditions would be like – is ill suited to this task, however. To analyze what ought to be done under unjust conditions solely in terms of what fully just conditions would be like is to ignore transition-costs entirely.

Some readers might want to suggest that because Dworkin claims that distributive justice requires an equal distribution of social resources, Dworkin should claim that then transition-costs ought to be distributed equally. This seems implausible, however. Offhand, it would seem that people who suffer injustice have a greater claim to have their interests advanced in social progress than those who benefit. Another possibility would be to say that those who suffer the worst injustices should have their interests take priority over the interests of others. There problem here is, what if minimizing the costs on the worst off would impose enormous costs on the rest of society, such as the middle class? Offhand, it would seem bizarre to think that we should subject people in society to whatever scheme of transition is best for the worst off, no matter how costly such a scheme might be for others. Intuitively, an adequate account of the just distribution of the costs associated with eliminating and rectifying injustices – that is, an adequate non-ideal theory – will fall somewhere in between these

possibilities. It will make sense of the idea that just social progress is a delicate balancing act, one that gives some sort of greater value to the interests of those who suffer the most without giving their interests absolute priority over the interests of others. Dworkin's approach to non-ideal theory does not address these issues, however. However illuminating his approach to non-ideal theory might be, we have ample reason to want a deeper, more systematic non-ideal theory – one that provides an account of how transition-costs are to be weighed and distributed among persons.

Allen Buchanan's non-ideal theory of international law seems to come a bit closer to providing an account of the just distribution of transition-costs. Interestingly, Buchanan sets aside ideal theory almost entirely. He claims that because the ideals that ought to govern a fully just international order are extremely contentious, we should develop a non-ideal theory of international law on the basis of ideas that are not so contentious: namely, that (1) people have important interests as human beings, (2) that international law should aim to promote and protect these interests, and (3) that the language and law of human rights are the best means by which to promote and protect those interests.²¹ Buchanan claims, plausibly, that international law and practice ought, here and now in the real world, to promote and protect each individual's ability to live a "decent human life."²² Offhand, this account might seem capable of providing some account of the sorts of transition-costs that can be justly imposed on people for the sake of justice. Intuitively, the protection of some rights (e.g. the rights to

²¹ See Buchanan (2004): Ch1, §VII, esp. p. 67.

²² Buchanan (2004): 128-30.

life, freedom from torture, etc.) seem far more essential to the ability of persons to live “decent human lives” than others (e.g. the right to equal pay for equal work, etc.).

Buchanan develops no clear analysis, however, of which rights are more important than others, how much more important they are, the extent to which justice might allow some human rights to be violated so that large numbers of other people might enjoy other human rights, and so on. Consider Buchanan’s list of human rights:

My hypothesis is that the most basic human rights – those most important for the capacity to live a decent human life – include the following: the right to life (the right not to be unjustly killed, that is, without due process of law or in violation of the moral constraints on armed conflict), the right to security of the person, which includes the right to bodily integrity, the right against torture, and the right not to be subject to arbitrary arrest, detention, or imprisonment; the right against enslavement and involuntary servitude; the right to resources for subsistence; the most fundamental rights to due process and equality before the law; the right to freedom from religious persecution and against at least the more damaging and systemic forms of religious discrimination; the right to freedom of expression; the right to association (including the right to marry and have children, but also to associate for political purposes, etc.); and the right against persecution and against at least the more damaging

and systematic forms of discrimination on grounds of ethnicity, race, gender, or sexual preference.²³

Clearly, these rights can come into conflict. We might be able to achieve conditions of due process and equality only by invading a nation, killing many people in the process, as might be the case if, as many people hope, the United States' invasion and occupation of Iraq turns out to lead to these things in the longer run. The question, of course, is whether justice permits us to impose the ultimate cost of death upon some people so that others can enjoy better conditions. Buchanan gives no clear answer to the question of how the various human rights are to be weighed. He claims that these issues are "deeply indeterminate"²⁴, and that when it comes to "the question of how much protection, at what cost, is appropriate," we should defer to the "complex set of processes at the international and the domestic level...[such as] specific human rights conventions...international quasi-judicial agencies...and agreements explicitly designed to formulate guidelines and timetables."²⁵ There are three related problems with Buchanan's position here. First, in the absence of any theory of which sorts of costs we can impose on people for the sake of improvements for others, how are we to know whether the processes and conventions that Buchanan is referring to are doing a good job of deciding these matters? Second, there seem to be independent reasons to doubt whether those processes really do a good job as such. Many people think, after all, that

²³ Buchanan (2004): 129.

²⁴ Buchanan (2004): 185.

²⁵ Buchanan (2004): 186.

organizations such as the United Nations, World Trade Organization, International Monetary Fund, G8, and so on, do a bad job at deciding which sorts of costs people should bear for the sake of social progress.²⁶ Finally, and perhaps most to the point, Buchanan’s reply seems to me unjustifiedly pessimistic. I believe that we can provide a deeper theory of the indeterminacies to which Buchanan refers – a theory that can help us resolve them in a more principled way. In order to arrive at such a theory, however, we must first attempt to settle on a method for investigating the issues. It is to this that we now turn.

§1.2. THE CASE FOR UTILIZING AN ORIGINAL POSITION WITHIN NON-IDEAL THEORY

I believe that many, if not all, political philosophers should be prepared to utilize a variation of John Rawls’ famous “original position” to construct a non-ideal theory of justice. This might seem to be a strange claim indeed, however. Why should a philosopher who rejects Rawls’ original position argument be prepared to utilize some version of the original position within non-ideal theory? My first reply is simply that, at the end of the day, we see that the “Non-Ideal Original Position” (as I call it) leads to principles of non-ideal theory that political philosophers of all stripes can in fact accept. As we will see in §1.4, I believe that the Non-Ideal Original Position leads to a Fundamental Principle of Non-Ideal Theory that essentially incorporates *whichever* wider philosophical commitments a theorist has into non-ideal theory. My first claim, then, is that “the proof is in the pudding”: that the Non-Ideal Original Position leads, in an illuminating way,

²⁶ See Bello (2004), as well as Mander and Goldsmith (1996), for common criticisms of these institutions.

to a principle of non-ideal theory that, as a matter of fact, should satisfy most (if not all) political theorists. I also believe, however, that there are deeper philosophical reasons for philosophers to adopt an original position in non-ideal theory even if they do not accept the method elsewhere. Let me now explain what I take those deeper reasons to be.

I should begin by describing what I take an original position to be, exactly, and by describing, broadly speaking, how I think an original position for non-ideal theory (or simply, the “Non-Ideal Original Position”) ought to be constructed. An original position, as I understand it, is a hypothetical device in which (i) rational actors (according to some appropriate conception of “rational” – more on this shortly) who are (ii) subject to some class of constraints on their ability to pursue what they rationally prefer are (iii) charged with the task of coming to an agreement with one another on moral or political principles, given their rational nature and the constraints to which they are subject. The original position that Rawls utilizes in *A Theory of Justice* consists, for example, of purely rational individuals behind a “veil of ignorance” which withholds from them any information, such as information relating to their race, sex, social class, or talents, which might allow any of them to tailor the agreement to their own distinct advantage over the advantage of others. The parties to Rawls’ original position are then conceived as aiming to come to a rational agreement on principles of justice given the informational constraints imposed upon them by the veil of ignorance, as well as given the further constraint (imposed by Rawls) that the parties are to be conceived as reasoning under an assumption of “strict-compliance”: an assumption that, “everyone is presumed to act justly and to do

his part in upholding just institutions.”²⁷ The strict-compliance assumption means, as Rawls points out, that the parties are reasoning to principles of ideal theory. They are reasoning to an agreement on principles to govern a “well-ordered society,” not a society in which people can be expected to fail to abide by the principles agreed upon (the latter, of course, is the domain of non-ideal theory).

Now clearly, if we are going to utilize an original position within non-ideal theory, it will have to differ from Rawls’ ideal theoretic original position in at least one critical respect. Rawls himself draws attention to this respect in the following passage – a passage in which he actually discusses the possibility of investigating non-ideal theory with a further, non-ideal theoretic step of his original position:

The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterize a well-ordered society under favorable conditions...Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions.²⁸

Rawls sets aside the task he mentions here, stating, once again, that, “I shall not attempt to give a systematic answer to these questions.”²⁹ Still, we can see from Rawls’ remarks what a non-ideal theoretic use of the original position (the Non-

²⁷ Rawls (1971): 8.

²⁸ Rawls (1999a): 216.

²⁹ Ibid.

Ideal Original Position) should be like. Rawls' remarks indicate, quite reasonably, that Rawls thought that deliberations in the Non-Ideal Original Position ought to occur after principles of ideal theory are arrived at. I say that this is reasonable because, clearly, in order to investigate non-ideal theory – in order, that is, to arrive at principles for meeting injustice – we must first know what injustice is. Notice, next, that we need not have arrived at principles of ideal theory by Rawls' original position in order to utilize the Non-Ideal Original Position for non-ideal theory. We might very well reject Rawls' original position argument to his two principles of ideal theory for any of the many reasons that Rawls' critics have adduced. Rawls' argument to his two principles of justice is, after all, questionable on many grounds.³⁰ Some critics claim that Rawls should have understood the parties to his original position as not pursuing “primary goods”, but rather simply their own expected utility, a strategy that (these critics charge) would lead the parties to agree to nothing other than the very theory of justice that Rawls explicitly sets out to reject: utilitarianism. Other critics accept Rawls' use of primary goods but question Rawls' argument that the parties would agree to his two principles of justice. The important thing, in any case, is that it seems, offhand at least, that we could sensibly apply the Non-Ideal Original Position to any principles of ideal theory, and have the parties deliberate to principles of non-ideal theory from those principles. It is also important to note that any Non-Ideal Original Position (Rawlsian or otherwise) will impose constraints on the rational motivation of the parties that did not exist in Rawls' ideal theoretic original position. Because the parties to a Non-Ideal Original

³⁰ For nice summaries of these criticisms, see Barry (1973) and Kymlicka (2002): Ch. 3.

Position are deliberating to principles to govern how injustices are to met – because, that is, principles of ideal theory are already on hand – the parties cannot be conceived as purely rational. They must be conceived as rational subject to the constraint that they all must take an interest in – and indeed, be motivated by – whatever principles of ideal theory are adopted. Thus, if we are Rawlsians, we must conceive the parties to the Non-Ideal Original Position as being motivated by Rawls’ two principles of justice; if we are Nozickeans we must conceive the parties as motivated to respect one another’s moral rights, as well as motivated to rectify past violations of rights; and so on.

Now I suspect that it might not be clear to many readers at this point how, if the parties to the Non-Ideal Original Position are conceived as motivated by one’s favored ideal theory, there is any further “room” for the parties to reason to a rational agreement. We will return to this issue shortly. Before we do so, however, we should also note that the exact specification of the Non-Ideal Original Position’s veil of ignorance will depend on one’s favored ideal theory as well. Clearly, the parties to the Non-Ideal Original Position should be afforded whatever, and only whatever, information the ideal theory adopt says they should be afforded. So, for example, suppose we endorse a Nozickean ideal theory: an theory which says that justice is a historical matter of individuals’ rights and violations of those rights (e.g., Nozick says that people have property rights to particular things, and that if they are deprived of their property, they ought to have their property returned or otherwise be compensated for the violation of their property rights). In this case the parties to Non-Ideal Original Position will surely have to be accorded knowledge of their own entitlements (i.e. what their

legitimate property-holdings are, which items of property they have been unjustly deprived of, who has that property, and so on).

A fairly obvious question here, however, is whether, in many cases at least, the idea that the veil of ignorance should be specified by reference to ideal theory will result in any veil of ignorance at all. What use, after all, would a Nozickean have for a veil of ignorance of any sort? Offhand, it would seem that a Nozickean would say that all information is relevant to dealing with injustice – that all we need to know is whose rights have been violated, and how, in order to properly rectify injustices. Let me explain, however, why I think that all political theorists, even Nozickeans, should be prepared to utilize some veil of ignorance, and hence, the Non-Ideal Original Position for non-ideal theory.

The idea of the Non-Ideal Original Position should, for obvious reasons, appeal to moral or political constructivists – philosophers who believe that moral or political principles are specified by some sort of impartial deliberative process.³¹ This is a more substantial point than it might seem. For while it might seem fairly obvious that a Rawlsian ought to adopt the Non-Ideal Original Position in order to arrive at principles of non-ideal theory, if what I have said so far is right, the Non-Ideal Original Position can be detached from Rawls' particular brand of constructivism and attached to some other constructivist moral or political theory, such as perhaps T.M. Scanlon's³² constructivist theory (Rawls is a political but not a moral constructivist).³³ I propose, then, that right

³¹ See, for example, the Stanford Encyclopedia of Philosophy's entry on contractualism, <http://plato.stanford.edu/entries/contractualism>.

³² See *ibid.* for a nice introduction to different constructivist theories.

³³ See Rawls (2005): Lecture III.

off the bat the Non-Ideal Original Position has a much broader domain of application than one might have thought. Still, I want to say that the Non-Ideal Original Position has an even wider domain of application than that. Many moral and political philosophers are not constructivists, and yet I want to say that they too should endorse the Non-Ideal Original Position for non-ideal theory. The question, of course, is why I think this. The answer has to do with the very nature of non-ideal theory. Non-ideal theory is so complex, and our intuitions not only unsettled but also the subject of reasonable disagreement, that moral and political philosophers who are not constructivists in other domains ought to be constructivists in this domain – or so I will now maintain.

It is telling, I think, that the task of providing a fully systematic analysis of non-ideal theory has not only been explicitly set aside by all of the theorists that I have discussed here – Rawls, Nozick, Buchanan – but indeed, set aside by moral and political philosophers quite generally. Why is it that Rawls, arguably the most systematic political philosopher in history, merely says of non-ideal theory (once again) that, “I shall not attempt to give a systematic answer to these questions”?³⁴ And why is that Nozick says similarly of non-ideal theory, “I do not know of a thorough or theoretically sophisticated treatment of such issues”?³⁵ Why, in short, is there such a clear gap in moral and political philosophy where a systematic non-ideal theory intuitively should be? Why, of all the moral and political theories that we have, do we lack any sort of fully general or systematic analysis of the sorts of costs that we can impose on people, and how those costs

³⁴ Rawls (1999a): 216.

³⁵ Nozick (1974): 152.

ought to be distributed, for the sake of eliminating or rectifying injustice? (We do of course have general moral theories – such as Kantianism, utilitarianism, and virtue theories. Still, aside from utilitarianism, which is widely criticized, none of these theories seem particularly well-suited to provide a general account of the costs that we can impose on people to overcome injustice, nor how those costs ought to be distributed among persons). To put the matter bluntly, it seems to me that contemporary political philosophy lacks any systematic accounts of non-ideal theory for the simple reason that, due to all of the complexities and unsettled intuitions we have about non-ideal theory, it seems hard to know even where to begin theorizing. We have seen, after all, that Allen Buchanan is quite explicit about the fact that he takes non-ideal theory to be “too indeterminate” to make much headway. Rawls makes similar remarks, saying that “in the more extreme and tangled instances of nonideal theory...we may be able to find no satisfactory answer at all.”³⁶ It seems to me, in other words, that the fundamental challenge of non-ideal theory is this: it is generally thought that a systematic non-ideal theory would be desirable, yet the very domain of non-ideal theory seems resistant to systematic analysis. Theories, by their nature, simplify matters. Yet non-ideal theory, by its very nature, seems almost hopelessly complex.

I believe, however, that the very challenge of non-ideal theory presents us with here shows us the right way to go about answering it. We must find a way to simplify systematize what we can within non-ideal theory without attempting to simplify or systematize those aspects of non-ideal theory that cannot be simplified or systematized. This will presumably be a difficult endeavor. We

³⁶ Rawls (1999a): 267.

must begin by attempting to distinguish those things that can be simplified and systematized from those that cannot – and it is precisely this, I propose, that the Non-Ideal Original Position is good for. Let me explain.

We often have all sorts of vague, unsure, and conflicting intuitions within non-ideal theory, even when we agree on most matters of ideal theory. Consider first, from a Nozickean point-of-view, the fact that most people in the United States today have benefitted from immensely from past injustices. The slaughter, displacement, and many frauds perpetrated upon the original native people of North America is an enormous black mark on the history of the United States. So too is the institution of slavery. And many of us today have benefitted from these injustices. Caucasian Americans fare far better than Native Americans and African Americans in every quantifiable aspect. We live longer, make more money, are convicted for fewer crimes, and so on.³⁷ The question is: what, in light of the past injustices themselves and the downstream effects of those injustices, does justice require now? Consider the issue from a Nozickean point-of-view. Nozick maintains that the moral rights that he ascribes to persons are somehow founded in the Kantian idea that people ought to be treated as “ends-in-themselves.”³⁸ According to Nozick, we must respect persons’ rights as “side-constraints” on how we treat them for the simple reason that each person, “is a separate person...his is the only life he has.”³⁹ Yet the idea that each person has one and only one life to live and therefore ought to be able to live it as she wishes,

³⁷ <http://www.ruralhome.org/pubs/hsganalysis/ts2000/NativeOverview.pdf>

³⁸ See Nozick (1974): 28-51.

³⁹ Nozick (1974): 33.

so long as she does not force or coerce others to live against their wishes (which is clearly Nozick's basic idea⁴⁰) seems hard to apply within non-ideal theory. Each person who has benefitted from historical injustices has just as much of a claim to live her life as she wishes as anyone who has suffered the effects of those injustices. Yet what is it to say this? If we take property away from the person who has benefitted from injustices due to no fault of her own to compensate those who have suffered the effects of those injustices (let us say it is her ancestors who committed the injustices), we intuitively intrude upon her ability to live her life as she wishes. If, on the other hand, we do not take property away from her (to compensate those who have suffered), we intuitively intrude upon their ability to live their lives as they wish (since they have been unjustly deprived of holdings they would have had if their ancestors had not been unjustly deprived of their property). Offhand, it seems as though different Nozickeans could have very different, as well as uncertain, thoughts about this sort of case. The Nozickian thinks that no one should be "used," yet it seems that in order to compensate the victims of past injustices, we must in fact use someone – that we must intrude upon individuals' lives in order to deal with the fact that past individuals' lives were unjustly intruded upon. Yet if Nozickeans can disagree about, and have quite uncertain views (as Nozick does) about, what ought to be done in these cases, how can a Nozickian develop a reasonable non-ideal theory?

Now consider a second example of injustice. "Liberal" political theories are univocal in their commitment to the view that, in some sense, all people

⁴⁰ Nozick (1974: 32-3) says, "Side constraints express the inviolability of other persons. But why may not one violate persons for the greater social good?...To use a person...does not sufficiently respect and take account of the fact that he is a separate person, that this is the only life he has."

ought to be treated as political equals. Different theories give very different accounts, of course, of what this equality consists in. Most liberal theories, at any rate, are committed to the ideas that justice requires all persons in society to enjoy the same basic political rights, such as rights to freedom of expression, association, democratic voting rights, and so on. But now what about when these sorts of conditions fail to exist in a society? On the one hand, it natural to think that fundamental political inequalities ought to be eliminated as efficiently as possible. On the other hand, when we actually look at the aims and policies of liberal reformist groups, and the individuals that compose those groups, in societies that fall short of these liberal standards, we often get a very different, more complex picture of how those inequalities ought to be eliminated. So, for example, what are we to make of the fact that some women's groups in Iran explicitly favor grassroots measures to overcome injustices – measures that will be sensitive to the needs of women “on the ground” in the real world – over internationally-based measures?⁴¹ Grassroots movements would seem to be sensitive to the kinds of important, but subtle, transition-related concerns voiced by the following Iranian woman (to take just one example):

...the experience that I want to tell is in regards to one of my closest family members, my father. My father is a very kind, sincere, religious and pious

⁴¹ The “One Million Signatures” in Iran campaign asserts as its aims, “to identify the everyday concerns of women, especially their legal needs and problems...relying on the needs identified by women themselves”, “to carrying out bottom-up reform and to creating change through grassroots and civil society initiatives, and seeks to strengthen public action and empower women.” It also goes out of its way to restrict participation in the movement to Iranian men and women. (www.we-change.org/spip.php?article18).

human being. At the same time he is drawn to knowledge, reflection and logic as well. At first, he would try to answer my criticisms of the status quo laws with kindly advising me not to seek the reasons and causes for these historic injustices and discrimination between men and women. He would say “Probably there is some wisdom embedded in the unequal laws that I have not found, and for this reason I should study more.” Due to this rationale, my father was against changing the laws. I listened to my father, so with much persistence and diligence I researched the literature, but the more I studied, the deeper my convictions became that the laws were discriminatory and unjust.

With all this, a subconscious fear grew in me. What if my patient father, who has spent his life in promoting science and religion and has no expectations from anyone or any rankings, was to become offended and take away his kindness from me. Because of this, I stopped the discussing this topic with him, but I kept up on my research.

After joining the campaign and battling with myself, I broached the subject of the movement and its goals with friends and neighbors. All the while I was afraid of worrying my father. From the corner of my eye, I kept watching for his reactions.

Talking of the campaign among family and friends resulted in a variety of questions regarding the validity of its goals (questions that rarely come up when talking with other activists.) Of course, I defended the woman’s

rights movement of my country as well as the inalienable rights of Muslim women with strong reasons and I explained that the current laws are creating many problems for women. I also described the positive new movements in other Islamic countries that were attempting to correct their own discriminatory laws. Since I believe that Islam is a religion that defends justice and equality, at least that is what my father taught me, why should Muslim women be quiet in the face of injustice? Are we less deserving than other women? Since we are Muslims, does this mean we should be without rights?

These questions continued for some time and I noticed my father carefully monitoring my answers. Days and weeks passed by in similar fashion until I gradually felt that the clouds of sadness and worry were starting to lift from my father's kind and compassionate face. Little by little, he developed a smile of support for me and my fellow campaigners. Finally, one day while signatures were being collected from various friends and family, my father asked to sign and be part of the campaign as well.

That night, I cried tears of joy. The relief I felt made me lighter, as if I could fly. For some time I felt that my dear father was distancing himself from me and I thought that I was going down a path that he disapproved of. His becoming part of the campaign brought us closer. I was so happy.

Yes, I have learned a big lesson that change takes time and I have to be more patient. I have realized that influencing other people's beliefs and opinions takes time and doesn't happen over night!

What is interesting is that my father is now very persistent in wanting to collect signatures from friends and co-workers. I have witnessed many of his arguments and discussions in the effort to convince his friends for the need for women's rights, as well as the need to interpret religion based on changing times. I get unbelievable energy from him and I bask in the happiness this brings me....

Long before the start of the "One Million Signature" campaign, I was frustrated with the difficult plight of women and I wished from the bottom of my heart for these unfair laws against women to change. In gatherings and various get-togethers, I would broach the topic of the problems that women face today, but there were times when I would lose the motivation for discussions and arguments. It was as if, I was devoid of hope. In fact, prior to working with the campaign, I would only speak with specific people such as close friends and some family members, and I would generally avoid bringing up the topic of women's difficulties in larger groups or in the presence of strangers. Sometimes I would be ashamed. Low self esteem and not knowing all the facts would cause me to stop short of mentioning women's issues and I would allow the social gathering to go about its traditional routine.

However, since joining the campaign, I slowly began to feel a sense of conviction and responsibility in articulating the pain and difficulties of women, and my self confidence in discussing these issues in social gatherings grew, especially in the presence of my family elders. In a way, answering people's questions about the various details of the laws made me even more aware of feminism and the situation of the women in my country. More importantly, I knew that I was not alone. Knowing that many unacquainted friends of the campaign in Tehran and other parts of Iran were busy collecting signatures gave me a good feeling. No longer feeling alone in this small city gave me a sense of support and hope. Being a member of the campaign gave me a new sense of identity.⁴²

Offhand, it seems that liberal political philosophers will be inclined to disagree a great deal about which kinds of transition-related preferences are morally legitimate. On the one hand, the concerns of the woman just mentioned seem important to take seriously. On the other hand, is justice really the sort of thing we should forestall out of concern for familial relations? Family is surely important, but is it that important (i.e. important enough to make a difference as to how we deal with injustice)?

I propose that the Non-Ideal Original Position is the uniquely right kind of method for resolving these problems: the problem being that when it comes to many (if not most) issues, our moral intuitions are unclear, unstable, and the subject of reasonable disagreement. If we situate rational individuals who accept

⁴² <http://www.we-change.org/spip.php?article326>

some ideal theory T behind a veil of ignorance that, first, (i) provides them with whatever information T says they should be afforded (and again, in Nozick's case, this might be all historical information), but which also, (ii) prevents those parties from knowing which particular views they have in the domain of non-ideal theory, we in effect imagine a device by which adherents of T can come to a fair resolution to the indeterminacies and reasonable disagreements that we have seen exist within non-ideal theory.

The obvious question at this point is: why should philosophers adopt the Non-Ideal Original Position to resolve these issues instead of adopting a "competitive" approach to non-ideal theory – an approach according to which each of them, as a unique proponent of that ideal theory, theorizes according to his own views and intuitions to conclusions within non-ideal theory? This is, after all, the way we usually do things in philosophy, science, and indeed, in business and politics. We allow people, and theories, to compete, and the end of the day, the last one standing is the winner (or theory we adopt). Why think that this is the wrong approach within non-ideal theory?

I propose that there are two reasons why moral and political theorists should wish to come to a fair resolution to the uncertainties and disagreements that arise within non-ideal theory. First, I propose that due to these uncertainties and disagreements, non-ideal theory seems to me uniquely ill-suited to the competition model. It is interesting, I think, that there really hasn't been any competition, as it were, with respect to non-ideal theory. As we have seen in the cases of Rawls, Nozick, Dworkin, and Buchanan, each of those theorists sets aside the most contentious issues of non-ideal theory for another day. The reason for

this, it seems to me, is that in order for a competition to even take place, we must have some idea of what the “finish line” is – of what a good theory would look like, broadly speaking. My point is simply that while we do seem to have some idea of what the finish line looks like when it come to ideal theory – we Rawlsians believe that Rawls’ theory makes the best sense of our views of justice; Nozickeans disagree; and so on – things seem far different within non-ideal theory. Our intuitions, it seems to me, are so uncertain, and so diverse, in non-ideal theory that a competition to arrive at a non-ideal theory that many people can accept is destined to fail. When our intuitions differ so much, and are so uncertain, the very best we can do is to come to a fair resolution to the differences between the intuitions that we share – and the original position device is a method for accomplishing this.

Second, I propose that there is are certain matters of “due respect” for one another as theorists, and “due humility”, that are particularly relevant within non-ideal theory. We have seen, once again, that there seem to be unusually broad, and deep, levels of uncertainty and disagreement within non-ideal theory – that there seems to be little agreement among moral and political philosophers about which matters are even relevant within non-ideal theory. There are, it seems to me, two ways to ways to respond to this problem. One way is to proceed as we do in most other areas of philosophy – by way of individual philosophers presenting, defending, and systematizing their own philosophical intuitions, with the hope that enough other philosophers will share their intuitions so that many other philosophers will find their theory plausible. This not only seems hopeless to me in non-ideal theory, however; I propose that it is unacceptably solipsistic. I

think, first, that precisely because of how much disagreement there is in non-ideal theory, any theory that a philosopher bases on his/her own intuitions is not likely to gain many adherents, let alone widespread acceptance. It also seems to me, however, that this approach shows something like an inadequate amount of respect for our fellow theorists, and indeed, a lack of due humility on the part of the philosopher who theorizes in such a way. It seems to me that when we recognize particularly broad matters of disagreement in a particular domain of inquiry among people we otherwise agree with and take to be reasonable (i.e. those who at least agree with us on matters of ideal theory), we have an obligation to give each such person's intuitions a "fair hearing" – something that, once again, the Non-Ideal Original Position seems to be a device for accomplishing.

Now I expect that the following question might be raised here: why think that such an approach is appropriate merely for non-ideal theory, rather than ideal theory, or indeed, philosophy quite generally? Philosophers do, after all, disagree quite often about what is relevant in different fields. Should we be fair to all philosophical views in all domains, such as imagine a Non-Ideal Original Position for epistemologists, or philosophers of mind, and so on? As an aside, I actually think that there is something reasonable about this. It has always struck me as peculiar that dualists in the philosophy of mind (such as David Chalmers) seem so convinced that "phenomenal consciousness" raises serious philosophical problems, that "zombies" are conceivable, and so on, when as a matter of fact other conscientious philosophers (such as Daniel Dennett, myself, and many others) seriously report to find nothing very mysterious about consciousness, zombies to be inconceivable, and so on. How can we be sure that there is a

problem when, apparently, many people who are as conscientious and sophisticated as we are disagree with the very premises with which we begin? Still, as important as I think these questions are, I do not want to push this line of thought too far. I want to suggest instead that when it comes to ideal theory in political philosophy at least, we often are justified in rejecting others views and intuitions. It seems to me that the “competition” model is appropriate for ideal theory simply because there are moral and political intuitions in this domain that are widely held – intuitions that we can appeal to show that our favored theory does a much better job of systematizing common intuitions than other theories. It seems to me, to conclude, that ideal theory is very different than non-ideal theory. In ideal theory, there is much common ground to be had. If we are to make any headway in non-ideal theory, in contrast, we must grapple with the distinct lack of common ground. And this, I maintain, is what the Non-Ideal Original Position is an uniquely good device for doing.

§1.3. THE NON-IDEAL ORIGINAL POSITION EXPLICATED

Let me now explicate the Non-Ideal Original Position in more detail so that we can see how, or so I believe, it leads us to a Fundamental Principle of Non-Ideal Theory that systematizes what can be systematized within non-ideal theory in a way that (I think we will see) paves a path that will enable us to resolve, in a principled way, the uncertainties and matters of reasonable disagreement within non-ideal theory that cannot be systematized.

We have already seen that the parties to the Non-Ideal Original Position are to be conceived as accepting, and as motivated by the acceptance of,

whichever ideal theory, T, we favor. The next question to address is the specification of the veil of ignorance. The veil of ignorance, as I have already suggested, ought to afford the parties knowledge of whatever information one's favored ideal theory, T, says they should be afforded. Thus, to repeat a point made earlier, a Nozickean Non-Ideal Original Position should afford its parties the best available knowledge of the history of property holdings, injustices, and so on. The natural question now is: if the Non-Ideal Original Position affords its parties whatever knowledge T says they should be afforded, what veil of ignorance is there, really? The answer to this question was already mentioned in my argument for the use of an original position in non-ideal theory. The veil of ignorance in the Non-Ideal Original Position sets two sorts of limits on the parties' deliberations: it should (i) withhold from them any and all knowledge that one's favored ideal theory, T, says should be withheld from them (for a Rawlsian, this will be all "self-individuating" information such as one's race, sex, etc.); but it should also (ii) withhold from them any and all knowledge of the particular views about non-ideal theory that they, as an adherent of T, might hold. It is in virtue of this feature, I submit, that the Non-Ideal Original Position represents a fair resolution to the disagreements and indeterminacies that proponents of T face within non-ideal theory (and should commonly want a fair resolution to, if my argument in §2 is correct).

This brings us to a somewhat vexing issue: the issue of who, or what, the parties to the Non-Ideal Original Position represent (and how). How can we square the idea that all of the parties to the Non-Ideal Original Position accept, and are motivated by, whichever principles of ideal theory we favor with the idea

that the Non-Ideal Original Position is supposed to be device for “dealing with injustice.” The answer is that we must distinguish the principles accepted by, and the motivations of, the parties from what the parties can expect people in the real world to accept and be motivated to do. The basic idea behind the Non-Ideal Original Position, after all, is this: we want to know which principles ought to govern social transition to a fully just state of affairs given the fact that many people in the real world will not accept or be motivated to conform to whichever principles of ideal theory we endorse. In light of this, we can see, I think, that it is eminently sensible for the parties to the Non-Ideal Original Position to accept and be motivated by whichever principles of ideal theory we espouse, but also, that they should aim to come to an agreement on principles of non-ideal theory from the knowledge that many people in the real world will reject their favored principles of ideal theory, and indeed, even their principles of non-ideal theory. This is the relevant notion of “partial compliance.” The parties must look to agree to principles of non-ideal theory in light of the levels of acceptance and motivation they can expect of actual people in the real world.

We can now make sense of precisely who the parties to the Non-Ideal Original Position represent, and how. Intuitively, each person is under an obligation to support just social conditions. The fact that the parties to the Non-Ideal Original Position accept, and are motivated by, the correct principles of non-ideal theory means, then, that the parties represent all of us in the actual world qua the obligation we are under to support just conditions even though, as a matter of fact, many of us fail to live up to our obligation to support those conditions. This point can help us see how what might appear to be an

incoherence of the Non-Ideal Original Position is not an incoherence at all. The ostensive incoherence is this: how can the parties to the Non-Ideal Original Position agree to principles of non-ideal theory given their knowledge that, once the veil of ignorance is “raised” and they find themselves in society, they might reject the principles agreed to (out of their rejection, in the real world, of the correct principles of ideal theory)? The answer to this question is simple. We are trying to arrive at principles specifying what justice requires here and now in the real world on the assumption that many people will not live up to the obligation they are under to support just conditions. It is perfectly sensible, then, for the parties to be motivated by principles of ideal theory that they can expect themselves to reject in the real world. Their motivation represents the idea that they are under an obligation to support just conditions regardless of whether they actually live up to that obligation.

This conception of the motivation of the parties sheds some light on how the parties ought to deliberate. Since the parties to the Non-Ideal Original Position are conceived as accepting the correct principles of ideal theory, they must be motivated to advance the interests that people in the real world would have only insofar as those interests are consonant with the demands of ideal theory. The parties to the Non-Ideal Original Position, as such, ought to actively aim to thwart any and all “unjust” ends of individuals in the real world and instead aim to advance the interests that “unjust individuals” would have if those individuals did live up to their obligation to support just institutions. This means, in short, that each party to the Non-Ideal Original Position will have to reason counterfactually about individuals in the real world. They will have to

estimate the interests that the individuals they represent would have if they lived up to their obligations to desire just institutions. The question now, obviously, is: how should they do this?

This brings us to the question of which sorts of transition-costs and benefits, more precisely, the parties to the Non-Ideal Original Position should be permitted to aim to advance (from behind their veil of ignorance, consonant with their duty to promote conditions of ideal justice). This is not an easy question to settle. I take it that whichever ideal theory one endorses, one might disagree with other proponents of that same theory about which sorts of transition-costs are legitimate. I also take it that we can all agree, however, that there are some such legitimate transition-costs. Most of us do not think that we have an obligation to die, or suffer immensely (such as through torture or starvation), so that injustices are eliminated – at least not in most cases. Other sorts of transition-costs fall into a much greyer area, however. We saw some examples in §2. Is it permissible to prefer a grassroots approach to social change due, for instance, to concerns for one's familial relationships, when a grassroots approach might be expected to result in social progress occurring more slowly than some other approach? This seems to be something about which different people will disagree.

I propose, in response to the uncertainties and disagreements we have about the legitimacy of different kinds of transition-costs, that we proceed from the default stance that all transition-related concerns the parties to the Non-Ideal Original Position might have are legitimate (against the background, again, of their acceptance of our favored ideal theory, T). First, by doing so, we at least give each such concern a fair shot in the Non-Ideal Original Position's

deliberative process, as opposed to preemptively setting potentially relevant issues aside at the very outset. Second, if the principles of Non-Ideal Theory we arrive at on the basis of this assumption conflict with our considered moral intuitions, we can always go back, revise Non-Ideal Original Position, and try again with a different specification (although, as I think we will soon see, the default stance that I am advocating does not lead to principles that offend our convictions).

Before moving on, it is important to see why Rawlsians utilizing the Non-Ideal Original Position ought not to conceive the parties to the Non-Ideal Original Position as aiming simply to advance their shares of the “primary goods” (basic rights and liberties, opportunities, wealth, income, and social bases of self-respect) that Rawls has the parties in his (ideal) original position deliberate about.⁴³ For Rawls, it is precisely the original position’s strict-compliance assumption that makes it rational for the parties to the original position to deliberate on the basis of primary goods. Since the parties know (1) that the primary goods are all-purpose goods for pursuing conceptions of the good, and (2) they know, in virtue of the assumption of strict-compliance, that they will not undergo any costs in receiving those goods, they can rationally assume (3) that they do want more of those goods rather than fewer. The problem, of course, is that once matters of transition are brought into the picture (as they are within non-ideal theory), the parties must take seriously the idea that they might have to suffer enormous costs in order to enjoy more of a primary good. We can see how this is by referring back to the autobiographical story told by the aforementioned

⁴³ See Rawls (1971, 1999a): §15.

Iranian woman. This woman appears to regard herself as having much to gain in a certain process of achieving liberal-democratic rights. She seems to see a grass-roots approach as allowing her to maintain a healthy relationship with her father, and sees herself as learning and developing as a result of her engagement in the social movement. To simply provide her with more rights and liberties in some other way – by, for example, United Nations intervention – might set back these interests that she conceives of herself as having. Thus, there is a sense in which basic rights and liberties are not all-purpose goods under conditions of injustice. They are not (necessarily) goods for achieving the various transitional goods that people can be concerned with.

The parties to the Non-Ideal Original Position must for this reason be conceived as abandoning the single-minded concern they had with primary goods in Rawls' (ideal theoretic) original position. Rawls' primary goods are to remain in the background of their deliberations, to be sure, just insofar as (for reasons already given) the parties have a background desire to realize the fully just conditions that Rawls' two principles of justice specify (the parties arrived at those principles, after all, by deliberating about primary goods). The point is simply that insofar as at this point of their deliberations the parties can clearly have diverging interests – in the ideal stage each party had interests in the same primary goods; at this stage different persons may have different, and even opposing, transition-related concerns – the parties can no longer rationally regard Rawlsian primary goods as the appropriate basis for their deliberations. The question then, obviously, is: on what basis should they deliberate? The only plausible remaining answer would seem to be the one that Rawls explicitly

introduced primary goods (in his ideal theoretic argument) in order to avoid: the actual interests (informed preferences, perhaps) that the parties can expect to have once the veil of ignorance is lifted.⁴⁴

Is this move away from primary goods problematic? I propose, to the contrary, that it illuminates an important difference between ideal theory and non-ideal that Rawls himself appears to recognize. For although Rawls says that, “Justice as fairness rejects the idea of comparing and maximizing overall well-being in matters of political justice”⁴⁵, when he discusses the case of slavery (a clear case of injustice), he not only says, “I have assumed that it is always those with the lesser liberty who must be compensated. We are always to appraise the situation from their point-of-view...”⁴⁶; he also says, discussing the case of how to deal with injustice when those who suffer injustice may be unable to look out for their best interests, that, “Paternalistic decisions are to be guided by the individual’s own settled preferences and interests as far as they are not irrational, or failing knowledge of these, by the theory of primary goods.”⁴⁷ Rawls himself seems to recognize, then, that when it comes to non-ideal theory, it is individuals’ preferences – at least insofar as their preferences are rational and adequately informed – that are the most appropriate measure of interpersonal comparisons.

The parties to the Non-Ideal Original Position should aim to advance the “just interests” of the people they represent, then, where these are understood as the “rational” and “adequately informed” preferences they would have if they

⁴⁴ See e.g. Rawls (2005): 75, 178-87

⁴⁵ Rawls (2005): 188

⁴⁶ Rawls (1999a): 218.

⁴⁷ Rawls (1999a): 219

lived up to their obligations to support just institutions (it is surely also the case that individuals have preexisting obligations not to act outside of the bounds of ordinary morality – such as by committing murder – so these parties will have to take into account an additional “moralizing” constraint on their counterfactual reasoning as well). The parties to the Non-Ideal Original Position seem to be in a difficult – and indeed, almost impossible – situation, then. How are they to make these sorts of counterfactual estimations? It might come as a surprise that I do not think that we can, nor that we need to, settle this question prior to allowing the parties to deliberate to a principle of non-ideal theory. I think that we should recognize – and indeed, that the parties themselves should recognize – that there may be a great amount of disagreement over the very question of what individuals’ interests would be if those individuals were “rational”, “adequately informed”, “moral”, and “lived up to their obligation to desire just institutions.” I think that we can get from these admittedly (and probably inevitably) vague and underspecified ideas to a Fundamental Principle of Non-Ideal Theory, and then see, in light of these issues, precisely how it is that that principle requires a secondary principle to help us resolve these issues downstream, as it were. Let me explain.

§1.4. FROM THE NON-IDEAL ORIGINAL POSITION TO A FUNDAMENTAL PRINCIPLE OF NON-IDEAL THEORY

We now have what I take to be a full specification of the situation of the Non-Ideal Original Position (as conjoined with whichever ideal theory we like). The parties are to be conceived as aiming to advance the aims they can expect to have, once the veil of ignorance is raised, if they were (i) rational, (ii) adequately

informed, and (iii) accepted the correct principles of ideal theory, (iv) under unjust conditions. In addition, we should also presumably add two more constraints. First, the parties should presumably (v) respect any and all moral obligations they might have more broadly (according to widely accepted standards, such as ordinary prohibitions against murder, theft, deception, etc., or, if one believes a particular moral theory, such as Kantianism, Utilitarianism, or some form of Virtue Theory, whatever that theory prescribes). Second, the parties should also (vi) accept whatever principles of rectification, or compensatory justice, might fall directly out of the ideal theory they accept.⁴⁸

The question now is how, given all of these features of the Non-Ideal Original Position, the parties to ought to deliberate. Some readers, followers of Rawls, might wonder whether, if Rawls' ideal theory is accepted (for instance),

⁴⁸ I have assumed so far that the parties to the Non-Ideal Original Position are to deliberate from principles of ideal theory to principles of non-ideal theory. This leaves out something potentially important. Some ideal theories, such as Robert Nozick's libertarian theory, include or entail certain principles of rectification or compensation. So, for instance, as Nozick (1974: 27, 152-3, 173, 208, 230-1) points out, his account of natural rights seems to include a natural right of persons to have past violations of their other rights (e.g., their rights to life, liberty, and property), or the past violation of their ancestors' rights (rights which would be generally respected in the sort of "minimal", libertarian state Nozick espouses) to be rectified, where this is understood, roughly speaking, as either (i) returning to those whose rights have been violated what has been taken from them (e.g. their property), or (ii) compensating them for things that have been unjustly taken but cannot be returned (such as the freedom of lives of ones ancestors if they have been enslaved or subject to genocide). Strictly speaking, such principles are principles of non-ideal theory. Still, since they fall out of ideal theory directly, they are not to be arrived at via the Non-Ideal Original Position. In this case, the Non-Ideal Original Position should be understood not as establishing all of non-ideal theory, but instead, as filling out the rest of non-ideal theory given whatever principles of rectification fall directly out of ideal theory. See Roberts' (2005) anthology of several recent papers about rectificatory justice for a survey of some recent thought about rectificatory justice.

the parties to the Non-Ideal Original Position ought to be conceived as reasoning according to the same strategy that Rawls imputes to the parties to his ideal theoretic original position: the so-called “maximin” rule, the rule that selects the “best worst” outcome, or maximizes the standing of the worst off in society.⁴⁹ There are clear reasons why the parties to the Non-Ideal Original Position should not reason according to maximin, however, even if (against Rawls’ many critics) we accept Rawls’ use of maximin within ideal theory. Rawls, for his own part, notes that maximin is only rational when three conditions are jointly satisfied: namely, when (1) the deliberating party(-ies) are ignorant of probabilities; (2) the parties care very much about avoiding a sub-maximin result (a result worse than maximin would allow); and (3) the parties do not care very much about achieving a result above what maximin assures.⁵⁰ Conditions (2) and (3) are not satisfied in the Non-Ideal Original Position, however. People who want justice – even people who think that an ideally just society would conform to Rawls’ difference principle – can care very much about how quickly such a just result is brought about. So, for instance, suppose, just for the sake of argument, there were two, and only two, ways to bring about a society that fully conformed to the difference

⁴⁹ Rawls (1999a): 53-6. Some people evidently think that Rawls only uses maximin to argue for his second principle of justice (the difference principle), not both of his principles (at least a few readers of this chapter have taken issue with my understanding of Rawls’ use of maximin). I reply that there is clear textual evidence in favor of my interpretation at Rawls (1999a): 135, where Rawls says explicitly, of maximin, that,

...this line of thought is practically decisive if we can establish the priority of liberty. For this priority implies that the persons in the original position have no desire to try for greater gains at the expense of the basic equal liberties. The minimum assured by the two principles in lexical order is not one that the parties wish to jeopardize for the sake of greater economic and social advantages. (Rawls 1999a: 135).

⁵⁰ Rawls (1999a): 134-5.

principle – a society in which all inequalities are maximally beneficial to the worst off. According to Scheme #1, let us suppose, we achieve this result by making the worst off even worse off for a short period of time, but that we could bring about a society that conformed to the difference principle in two years time. On the other hand, Scheme #2 would aim to maximally benefit the worst off at every point in time moving forward, a result which would slow down social progress so that a society that fully conformed to the difference principle could only be brought about after a much longer period (say, fifty years). The latter scheme conforms to a maximin principle of social progress – a maximin principle of non-ideal theory. It is hard to see, however, why the parties to the Non-Ideal Original Position should take themselves unequivocally as preferring the scheme that that principle entails (Scheme #2) over Scheme #1. The parties have every reason to expect that many of the people they represent – people who desire a just society – actually do prefer Scheme #1 to Scheme #2. The question now is: if the parties ought not to rationally deliberate according to maximin, which strategy they should adopt. I submit that because the parties to the Non-Ideal Original Position are,

- (a) Behind a veil of ignorance (preventing them from knowing who they are),
- (b) Accept whatever principles of ideal theory and rectification we take to be correct, but otherwise,
- (c) Rationally want to advance whatever ends they might have under whatever conditions of injustice are at issue, so long as those ends are

rationally held, adequately informed, and consistent with whatever broader moral obligations they might have,

and there is evidently nothing more we can say about them, then, on the assumption that the idea of a “social preference ordering” is coherent⁵¹, the following principle falls out of the Non-Ideal Original Position directly:

The Fundamental Principle of Non-Ideal Theory: For any action A, agent B, and less-than-fully-just social conditions C (past or present), *social justice*⁵² requires B to perform A given C if and only if, of all available actions, B has sufficient reason to expect A to best satisfy the social preference ordering that would exist if every relevant individual (defined relative to ideal theory) were (i) rational, (ii) adequately informed, (iii) endorsed the correct principles of ideal theory (and rectification), but (iv) otherwise desired to advance his/her transition-related preferences (v) within the broader constraints of ordinary morality, (vi) given C.

⁵¹ A social preference ordering is a single ordering of preferences, or preference-ranking, representing the preferences of many individuals considered as an aggregate. It is supposed to represent, so to speak, the “will of the people.” As we will soon see, there are many questions surrounding the idea of such an ordering. I will discuss these questions momentarily.

⁵² I want to note here that I am only purporting to establish what *social justice* requires of us, not what our moral duties as persons are *simpliciter*. Most of us tend to think that considerations of social justice are not the only morally relevant feature of the world. Intuitively, duties of justice may be outweighed by other moral duties or permissions. I may be under a duty of justice to support to elimination of racial discrimination, and yet morality might require me to set aside this duty so that I can attend to my personal duty to care for a dying friend. I cannot purport to settle the questions of when or how considerations of justice outweigh other moral considerations. I offer my theory merely as an account of what *social justice* requires (in response to injustice), leaving it an open question of where social justice figures into the bigger moral picture.

This principle is admittedly complex, and raises many difficult questions. I have already mentioned, in introducing the principle itself, the sorts of questions that arise concerning the idea of a social preference ordering. Another set of problems pertains to the rest of the Principle's conditions. So far I have been treating the terms "rational", "adequately informed", and so on, as though these terms are clear and unproblematic. They are neither clear nor unproblematic, however. We will come back to these issues shortly. For now, I want to draw attention to the fact that, however complex and difficult the Principle may be, it embodies a fairly simple and, I think, highly plausible idea. The Principle says simply that a just response to injustice is one that advances each person's "legitimate" interests equally, where their legitimate interests are understood as the preferences they would have if they were rational, adequately informed, and so on. This is surely a plausible claim. I suspect, in fact, that most of us already at least tacitly believe something very close to it. Most people who care about overcoming injustices quite naturally care about the well-being of persons, at least insofar as the well-being of persons is consistent with what justice requires. But now if the Non-Ideal Original Position leads us to nothing more than this – to nothing more than an idea most of us already accepted (at least implicitly) – what good is the Non-Ideal Original Position, really? Did we really need it? Perhaps we could have arrived at the Fundamental Principle in some other, more direct, way. I am not sure. I submit, in any case, that the Non-Ideal Original Position is a useful and important way to arrive at the Fundamental Principle for two reasons. First, it illustrates how the Fundamental Principle would be the result of a fair agreement among free and rational persons, considered as equals, given plausible

antecedent constraints (e.g. of morality and justice) on the ends such persons can legitimately pursue. This is important in that the defining idea of liberal moral and political philosophy is that persons must be treated as “free and equal.” The Non-Ideal Original Position shows us precisely how the Fundamental Principle can be understood as an agreement among free and equal persons. Second, it shows that any suitably liberal political philosopher, even a Rawlsian (who, as we have seen, adopts a “primary goods” metric for social comparisons within ideal theory), must adopt a preference-maximization principle within non-ideal theory (though, once again, the particular kinds of preferences to be maximized are subject to an important class of constraints). This is important, obviously, insofar as many liberal moral and political philosophers (e.g., Rawlsians and Nozickeans) reject the idea of justice as a matter of preference-maximization within ideal theory. The Non-Ideal Original Position shows us that even if we accept some non-preference-maximizing ideal theory, non-ideal justice is a matter of preference-maximization (though, it is important to keep in mind, ideal theory can set severe constraints on which kind of preferences are legitimate).

Let us now return to some of the difficulties raised by the Fundamental Principle. One of the Principle’s most central notions – the notion of a social preference ordering – raises all kinds of notorious problems. One problem has to do with how to compare the preference orderings of individuals. People do not only order their preferences, after all; they care about them. Let me explain. Suppose your dominant preference – the preference highest in your list of preferences – is for you to be a professional baseball player, and that my dominant preference ranking is for me to be a philosopher. Offhand, it looks like

we should assign your dominant preference and my dominant preference equal value, whether we are concerned with moral value or perhaps simply individual well-being. Intuitively, however, there is more to the value of preferences than this. I might be a much more driven individual than you. Even though your highest preference is to be a professional baseball player, you might actually care about it far less than I care about my highest ranked preference (to be a philosopher). This is a simple fact about people with which we are all surely familiar. Some people are just generally more apathetic than others. But now if this is the case, how can preference-rankings be an adequate interpersonal metric for social comparison? It would seem that in order to arrive at a truly accurate social preference ordering – one that treats all persons equally (as the Fundamental Principle requires) – we must be able to interpersonally weigh the relative strengths of individuals' preferences. It is not clear how to do this, however.⁵³ Another worry has to do with composition. The fallacy of composition is well-known, after all. It might well be the case that if we aggregate a bunch of individuals' preference rankings into a single social preference-ordering, we arrive at a preference-ordering that is actually very low in each person's own preference-ordering – a preference-ordering, in other words, that is undesirable from every person's point of view.⁵⁴ More generally still, however intuitive the idea of a social preference ordering may be – and indeed, there intuitively should be some way to agglomerate the preferences of large numbers of persons into a specification of what is best for the class of individuals

⁵³ See Gaus (2008): Ch. 5.

⁵⁴ Ibid.

considered as an aggregate – there is a great deal of philosophical debate over whether it can be done at all. Arrow’s Impossibility Theorem is widely agreed to demonstrate that there is no way to transform the preference-rankings of individuals into a social preference ordering while at the same time satisfying a particular set of highly intuitive criteria.⁵⁵ Another set of problems concerns the Fundamental Principle’s other conditions. Presently, we have no real specification of what it is for a preference to be rational, adequately informed, or consistent with ordinary moral requirements. One might wonder whether each of these terms is hopelessly vague. They are, at any rate, clearly underspecified.

We seem to have a lot more theoretical work to do, then, in order to provide a full defense of the Fundamental Principle. Unfortunately, I cannot purport to do this work here. I do not know how to solve the many problems just raised. The fact that we do not have a *full* defense of the Fundamental Principle is not to say, however, that we lack an *adequate* argument for it. One can have an adequate argument for a principle even though one lacks solutions to a number of problems it raises. This, I submit, is our situation here. We do have an adequate defense of the Fundamental Principle. We know that free and equal individuals would agree to it from the Non-Ideal Original Position. We just do not know, as of yet, how to resolve many issues that it raises. The question I want to ask now is: can we apply the Fundamental Principle adequately *without* resolving all of the thorny theoretical questions that surround it? I will now argue, in Chapter 2, that we can. I will argue that even without compelling theoretical answers to the

⁵⁵ Arrow (1950). For a nice overview of Arrow’s Theorem, as well as some attempts to respond to the problem, see Gaus (2008): especially Ch 5.

issues surrounding the Fundamental Principle, we can still come to an epistemically justified *practical* principle – a “Principle of Application” – for applying the Fundamental Principle even without adequate theoretical solutions to the problems it raises.

§1.5. CONCLUSION

I have argued that political philosophy presently lacks a fully general non-ideal theory of justice; I have argued that most (if not all) philosophers should utilize a variation of John Rawls’ famous original position – a “Non-Ideal Original Position” – to construct such a theory; I have developed the Non-Ideal Original Position; and finally, I have argued from the Non-Ideal Original Position to a “Fundamental Principle of Non-Ideal Theory,” recognizing some thorny theoretical issues that this Principle raises. My task now will be to argue that even though I cannot purport to resolve those theoretical issues, we can nevertheless arrive at a practical principle for applying the Fundamental Principle adequately in the real world.

CHAPTER 2

FROM THE FUNDAMENTAL PRINCIPLE OF NON-IDEAL THEORY

TO THE PRINCIPLE OF APPLICATION

Chapter 1 argued for the following principle:

The Fundamental Principle of Non-Ideal Theory: For any action A, agent B, and less-than-fully-just social conditions C (past or present), social justice requires B to perform A given C if and only if, of all available actions, B has sufficient reason to expect A to best satisfy the social preference ordering that would exist if every relevant individual (defined relative to ideal theory) were (i) rational, (ii) adequately informed, (iii) endorsed the correct principles of ideal theory (and rectification), but (iv) otherwise desired to advance his/her transition-related preferences (v) within the broader constraints of ordinary morality, (vi) given C.

It was recognized, however, that this principle raises many difficult questions. First, it is hard to determine what any single individual would prefer under relatively simple counterfactual conditions, let alone what individuals would prefer given the complex set of counterfactual conditions listed in the Fundamental Principle. Consider the question of what I would prefer to do today if it were rainy rather than sunny. My answer to this question, offhand, is that I am not sure. A second problem concerns the idea of a social preference ordering. A social preference ordering is supposed to represent the preference orderings of a large number of individuals considered as a single aggregate – the “will of the people,” so to speak. There are all sorts of serious difficulties with the idea of a

social preference ordering, however. Arrow's Impossibility Theorem is known to demonstrate, for example, that no system can transform the ranked preferences of individuals into a single social preference ordering while at the same time satisfying a set of highly intuitive criteria.⁵⁶ A third problem concerns the counterfactual requirements the Fundamental Principle imposes on individuals' preferences: the conditions of "rationality," "adequate informed-ness", "broader constraints of morality," and so on. I have deliberately left all of these ideas opaque, as there have been longstanding philosophical debates about all of them, and I do not wish to hang the non-ideal theory I am defending on any particular conceptions of them.

In an ideal world, I (or someone else) would be able to resolve all of these issues decisively. This is not such a world, however, and for my part I have little to say about any of them. I cannot purport to resolve the problems surrounding the notion of a social preference ordering, or provide the definitive account of what it is for persons to be rational. What I hope to show in this chapter, though, is that we can arrive at a practical principle – an epistemic principle – for applying the Fundamental Principle to the real world with confidence, even without theoretical solutions to the kinds of problems just mentioned. I recognize that to some readers this might sound like a fool's errand. How could we possibly be confident – that is, justifiably confident – that we are applying the Fundamental Principle correctly without knowing precisely what its main components (the idea of a social preference ordering, rationality, adequate informed-ness, and so on) amount to? My basic claim – the fundamental claim

⁵⁶ See Arrow (1950), as well as Gaus (2008): Ch. 5.

upon which this chapter, and all that follows, hangs – is that there is a critical difference between “knowing” and “knowing precisely.” I submit that we all know, broadly speaking, what it is for people to be rational, adequately informed, and moral. We use these terms, after all, and make judgments using them, all the time in real life. When we come across individuals or classes of individuals who have constructed their views and aims on the basis of faulty information, or on the basis of ignoring relevant information, we judge them as “inadequately informed.” We also have all kinds of ideas about what constraints morality sets on behavior. We may not know precisely what these things are – that is the task of philosophers in the longer run – the idea that we do not know what they are, broadly speaking, is surely false. My claim now is that if this is the case – if we have an admittedly fallible but nonetheless adequate grasp of the Fundamental Principle’s constitutive notions, as I think we do – we can apply the Fundamental Principle using the grasp we have of those notions. That, at any rate, is what I shall try to show here.

I expect some of my skeptical readers to doubt the promise of this approach. These readers might think that some, or even all, of the questions surrounding the Fundamental Principle call that principle itself into question. So, for example, consider Arrow’s Theorem. Some readers might take Arrow’s theorem as proving that there is no such thing as a correct social preference ordering, in which case the Fundamental Principle is defective (and there would seem to be no good reason to even look for a “good practical guide” to its implementation). My reply to these skeptical worries is that a great deal of important philosophy is done in the face of similar problems, and that here, as in

many areas of philosophy, it is well worthwhile to develop and construct theories even when serious problems arise at a fundamental level. Fundamental problems arise, after all, literally everywhere in philosophy. Consider epistemology. Few epistemologists believe that the problem of skepticism regarding the external world has been adequately resolved (do we really know that we are not in “the Matrix”?)⁵⁷, or that a fully adequate analysis of the nature of knowledge has been given. At one time it was widely agreed that “knowledge is justified true belief.” Then Gettier came along, disproving that analysis, and debates about the nature of knowledge have again raged ever since.⁵⁸ Or consider metaphysics, where there is a lack of consensus about the nature of many, and probably most, of the most important aspects of reality, such as the nature of causation.⁵⁹ We do not generally take these kinds of problems as fatal to philosophical theorizing. We may not know precisely what knowledge or causation are, or be able to establish once and for all that we know that the external world exists, and yet we move forward. We develop theories on the assumption that we have knowledge, and on the assumption that causation exists, and so on, because it is really the only good option. The only other options would be to give up theorizing altogether, or else focus exclusively on the fundamental problems until (we hope) we arrive at solutions that satisfy us. Neither of these options is attractive, however. It is well worth investigating what philosophy can tell us *on the assumption* that things

⁵⁷ See the Stanford Encyclopedia of Philosophy’s entry entitled, “Skepticism”, at <http://plato.stanford.edu/entries/skepticism/>

⁵⁸ See Gettier (1963). Cf. the Stanford Encyclopedia of Philosophy’s entry, “The Analysis of Knowledge”, at <http://plato.stanford.edu/entries/knowledge-analysis/>

⁵⁹ See the Stanford Encyclopedia of Philosophy’s entry, “The Metaphysics of Causation”, at <http://plato.stanford.edu/entries/causation-metaphysics/>

like knowledge and causation exist. By a similar token, I submit, it is well worth investigating what political philosophy can tell us on the assumption that there are such things as a correct social preference ordering, and so on.

This chapter argues, at any rate, that the following principle is the best available epistemic indicator of what the Fundamental Principle requires (i.e. given our admittedly vague and infirm philosophical grasp of the Fundamental Principle's constitutive components):

The Principle of Application: For any action A, agent B, and less-than-fully-just conditions C, we should tailor our confidence that social justice requires B to perform A in direct proportion to the extent to which we can expect B's performance of A to either

(i) Best advance the overall aims of whichever reformist group – past, present, or hypothetical -- best satisfies the following desiderata:

- a. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- b. Its members are voluntary participants;
- c. Its leadership is equally responsive to each of its members' interests;
- d. It has more members than rival reformist groups;
- e. Its leadership and members are rational and adequately informed; and

- f. Its membership is more similar to the complete class of individuals who suffer C's injustice(s) than any other group;

Or, if more than one reformist group appears to satisfy these desiderata roughly equally well,

- (ii) Best advance a fair compromise between the overall aims of the reformist groups in question.

Let me say a few things about this principle. It is important, first, to get clear on the notion of a "reformist group." A reformist group, as I wish to understand it, is *any* class of persons who, as a collective, display some interest in eliminating or rectifying whatever injustices obtain, as specified relative to whichever ideal theory (and theory of rectification) we, as theorists, take to be correct. As we will see later, a number of potential objections to the Principle of Application, as well as misuses of it, can result from a failure to attend to this definition. Indeed, there are two ideas readers must keep in mind. The first idea is that reformist groups are not to be understood narrowly as dissident groups within particular societies (such as the NAACP in the United States or women's groups in patriarchal societies). Though I do consider these classes of individuals reformist groups, much larger institutions, such as entire nations or even international institutions such as the United Nations, can also qualify, depending on whether (by reference to ideal theory) the classes of individuals who compose those groups display an interest in eliminating or rectifying injustices (as they often do). It is also absolutely critical to keep in mind that whether a particular group counts as a reformist group will depend upon the ideal theory (and theory of

rectification) we endorse as theorists. Suppose, for example, we came to accept some sort of libertarian political theory, such as the theory that Robert Nozick defended in *Anarchy, State, and Utopia*. According to Nozick's theory, all people have certain natural moral rights that no individual or institution can legitimately violate. On my account, if we adopt this theory, a group will count as a reformist group only if group displays an interest in justice that is consistent with Nozick's conception of rights. Accordingly, all sorts of groups that we might ordinarily refer to as reformist groups – groups, once again, such as the NAACP – might not be rightly thought of as reformist groups, at least so far as the Principle of Application is concerned.

I want to draw readers' attention now to another critical idea: namely, that I have intentionally set up the Principle of Application so that it is *not* an algorithm, or a principle that will always drive us, like a mathematical formula, to definitive conclusions about what justice requires. It should be clear, even at first glance, that Principle of Application requires the use of judgment, and even debate. The question of which reformist group best satisfy the Principle of Application's desiderata in any particular case may not be an easy question to answer. People may in fact disagree about, and debate, these issues. I do not think, however, that this is a failure of the Principle. Far from it. I propose that when it comes to the question of how to deal with injustices, an algorithmic principle is exactly what we should *not* expect. The real world is, after all, an incredibly complex place, and the best we can do in light of all of the aforementioned complexities that surround the Fundamental Principle of Non-Ideal Theory, I think, is to arrive at a principle to focus further debate. This, I

propose, is what the Principle of Application accomplishes. It may not solve every problem. It does, however, distinguish which issues are relevant from those that are not. It tells us that in order to determine what justice requires, the aims of reformist groups are relevant; other things are not. Our job is then to debate which reformist group, if any, best satisfies the Principle of Application's desiderata.

Let me now, finally, describe how this chapter will proceed. §1 argues that the Principle of Application is *prima facie* plausible by showing that, as a matter of fact, something very close to it actually underlies the judgments we tend to make about particular cases of injustices, at least when we are thinking about those cases carefully. §2 then aims to defuse a few initial worries some readers might have about the Principle of Application. §3 aims to show, in detail, how the Principle of Application is our best epistemic guide to estimating whether any particular action satisfies the Fundamental Principle of Non-Ideal Theory. Finally, §4 applies the Principle of Application to an important real world case: the case of whether the United States-led invasion of Iraq in 2002 was just or unjust. As we will see, there are two reasons for discussing this case. First, we will see that the analysis of the case we get by applying the Principle of Application is plausible as well as illuminating. Second, the case enables us to clear up some further possible misconceptions about the Principle itself.

§2.1. A *PRIMA FACIE* CASE FOR THE PRINCIPLE OF APPLICATION: CONFORMITY WITH CONSIDERED MORAL JUDGMENTS

It is a common practice in moral and political philosophy to test our theories against “our considered moral judgments”, such as our judgments that lying and stealing are morally wrong, business monopolies are unjust, and so on.⁶⁰ We would hardly accept a moral theory that entailed that lying and stealing are morally right, for example. Much of moral and political philosophy, in fact, goes much further than this, assigning some justificatory status to our considered judgments and intuitions about particular cases. Of course it is widely recognized that we should not treat our moral intuitions, even our strongest ones, as sacrosanct. We take challenges to morality seriously. Many of us still worry a great deal about the “immoralist challenge” that Plato spent much of his *Republic* responding to over two-thousand years ago. We wonder how it can be true that we ought not to steal, or lie, if (as seems plausible) there are times when we would be better off doing those things.

I do not want to adopt any strong views about the justificatory power (or lack thereof) of our moral intuitions. I want instead to adopt what I take to be an uncontroversial idea: namely, that coherence with our moral intuitions is at least some reason to take a moral principle or theory seriously. The fact that something coheres with what we already believe is, after all, an indication that that thing “fits” with things that we already take ourselves to have good reason to believe. In any case, I want to show how the Principle of Application coheres

⁶⁰Rachels’ (2007) introductory text to moral philosophy and Kymlicka’s (2002) introductory text to political philosophy demonstrate the ubiquity of this approach in both fields, respectively.

with our considered moral judgments. My hope is that this will warm my readers to the Principle and pave the way for the full argument that I will give for the Principle in §3.

§2.1.1. Case #1: *The Montgomery Bus Boycott*

Consider the Montgomery Bus Boycott – a boycott organized by the NAACP and Montgomery Improvement Association (MIA) to protest racial segregation on public transportation that occurred from December 1955 to December 1956 in Montgomery, Alabama. Was the Boycott a just response to the injustices that blacks faced in Montgomery (and America in general) at the time? I assume that most of us have the strong moral conviction that it was. The question, though, is why we think it was just. The Boycott imposed all kinds of costs on people. It required many blacks to forego their only method of transportation, leading many of them to walk to and from work in the long, hot, and humid Alabama summer.⁶¹ Many participants (as well as blacks more generally) were threatened or physically attacked, and surely had to lead their daily lives under conditions of severe stress.⁶² The houses of several black leaders and citizens were bombed, and snipers even shot at buses once the boycott was over and blacks began to ride the buses again.⁶³

⁶¹ See http://www.montgomeryboycott.com/article_overview.htm. See also, http://www.worldbook.com/wb/Students?content_spotlight/climates/north_american_climate_alabama.

⁶² See <http://home.att.net/~reniqua/what.html>, as well as <http://www.watson.org/~lisa/blackhistory/civilrights-55-65/montbus.html>.

⁶³ <http://www.watson.org/~lisa/blackhistory/civilrights-55-65/montbus.html>.

Consider, moreover, the many abuses that participants in the American Civil Rights Movement faced more generally. Southern blacks who registered to vote were harassed, beaten, and in some cases even killed. In 1963, the NAACP's Medgar Evers was shot and killed in front of his wife and children in Jackson, Mississippi; Reverend George Lee of Belzoni Mississippi was murdered after he refused to remove his name from a list of registered voters; three "Freedom Summer" field-workers (Michael Schwerner, James Chaney, and Albert Goodman) were shot and killed for helping Mississippi blacks register to vote; and so on.⁶⁴ Whites also resorted to economic warfare, cutting off federal food relief to blacks in the poorest counties of Mississippi, and by refusing to give blacks credit at local banks.⁶⁵ The "Freedom Riders" who rode Greyhound Buses between states to test the Supreme Court's ruling banning racial discrimination and interstate travel were often attacked at bus terminals by angry mobs armed with lead pipes, baseball bats, bicycle chains, thanks in part to the conspicuous absence of local police.⁶⁶ I could go on.

One natural thought is that the Montgomery Bus Boycott, the Freedom Rides, demonstrations, and other actions to protest racial inequalities were just for the simple reason that they were attempts to eliminate real injustices. A natural thought is that they were just because they were ultimately successful. Public pressure in response to the Montgomery Bus Boycott ultimately led, after all, to the Supreme Court's decision banning racial segregation on public transit.⁶⁷

⁶⁴ http://www.learningtogive.org/lessons/attach.asp?attach_num=2&ln=1&unit=97.

⁶⁵ http://www.learningtogive.org/lessons/attach.asp?attach_num=2&ln=1&unit=97.

⁶⁶ http://www.learningtogive.org/lessons/attach.asp?attach_num=2&ln=1&unit=97.

⁶⁷ <http://www.africanaonline.com/montgomery.htm>.

But are either of these explanations the best account of why we consider the tactics of the American Civil Rights Movement to be just? I think not. I think that we judge the Montgomery Bus Boycott and other such actions to be just because they were conscientious responses to injustice chosen by the oppressed themselves. Let me explain.

§2.1.2. Case #2: What if Things Had Gone Differently?

Suppose things had been even worse than they actually were in 1955. Suppose that the situation was so perilous for blacks that during meetings of the NAACP and the MIA, the members of those organizations came to reject the idea of the boycott. Suppose furthermore, to be more specific, that although most of the attendees at these meetings believed that a boycott would successfully promote racial desegregation in the longer run, a number of particularly persuasive attendees at the meetings convinced a majority of the other attendees that the costs that a boycott would impose on blacks – probably riots, lynchings, and so on – were far too great. Suppose, accordingly, that a majority of attendees at the meetings came to hold the view that it would be better, all things considered, for progress toward the end of racial desegregation to proceed in a more measured way (a way that would avoid riots, minimize lynchings, and so on).

Suppose that in some such way the NAACP and MIA both came to reject the idea of the boycott and decided against petitioning federal courts for intervention. Would this a just response to the racial injustices that blacks faced? It seems clear to me that it would be. In this case, we have (1) two groups, the NAACP and MIA, which seem to represent the overall interests of the oppressed;

and (2) agreement within each of those groups that the costs that a boycott or judicial intervention would impose on their people are not worth the benefits, all-things-considered.

I recognize that it is not exactly natural to think that it is ever just for “justice to be delayed” due to the costs that progress would impose on people. Still, this seems to me to precisely the sort of example where this is plausibly the case. It seems to me that if the very people who have the most to gain from the elimination of injustice reject a means for doing so because they are unwilling to bear the particular costs associated with that means, we have reason to think that that means, however efficient it may be, is not in the best interests of the very people (the oppressed) whose interests we have reason to care about the most.

§2.1.3. Case #3: Reformist Groups at Cross-Purposes

Now consider a case in which there are different classes of oppressed individuals: an oppressed racial minority on the one hand, and an oppressed gender (e.g. women) on the other hand. It is likely that the reformist groups that advocate in favor of each of these classes might stand in the other group’s way. Consider, for example, a policy to achieve equal voting rights for women in the society. The oppressed racial minority might worry, not unreasonably, that if women in their society achieved equal voting rights, it might make it more difficult for that racial minority to overcome the injustices they face. Suppose, for example, that equal voting rights for women might lead to a strong reaction on behalf of the oppressing class in the society (e.g. white males), such as a movement in favor of a constitutional amendment prohibiting equal voting rights for the racial

minority. In this case, justice for women might be achieved at the cost of greater injustice for the racial minority.

What are our intuitions about this case? For my part, I think our intuitions are fairly clear. I think we can agree that if there are multiple classes of oppressed persons, then the most just thing to do is to advance the interests of all of those classes equally. Now, as a matter of fact, in the real world it might often turn out that we do not have many choices. It might not be possible, for instance, to achieve equal voting rights for women and a racial minority at the same time. It will probably often be the case, moreover, that advancement of the rights of one group (equal voting rights for women) will promote the advancement of the rights of the other group. Social progress often does build upon itself, after all. Once it is seen that men and women should be treated equally, the logical next step (one that has been historically realized!) is for different races to be treated equally as well. Still, I take it that when we do have realistic options to advance the interests of both groups, justice prohibits us from arbitrarily privileging one group over the other. If there are two oppressed groups in a society – women, on the one hand, and a racial minority on the other – then surely the most just response to injustice is one that embodies a fair compromise between the interests of these groups (if and when their interests conflict).

§2.1.4. Analysis of the Test Cases: Conformity With the Principle of Application

The three cases just discussed indicate that the justice of a particular response to injustice is not a simple matter of whether the response is effective in eliminating or rectifying the injustice. It matters a great deal whether the particular response

is one that is chosen by, or at least endorsed by, reformist groups. And indeed, I think we see that our reasoning in these cases corresponds quite closely to the Principle of Application.

Recall that according to the Principle of Application, we are to pursue whatever action (under conditions C) we have reason to take to advance the aims (or compromise among the aims) of whichever reformist group(s), past, present, or hypothetical, we have sufficient reason to take to best satisfy the following desiderata:

- a. Its members (at least tacitly) pursue correct and relevant principles of ideal theory, rectification and morality;
- b. Its members are voluntary participants;
- c. Its leadership is equally responsive to each of its members' interests;
- d. It has more members than rival reformist groups;
- e. Its leadership and members are rational and adequately informed; and
- f. Its membership is more similar to the complete class of individuals who suffer C's injustice(s) than any other such group.

When we look at Cases 1-3, it is evident that all of the groups are pursuing correct principles of ideal theory (qua desideratum (a)). In Cases 1-3, the NAACP and MIA are both seen to be advocating in favor of racial equality; and in Case 3 the women's groups were said to advocate in favor of equal rights for women. The fact that these groups advocate in favor of the correct principles of justice is

clearly important. We would be much less confident that it would be just to pursue the aims of a reformist group, such as the Nation of Islam, that we take to endorse false principles of ideal theory (the Nation of Islam endorses a prohibition against interracial mixing and marriage).

It is also intuitively important that a reformist group satisfy the Principle of Application's other desiderata. We would be less and less confident of the justice of pursuing the aims of a reformist group to the extent that that reformist group consisted of people coerced into participating (*contra desideratum* (b)), to the extent that we suspected its leadership of ignoring its members' wishes (*contra desideratum* (c)), to the extent that the group had fewer members than rival reformist groups pursuing similar ends (*contra desideratum* (d)), to the extent that we suspect its leadership of being irrational or inadequately informed (*contra desideratum* (e)); and so on. Each of the Principle of Application's desiderata intuitively speak to the question of how well that group functions as an indication of what justice requires.

So, for example, let us compare the NAACP to the Nation of Islam. We have already seen that we seem to have reason to prefer the NAACP's aims simply insofar as it endorsed racial equality, whereas the Nation of Islam wanted to prohibit racial mixing and marriage. The NAACP also seems to clearly outperform the Nation of Islam on many of the Principle of Application's desiderata as well. The NAACP has always enjoyed much greater popular support among the oppressed than the Nation of Islam did (*desideratum* (c)) – something which would seem to support the proposition that the NAACP does a better job of representing the interests of more blacks than the Nation of Islam;

the NAACP's was much more representative of the oppressed population as a whole in terms of its composition (desideratum (f)). The Nation of Islam is explicit that its aims are to advance the interests of black Muslims, not black Americans or blacks generally.⁶⁸ But of course it was not only black Muslims who were subject to discriminatory laws in the American South. In 1955, black individuals in the South suffered the effects of unjust laws regardless of their religious creed. A group that represented the interests of black individuals as such, then, would surely better represent the interests of the oppressed than the Nation of Islam. And of course this is another count on which the NAACP seems to fare far better. Although many aspects of the Montgomery Bus Boycott were planned by ministers and meetings were held at Baptist churches⁶⁹, the aim of the boycott was clearly achieve conditions of racial equality.

Our considered convictions in the test cases appear to conform to the Principle of Application. We have seen that in all three test cases, we really do think that social progress should conform to the aims of whichever reformist group best satisfies the Principle of Application's desiderata. If the reformist group that best satisfies those desiderata decides to organize a bus boycott, then we judge the boycott to be a just response to injustice. If, on the other hand, that group decides not to organize a boycott, then we judge that decision to be a just response to injustice. And so on. In each of the cases discussed so far, our considered judgments about whether a particular response to injustice is just

⁶⁸ http://www.noi.org/muslim_program.htm.

⁶⁹ <http://www.africanaonline.com/montgomery.htm>.

really do seem to embody a sort of tacit acceptance of the Principle of Application.

§2.1.5. Two Harder Test Cases

The test cases that we have discussed so far are relatively “easy” cases. Boycotts and decisions to petition federal courts are one thing. Some readers might wonder whether our considered convictions about more difficult cases – such as, for example, the question of whether a decision to wage war is a just response to injustice – involve the same kind of tacit acceptance of the Principle of Application. I want, therefore, to consider two additional test cases: the case of the American Revolutionary War against the British, and the decision by the United States and a coalition of other nations to invade the nation of Iraq in 2003. I believe we will see that the considered convictions that many (though perhaps not all) of us have about these cases correspond directly to the Principle of Application.

§2.1.5.a. Case #4: The American Revolution

Historians have estimated that approximately 40-45% of American colonists actively supported the Colonies’ rebellion against the British government, that 15-20% were British Loyalists who wanted to reconcile with the British Government, and 35-40% of American colonists were “neutral” between supporting the rebellion or supporting some sort of reconciliation.⁷⁰ Similar diversity of opinion was evident in the Continental Congress, the political body in

⁷⁰ See Calhoun (2003): 245.

the American colonies that debated the question of rebellion, sent entreaties to the British Crown to protest various injustices, and eventually authorized the formation of the Continental Army and war against the British.⁷¹ Some members of the Congress (e.g. Joseph Galloway and John Jay) wanted to keep the Colonies in the British Empire⁷², others (such as John Dickinson) wanted to avoid bloodshed⁷³, whereas others (such as John Adams and Patrick Henry) thought war to be necessary and inevitable.⁷⁴

This suggests that there were two, or perhaps three, reformist groups in the American colonies in the time leading up to and including the Revolutionary War. It is not obvious that the British Loyalists should be considered a reformist group at all, since they were apparently content to live with the injustices the British Crown visited upon the Colonies. In any case, however – whether or not we consider the British Loyalists reformers – we can say that there were more or less two kinds of people: (1) those who supported war against the British, and (2) those who wanted to avoid war (for one reason or another). Eventually, of course, the pro-war group “won out”, and there was unanimous agreement upon the Declaration of Independence, which asserted the right of the American people to dissolve its ties with Britain by force.

Let us ask ourselves now what our considered moral convictions about the Revolutionary War are. It is widely thought, of course, that the Revolution was just. What made it just, however? Was it simply that the American people had a

⁷¹ Greene (1922): 434.

⁷² Ibid.

⁷³ See Ferling (2003).

⁷⁴ Ibid.

right to secession from the British Empire? For my part, I think it was something more. For suppose there had been no agreement on the Declaration of Independence. Would it have been just for the pro-war faction to visit the horrors of war on the anti-war factions without such an agreement? I think we can agree that it is doubtful. The fact the leaders of the American Colonies eventually came to an agreement on the justification of war is what made the war just.

But now if this is true, then it seems that our considered convictions about the justice of the American Revolution do indeed (at least tacitly) conform to the Principle of Application. In this case, as in the previous cases, we see that our confidence about the justice of a particular response to injustice (the injustice here of the British rule) corresponds directly in proportion to our confidence that that response would advance the overall aims of that reformist group that best satisfies a certain class of desiderata.

§2.1.5.b. Case #5: The 2003 Invasion of Iraq

Let us now consider a more contentious and complex case: the case of the United States-led invasion of Iraq in 2003. Although this is a contentious case, I think that common doubts regarding the justice of the invasion and occupation can be found in the Principle of Application. Why is it, after all, that many of us doubt the justice of the invasion and occupation of Iraq? I think we can trace many of our doubts to two facts: namely, (1) the fact that the Iraqi people did not request military intervention, and (2) the fact that a vast majority of the international

community opposed the invasion at the time it occurred.⁷⁵ Let me explain why, by reference to the Principle of Application, these two facts do indeed constitute reasons to doubt the justice of the invasion.

The United States government has attempted to justify the invasion and occupation of Iraq on many grounds. The two primary grounds, however, were (1) the military threat Iraq was thought to pose to the United States and international community, and (2) Iraq's "brutal repression of its civilian population."⁷⁶ Let us utilize the Principle of Application to evaluate the justice of both of these purported justifications.

The Principle of Application tells us that we should pursue the aims of whichever reformist group best satisfies the following class of desiderata:

- a. The group's members at least tacitly pursue correct and relevant principles of ideal theory, rectification, and morality;
- b. Its members are voluntary participants;

⁷⁵ The failure of the United States and its allies to gain broad international support for the invasion (and continued occupation of Iraq), and indeed, its failure to gain the support of the Iraqi people have been two of the most common criticisms of the invasion (and occupation, respectively). The United Nations and international community were, of course, concerned with the possible threat posed by Iraq. At the time of the U.S.-led invasion, however, the U.N. had approved Resolution 1441, giving Iraq "a final opportunity to comply with its disarmament obligations." The U.S.-led invasion did not allow Iraq this opportunity. U.N weapons inspectors had found no evidence of weapons of mass destruction in Iraq, and claimed that several additional months of inspections would be able to resolve the question of whether such weapons existed. See also Blix (1999), as well as "Hans Blix's Briefing to the Security Council", which can be found at <http://www.guardian.co.uk/world/2003/feb/14/iraq.unitednations1>.

⁷⁶ The Iraq War Resolution can be found at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ243.107.

- c. It has more members than rival groups;
- d. Its leadership is equally responsive to each of its members' interests;
- e. Its leadership and members are rational and adequately informed; and
- f. Its membership is more similar to the complete class of individuals who suffer the injustice aiming to be overcome or rectified than any rival group.

Let us consider how well various candidate reformist groups could be said to satisfy these desiderata. The United States and its pro-invasion allies could be considered one such group, seeing as they (correctly) perceived Iraq to be an unjust regime, one that was widely believed to pose a serious international threat. On the flip side, the United Nations and international community more generally could also be considered reformist groups as well. These latter two groups had, of course, very different attitudes toward the justice of the Iraq invasion than the former. Survey results just prior to the invasion showed that while a full 73% of American citizens supported the invasion, a majority of citizens in 41 other nations did not support an invasion without U.N. approval, and approximately half of the world's population as a whole opposed invasion under any circumstances.⁷⁷ There were, then, to put it roughly, broadly two reformist groups prior to the invasion, each of which had approximately opposite viewpoints about the justice of an invasion: the United States and its allies, which

⁷⁷ Gallup International Poll 2003, <http://www.gallup-international.com/download/GIA%20press%20release%20Iraq%20Survey%202003.pdf>

supported the invasion, and the United Nations and international community, on the other hand, which did not.⁷⁸

Let us now compare these two groups – call them the “pro-invasion” and “anti-invasion” groups – with respect to the Principle of Application. Begin with desideratum (a): the “correct principles of ideal theory and morality” desideratum. The United Nations and international community clearly satisfied this desiderata better than the United States or the other invading forces. The primary justification the U.S. gave for invading Iraq was the threat that Iraq supposedly posed to the U.S. and the international community,⁷⁹ as well as wars to liberate oppressed populations, are not only both prohibited by international

⁷⁸ Some readers might wonder whether we should consider the member nations of the U.N. and the international community to be two different candidate groups, not one. Strictly speaking, this is correct. All the same, I think that for the sake of our discussion we can consider them both as a single group. One nice thing about the Principle of Application is that we do not always need to pare down the number of candidate reformist groups and evaluate each of them against one another with respect to the Principle’s desiderata. If we know that a number of candidate groups (such as the member nations of the U.N., on the one hand, and the international community as a whole, on the other) both support some policy *P*, and *both* of those groups fare better with respect to the Principle of Application’s desiderata than every candidate group that prefers $\sim P$, we do not need to determine *which* of the groups that support *P*, at the end of the day, satisfy the Principle of Application’s desiderata the best – for we already know (without comparing those groups) that whichever group performs the best, that group prefers *P* to $\sim P$. We can therefore often simplify our inquiries by considering two or more groups that agree with one another policy-wise (in this case, the U.N. and international community more generally) as constituting a single groups.

⁷⁹ See www.whitehouse.gov/news/releases/2003/03/20030306-8.html, “Saddam Can Rule if He Complies: Bush” at http://www.dailytimes.com.pk/default.asp?page=story_23-10-2002_pg4_1, as well as www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020924/debtext/20924-05.htm, where British Prime Minister Tony Blair said, “Regime change in Iraq would be a wonderful thing. That is not the purpose of our action; our purpose is to disarm Iraq of weapons of mass destruction.”

law⁸⁰; they are also categorized as unjust by most modern just war theorists⁸¹, and were evidently regarded as illegitimate. Then consider desideratum (e): the “rational and adequately informed” desideratum. It is now known, and was suspected by many prior to the invasion, that the United States’ intelligence “proving” the existence of weapons of mass destruction in Iraq was incorrect, and indeed, was tainted by a bias in favor of building a case in favor of invasion – a bias that ignored disconfirming evidence.⁸² In contrast, the U.N. and international community as a whole, both of which favored continued weapons inspections to discover the truth, seem to have been clearly committed to obtaining more adequate information, and to considering the evidence in a cool, rational (as opposed to out of a bias in favor of war) than the U.S.. Now consider desideratum (f): the desideratum which instructs us to consult the reformist group that is most similar overall to the entire class of individuals subject to injustice. Here again, the international community and U.N. both fare far better than the United States and supporters of the war. If Iraq was ever an

⁸⁰ See the U.N. Charter (www.un.org/aboutun/charter/). For a brief analysis of the U.N. Charter applied to the Iraq war, see www.worldpress.org/specials/iraq/.

⁸¹ See §2.1 of the Stanford Encyclopedia of Philosophy’s entry on “War” at <http://plato.stanford.edu/entries/war/>.

⁸² See the Downing Street Memo (sometimes referred to as the “smoking gun memo”), www.downingstreetmemo.com/docs/memotext.pdf, a note from a secret meeting of senior United Kingdom government at the personal residence of British Prime Minister Tony Blair (at 10 Downing Street) which records the head of the British intelligence agency, MI6, asserting that, “Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy.” The memo also quotes British Foreign Secretary Jack Shaw stating that Bush had “made up his mind” to take military action even though “the case was thin,” as well as British Attorney General Lord Goldsmith warning that it would be difficult to justify invading Iraq on legal grounds.

international threat at all, it was not just a threat to the United States but to the international community as a whole. Second, there is little (if any) evidence in the history of international affairs of oppressed groups preferring to be “liberated” from oppressive governments by military force. Then consider desideratum (c): the desideratum which instruct us to defer to larger reformist groups over smaller ones (all things being equal)? Here again the international community and U.N. both fare far better than the United States and other supporters of the invasion. The international community and U.N. both include a wide variety of nations, whereas the forces that supported the Iraq invasion were far fewer in number.

I believe we can see here, yet again, that the Principle of Application accounts for and explains some of the judgments we make. I think that many of us who judged the war to be unjust from the start believed the war to be unjust largely, if not entirely, because we believed that the U.N. and international community as a whole – both of which opposed the invasion – were, for all of the reasons just mentioned, in a much better position to appreciate the legitimate interests of all. Many of us who doubted the justice of the war, or who believed from the outset that it was deeply unjust, doubted whether the U.S. was pursuing correct and relevant principles of justice (qua desideratum (a)); whether the U.S. was acting rationally, as opposed to in a reactionary manner to the terrorist events that occurred on 9/11/2001, and whether the U.S. was adequately informed (qua desideratum (e)); whether the U.S.’s near-unilateral decision to invade Iraq (with a relatively small “coalition of the willing”) was appropriate

given the existence of particularly large and diverse international community that opposed the invasion (qua desiderata (c) and (f)); and so on.

§2.1.6. Conclusion

We have seen in this section that the Principle of Application accounts for and explains the considered moral convictions, as well as doubts, we have about a variety of test-cases. The question now is whether a deeper philosophical argument can be made for the Principle. Before we investigate that question, however, I want to consider some possible worries about the Principle.

§2.2. DEFUSING SOME INITIAL WORRIES

I expect readers to have a few worries about the Principle of Application, worries that are worth addressing before moving on to the full argument for the Principle.

§2.2.1. Reformist Group Bias

One worry about the Principle of Application has to do with its focus on reformist groups, particularly (following desideratum (f)) its focus on reformist groups that are the most similar in composition to the complete class of persons who suffer from whatever injustices are at issue. Recall that the Fundamental Principle of Non-Ideal Theory requires us to aim to satisfy the social preference ordering composed of the preferences that all persons in the relevant domain (society or world) would have if each person were rational, adequately informed, accepted the correct principles of ideal theory and rectification, and so on. The worry here is that reformist groups, particularly those that are the most similar in

composition to the complete class of individuals who suffer injustice, will not represent very well (or even adequately) the preferences that persons in other classes would have if those individuals were rational, adequately informed, and so on. Let me explain what I mean with an illustration.

Consider once again the American Civil Rights Movement. According to the Principle of Application, we ought to aim to advance the aims of reformist groups such as the NAACP. How responsive, however, can we expect the NAACP to be to the legitimate interests of white males? Offhand, the NAACP would seem clearly the most responsive to the interests of blacks, not whites. Yet, the worry goes, it surely the case that white people had legitimate interests related to social progress as well. Why couldn't a white person who truly accepted principles of racial equality, who was rational and adequately informed, and so on, desire, say, that the Montgomery Bus Boycott had not occurred (for the simple reason that it made daily life very difficult)? If it is possible for such a person to desire this, then according to the Fundamental Principle of Non-Ideal Theory that person's preference should carry some weight (no more and no less than any other person's legitimate preferences) in the social preference ordering that defines what justice requires of us. The worry, obviously, is that if we follow the Principle of Application, we will in practice fail to give such preferences the weight they are due.

My reply to this worry has two parts. First, it seems to me that groups that satisfy the Principle of Application's desiderata comparatively well will tend to be responsive to the legitimate interests (i.e. rational and adequately informed preferences grounded in acceptance of correct principles of ideal theory,

rectification, and morality) of members of the majority class. Why? Consider what a reformist group such as the NAACP must do in order to gain a great deal of voluntary participation among the class of persons who suffer injustice. People who accept correct principles of ideal theory and rectification (qua desideratum (a)) who are adequately informed and rational (qua desideratum (e)) will surely tend to voluntarily join reformist groups (qua desideratum (b)) that they can expect to be relatively successful in promoting social progress. No one who is rational and adequately informed and who truly wants justice is going to waste his/her time joining a group that stands little chance of achieving any measure of success. A person who wants justice and is rational and adequately informed will, all things being equal at least, want to participate in a social movement that he/she can expect to achieve some real results. Yet what does it take to achieve results? Intuitively, it takes a certain amount of willingness to appeal to “moderates”, including members of the class who benefit from injustice (who want justice but may or may not be willing to endure the same costs as those who suffer from injustice). To see this, consider once again the NAACP and the Nation of Islam. The NAACP has always been much more popular among black Americans than the Nation of Islam or other militant movements (such as the Black Panthers). Why is this? Intuitively, part of the answer must be the fact that militant movements are less likely to make real headway in a society in which whites are a vast majority. The sheer popularity of the NAACP, in other words, seems to attest to its members’ willingness to engage with and take seriously (if only begrudgingly, and strategically) the interests of the white majority. One worry here, obviously, is that the popularity of the NAACP must be

due to its members' (begrudging) willingness to engage with the interests of whites will tend to lend weight to the illegitimate interests that many white people have. Indeed, this seems to be a main complaint of more militant groups. Groups such as the Nation of Islam and Black Panthers have repeatedly accused the NAACP of being overly sensitive to the interests of whites. I do not think that this is a serious worry, however. According to the Fundamental Principle of Non-Ideal Theory, justice is a matter of advancing the preferences that people would have if each person accepted the correct principles of ideal theory, and so on. The mere fact that the NAACP and other mainstream civil rights groups have enjoyed greater popularity among blacks than more militant groups indicates that more blacks who desire racial equality prefer the aims and policies of the more mainstream groups than those of the militant groups. The point now is that if more blacks and whites (presumably) who desire justice prefer the NAACP's aims and policies over the aims and policies of more militant groups, then we seem to have ample reason to think that the NAACP's aims and policies are a much better representation of the preferences that all persons in society would have if they satisfied the Fundamental Principle's conditions. I submit, in short, that the comparative popularity of a reformist group among the oppressed (the popularity of the NAACP among blacks) is itself ample reason to think that that group's aims and policies is responsive to the legitimate interests of all. A reformist group that gains popularity among the oppressed just will tend to be responsive to the legitimate interests of all insofar as (i) the oppressed (if they are rational) will want to see progress achieved and, (ii) progress tends to require some measure of compromise with the interests of the interests of oppressing classes.

The second part of my response to the worry that reformist groups will tend to be biased in favor of the legitimate interests of the oppressed over the legitimate interests of others is more straightforward. I propose that if we have to estimate the legitimate interests of persons (as we do according to the Fundamental Principle), but any method of estimating those interests will have to be fallible (as I think is the case), then we ought to “err on the side of caution” and advance the legitimate interests of members of the oppressed class over the legitimate interests of the members of the oppressing class. The basic idea here is simple. If mistakes in estimating individuals’ legitimate interests are inevitable (as I think they are), then surely it is a better policy to err in a way that is beneficial to the oppressed rather than in a way that is beneficial to those that do the oppressing. Thus, I submit, even if the Principle of Application’s focus on reformist groups does run some risk of biasing judgments about what justice requires in favor of the legitimate interests of some persons (the oppressed) over the legitimate interests of others (the oppressing class) – and I have done my best to show that the risk is far more minimal than it might appear at first – the Principle of Application is still the best principle for estimating the legitimate interests of all. Whatever risk of bias is inherent in the Principle is regrettable. Still, if bias is unavoidable, it is better to be biased in favor of the oppressed rather than in favor of the unjust.

§2.2.2. Don't Reformist Group Often Have Immoral or Morally Questionable Aims?

I just claimed that if we have to choose between running the risk of illegitimately privileging the interests of the oppressed over the non-oppressed (i.e. giving the legitimate interests of the oppressed too much weight) or running the risk of the opposite, we should, indeed, run the risk of erring on the side of the oppressed. It is the oppressed who suffer injustice, after all, not the non-oppressed majority. Still, one might wonder whether it is appropriate, generally speaking, to advance the aims of reformist groups. What about when reformist groups advocate or organize acts of violence or terrorism, such as was the case, for example, when (in response to the Grand Apartheid in South Africa and the Sharpsville Massacre in 1960 in which South African police shot into a crowd of black civilians) the African National Congress – South Africa's main anti-Apartheid reformist group – renounced non-violent methods as inefficacious and began engaging in targeted killings, guerilla actions, and bombings that killed civilians?⁸³

It is important to keep in mind in cases like these that the Principle of Application instructs us to evaluate reformist groups along a number of desiderata, a particularly important one being that the group is pursuing correct and relevant principles of ideal theory, rectification, and morality. Indeed, it is important to keep in mind that the Principle of Application instructs us to tailor our confidence about the justice of an action in proportion to the extent that we are, or are not, confident about whether a reformist group satisfies those desiderata. Accordingly, the Principle suggests that we should indeed be cautious

⁸³ www.time.com/time/magazine/article/0,9171,954942-2,00.html

in cases like these. Ordinary morality surely tells us, for example, that violent responses to injustices – particularly bombings, targeted killings, and killing civilians – are very questionable methods at best. Ordinary morality also surely tells us, however, that the worse that injustices get, the more likely it is that violent responses are justified. So, to take one example, most Americans presumably believe that the American Revolution against the British was a justified response to British tyranny, even though, obviously, it involved a war. We should judge reformist groups in these kinds of cases very carefully then. So, for example, let us return to the African National Congress's adoption of violent methods. It is evident, first, that the ANC adopted these methods only as a last resort. The ANC continued to espouse non-violent tactics for twelve years, in fact, after the Apartheid regime instituted "Grand Apartheid" a policy of ethnic cleansing that forcefully resettled millions of blacks into "group areas" and subjected them to a particularly severe set of laws, including, of course, laws denying them voting rights in the Apartheid Government itself.⁸⁴ The ANC only turned to violent methods after (a) particularly severe policies were put in place, (b) the ANC itself was exiled, and (c) innocent black protestors were shot and killed at during the Sharpsville Massacre. Second, these violent methods were actually efficacious where non-violent tactics had failed. The end of Apartheid in South Africa was clearly precipitated by the fact that the ANC's violent tactics had rendered South Africa ungovernable. In the 1980s and early 1990s South Africa was in a virtual civil war. The government was losing control, and the economy was growing weaker and weaker due to boycotts, strikes, and international

⁸⁴ A list of these laws can be found at <http://africanhistory.about.com/library/bl/blsalaws.htm>.

sanctions (the latter of which, by the way, were requested by the ANC at the U.N.⁸⁵). Indeed, all three sets of initial negotiations between the ANC and Apartheid regime – the Groote Shuur Minute, the Pretoria Minute, and National Peace Accord, which led to further negotiations, and ultimately the fall of Apartheid – focused almost exclusively on resolving the violence and intimidation resulting from the ANC’s violent tactics.⁸⁶

The fact that reformist groups sometimes call for questionable measures is not, then, a serious problem for the Principle of Application. Far from it. The Principle requires us to think carefully about whether reformist groups satisfy its desiderata, and to tailor our confidence about the aims of reformist groups accordingly. In fact, in the Principle of Application’s defense, it seems to me that if the United States had actually accepted the Principle and thought through the ANC’s use of violence fairly carefully (as we have here), the United States would not now be in the awkward position of having once labeled the ANC, and its Nobel Peace Prize-winning leader Nelson Mandela – a man now widely regarded as a symbol of freedom and equality – “terrorists.”⁸⁷ As U.S. Senator John Kerry remarked on July 2, 2008 (the day that President George W. Bush finally signed a bill removing Mandela from the U.S.’s terrorist watch list), “[Mandela] had no place on our government's terror watch list” to begin with.⁸⁸ Senator Kerry is

⁸⁵ <http://www.anc.org.za/ancdocs/speeches/1960s/sp631029.html>.

⁸⁶ For the Groote Shuur Minute and Pretoria Minute, see the Minutes and Accords between the ANC and the South African Government, May 1990-February 1991, <http://www.anc.org.za/ancdocs/history/transition/minutes.html>. The full text of the National Peace Accord can be found at <http://www.anc.org.za/ancdocs/history/transition/npaccord.html>.

⁸⁷ <http://www.cnn.com/2008/WORLD/africa/07/01/mandela.watch/index.html>

⁸⁸ Ibid.

surely right. Mandela and the ANC utilized violent tactics, but they were no more terrorists than the American Colonies were terrorists against the British Empire in the Eighteenth Century. The Principle of Application helps us see why. Both of these cases (the American Revolution and the ANC-led South African rebellion) are cases in which widely popular reformist groups, headed by rational and informed leaders who extolled correct principles of justice and abided by the commonplace moral norm that political violence is appropriate as a last resort to grave injustice, espoused violence only as a last resort. If only the U.S. and other international critics of the ANC had reasoned according to the Principle of Application as such. Perhaps Apartheid could have been eliminated with less bloodshed.

§2.2.3. Aren't Reformist Groups Often Irrational or Inadequately Informed?

Some readers might suggest that reformist groups are often, or even typically, irrational or ill-informed. So, for example, Jagdish Bhagwati, a well-known economist, appears to think that opponents to the World Trade Organization and globalization tend to have an “inadequate intellectual grasp” of economics and social policy.⁸⁹ Similarly, one reader of an earlier draft of this chapter remarked: “In my lifetime the reformist groups have generally been ill-informed about economics, and have pushed really detrimental policies.”

My reply to this worry comes in two parts. The first part of my reply is that it is absolutely critical to keep in mind that the phrase, “reformist group”, as I am using it, is not to be understood as referring merely to (or even primarily to)

⁸⁹ Bhagwati (2004): 18.

the sorts of groups that this worry seems to have in mind, such as trade unions or groups of “anti-globalization” protestors. Quite the contrary, the Principle of Application implies that any class of persons that displays an interest in eliminating or rectifying injustice (defined relative to ideal theory) can qualify as a “reformist” group, including the World Trade Organization or even economists. The Principle of Application says that we are to consider all such groups, and then rank them according to how well we judge them as satisfying the Principle’s desiderata. This is important because if, hypothetically speaking, due to the complexity of a particular case, we became convinced (in a particular case) that, in the face of some injustice, only a certain class of economists were rational and adequately informed (as well as displaying an interest in eliminating that injustice), we could very well come to judge that class of economists as satisfying the Principle of Application’s desiderata better than any other group – in which case, following the Principle, we should judge that their opinions best represent what justice requires.

It is also critical to keep in mind here that the Principle of Application is not any sort of algorithm. Some readers might wonder how we could possibly judge some class of economists as satisfying the Principle of Application’s desiderata overall better than some other group(s) when many of those other groups will clearly satisfy many of the Principle’s other desiderata better than economists (economists are not, for example, very similar as a class to those who suffer injustice). It is always important to keep in mind, when thinking about the Principle of Application, that if a group that fails miserably with respect to a single particularly important desideratum – such as the desideratum of

rationality – we should surely rank that group as performing poorly vis-à-vis the desiderata overall. No matter how well a reformist group satisfies a number of the Principle’s desiderata, gross failures with respect to some of the Principle’s most important desiderata (particularly its rationality and “correct principles of justice” desiderata) will, for fairly obvious reasons, justify us in ranking other groups more highly with respect to the desiderata as a class.

The second part of my reply to the worry raised is that we must be careful to take a suitably broad view of what is at issue when we evaluate reformist groups along the dimensions of rationality and informed-ness. As readers will see in Chapter 5, where I discuss global economic justice, I believe that proponents of particular economic policies (such as Jagdish Bhagwati) often miss the point in criticizing opponents of their views as having an “inadequate intellectual grasp” of economics. As readers will see, I think that the most interesting debate about globalization, free trade, and so on, is not about economics but over the morality of forcing economic policies on people regardless of whether or not those people want the (perhaps very real) benefits of those policies. It is absolutely critical, then, to apply the Principle of Application to reformist groups – to judge how “rational” and “adequately informed” a group is – according to the correct set of criteria. The fact that a particular reformist group is inadequately informed about economics may well be irrelevant if the real issue is not economics, but rather something else entirely (such as principles of morality).

§2.2.4. Does the Principle of Application Imply That All Reformist Groups Aside From One Must Disband?

Some readers might have a simple technical worry about the Fundamental Principle – one that might seem to amount to a *reductio ad absurdum* of it. The Principle tells us, once again, that we ought to take the aims of whichever reformist group best satisfies various desiderata to be the best representation of what justice requires (qua the Fundamental Principle of Non-Ideal Theory). One might worry that if we accept this, it follows that all other reformist groups have a duty founded in justice to give up their aims and adopt the aims of the reformist group in question. So, for example, suppose there are several reformist groups in an unjust society: groups A, B, C, D, and E. Then suppose that group B best satisfies the Principle of Application’s desiderata. In that case, does it not follow that all of the other groups – A, C, D, and E – now have a duty to stop existing altogether, or disband? The worry then, obviously, is that if that is true, the Principle of Application has intolerable implications. Indeed, the idea seems paradigmatically fascist. The famous Reign of Terror that plagued the French Revolution seems to have been the result of just this kind of intolerance. Different factions of revolutionaries in France mutually radicalized one another, leading to mass violence and mass executions that took the lives of tens of thousands of French men and women.⁹⁰

This worry is worth mentioning because it draws our attention once again to an important aspect of the Principle of Application that we must always be carefully to remind ourselves of: namely, that its desiderata themselves suggest

⁹⁰ Secher (2003).

the promotion of conditions of free and open debate among reformist groups. After all, how are we to know whether a reformist group is pursuing correct and relevant principles, or whether it is rational and adequately informed, if there are not other groups to challenge it? The arrogance of facism is that fascists “think they know best” unilaterally without allowing other people to speak their mind. In order for us to judge which reformist group around us best satisfies the Principle of Application’s desiderata, there must be competing reformist groups. Accordingly, the Principle of Application does not support or imply that as soon as we single out a particular reformist group as best satisfying its desiderata in particular case, all other reformist groups must disband and join it. On the contrary, the Principle implies that we must remain ever-vigilant about maintaining conditions of free and open debate and association.

§2.2.5. Cases Where Reformist Groups Are Absent

Thus far I have dealt with cases in which relevant reformist groups exist. Offhand, however, we can imagine all sorts of cases in which there are no reformist groups. Consider a closed society that does not tolerate dissent. Which reformist group could we possibly appeal to in this case?

I submit, first, that in many cases there will be reformist groups in other societies that we can take to satisfy the Principle of Application on behalf of the class of persons who suffer in the closed society. Injustices in different societies are often quite similar, after all. Consider two Islamic societies in which women are afforded fewer rights than men. Then suppose that one of these societies is closed, whereas the other is relatively tolerant of dissent. Finally, suppose that

the latter society includes women's groups that advocate in favor of gender equality and espouse particular aims and policies in support of achieving that end. The Principle of Application tells us – plausibly, I submit – that although the two societies may be different in many respects, we should take the women's groups in the open society to be the best “voice” in favor of the interests of the women in the closed society, at least if the two societies are alike in most respects.

What if the closed society is very different, however? So, for example, suppose the open society is Islamic whereas the closed society is Confucian. Intuitively, the women in the two societies might have very different concerns (at least if, qua the Fundamental Principle of Non-Ideal Theory, they accepted the correct principles of ideal theory). What, if anything, does the Principle of Application tell us about this case? Recall that the Principle of Application instructs us to advance the aims of whichever reformist group, past, present, or hypothetical, best satisfies the Principle's desiderata. In this case at hand, the Principle of Application would presumably have us extrapolate from the aims of the women's groups in the open Islamic society to a hypothetical account of what the aims of women's groups in the closed Confucian society might be if (contrary to fact) such groups existed. This may of course be difficult, but oftentimes there will be known similarities and differences between the oppressed classes of different societies that would enable us to make such an extrapolation with confidence. We might know, for example, that “family” is of great importance to women in both societies. Accordingly, if the women's groups in the open Islamic society espoused policies of reform that purport to reconcile their interest in family with the achievement of gender equality, then by a similar token, we

should imagine that if there were such reformist groups in the Confucian society, they would have similar aims.

I submit, then, that the Principle of Application deals with cases in which reformist groups are absent in two ways: it (1) directs our attention to reformist groups where they do exist and (2) instructs us to extrapolate from those groups to the case where such groups are absent.

§2.2.6. Why Not Go Entirely Hypothetical?

Some readers might wonder, in light of the case just discussed, whether it might be better to abandon the Principle of Application's focus on actual reformist groups in favor of a principle which focuses our attention on hypothetical estimations from the outset. The Fundamental Principle of Non-Ideal Theory tells us that we deal justly with injustice, after all, simply insofar as we advance the preferences that people would have if they satisfied various conditions. Why shouldn't we just bypass reformist groups altogether and just estimate what we think people would prefer under those conditions? My answer to this question, as a first pass, is that the Principle of Application keeps us grounded in reality as opposed to what we think reality is. One of my greatest worries about Western social and political theories, a worry that often raised by theorists of other traditions⁹¹, is that Western theorists fail to afford enough attention to the differences between people of different cultures. Just to be clear, I think it is important not to lend these sorts of worries more weight than they are due. For my own part, I think we have a duty founded in justice not to accept values that

⁹¹ See Beitz (2001): 270-274 for a brief summary (and Beitz's reply) to some common concerns.

are inconsistent with the equal treatment of persons, no matter how common those values may be in some parts of the world. Still, the worries surely have some bite. If we want to eliminate and rectify injustices, we should surely consider the views of the very people we want to help: the oppressed people on the ground who have day-to-day lives to live, family members, friends, and associates to deal with, and so on. I believe that the Principle of Application keeps us appropriately grounded in this reality in a way that purely hypothetical judgments about what is best for people cannot.

§2.3. THE ARGUMENT FOR THE PRINCIPLE OF APPLICATION

Now that we have a prima facie case for the Principle of Application, as well as replies to a few initial worries, let us turn to the full justification of the Principle – the argument that the Principle really is the best available indicator (to us in the real world) of whether an action satisfies the Fundamental Principle of Non-Ideal Theory (and is therefore required by justice).

In order to defend the Principle of Application, then, three things must be accomplished. First, the case must be made for taking the aims of reformist groups to be the best available indicator of the social preference ordering that constitutes the Fundamental Principle's satisfaction condition. Second, it must be shown that our confidence that a reformist group's aims represent that preference-ordering should increase to the extent that that group satisfies the Principle of Application's desiderata (and decrease to the extent that the group fails to satisfy those desiderata). Finally, it must be shown that when two or more competing reformist groups satisfy the Principle of Application's desiderata

roughly equally well, a fair compromise between the aims of those groups represents the Fundamental Principle's satisfaction conditions better than any of the groups' aims taken individually. It is to these three tasks that I now turn.

§2.3.1. Stage 1: The Argument for Taking Reformist Groups to be the Best Available Representation of the Fundamental Principle's Social Preference Ordering

Suppose you wanted to estimate what I would believe or prefer if I were different in some way(s) than I actually am. We make these sorts of estimations quite often, if only implicitly. As a teacher, I often find me asking myself questions such as, "What would student X be able to accomplish if she studied harder?" Usually I ask this question because I see a student who, in my estimation, has some real talent but is not making the most of it. I have an idea that the student would probably be able to accomplish quite a bit more, and produce better work, than she has, if only she put more time and effort into her work.

I assume these kinds of estimations often have some accuracy. Indeed, much of what we do in life is predicated upon our ability to predict what people would do under various conditions. So, for instance, consider a "talent scout", such as a scout for a major-league baseball team. Such a scout is paid to watch young prospects play the game of baseball and then estimate, on the basis of what he sees, not only whether a particular player can be expected to work hard, but also, on the basis of that player's natural skills, whether if that player worked hard, he would display the sorts of skills necessary to compete effectively at a major-league level. Now, of course, anyone who pays attention to baseball, or to

just about any other business that involves the evaluation of talent, knows that talent evaluators often mis-estimate talent. So, for instance, it is not uncommon, particularly in professional sports, for talent-evaluators from diverse backgrounds to come to a consensus that a particular person is a “can’t miss” talent – a person who they are fairly certain will develop certain skills and succeed in the some domain – but then discover, at a later point, that their estimations were quite of the mark. The fact that we often make incorrect judgments about what people will do in the future, or would do under counterfactual conditions, does not, however, make us give up our belief that the sorts of estimations we do make can have strong accuracy-making features.⁹² So, for instance, while it is the case that some sports superstars, such as Tom Brady (who, at the young age of thirty, is already considered one of the greatest quarterbacks to ever play professional American football), were widely underestimated early on in their career (Brady was drafted in the sixth round of the NFL Draft), it is still the case that players selected in earlier rounds of the Draft tend to succeed more often, and succeed at a higher level, than players selected in later rounds. Thus, while our estimations about what people will do in the future, and what they would do under counterfactual conditions, are surely fallible (often highly so), it is surely also the case that these sorts of estimations,

⁹² Although the truth-conditions for indicative conditionals (i.e. conditionals of the form “If p, then q”) is a matter of much contention, one leading view is that the truth-conditions of “forward-looking” indicatives (i.e. “will” conditionals, such as “If p is the case, then q will be the case”) are identical to the truth-conditions for counterfactuals (i.e. “would” conditionals, such as “If p were the case, then q would be the case”). See Gibbard 1981: 222-6; Dudman 1984, 1988; and Bennett 1988. See also <http://plato.stanford.edu/entries/conditionals/#TruConRevStaJac>.

when we make them in the right ways, tend, if only in a probabilistic way, to track objective facts (about the future and counterfactual conditions).

The point just made about the NFL Draft alerts us, I think, to what grounds the accuracy of these kinds of counterfactual judgments. In the case of the NFL, we see that some actual number of individuals with a certain combination of properties – natural talents and hard work – succeed at a very high level, and we make probabilistic counterfactual assessments about new players on the basis of these frequencies. So, for instance, if we see that nine out of ten quarterbacks with “first-round talent” who work hard succeed in the NFL, it seems natural – and epistemically warranted – for us to conclude that the chances of this particular quarterback succeeding (if he has first-round) talent is nine in ten.

We can put the same point here by saying that the ratio of actual individuals who possess two particular properties (first-round quarterbacking talent and hard work) who also possess a third property (NFL success), represents the probability, for any particular person, whether that person would instantiate the latter property if he/she had both of the former properties. This analysis in turn seems to suggest a way to represent the probability of whether, for any particular individual I and proposition P, I would prefer that P obtain (to some alternative(s)) under the counterfactual conditions the Fundamental Principle of Non-Ideal Theory specifies. Since the Fundamental Principle asks us to estimate, of every individual in a relevant domain (i.e. society or world), what that person would prefer under some relevant set of less-than-fully-just conditions C if that person were (i) rational, (ii) adequately informed, (iii)

accepted the correct principles of ideal theory and rectification, (iv) desired the rectification of past injustices (as required by some independent theory of rectification, assuming there is one), but (v) otherwise rationally desired to advance his/her own transition-related preferences (vi) within the broader constraints of morality more generally, (vii) under C, we should be able to estimate those preference by reference to the actual frequency of preferences among individuals in the population who actually are rational and adequately informed, accept the correct principles of ideal theory and rectification, and so on, under the conditions of injustice in question.

There is a serious problem to consider here, however. In the case of the NFL prospect and the case of the talented student discussed earlier, the reference-classes that we use to estimate the counterfactual probabilities are composed of by individuals who are relevantly similar to the person in question. So, for instance, if we return to the case of the talented student, I estimate the probability that she would produce strong work if she worked hard in terms of similar students who had her sort of talent and who worked hard. Similarly, in the case of the NFL quarterback prospect, we estimate the probability that he will have success in the NFL by reference to similarly talented quarterbacks who have been drafted in the past. What we do in both cases, in other words, is estimate the probability that a particular person will have some property in terms of the number of individuals in a representative sample. We estimate the probability of whether this first-round talent quarterback would have NFL success if he worked hard in terms of the past successes of other first-round talents who worked hard.

The main problem with attempting to represent the satisfaction conditions of the Fundamental Principle of Non-Ideal Theory in similar terms, however, is that it is hard to see what might constitute such a representative sample. Which kinds of people, in the real world, do we tend to have good reason to take, under conditions of injustice, to be (i) rational, and (ii) adequately informed, to (iii) desire fully just conditions (as specified by the correct ideal theory of justice, assuming there is one) and (iv) desire the rectification of past injustices (as required by some independent theory of rectification, assuming there is one), but (v) otherwise desired to advance his/her own transition-related preferences within the broader constraints of morality, (vi) under those conditions? If we make the fairly uncontroversial assumption that desires have at least a *ceteris paribus* motivational component – that is, that an individual who desires X will at least, all things being equal, actually be motivated to pursue X – we should aim to single out those classes of individuals who, generally speaking, appear to be composed of by rational and adequately informed individuals who are actually motivated to bring about fully just conditions, and properly rectify past injustices, who are otherwise concerned with advancing whichever interests they take themselves to have *vis-à-vis* transition within the broader constraints of morality, under conditions of injustice. The question then is: which classes of individuals satisfy these conditions? Generally speaking, the answer seems to me to be: reformist groups. Let me explain.

Consider once again the members of the black American Civil Rights Movement during the 1960s. Generally speaking, it seems that the members of those groups were not only rational and adequately informed (at least insofar as

their members pursued the principles of a well-informed leadership), but also, were clearly motivated to pursue correct principles of justice – in this case, a basic principle of equal civil rights – in ways that also seem to have taken into account the transition-interests of the members of the group. Many members of those groups were willing to march, demonstrate, engage in acts of civil disobedience, be abused by police, and so on, in order to achieve equal rights; other members were not necessarily so willing to incur all of those costs. Generally speaking, though, I think we take the “movement” itself to be defined largely by the sorts of costs that its members were willing to incur – that it is precisely because so many activists were willing to perform acts of disobedience and put themselves in dangerous situations for the cause of equality that we think, on average, that those are the costs that members of that group quite generally were willing to incur against their background desire for justice.

Now again, not all reformist groups are like this. Reformist groups can pursue false principles of justice, or even no principles of justice at all (they may be out for nothing but revenge). Reformist groups can also be non-voluntary, or conscript their members (as is the case with various “freedom fighter” groups in parts of Africa). Finally, there may be cases where reform groups pursue irrational policies – policies that set back their group’s very own goals – as well as cases in which reformist groups settle on the goals and policies they do on the basis of inadequate information.

In all of these cases, we should be skeptical of whether the goals of such groups accurately represent the preferences that individuals in society or the world at large would have under the counterfactual conditions mentioned in the

Fundamental Principle of Non-Ideal Theory. Let us set these issues aside for now, however. We will come back to them later. The point for now is simply is that it looks as though the membership of reformist groups can and often actually do satisfy, as a collective, the conditions mentioned in the Fundamental Principle. First, we seem to often have strong evidence, via the voluntary nature of participation in these groups, that the members of some such groups (at least implicitly, through their joining the group and promoting its aims and policies) do prefer correct and relevant principles of justice (when, as is the case in the mainstream American civil rights movement, the leadership of many of these groups explicitly pursued racial equality). Second, we seem to often have strong evidence, once again via the voluntary nature of these groups, that the goals and policies of these groups must generally be sensitive to the transition-costs that their members, as a group, prefer to incur (such groups would presumably lose great numbers of members to some rival group(s) if their goals and policies imposed costs their members are unwilling to face). Finally, it seems that we often have good evidence relating to the question of whether the goals and policies these groups pursue are rational and adequately informed (so, for example, it is hard to see how the goals and policies of mainstream American civil rights groups could be condemned as being otherwise). We appear to sometimes have good evidence, then, that certain groups of people – the members of certain reform groups – generally do satisfy the conditions mentioned in the Fundamental Principle of Non-Ideal Theory, as well as strong evidence of what the members of those groups generally prefer. The question now is whether we have good reason to take those individuals' preferences to represent the

preferences that members of an entire society, or the world, would probably have under those same counterfactual conditions.

The problem that arises at this point, however, is this. In the case of the NFL football prospect, we evaluate what this talented prospect would probably accomplish by reference to the successes of similarly talented prospects in the past who worked hard. The group that in this case we take to represent the probability that this prospect will succeed, then, seems properly representative of him. It represents what we can expect of a person of his talents. The problem in the case of reformist groups – of using them to represent what individuals in the larger society or world would prefer under the conditions listed in the Fundamental Principle of Non-Ideal Theory – is that the two classes at issue here (the group doing the representing, and the group supposedly being represented) are very different. Reformist groups are typically composed of members of social classes that are poor, downtrodden, and subject to injustice. The idea of using their preferences to represent the preferences that other classes of individuals would have, and indeed the preferences that the members of an entire society or the world at large would have, if the individuals in those classes satisfied the conditions listed in the Fundamental Principle of Non-Ideal Theory, might sound a lot like taking the success rates of very untalented quarterbacks to accurately represent what we could expect of talented quarterbacks who work hard. How can we claim to know, or estimate with any sort of claim to accuracy, what the members of a society or world probably would prefer under the conditions listed in the Fundamental Principle in terms of what a very different class of individuals actually does prefer under those conditions?

At first glance, this problem might seem to be insurmountable. Fortunately, though, I believe that we have more resources at our disposal. We often estimate what a person would believe or prefer under certain counterfactual conditions by, in part, considering the nature of the counterfactual conditions in question. So, for instance, we might ask what I would believe if I were a religious believer (of, say, some major faith, e.g. Christianity, Judaism, Islam, etc.). At first glance, it might seem difficult to speculate, with any accuracy, what I would probably believe if I were a believer. I am, after all, not only a committed Atheist, but a person who is by all accounts extremely skeptical in general. It does not seem impossible to estimate what I would probably believe if I were a believer, however. After all, we presumably know quite a lot about the properties of being a religious believer, as well as about other properties (such as the property of being an Atheist). We know that religious believers, by the very nature of the property of being a religious believer, believe in the existence of some God or gods. We know that Jewish individuals typically believe in a particular God – the one described in the Old Testament. In contrast, we know that Christian individuals tend to believe in the God described by the Old and New Testaments together. We know that Atheists believe that no god of any sort exists. And so on.

I propose, next, that we can (and I think often do) make accurate counterfactual judgments in virtue of what we know about these sorts of properties. So, for instance, suppose once again that we wanted to know what I would prefer or believe if I were a believer. It is difficult to answer this question simpliciter for the following reason. As a skeptical individual, I find it hard to

conceive myself as being a believer. I almost want to say, “If I were a believer, I wouldn’t be me.” But of course that cannot be exactly right. I do not think it is an essential property of me that I am as skeptical as I am. I surely can imagine myself having been born and raised in a devoutly religious community, and as having come to believe some religion or other. In doing so, however, I seem to be imagining myself as somewhat less skeptical than I actually am. I still might have had a somewhat skeptical nature, of course, given that I do seem naturally inclined to skepticism. It seems hard, therefore, to judge with any strong claim to accuracy what I would have believed or preferred if I were a religious believer simpliciter. I think we can, however, make justified judgments about more specific questions. So, for example, we might ask what I would probably prefer or believe if I were a skeptical believer, on the one hand, or a devout believer, on the other. In each of these cases, the very nature of the properties in question – the properties of being skeptical and devout, respectively – seem to single out relevant comparison classes in the real world. There are, after all, populations of comparatively skeptical religious believers in the real world, as well as populations of devout religious believers – and the members of both groups (in the real world) have very different properties. So, for instance, it is surely true that, on average, less devout religious believers tend to attend religious services less often than more devout believers.

Accordingly, it seems as though we can come to justified judgments about what you, I, or anyone else would believe or prefer under various counterfactual conditions in virtue what the members of relevant comparison classes of actual individuals – classes that instantiate relevant classes of properties – actually do

believe and prefer. Even though we may not be able to judge with any accuracy exactly what I would believe if I were a believer simpliciter, the point is that we surely can look to populations of actual individuals to judge what I would probably believe or prefer if I were a skeptical believer or a devout believer, respectively. In the former case, we should surely just look at what populations of skeptical believers in the real world tend to prefer and believe, whereas in the latter class we should look at what populations of what devout believers tend to prefer and believe.

The question now is whether we can make a similar move with respect to the Fundamental Principle of Non-Ideal Theory. I believe we can – that we can see, by reflecting on the nature of the property of desiring justice, that the sorts of reformist groups I mentioned earlier comprise the relevant comparison class for us to estimate what the members of entire societies, or even the world as a whole, would prefer under the conditions mentioned by the Fundamental Principle. The Fundamental Principle of Non-Ideal Theory tells, once again, us to aim to satisfy the preferences that everyone in a relevant population would have, given past or present injustices, if those individuals desired conformity to correct principles of ideal theory and rectification. So, for example, if we consider the case of racial inequality, the Fundamental Principle instructs us to aim to maximally satisfy the preferences that the entire population of individuals would have if each member of the population desired racial equality. Or consider economic injustice. Suppose Rawls is correct that justice requires the basic structure of a society to be such that it maximizes the wealth and income of the least well-off class.⁹³ In this

⁹³ See e.g., Rawls (1999a): 65-73.

case, the Fundamental Principle of Non-Ideal Theory instructs us to aim to maximally satisfy the preferences that the members of society-at-large would have if each member of that society desired the basic structure of society to maximize the wealth and income of the least well-off.

Notice, first, that each of these desires requires us to aim to satisfy the preferences that individuals in a larger domain would have if they desired to advance the interests of the downtrodden. The point here, more broadly, is that it seems as though a genuine desire for justice is, by its very nature, a desire to set one's interests aside so that those who are suffering injustice no longer have to suffer it (and that those who have suffered injustice in the past are properly compensated). Accordingly, we have one reason to take reformist groups to be the relevant comparison class for estimating what everyone in a population would prefer if the individuals in that larger class desired justice. If desiring justice is a matter of setting one's interests aside so that the downtrodden can enjoy the conditions of justice that they ought to enjoy – e.g., if a desire for racial equality just is a desire that the members of discriminated races enjoy the conditions of equality they are due as a matter of justice – then indeed, it would seem that we should take the preferences of the members of reformist groups to represent, or stand for, the preferences that we all ought to have, at least so to the extent we are confident that the group satisfies the Principle of Application's desiderata.

I italicized the last part of the previous sentence to head off, once again, an important (but, I think, misplaced) sort of worry: the worry that the “downtrodden” will, for all kinds of reasons, be most unlikely to take the interests of others adequately into account. Here is a concrete realization of the worry.

One reader of an earlier draft of this chapter remarked that in a meeting with a NAACP lawyer at a conference on affirmative action, the lawyer categorized opponents of affirmative action as simply evil. The worry, of course, is that this lawyer is evidently not concerned at all with the interests (or even opinions) of those who would be negatively affected by affirmative action. But now what does this case really show? I think it shows, first, that we must be very careful when it comes to applying the Principle of Application. Remember, how we evaluate a reformist group vis-à-vis the Principle of Application will depend on many things. A political libertarian such as Nozick, for example, will presumably reject affirmative action as inconsistent with libertarian principles from the outset. The NAACP will, then, fare very poorly vis-à-vis the Principle of Application for a Nozickean from the outset. I also think, second, that the Principle of Application makes good sense of the skepticism that many people have about affirmative action policies. The Principle of Application says, if you recall, that we are to tailor our confidence about the justice of an action in proportion to our confidence about how well particular reformist groups satisfy the Principle of Application's desiderata. In light of this, let us reconsider the case of the NAACP lawyer. This case is disturbing precisely because the lawyer's attitudes about opponents to affirmative action seem patently unreasonable. My claim now is that insofar as we do think this, we should apply the Principle of Application accordingly. The Principle of Application tells us to tailor our confidence about the justice a group's aims (such as the aims of the NAACP) in proportion to how confident we are that the group is actually motivated by correct principles of justice, morality, whether it is actually informed, rational, and so on. My reader's

encounter with the NAACP lawyer, as such, should presumably lead us to have less confidence in the NAACP's views on affirmative action that we otherwise might have, as the lawyer's claim that opponents to affirmative action not only seems irrational and ill-informed (what, if anything, supports such a judgment); it also seems (to me, at any rate) immoral (the idea that those who disagree with us are evil seems to me to be a paradigmatically fascist attitude).

I now want to argue that there is a second reason to take the aims of reformist groups (to the extent that those groups satisfy the Principle of Application's desiderata) to represent the preferences we all would have (collectively) if we satisfied the Fundamental Principle of Non-Ideal Theory's conditions. I think, as a general matter, we should recognize that self-interest is one of the greatest, if not the greatest, source of bias for individuals. So, for instance, consider Martin Luther King's famous criticism of white clergy in his "Letter from Birmingham Jail." Dr. King devotes much of his letter to casting doubt on whether the white clergy, despite their claims to desire justice, genuinely did desire justice. Dr. King's argument, more or less, is that if the white clergy had a genuine desire for justice, they would not be saying the things they were saying, such as that the tactics of civil rights groups as "too much, too soon"; they would instead support civil rights groups.

Now, we all know how powerful, but also subtle, the motivation of self-interest can be. Dr. King's worry, I take it, was that even if members of the white clergy truly believed that they desired justice, we have reason to take their desires to have been distorted, or biased, by their position of relative privilege. But now if self-interest is such a powerful source of bias, how is it to be counteracted?

Here again, it seems as though reformist groups stand for, or represent, the best way to avoid this bias against justice. If we want to estimate, with as much accuracy as possible, the preferences that individuals in a society or world would have if each of them desire justice, it would seem that we should defer to the preferences of those who have the least reason to be motivated against justice (or alternatively, the greatest motivation to desire justice). But again, it is surely the members of reformist groups who best fit this bill. They are, after all, not only subject to injustice, bearing its greatest costs; they are, as members of reformist groups, actively seeking to overcome it.

We have an argument, then, to take the aims of reformist groups to represent the social preference ordering composed of the preferences that members of a particular society, or world as a whole, would have if each member of that whole counterfactually satisfied the Fundamental Principle's various conditions. I have just argued,

- (1) That the preferences that persons counterfactually would have under some set of conditions are best represented by the actual preferences of persons actually satisfy those conditions;
- (2) That the aims of reformist groups typically reflect the actual preferences of large bodies of persons who actually satisfy the Fundamental Principle of Non-Ideal Theory's various conditions.

If we then suppose something that seems eminently plausible, namely, that,

- (3) The aims of reformist groups thus reflect a single social preference ordering compose of the actual preferences of large bodies of persons

who actually satisfy the Fundamental Principle of Non-Ideal Theory's conditions.

It follows that,

- (4) The aims of reformist groups are the best available representation of the Fundamental Principle of Non-Ideal Theory's satisfaction conditions.

Now clearly, this is not all there is to be said. Once again, how well a reformist group represents the Fundamental Principle of Non-Ideal Theory's satisfaction conditions (and so, what justice requires) will depend on other features of that group. Some reformist groups, such as the Nation of Islam, pursue some correct principles of ideal theory (equal civil rights for all races), but also pursue incorrect principles (no racial mixing or intermarriage). Also, reformist groups can also be motivated by pernicious forces, such as revenge against their oppressors. Reformist groups can also have poor leaders, their members can be poorly informed; and so on. We should tailor our confidence as to how well a particular reformist group represents the Fundamental Principle's social preference ordering, then, according to how well that group fares along various dimensions. We need a list of desiderata that will enable us to judge how well a particular group represents that preference ordering. It is, therefore, the Principle of Application's desiderata that I now turn.

§2.3.2. Stage 2: The Case for the Principle of Application's Desiderata

I think that we have already seen implicitly, in discussing the Montgomery Bus Boycott and other toy cases, how the Principle of Application's desiderata bear on

how well a particular reformist group's aims represent what justice requires (qua the Fundamental Principle of Non-Ideal Theory). My aim in this section is simply to make the case for the Principle of Application's desiderata more explicit.

§2.3.2.a. Desideratum (a): Correct and Relevant Principles of Ideal Theory and Morality

It is obviously important that the Principle of Application contain desideratum (a): the desideratum which instructs us to aim to advance the overall set of tradeoffs endorsed by a majority of the members of that reformist group which best satisfies the Principle's other desiderata, but whose members endorse those tradeoffs out of a concern for correct principles of justice. It is crucial, after all, that we not advance unjust aims. We should take desideratum (a) to be something like a "side-constraint", then, on the sort of group whose members can satisfy the Principle of Application. Any failure to satisfy desideratum (a) should, in other words, be taken as a disqualifier – one that requires us not to aim to satisfy the tradeoffs endorsed by the members of that group.⁹⁴ Still, conformity to the correct-and-relevant-principles requirement can come in degrees – degrees that should inform the extent to which we take the preferences of the members of a given reformist group to be just. Let me explain.

⁹⁴ What if no reformist groups, past and present, satisfies this desideratum (no group has the courage, perhaps, to organize and speak up)? It is in this case, I submit, that we can do no better than appeal to our own hypothetical estimations about what such groups' aims would be if they did exist.

Suppose, contrary to fact, there had been no NAACP in 1965 – only the Nation of Islam. We have seen that some, but only some, of the principles the Nation of Islam pursued were just. The Nation of Islam did, after all, endorse a principle of equality before the law. Now remember, the Principle of Application tells us that we should indeed pursue the tradeoffs endorsed by a majority of the members of the group, so long as those tradeoffs are consistent with the common obligation we are all under to support the realization of just conditions. What we would have to do in this case, then, is judge to the best of our ability whether a particular policy/aim of the Nation of Islam really is in line with justice. The Principle of Application tells us, after all, to tailor our degree of belief as to what justice requires here and now, all-things-considered, to how well we can take the group to satisfy the desiderata. Since correct principles of justice are an absolutely vital desideratum – we do not want to ever pursue false principles of justice – it follows in the case at hand, according to the Principle of Application, that we should pursue the Nation of Islam’s favored set of trade-offs only insofar as we are confident that those tradeoffs really are consistent with correct principles of justice. Doing this might be difficult, but it would not, presumably, be impossible. We can often tell, with at least some accuracy, whether a particular policy goal, or action, by a group is informed by some correct principle(s) of justice.

It important to keep in mind that precisely which principles we count as “correct” will depend on which ideal theory (and possibly, theory of rectification) we endorse. The Fundamental Principle of Non-Ideal Theory purports only to specify what justice requires once we have come to some conclusion(s) about

ideal theory. So, for instance, suppose one believes that Rawls' theory of domestic justice is correct. In this case, one should take the Fundamental Principle of Non-Ideal Theory to require us to aim to perform those actions we can expect to best satisfy the preferences that individuals would have if they desired conformity with Rawls' two principles of justice – the first of which assigns everyone in society equal basic rights and liberties, and the second of which assigns everyone in society equal opportunities and requires the economic order to be maximally beneficial to the worst off class in society. But of course one might not accept Rawls' theory. One might accept some other theory, in which case one should take the Fundamental Principle of Non-Ideal Theory to require performance of those actions we can expect to best satisfy the preferences that individuals would have if they desired conformity with the principles of that theory. And so on.⁹⁵

One problem that might appear to arise at this point has to do with the question of whether reformist groups ever actually do pursue the principles of justice of a particular ideal theory or theory of rectification. So, for instance, suppose that one takes Rawls' theory of domestic justice to be correct. What are we to say about mainstream American civil rights groups? They clearly pursued racial equality (in conformity with Rawls' first principle of justice). At the same time, however, it seems that we have little to no evidence that those groups were pursuing an economic order that would maximally benefit the worst off in

⁹⁵ What if one endorses no ideal theory at all? In this case, I take it that the Fundamental Principle's "correct principles of ideal theory" clause is vacuously satisfied in this case, and therefore, that absent any ideal theory, the Fundamental Principle collapses more or less into utilitarianism. This is an interesting result, I think.

society. But now if we do not have any good reason to believe that such groups were pursuing goals in conformity with both of Rawls' principles, how can we take those groups' policies to represent the preferences that individuals in the larger domain would have if those individuals desired conformity with Rawls' principles? The answer in this case is that Rawls' principles tell us which principles are relevant. Rawls' theory specifies that his first principle of justice stands in a position of lexical priority over the second principle of justice. It tells us, in other words, that equality of basic rights and liberties is more important than equality of opportunity or an economic order that is maximally beneficial to the worst off in society. For this reason, it seems that even if American civil rights groups were not committed to the realization of an economic order that satisfies Rawls' requirement, this is irrelevant. The fact that such groups were pursuing a society that conformed with Rawls' first principle is all that is relevant in this case. Thus, we can take such a group as representing the preferences that individuals in society would have if individuals in society desired (Rawlsian) justice even if that group is only pursuing conformity with Rawls' first principle.

But now what if the ideal theory or theory of rectification that one adopts is very different? So, for example, suppose one endorses Nozick's libertarian theory. Are there any reformist groups pursuing libertarian principles? The answer is: of course there are. Though they are in the vast minority, there are libertarian groups – groups which, if we endorse a libertarian conception of justice (though most of us do not), we must categorize as oppressed by injustice. The point, at any rate, is simply that satisfaction of the correct-and-relevant-

principles-of-justice requirement (desideratum (a)) will depend on which ideal theory, and theory of rectification, one adopts.

2.3.2.b. Desideratum (b): Voluntariness of Participation

The extent to which the members of a group participate voluntarily is surely also important. Our aim, if you recall, is to judge what people in some larger domain (i.e. a society or the world) would prefer if they desired justice, etc., in terms of what the members of reformist groups actually do prefer. But of course in order to do this we have to come to epistemically justified conclusions about what the members of such groups prefer – and this is by no means an easy thing to do. A person’s decision to voluntarily join a particular reformist group would, though, seem to be a good indicator of one thing: if a person voluntarily joins a particular group, we seem have sufficient reason to conclude that that person prefers that group over others. Now, of course, people join groups for all sorts of reasons, such as strategic ones (they expect that the group is more likely to be successful than other groups). Even this fact, though – that a person joins a group for strategic reasons – seems telling, however. It supports the idea that the person is more interested in, and prefers to support, a group that has a good chance of making progress. People care about, and have preferences related to, relative “chances of success.” I may prefer Group A’s aims to Group B’s aims, all things being equal, yet I may join Group B because I care not only about the aims of these groups but about the likelihood of success. I choose Group B because, when I weigh what I take to be the relevant issues, I see that I prefer Group B’s aims all-things-considered (i.e. including my preferences regarding probabilities

of success). If I really preferred Group A's aims, all-things-considered (even given, that is, the poor likelihood of A's succeeding in its aims), I would have surely joined Group A instead.

One objection here might be that sometimes people join a group not because they really like the group, but rather, because even though they do not really like the group very much at all, they nevertheless regard it as the best group available (i.e. the "lesser evil"). Is this a problem for the Principle of Application? No. Remember, the Principle of Application does not purport to be anything like an "objectively good" measure of what people actually prefer any more than a democratic election purports to be an "objectively good" measure of what people prefer. Instead, much like a democratic election, in which people vote for the best available candidate, what we have with different reformist groups are essentially different "policy packages" that, by joining that group, each member can be taken to voluntarily "vote for" above all other available packages. The fact that most people do not "get everything they" want in joining a reformist group seems regrettable in a certain sense – just as it seems regrettable that in democracies we do not typically get to vote for candidates who endorse everything we prefer. But is either case really regrettable? One of the most important things that reformist groups do, just like political parties, is solve some very difficult informational problems. I am a member of the Democratic Party in the United States, for example, in part because I realize that, as an ordinary citizen – even as a highly educated citizen – there are many things that I just do not know. I do not know the intricacies of government or economics, for instance, nearly as well as a politician or economist. The leaders of the

Democratic Party, then, provide me with a very important service. It may not satisfy all of my preferences, but then again, some of my preferences may be based on misunderstandings about politics or economics. What I do in becoming a voluntary member, then, is subscribe to the party's general aims (though I might not agree with all of its particular decisions) above the aims of other parties.

I take it, then, that reformist groups, like political parties, represent us through something like our voluntary consent. The goals or actions of a reformist group or political party may not advance all of my favored preferences. Still, there is every reason to think that such groups do the best available job of representing the interests of all of their members as an aggregate (which is what the Fundamental Principle of Non-Ideal Theory requires). The Democratic Party may not aim to advance all, or even most, of my preferences – and even to the extent that it does, it may do so in a highly imperfect manner (corruption, for instance, is always an issue). Still, the question is whether, of all available methods, the Democratic Party is the best method for me to advance my interests in a way that gives everyone else roughly the same opportunity to advance theirs – or, similarly, whether the NAACP's actions are the best available representation of each of its members' interests. I submit that in both cases, to the extent that participation is voluntary, we do have good reason to take these methods to be the best available. Democratic representation may be imperfect, but I think most of us take it (when it works relatively well and free from corruption) to be the best, or fairest, form of government available. My proposal, similarly, is that “reformist group representation” may be an imperfect – but nevertheless, the

best available – way to represent what people would prefer if they desired fully just conditions and the rectification of past injustices. A person’s voluntary participation in a group indicates that person’s “vote” for that group, and its aims, above other groups and their aims.

2.3.2.c. Desideratum (c): Responsiveness

Like democratic representation, though, “reformist group representation” is surely better when people not only join and participate voluntarily, but when they join and participate because they actually think that the group is responsive to their preferences. To understand what I mean here, recall the “lesser evil” objection discussed in the previous section. I may voluntarily join, and so “vote” for a group above other groups, because I prefer the group, and its aims, to other groups. But now even if this shows that I prefer the group to other groups, this does not show that I actually prefer the group “simpliciter.” I may wish there were a better group – one that was more responsive to my actual preferences.

The general, and fairly obvious point here, is that how well a reformist group represents the interests of its members – and so (if I am right) the preferences we would all have if we satisfied the Fundamental Principle of Non-Ideal Theory’s conditions – intuitively depends not merely on the voluntary participation of its members, but also, on how well it actually responds to their preferences. If I voluntarily join a group, that shows that I prefer the groups to rival groups. It shows that the group does a better comparative job of representing my preferences than other groups do. We are not merely concerned with making comparisons, though. We should tailor our confidence that a

reformist group's actions represent its members' preferences – and so the preferences we would have if we satisfied the Fundamental Principle of Non-Ideal Theory's various conditions – to how well that group really does respond to what its members want. Moreover, what if the only reformist group available is not a voluntary one? A group that conscripts or coerces its members may still be the best available representation of its members' interests if we have reason to believe, that despite its coercive nature, it is more responsive to its members' preferences than other groups (if, let us suppose, those groups are coercive too). Making judgments about the responsiveness of coercive groups will often be difficult, surely, but not necessarily impossible.

At any rate, our judgment about how well voluntary reformist groups respond to their members' preferences should, for fairly obvious reasons, impact our degree of confidence that the group does an objectively good job of representing its members interests. We should desire that reformist groups – voluntary or not – be more responsive to their members rather than less.

2.3.2.d. Desideratum (d): Popularity

On the account I am proposing, each person's voluntary involvement in a reformist group is tantamount to that person casting a vote for the tradeoffs endorsed by that group over the tradeoffs endorsed by other groups. As such, it should be fairly clear why the comparative popularity of a given reform group is an important desideratum. A reformist group that is more popular than its rivals, in essence, enjoys more "votes" than that group. The claim then is that the more support a reformist group has, the greater claim it has to represent the interests

of the oppressed. It is crucial to be careful here, though. A reformist group may enjoy more popularity than another group for all sorts of illegitimate reasons. A “reformist” group may enjoy a great deal of popularity, firstly, because it is not really a reformist group in the relevant sense (the sense of pursuing correct and relevant principles of justice). Sometimes, oppressed classes of individuals support groups not out of any sense of justice, but out of a sense of revenge or hate. We need to be sure, once again, to restrict our focus to legitimate reformist groups only. Second, a reformist group may enjoy a great deal of popularity precisely because it represents only a small portion of an oppressed population. We saw that this is the case with the Nation of Islam – a group which only purports to represent the interests of Black Muslims. It is for this reason that we must now turn, shortly, to desideratum (f): the desideratum which instructs us to focus our attention on that reformist group whose membership best approximates a sample of the entire class of persons oppressed by a particular form of injustice.

2.3.2.e. Desideratum (e): Rationality and Informedness

Because the Fundamental Principle of Non-Ideal Theory instructs us to aim to advance the preferences that individuals would have if they desired justice and were rational, we should take the members of a reformist group to represent these preferences only insofar as we are reasonably confident that the members that compose the group are generally rational, and moreover, that the particular preference being expressed is rational. Let me explain.

In some cases, a reformist group may endorse an irrational policy goal because its leaders lack adequate knowledge of relevant aspects of economic theory. This is not the only way that a reformist group can intuitively fail to represent the preferences that individuals in society or the world would have if those individuals desired justice, were rational, and were adequately informed. For there are surely other ways that the leaders of a reformist group (and by extension, its members) might pursue goals on the basis of inadequate information. Recall that the Fundamental Principle of Non-Ideal Theory instructs us to aim to satisfy the preferences that individuals who desire justice but who are otherwise concerned with transition-costs can have if they were rational and adequately informed. In order to adequately represent these preferences, then, we must expect that the members of a reformist group have adequate knowledge of the sorts of transition-costs they stand to incur as a result of different possible actions, and indeed, adequate knowledge of the overall distribution of costs and benefits they (as individuals) stand to accrue as a result of different actions.

I take it that in many cases, it is quite clear that the members of reformist groups are well aware of the sorts of transition-costs they stand to face. So, for example, it is surely the case that the members of American civil rights groups were aware of the benefits they would accrue from the achievement of equal rights, but also well aware of the sorts of transition-costs they would incur under various circumstances (e.g. abuse from police during demonstrations, etc.). In cases like these, it seems reasonable to conclude that each member of a voluntary reformist group is a member of that group precisely insofar as he/she judges the

goals of that group, compared to the goals of any other group in the actual world, to best match his/her rational and adequately informed judgments of which actions or policies will be most advantageous for him/her.

In any case, the question of whether the members, and leadership, of a reformist group are generally rational and adequately informed will be a matter of judgment, and we should tailor our confidence about how well a reformist group represents its members (and therefore us, qua the Fundamental Principle of Non-Ideal Theory) accordingly.

§2.3.2.e.1. The Presumption in Favor of Rationality and Informedness

I want to conclude this section, however, by briefly defending the following presumption:

The Presumption in Favor of Rationality and Adequate Informedness:
Absent clear and compelling reasons to the contrary, we should presume that the members and leaders of reformist groups are rational and adequately informed.

I propose that this presumption is reasonable a few simple reasons. I believe that if history is any indication, people tend to be too quick, rather than too slow, to dismiss other people as irrational or inadequately informed. The sad fact of our world is that people tend to think they know what is best for other people and tend to foist upon people their views about what the best life to live is whatever those people might think themselves. I believe that history, our own fallibility, a proper appreciation of the fact that each person has their own life to live, we should err on the side of caution when it comes to the prospect of dismissing

others' views as irrational or inadequately informed. Unless people are clearly ignorant of critical facts or mentally infirm (due to malnutrition), we should trust them to judge how well their own lives are going and what they want for themselves in the future. I believe, to quote Isaiah Berlin, that we should err on the side of caution with respect to paternalism (err, that is, on the side of not being paternalistic), for the following reasons:

[paternalism] is to treat men as if they were not free, but human material for me, the benevolent reformer, to mould in accordance with my own, not their, freely adopted purpose...to manipulate men, to propel them towards goals which you – the social reformer – see, but they may not, is to deny their human essence, to treat them as objects without wills of their own, and therefore to degrade them. That is why to lie to men, or to deceive them, that is, to use them as means for my, not their own, independently conceived ends, even if it is in their own benefit, is, in effect, to treat them as sub-human, to behave as if their ends are less ultimate and sacred than my own.⁹⁶

2.7. Desideratum (f): Composition

We come now, finally, to the Principle of Application's final desideratum: the desideratum which requires us to prefer reformist groups that more closely approximate a representative sample of all those who suffer whichever injustice is attempting to be overcome or rectified. The basic (and highly intuitive) idea here is that, all things being equal, the more similar a reformist group is to the

⁹⁶ Berlin (1969): 137.

population whose interests are at issue – namely, the entire population that is subject to a particular injustice – the more reason we have to take the preferences of its members to represent the preferences of that population (and then, by extension, the preferences we would all have if we lived up to our obligations to desire justice).

Some examples may be helpful here. We have already encountered one such example. In Montgomery Alabama in the 1950s, the injustice in question was segregation of public transportation. Now, once again, there were competing reformist groups in both cases. On the national level, the NAACP and the Nation of Islam were both advocating “reform” – though, as we have seen, we have good reason to doubt whether the Nation of Islam’s aims were consistent with the demands of correct principles of justice. The point now is that the sheer similarity of a reformist group to a target population would seem to be good reason for taking the reformist group to represent the interests of the target group. Intuitively, the NAACP is more representative of the legitimate interests of blacks than the Nation of Islam simply because the NAACP’s membership is composed of by blacks from a wide variety of backgrounds, whereas the Nation of Islam’s membership is composed of by black Muslims only.

Now consider a second example. Suppose we are interested in what should be done about sexual inequality in some society – such as the sort of inequality that exists in Iran. In this case of Iran, there are numerous groups advocating reform. Some of these groups, such as Women Movement Against Fundamentalism in Iran, are located outside of Iran.⁹⁷ Other groups, such as the

⁹⁷ See <http://www.wfafi.org/>.

One Million Signatures Campaign, are located within Iran and have made it their stated policy aim to include women in Iran in the movement on a grass-roots level.⁹⁸ The desideratum at issue tells us in this case that, all things being equal, we should privilege the latter group over the former. The mere fact that the latter group's membership is composed of women in Iran is good reason to take that group to be more sensitive to their interests than the former group.

We should remind ourselves, of course, that this desideratum is one among several. The mere fact that a reformist group is similar in composition to an oppressed population is not, in itself, reason to think that group satisfies the Principle of Application better than another group. We must always remember to judge how well a particular group satisfies the Principle of Application's desiderata by considering those desiderata together as a class.

§2.3.2.g –The Principle of Application's Desiderata and Pitkin's Four Conceptions of Representation

At the outset of her seminal work on representation, *Concept of Representation*, Hanna Pitkin points out that “representation, taken generally, means the making present in some sense of something which is nevertheless not present literally or in fact...that in representation something not literally present is considered as present in a non-literal sense.”⁹⁹ This is clearly what the Principle of Application is intended to accomplish. It is intended to represent the Fundamental Principle of Non-Ideal Theory's satisfaction conditions in a way that can lead us to justified

⁹⁸ <http://www.change4equality.com/english/spip.php?article18>.

⁹⁹ Pitkin (1967): 8-9.

conclusions about which actions best satisfy those conditions (and hence are required by justice all-things-considered). The Fundamental Principle tells us that we should aim to determine which actions, here and now in the real world, would best satisfy a class of counterfactual preferences – a class of preferences which, given their counterfactual nature, simply are not present. The Principle of Application then purports to represent those preferences – and indeed, which action(s), of those available, best satisfies the collective class of those preferences – in terms of the “revealed” preferences of the members of reformist groups (the tacitly or explicitly demonstrated preferences of a majority of the members of whichever group best satisfies the Principle’s desiderata – more on this shortly).

I believe we can see that the Principle of Application embodies all four types of representation that Pitkin describes: authorization, accountability, symbolic representation, and descriptive representation. Consider first what Pitkin calls “representation as authorization.”¹⁰⁰ The rough, and highly intuitive, idea here is that someone – you, I, a lawyer, a king or queen, a group, a democratically elected politician, etc. – can be said to represent another person or group insofar as the latter authorizes the former to do so. We typically say, for example, that an attorney is a person’s legal representative just insofar as the person consents to that attorney as his/her legal representative (though of course a legal representative can be appointed to a person as well). The Principle of Application’s second desideratum, (b), appears to embody something like this idea. That desideratum says that we should favor a reformist group over others insofar as its members are voluntary participants. Why? The natural idea, I take

¹⁰⁰ Ibid.: 11, 17-23, 25, 27-34, 42-3.

it, is that if people volunteer in a reformist organization, there is some broad sense in which they authorize its actions. For while they might not approve of the group simpliciter – they might wish the group pursued different ends than it does – their voluntary participation in the group would seem to indicate that they at least prefer the aims of that group over the aims of all other groups that have a realistic chance of realizing their aims.

Next, consider Pitkin’s conception of “representation as accountability.”¹⁰¹ Pitkin notes that while I may authorize a person or group to represent me, that person or group may represent me poorly by not being appropriately accountable to me. Indeed, the idea of representation as accountability, as such, is surely a large part of why we take modern democracies to represent better than, say, monarchies. For even if we were to agree that monarchies could be authorized to represent their people – and many doubt this – it seems that democratically elected politicians, simply insofar as they can be voted out of office, will tend to represent at least the most fundamental interests of the people better than kings or queens (who are not held accountable to the people by any such methods). Notice how well the Principle of Application’s desiderata (c), (d), and (e) appear to embody this idea. These desiderata draw our attention to the fact that a reformist group that has greater popularity, is more responsive to its members, and is more rational and informed than rival groups will more accountable to its members’ interests than rival groups.

Similar considerations speak in favor of the desideratum (c) – the “popularity” desideratum – as embodying a form of what Pitkin calls “symbolic

¹⁰¹ Ibid.: 11, 55-9.

representation.”¹⁰² As Pitkin points out, we tend to take a person or group to represent simply insofar as people believe that representation is taking place (she says, “the only criterion of what counts as a symbol is in people’s attitudes and beliefs”).¹⁰³ So, to take an example, Martin Luther King seems to have been a good representative of black Americans’ desire for equal civil rights in part because a very large class of individuals took him to be their representative (even if many of them never explicitly authorized him to represent them, even if he was not accountable to many of them, etc.).

Finally, notice that the Principle of Application’s final desideratum – the one that instructs us to favor reformist groups which are the most similar overall to the classes of persons who suffer (or suffered) injustice – embodies what Pitkin calls “descriptive representation.”¹⁰⁴ Here, Pitkin cites John Adams’ claim that a representative legislature “should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason and act like them,”¹⁰⁵ as well as the common claim that a legislature should “be a ‘mirror’ of the nation or of public opinion”¹⁰⁶ to represent the public properly. The rough and highly intuitive idea, I take it, is that all things being equal, a representative person or body will tend to better represent the preferences or interests of those represented insofar as the representative is a truer “sample” of the representative class.¹⁰⁷

¹⁰² Ibid.: Ch. 5.

¹⁰³ Ibid.: 100.

¹⁰⁴ Ibid.: Ch. 4.

¹⁰⁵ Ibid.: 60.

¹⁰⁶ Ibid.: 61.

¹⁰⁷ Pitkin (1972): 74

§2.3.3 – Stage 3: The Case for the Principle of Application’s Fair Compromise Clause

The question now is which kinds of judgments we should make when different reformist groups – ones with opposing aims – appear to satisfy the Principle of Application’s desiderata roughly equally well. The answer here is, I think, relatively straightforward. Recall that the Principle of Application is an epistemic principle – one that says that reformist groups, to the extent that they satisfy various desiderata, are the best available *indicators* of what justice requires (qua the Fundamental Principle of Non-Ideal Theory). To say that two or more reformist groups satisfy the Principle of Application’s desiderata roughly equally well, then, is to say that each of those groups’ aims are roughly on a par as epistemic indicators of what justice requires. Notice now, however, that opposing groups often cite very different *reasons* for the aims they espouse. Consider, if you will, the debate about international free trade. Proponents of international free trade often maintain, in favor of their view, that free trade increases growth, and growth increases average levels of human happiness and well-being.¹⁰⁸ Opponents of free trade, on the other hand, often cite environmental damage, lack of workplace safety, and other social effects (such as the “homogenization” of culture) as reasons to oppose free trade.¹⁰⁹ Notice now that although these groups overall aims are directly opposed – the one group favors free trade, the other opposes it – the *reasons* they give to support their respective views are not

¹⁰⁸ See <http://www.worldvaluessurvey.org> and Wilkinson (2007).

¹⁰⁹ Cf. Mander and Goldsmith (1996).

necessarily opposed. Suppose, then, to simply things greatly, that these two groups – “pro-free-traders” and “anti-free-traders” – satisfied the Principle of Application’s desiderata roughly equally well. This is to say, once again, that from an epistemic point of view, we have roughly just as much reason to think that both groups’ aims indicate what justice requires. The point now, however, is that insofar as each group bases its aims on particular reasons and their reasons do not conflict, we have clear-cut epistemic reasons to pursue whatever aims advance the conjunction of those non-conflicting aims. The point to notice now is that the conjunction of those non-conflicting aims intuitively amounts to a “fair compromise.” In the case at hand (assume for the sake of argument that the basic story is right), pursuing the non-conflicting aims of both groups would require us to pursue neither full-blooded free-trade policies nor full-blooded anti-free-trade-policies, but rather something in between: a set of trade policies that can be expected to increase economic growth, but which also allow certain limits to be placed on trade in order to protect the environment, workers, culture, and so on.

It is important to note, however, that in some cases a fair compromise as such might take a very different form. Sometimes opposing groups do not merely differ vis-à-vis their overall aims, but espouse fundamentally incompatible *reasons*. Suppose, to take another simple example, there are two reformist groups, each of which satisfies the Principle of Application’s desiderata roughly equally well, but which disagreed over the moral question of whether torture is justifiable if it can be expected to prevent devastating terrorist attacks. The one side, suppose, tends to believe that torture is wrong and unjust even if it would

save many lives, whereas the other side believes that torture is right (and indeed required by morality and justice) if it can be expected to save many lives. There is, it seems, no room for compromise between these two views. The reasons that each group cites in favor of their policy aims are fundamentally opposed to one another. What, then, should we say about this case?

Remember, once again, that the Principle of Application is an epistemic principle. In this case, then, we have (and please, just assume for the sake of argument that the way I have described the case is correct) roughly the *same* epistemic reason to think that torture is a justified response to certain terrorist threats as we have to think it is not. To say that we have as much reason to think that something is true as we have to think it is not true, however, is to say that we lack sufficient reason to think that either view is correct. In the case at hand, then, the Principle of Application can be thought of as leading to a fair *epistemic* compromise. We should remain agnostic about the case in question, judging neither that torture is a justified response to injustice, nor that it is not. In this case, the Principle of Application implies (plausibly, I think) that more public debate between the opposing reformist groups must occur until, hopefully at least, one group wins out over the other *vis-à-vis* the Principle's desiderata (at which time, following the Principle, we ought to revise our judgment in favor of the prevailing group's aims).

§2.4. CONCLUSION

I have argued that Principle of Application is the best available epistemic guide, here and now in the real world, to what justice requires *vis-à-vis* the

Fundamental Principle of Non-Ideal Theory. My aim now will be to apply the Principle of Application to important questions of international justice: to questions regarding human rights (Chapter 3), toleration of illiberal societies (Chapter 4), and international economic reform (Chapter 5).

CHAPTER 3
FROM THE TWO PRINCIPLES OF NON-IDEAL THEORY TO
HIGHER-ORDER HUMAN RIGHTS

This chapter argues that the non-ideal theory of justice that I have defended in this dissertation fills a critical gap in human rights theory, establishing a class of higher-order human rights to govern how other, first-order human rights are to be promoted, protected, and weighed. §3.1 argues that two prominent analyses of the concept of human rights are defective, and ought to be replaced with the simple analysis (suggested by Charles Beitz) that human rights are simply whichever rights are fundamental to the moral evaluation of social institutions.¹¹⁰ §3.2 then argues, in part by reviewing arguments from Chapter 1, that existing political theories do not adequately address the question of whether individuals or collectives of individuals have transition-related rights – rights relating to how unjust social institutions are to be reformed. I argue, as such, that a fully adequate theory of human rights must be grounded, at least in part, in the sort of “non-ideal theory” of justice that I have defended in this dissertation: a theory, that is, of how to deal justly with injustice. §3.3 argues from the non-ideal theory I have defended to the conclusion that all persons have higher-order human right to have social progress (i.e. toward the promotion and better protection of all of their human rights) governed by the two principles of non-ideal theory that I

¹¹⁰ Beitz (2001) espouses “a broad view of the scope of human rights,” one that recognizes them as a “a standard of assessment and criticism for domestic institutions, a standard of aspiration for their reform, and...a standard of evaluation for the policies and practices of international economic and political institutions.” (269)

have defended: the Fundamental Principle of Non-Ideal Theory and the Principle of Application. §3.4 argues that this higher-order human right implies, by way of the Fundamental Principle of Non-Ideal Theory, a defeasible presumption (at least so far as such a presumption is consistent with one's wider theoretical commitments)¹¹¹ that all persons have an equal human right to have the promotion or protection of two fundamental human rights – the rights to life and freedom from severe suffering – take priority over the promotion or protection of all other human rights, including (assuming they are human rights) rights to freedom of speech, association, democratic participation, and so on. Finally, §3.5 argues, by way of the Principle of Application, that the higher-order human right I defend makes good sense of and illuminates the conflicting moral intuitions that many of us have about three difficult questions about human rights: (i) the question of whether the human right against torture can ever be violated to promote or protect human lives; (ii) the question of whether the United States' invasion of Iraq was justifiable on human rights grounds; and (iii) the question of whether some or all of the members of illiberal-undemocratic societies have a human right to “national self-determination”, or non-interference, even though those societies are unjust.

§3.1. HUMAN RIGHTS AS RIGHTS FUNDAMENTAL TO THE EVALUATION OF SOCIAL INSTITUTIONS

There is remarkable little philosophical agreement on the nature of human rights. Virtually every property that human rights are supposed to have is the subject of

¹¹¹ Readers will see in §3.4. that this is a critical constraint to keep in mind.

active debate.¹¹² Some philosophers maintain that human rights are whichever universal moral rights all persons have in virtue of their humanity, personhood, agency, or some other feature(s).¹¹³ Others believe that human rights need not be universal.¹¹⁴ Some argue that there are many human rights.¹¹⁵ Others claim there are only a few.¹¹⁶ Some affirm that human rights are rights of individual persons.¹¹⁷ Others extend human rights to include group rights.¹¹⁸ Many take it for granted that human rights are especially important rights establishing minimum standards for the treatment of human beings.¹¹⁹ Others maintain that at least some human rights may be relatively unimportant.¹²⁰ Some contend that human rights are trans-historical rights that would exist even in a “state of nature.”¹²¹ Others argue that some or even all human rights depend on the existence of institutions, particularly nation-states.¹²² And so on.

These disagreements might not be so disturbing if there were at least some agreement on the considerations that are relevant to settling them. This seems to be no such agreement, however. As James Griffin points out, “The term ‘human

¹¹² See Griffin (2008): Ch. 1.

¹¹³ See e.g., Buchanan (2004): Ch. 2, Gewirth (1982), Griffin (2008): Ch. 2.

¹¹⁴ See Beitz (2001): 269.

¹¹⁵ See James Nickel’s characterization in “Human Rights”, *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-human/>.

¹¹⁶ Rawls (1999a).

¹¹⁷ Raz (2007).

¹¹⁸ See James Nickel’s “Human Rights”, *Stanford Encyclopedia of Philosophy*.

¹¹⁹ Ibid. See also Charles Beitz’s “Human Rights”, *Routledge Encyclopedia of Philosophy*.

¹²⁰ Raz (2007).

¹²¹ Tasioulas (2007).

¹²² See Nickel’s “Human Rights”, *Stanford Encyclopedia of Philosophy*.

right' is nearly criterionless. There are unusually few criteria for determining when the term is used correctly and when incorrectly – and not just among politicians, but among philosophers, political theorists, and jurists as well."¹²³ But now if the philosophy of human rights is to move forward, we surely do need some criterion. Griffin's own suggestion that the term is nearly criterionless suggests that there is some common ground that we can all be able to agree upon. But what might that ground be?

One popular analysis of human rights, which Raz calls the "traditional conception", takes human rights to be whichever moral rights all persons have in virtue of their humanity, personhood, agency, or some other feature(s).¹²⁴ A second view, the "institutional" or "political" view espoused by both Raz and Beitz, is that human rights are those rights that should function as "sovereignty-limiting" standards of conduct for states – standards that can justify external interference in states, where external interference is understood in a broad sense, ranging from mild international criticism to sanctions and, in the most extreme cases, military intervention and war.¹²⁵

Offhand, both of these analyses might seem somewhat plausible. Consider the traditional conception. If we think that people have moral rights – and most of us think we do¹²⁶ – it seems natural enough to identify as human rights

¹²³ Griffin (2008): 14.

¹²⁴ Raz (2007).

¹²⁵ Raz (2007), Beitz (2001)

¹²⁶ Though, of course, some people deny that we do. Bentham (1816), for example, famously referred to moral rights as "nonsense upon stilts" (220-30) and claimed that political philosophy based upon the preservation of the natural rights of persons is particularly "dangerous nonsense." (180)

whichever moral rights all persons have as “as humans.” The institutional view seems to make much better sense, however, of how the phrase “human right” is used in practice. We do not treat all moral rights that people have in virtue of being human as human rights. Every human being presumably has a moral right not to be slandered by his/her associates, yet we do not ordinarily call this a human right. Why not? The answer, Raz points out, is that the phrase “human right” has evolved within a certain kind of practice, mainly the practice of international law. When we say that something is a human right, we ordinarily mean that it is something that states and international bodies have a common duty to promote and protect. Human rights are not rights of personal morality. They are distinctly social rights.

But is Raz correct about the kind of social and political rights human rights are? Raz claims that human rights are whichever rights can justify international interference in the internal affairs of states – interference ranging from criticism to sanctions to possibly even military intervention or war. This view of human rights is too restrictive, however. The Universal Declaration of Human Rights and the United Nations Covenant on Civil and Political Rights both assert (i) individual rights to democratic participation, as well as (ii) a collective right of peoples to determine their own social, political, and cultural affairs. Human rights are not understood in contemporary law and practice, then, as Raz understands them. If peoples have a collective human right to determine their own social, political, and cultural affairs, then (assuming non-democratic societies can be peoples) they have a right to do so – to be free from international interference – even if they are undemocratic. One need not actually accept the

existence of a human right to democracy to see, in this case, that human rights are not understood in international law and practice as Raz understands them. The very idea of a collective human right of peoples to determine their own social, political, and cultural affairs implies that other human rights may not be sufficient to justify international interference in states that fail to respect them.

But if human rights are not the kind of rights that Raz takes them to be, what are they? The Universal Declaration of Human Rights and other covenants seem to support Charles Beitz's view that human rights are nothing more (or less) than whichever rights are fundamental to the evaluation of social institutions *per se*. They are, as Beitz puts it, nothing other than, "a moral touchstone – a standard of assessment and criticism for domestic institutions...[as well as] for the policies and practices of international economic and political institutions."¹²⁷

It is hard to know what exactly might support the claim that this is the correct analysis of human rights aside from the (just-noted) fact that it seems to conform best to how the concept is used in international law and practice. One potential test, however, might be this: does the analysis, if it is imported into a political theory that presently utilizes some other analysis of human rights, lead to a more plausible list of human rights than the theory gave under the previous analysis? Indeed, it seems to me that the best test of an analysis of human rights must be how well, overall, the human rights claims it implies conform to the judgments we actually make about human rights.¹²⁸ Let us see, then, whether the

¹²⁷ Beitz (2000)

¹²⁸ I assume of course that no adequate analysis will be *ad hoc*.

analysis defended here, when it is imported into a theory, makes that theory more plausible than it previously was.

Rawls has been widely criticized for espousing a “minimal” account of human rights in his *The Law of Peoples*. He restricts the class of human rights to “the right to life (to the means of subsistence and security); to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of freedom of religion and thought); to property (personal property); and to formal equality as expressed by the rules of natural justice (that is, that similar cases be treated similarly).”¹²⁹ Many of Rawls’ critics have argued that this list is unacceptably short, and that it is as short as it is precisely because he adopts the wrong analysis of human rights: an analysis which identifies human rights as rights the violation of which can justify military intervention.¹³⁰ Let us see what Rawls’ human rights commitments are, however, if we impose upon him the analysis that human rights are simply whichever rights are fundamental to the evaluation of social institutions.

Rawls espouses two theories of justice: a theory of domestic justice and a theory of international justice. According to the analysis of human rights at hand, then – the analysis that human rights are simply whichever rights are fundamental to the evaluation of social institutions – we must look at both of Rawls’ theories, and see which rights they recognize. According to Rawls’ domestic theory, a society is domestically just if and only if it conforms to two principles of justice: a principle of equal basic social and political rights for all

¹²⁹ See Rawls (1999b): 65.

¹³⁰ See Beitz (2001), Raz (2007), and Griffin (2001: 307-8; 2008: Ch. 1).

citizens, and a principle of distributive justice that requires fair equality of opportunity for all citizens as well as for the society to be otherwise structured so that it is to the maximum advantage of its least-advantaged members.¹³¹ According to Rawls' theory of international justice, on the other hand, "liberal" and "illiberal but decent" societies both have a collective right to non-interference.¹³² The analysis of human rights proposed here implies, then, that Rawls is committed to roughly the list of human rights recognized in the Universal Declaration of Human Rights and other covenants. It commits Rawls to the claim that individuals have human rights to freedom of expression, association, and democratic participation, but also, to the claim that all legitimate "peoples" have a human right, as collectives, to determine their domestic affairs without international interference.

The analysis of human rights that I have proposed here, then, essentially transforms what many philosophers have taken to be a woefully inadequate account of human rights into one that matches up almost precisely with lists of human rights that currently dominate international law and discourse. If this is not a strong mark in favor of an analysis of human rights, I do not know what is.

What I want to do now, at any rate, is to adopt the analysis and see where it leads. For although, as we have just seen, I believe the analysis tends to lead to a plausible list of human rights (though the list to which one is led by it will, of course, depend ultimately on whichever political theory one takes to be correct),

¹³¹ Rawls (1999a). Rawls (2005) appears to adopt a somewhat less exacting standard, claiming that a society that conforms to his two principles of justice would be the most reasonable, but that there are other sufficiently reasonable ways for societies to be organized.

¹³² Rawls (1999b).

we will now see that it leads to an important class of transition-related human rights that have not yet received the attention they are due.

§3.2. ON THE IMPORTANCE OF BRINGING A NON-IDEAL THEORY OF JUSTICE TO BEAR ON HUMAN RIGHTS: A BRIEF REVIEW OF CHAPTERS 1 AND 2

We saw in Chapter 1 that existing theories of justice and human rights are incomplete in a critical sense. Existing theories of justice and human rights, at least until now, have lacked anything approaching a fully systematic analysis of what it is to deal with injustices in a just manner. This is a serious omission – one that I have attempted to rectify in this dissertation. The non-ideal theory of justice that I have defended so far aims to provide a general analysis of what justice requires vis-à-vis dealing with injustice. I argued, first, for reasons I will not belabor repeating, that many (if not all) political philosophers should adopt a “non-ideal theoretic” version of Rawls’ famous original position (the “Non-Ideal Original Position”) to arrive at principles of non-ideal theory. I then argued, second, that the parties to the Non-Ideal Original Position would agree upon the following generic principle:

The Fundamental Principle of Non-Ideal Theory: For any action A, agent B, and less-than-fully-just social conditions C (past or present), social justice requires B to perform A given C if and only if, of all available actions, B has sufficient reason to expect A to best satisfy the social preference ordering that would exist if every relevant individual (defined relative to ideal theory) were (i) rational, (ii) adequately informed, (iii) endorsed the correct principles of ideal theory (and rectification), but (iv)

otherwise desired to advance his/her transition-related preferences (v) within the broader constraints of ordinary morality, (vi) given C.

Finally, I argued the following “secondary” principle of non-ideal theory is the best available practical (i.e. epistemic) guide to whether any particular action satisfies the Fundamental Principle:

The Principle of Application: For any action A, agent B, and less-than-fully-just conditions C, we should tailor our confidence that social justice requires B to perform A in direct proportion to the extent to which we can expect B’s performance of A to either

(i) Best advance the overall aims of whichever reformist group – past, present, or hypothetical -- best satisfies the following desiderata:

- g. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- h. Its members are voluntary participants;
- i. Its leadership is equally responsive to each of its members’ interests;
- j. It has more members than rival reformist groups;
- k. Its leadership and members are rational and adequately informed; and
- l. Its membership is more similar to the complete class of individuals who suffer C’s injustice(s) than any other group;

Or, if more than one reformist group appears to satisfy these desiderata roughly equally well,

- (iii) Best advance a fair compromise between the overall aims of the reformist groups in question.

I will now argue that these two principles imply a higher-order human right: the right of all persons to have injustice met in ways that conform to these very two principles.

§3.3. FROM THE TWO PRINCIPLES OF NON-IDEAL THEORY TO A HIGHER-ORDER HUMAN RIGHT TO HAVE THE PROMOTION AND PROTECTION OF HUMAN RIGHTS CONFORM TO THE TWO PRINCIPLES OF NON-IDEAL THEORY

Recall that according to the analysis of human rights I have proposed, a right is a human right if and only if it is a right fundamental to the evaluation of social institutions. The standard Hohfeldian analysis of rights analyzes rights, however, in terms of duties.¹³³ So, for example, the standard analysis of a “claim-right” is as follows:

A has a claim that B ϕ if and only if B has a duty to A to ϕ .¹³⁴

The two principles of non-ideal theory that I have defended, though, assign duties to individuals. They imply, for every individual, that that individual has a duty,

¹³³ Hohfeld (1919).

¹³⁴ From Leif Wenar’s entry, “Rights,” in *The Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights/>.

founded in justice, to perform a particular action (in response to some injustice) if, and only if, that agent can expect the action to satisfy certain conditions (namely, the conditions laid out in the principles). Accordingly, according to the Hohfeldian analysis, every individual has a claim-right upon herself and all other individuals who fall under the purview of the two principles of non-ideal theory, for injustices to be dealt with in accordance with those two principles. We can put this even more simply as follows: namely, that each person has a right for injustices to be dealt with in conformity with the two principles of non-ideal theory.

Whatever other human rights people might have (according to existing political theories), then, if the analysis of human rights that I have defended here is correct and the non-ideal theory of justice I have defended is correct, all persons have a human right for injustices to be dealt with in accordance with the two principles of non-ideal theory.

Notice, first, that this human right is a higher-order right in that it requires all other human rights (whatever those rights may be, e.g. the rights to freedom of association, speech, etc.) to be promoted and protected in a certain kind of way: namely, in conformity with the two principles of non-ideal theory. The second thing to note is that this higher-order right has contextually sensitive and relativistic implications (plausible ones, I think). Suppose, for example, that the reformist group that best satisfied the Principle of Application's desiderata in certain case change its mind from favoring some type of action A at one time to favoring not-A at a later time (due, perhaps, to the negative effects that A has had

on individuals so far). It follows from the higher-order human right I have defended here that we should take A to be required by justice initially but not-A to be required by justice later on. Is this unintuitive? I think not. The idea that requirements of justice can change, depending upon “facts upon the ground,” is not at all implausible. It is important to see, however, that although the higher-order human right that I have defended has these contextually sensitive and relativistic implications, it does not imply that human rights change over time. Recall that on my analysis human rights are whichever rights are fundamental to the evaluation of social institutions.¹³⁵ The two principles of non-ideal theory are surely fundamental to the evaluation of social institutions. Every person has a claim-right to have social progress conform to them. The particular duties that those principles can imply at different times on the other hand (a duty to perform A at time t but not-A at time t*) are not fundamental to the evaluation of social institutions for the simple reason that they are contextually sensitive and can change over time.

§3.4. FROM THE HIGHER-ORDER HUMAN RIGHT TO THE PRESUMPTIVE PRIORITY OF “BASIC” HUMAN RIGHTS OVER OTHER HUMAN RIGHTS

I believe that the higher-order human right just discussed leads us to a particular kind of presumption in favor of the priority of two basic rights – the rights to life and freedom from severe suffering – over all other rights (though, as we will soon see, we must be very careful when it comes to defining the precise nature of the presumptive priority).

¹³⁵ Rawls (1999a): 53.

My argument for a presumption in favor of the priority of the two aforementioned “basic” human rights over other all other human rights is straightforward. It is a truism, after all, that people – even those who desire justice – tend to care about their own lives and basic well-being over other things. There are, to be sure, always the brave few who are willing to sacrifice their life and well-being for the achievement of liberal conditions (such as, for example, the few brave dissidents in China who are willing to openly oppose the Communist regime at risk of prolonged imprisonment). These people are surely exceptions among humanity, however, not the norm. But now if this is true – if most people who are rational, adequately informed, and desire justice tend to prefer their own self-preservation over all other things – then the Fundamental Principle of Non-Ideal Theory implies straightaway that we have a presumptive duty to promote and protect two basic rights, the rights to life and freedom from severe suffering, over all other rights, at least insofar as doing so is consistent with principles of ideal theory, rectification, and morality more broadly.

It is absolutely critical to keep the italicized portion of this presumption in mind, however. Recall that the non-ideal theory that I have defended is intended to be, as far as possible, neutral between different ideal theories, theories of rectification, and theories of morality. Recall moreover, that the Fundamental Principle of Non-Ideal Theory in particular states that justice requires us to aim to deal with injustices in whichever ways we can expect to best advance the preferences that all relevant persons would have as an aggregate (transformed, once again, into a single social preference function) if each of those individuals were rational, adequately informed, accepted the correct principles of ideal

theory, rectification, and morality, under whichever conditions of injustice are at issue. The Fundamental Principle of Non-Ideal Theory, as such, is supposed to be deeply sensitive to the theorist's wider commitments within ideal theory and morality more generally. The presumption in favor of the priority of the basic rights of individuals to life and freedom from severe suffering must, as such, be understood relative to the theorist's wider commitments – commitments which might limit the scope of the presumption in important ways. Let me explain.

One fairly common point of disagreement in moral and political theory concerns distinctions between “positive” and “negative” rights and duties.¹³⁶ Although these distinctions are difficult (and, some would argue, incoherent), they at least seem highly intuitive. A negative right is one that precludes certain treatment of persons; whereas a positive right is one that requires people to take particular actions for the sake of others. So, for example, if the right to life is understood merely as a negative right, it is nothing more than a right not to have my life taken by others. It would be a positive right only if it required others to save my life. If the right to life is merely a negative right, others have duties not to stab me to death, but no duty to save my life if I am drowning. Similarly, if the right to freedom from suffering (as I call it) is a purely negative right, it is to be understood as a right for others not to cause others severe suffering, not a (positive) right to alleviate their suffering.

These distinctions must therefore figure into the presumptive priority of “basic” human rights that I have defended. A theorist who believes that all rights

¹³⁶ See §2.1.8 of “Rights” in *The Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights/>.

are negative rights must understand the presumption I have defended as coming to this: if we are forced to choose (e.g., by some conditions of injustice) between violating many individuals' right to, say, freedom of speech and violating a person's right to life – if that is, there are no other options – we must presumptively violate the right of free speech of the many for the sake of not violating the right to life of the single individual. Notice, however, that on this sort of view, we still never have any positive duties to save the lives of others. The presumption in favor of the priority of the two “basic” human rights (i.e. to life and freedom from severe suffering) is limited by the theorist's wider commitments.

The manner in which ideal theory and morality more generally can both limit the scope of the presumption I have defended here (the presumption that the “basic” rights to life and freedom from severe suffering are to take priority over other rights) enables the presumption to avoid some implausible results. Consider, for example, the old “sheriff and the mob” case. A sheriff knows that he might be able to prevent a deadly riot (saving numerous lives) by sacrificing a single individual's right to a fair trial (convicting the person to placate the mob). One might have thought that the presumption in favor of the priority of basic rights that I have defended implies (contrary to what most of us think) that the sheriff has a duty, founded in justice, to convict the innocent individual to prevent the riot. Suppose, however, that our ideal theory assigns only negative duties to individuals. In that case, the presumption in favor of the priority of basic rights (that I have defended) requires the sheriff to be concerned only with how he treats the person on trial; he has no positive duties to try to prevent other

people (namely, the mob) from doing immoral things. The presumption merely requires the sheriff, if he has to choose (for some reason, such as extortion, suppose) between killing or torturing the person on trial, on the one hand, or sacrificing that person's right to a fair trial on the other, he should presumptively choose the latter (sparing the person's life at the cost of a fair trial).

I submit, at any rate, that because most people are typically unwilling to sacrifice their own fundamental interests in life and freedom from suffering for the achievement of less-basic matters of justice, the Fundamental Principle of Non-Ideal Theory implies, within whichever broader constraints of ideal theory and morality we take to be correct, that the most "basic" rights of individuals – their rights to life and freedom from suffering – are to presumptively take priority over all other human rights.¹³⁷

I suspect some readers may take these restrictions – the sense in which ideal theory and morality more generally constrain how the presumption in favor of the priority of the two basic rights over all other rights is to be understood – to effectively gut the presumption all, or almost all, of whatever force it might have appeared to have. What do we learn, one might wonder, from the claim that justice requires us to presumptively prioritize the basic rights to life and freedom from suffering over other rights? Don't most ideal theories of justice, and indeed theories of morality more generally, usually already contain some provision(s) in favor of the priority of basic human interests to life (and such) over less basic

¹³⁷ I should add that the right to life probably takes presumptive priority over the right to freedom from suffering since, plausibly at least, most people would rather live and suffer rather than die (though, surely, things do get fuzzy here; I do not think that there is *clearly* a presumptive priority of the right to life over the right to freedom from suffering).

interests? My reply is (1) that of course most theories do prioritize these things, but that (2) the Fundamental Principle of Non-Ideal Theory provides yet another way of understanding the nature and justification of such a priority. The Fundamental Principle was, after all, derived from the Non-Ideal Original Position: a device that represents all persons who otherwise have correct principles of ideal theory and morality in mind as deliberating to principles for meeting injustice. The Fundamental Principle of Non-Ideal Theory therefore reveals that whatever (if anything) ideal theory or morality more broadly might say about the priority (or lack thereof, perhaps), there are distinct grounds within non-ideal theory for presumptively assigning human life and freedom from suffering greater moral importance than other rights or values. I take it, then, that the argument from the Fundamental Principle of Non-Ideal Theory to the presumption I have defended in this section at least adds to our understanding of why human life and freedom from suffering are (as they intuitively are) of such great importance. They are of such great importance, at least in part, because otherwise free and rational individuals in a hypothetical situation of equality would agree to such a presumption, regardless of whichever other moral principles of principles of ideal theory those individuals might accept.

It is, at any rate, important to keep in mind that the presumption I have just defended (however we fill out its content, i.e. as consisting of negative duties only, or including positive duties, and so on) is just that: a presumption. As we will see now (in §3.5), I believe that we can utilize the Principle of Application to establish when, and why, the presumption is defeated.

§3.5. HOW THE HIGHER-ORDER HUMAN RIGHT ILLUMINATES “HARD CASES”

In this section I will apply my analysis of human rights to a few “hard cases”, cases that are often discussed in the human rights literature and within international human rights discourse, are the subject of ongoing, and often intense debate, and which many of us have conflicting moral intuitions about: the cases of (1) whether torture is ever justified, (2) whether the United States’ invasion and occupation of Iraq is justifiable on humanitarian grounds, and (3) whether the members of illiberal-undemocratic societies have a (collective) human right to “self-determination.” I will not try to resolve any of these issues here. I want to show only that the account of human rights that I have developed here makes good sense of the conflicting intuitions that many people have about these cases, and has important, and plausible, things to say about them.

§3.5.1. *The Human Right Against Torture*

It is widely recognized that there is a human right against torture.¹³⁸ Yet, many of us are somewhat ambivalent about this right. What if, the saying goes, we could save millions of lives by torturing suspected terrorists? Why wouldn’t that be justified? Don’t the lives of millions outweigh the well-being of a small few, especially when we have reason to believe those few to be guilty of plotting the deaths of millions? Let us see what answers the non-ideal theory of justice that I have defended gives to these questions.

¹³⁸ See e.g. The Universal Declaration of Human Rights, as well as Nickel’s “Human Rights”, *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/rights-human/>.

Recall that on the account of human rights I have developed here, by reference to the non-ideal theory of justice that I have defended, there are “fundamental” human rights to life and freedom from severe suffering that, presumptively at least, take priority over other human rights. The presumptive priority of these basic rights is grounded in the fact that people, generally speaking – even those who accept the correct principles of ideal theory, and so on – surely tend to care about and prefer their own self-preservation over other matters of justice. Still, people do not always care more about self-preservation than other things. It is often said that torture, even if it would save lives, is a betrayal of “American values.”¹³⁹ What is meant by this, exactly? Different people have different ideas about what “American values” are, and it is not my aim to debate this question. I want to suggest instead that whatever “American values” may be, it is nevertheless arguably the case that many Americans actually do prefer to run the risk of losing their lives in a terrorist attack than have the American government engage in acts of torture to protect their lives. At the very least, I think that I prefer this. The idea that the American government is making me better off by torturing people is not something that fits with my values. Notice now, however, that if enough people are like this – if a majority of people in (say) America prefer the U.S. government not to torture people even if torture would save American lives – then, on the non-ideal theory that I have defended, torture (by the American government, at least) is indeed an unjust betrayal of what most Americans value.

¹³⁹ See Sands (2008).

I submit, moreover, that the Non-Ideal Theory I have defended has more to say about the justice of torture than this. The justice of torture is not, after all, a purely American issue. Recall that one of the most basic points of the non-ideal theory that I have developed – an idea contained in the Fundamental Principle of Non-Ideal Theory – is that we must aim only to advance the legitimate interests of individuals, where these are understood in terms of the preferences people would have if they (i) accepted the correct principles of ideal theory and rectification, and (ii) were rational and adequately informed, (iii) within whatever broader constraints of morality exist. Recall next that the Principle of Application is a practical principle for estimating what would best advance individuals' legitimate interests as such. A minute's reflection on the Principle of Application suggests, however, that Americans as a class do not satisfy that Principle's desiderata nearly as well as, say, the international community as a whole (the vast majority of which has agreed, in the Geneva Conventions, upon the prohibition against torture). The international community not only consist of a much larger class of individuals than the United States (qua desideratum (d)); it also consists of a class of individuals that is more similar overall to the complete class of individuals whose lives might be protected from terrorism via torture, since all of the world's individuals are potential targets of terror (qua desideratum (f)); it has reached a consensus that torture is immoral (thus satisfying desideratum (a) better than the U.S., since one obvious test of whether a group is pursuing correct principles of ideal theory, rectification, and morality must surely be worldwide consensus on which principles are correct); and so on.

The Principle of Application thus seems to imply that the United States' use of torture is doubly unjust – unjust, first, because its use of torture thwarts international consensus against torture, but also, because (at least arguably) a large number of Americans themselves seemingly do not want the U.S. to utilize torture in their name (i.e. for the sake of their personal safety).

§3.5.2. Human Rights and the 2003 Invasion of Iraq

I submit that my account has similar implications with respect to the question of whether it is just for the United States and its cooperating allies to invade and occupy Iraq. First, as I argued in Chapter 2, the United Nations and a vast majority international community more generally – both of which opposed the invasion of Iraq at the time at which it occurred – each satisfy the Principle of Application's desiderata better overall than the United States and pro-invasion forces. Secondly, and perhaps more importantly, the Principle of Application draws our attention to the Iraqi people themselves. There is, so far as anyone knows, no evidence that a majority of Iraqis – even those who thought that Saddam Hussein's regime was deeply unjust – wanted to risk their lives or the lives of their loved ones for the sake of regime-change. There is, moreover, no evidence, so far as I know, that a majority of Iraqis desire the occupying forces to remain in their lands. Offhand, however, the Iraqi people are the people that the Principle of Application (and indeed, the Fundamental Principle of Non-Ideal Theory) would have us focus upon the most. They are the people who have to bear by far the greatest costs of the war and continued occupation. The point

then is that if the two “reformist” groups that (arguably) best satisfy the Principle of Application in this case are (i) the international community as a whole, and (ii) the Iraqi people, but (iii) all of the evidence we have indicates that neither group preferred the invasion or continued occupation, then we clearly have sufficient reason to think that the invasion and occupation are both grave injustices.

§3.5.3. The “Human Right to National Self-Determination”

Finally, many of us have conflicting intuitions about whether members of the international community ought to exert pressure on illiberal/undemocratic societies. On the one hand, many of us feel that it is our duty to combat injustice wherever it occurs. On the other hand, many of us also feel that, in some sense, we ought to let different societies “solve their own problems”, and indeed, recognize right to “national self-determination.” This ambivalence is reflected, in fact, in contemporary human rights documents and treaties. The very first section of the first article of the United Nations Covenant on Civil and Political Rights recognizes that, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹⁴⁰ At the very same time, however, the covenant recognizes, “the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms”¹⁴¹, including rights to freedom of speech, association, religion,

¹⁴⁰ Article 1, §1.

¹⁴¹ Preamble.

democratic participation, and non-discrimination. On the face of it, these two assertions stand in opposition. How can the states of the charter be under a common obligation to promote those conditions and under an obligation to respect the right of all peoples to freely determine their political, economic, social, and cultural development? I believe that the non-ideal theory of justice that I have defended can answer this question. As we will see in the next chapter, I believe that the obligation of justice that we are all under to promote the sorts of liberal-democratic conditions the Covenant recognizes involves a presumption, on behalf of the wishes of reformist groups within illiberal/undemocratic societies, in favor of allowing those societies to achieve liberal-democratic conditions themselves. If this is right, then the two sorts of obligations asserted by the Covenant are not in conflict. We do have a duty to promote universal respect for liberal-democratic freedoms. It is just the case that we fulfill that duty by allowing illiberal-undemocratic societies to progress “in their own way” (within certain bounds). I will try to show next, in Chapter 4, precisely why this is, and what those bounds are.

§3.6. CONCLUSION

I have adopted, and attempted to provide further defense of, Charles Beitz’s view that human rights are simply the rights fundamental to evaluating social institutions. I then argued, on the basis of this analysis, that the non-ideal theory of justice I have advanced in this dissertation fills an important gap in human rights – that gap being that existing theories of human rights have not been based upon any systematic analysis of which kinds of costs can be justly imposed upon

people for the sake of promoting or protecting their human rights. If Beitz's analysis of human rights is correct, and the two principles of non-ideal theory that I have defended are correct, it follows that all persons have a higher-order human right to have all of their other human rights promoted and protected in conformity with the two principles of non-ideal theory. I argued, furthermore, that these two principles justify a presumption in favor of the priority of two basic human rights – the rights to life and freedom from severe suffering – though I have also noted that the precise nature of this presumption depends on wider theoretical issues, such as whether rights are “positive,” “negative,” and so on. Finally, I argued that the two principles of non-ideal theory illuminate some “hard” human rights cases that have been the subject of much debate – cases, such as the permissibility to violate the human right against torture for the sake of protecting the human right of many others to life.

CHAPTER 4
FROM THE TWO PRINCIPLES OF NON-IDEAL THEORY TO
INTERNATIONAL TOLERATION

It is hard to see how justice might require, or even allow, foreigners to tolerate unjust societies. Injustices might even seem to be *by definition* the sort of thing that it is unjust to tolerate, since to say that something is unjust is, intuitively, to say that it ought not to be the case. I hope to show here, however, that it is not only possible for justice to require foreigners to tolerate unjust societies, but indeed, that we have sufficient reason to reach the defeasible conclusion (one that further evidence, as we will see, could overthrow in the future) that justice requires international toleration of unjust societies, at least insofar as those societies respect the most basic rights of individuals.

§4.1 of this chapter discusses the concept of toleration, settling on a particular definition that I take to be adequate for my purposes. §4.2 criticizes arguments both for and against tolerating unjust societies. §4.3 then briefly reviews the non-ideal theory of justice that I have defended in this dissertation – the theory I have defended of what it is to justly deal with injustice. §4.4 uses the Fundamental Principle of Non-Ideal Theory that I defended in Chapter 1 to argue that justice can, at least in principle, require foreigners to tolerate unjust societies. §4.5 then uses the Principle of Application that I defended in Chapter 2 to argue that, given our present evidence, justice defeasibly permits foreigners to tolerate unjust societies that adequately respect the most basic rights of

individuals. Finally, §4.6 briefly explains why an analogous argument does not justify citizens tolerating unjust conditions in their own societies.

§4.1. THE CONCEPT OF TOLERATION

In order to adequately answer the question of whether, and if so how exactly, justice allows or requires foreigners to tolerate illiberal societies, we must come to an adequate understanding of what toleration is, including which sorts of actions on the part of foreigners would express toleration for such societies, and which actions would express non-toleration.

It is surprisingly difficult, however, to define the concept of toleration. There is some disagreement, for instance, over whether we must morally disapprove of something in order to tolerate it, or whether we can tolerate things we merely dislike.¹⁴² We need not settle this or other such issues in order to adequately pin down the concept of toleration adequately for our purposes, however. Since cosmopolitan-egalitarians do find illiberal societies morally objectionable, the question of whether it is possible to tolerate things one merely dislikes is not relevant to our inquiry.

One issue that is relevant, however, is the distinction between toleration and “mere acquiescence.” It is widely agreed that we do not tolerate things when we merely acquiesce to them, where this is understood as the choice to refrain from acting merely because one thinks one can do nothing to change whatever it

¹⁴² Cohen (2004): 88-90. See also Creppel (2002): 2-3; Deveaux (1998): 409; Galeotti (2002): 20-22, 50-51; and Raz (1986): 403.

is of which one disapproves.¹⁴³ In this case, one has no real choice but to put up with the thing of which one disapproves against one's will. Toleration, it is agreed, is the choice to put up with something one disapproves of out of principle.

This distinction is important insofar as it is sometimes claimed that liberals should not attempt to promote liberal conditions in illiberal societies because, as a matter of empirical fact (or at least conjecture), we should not expect our doing so to be successful. It is surely an important and interesting empirical question whether we should ever expect actions by foreigners to successfully promote liberal conditions in illiberal societies. It is not, however, the issue of toleration. The question that I am concerned with, in any case, is whether foreigners ever ought to tolerate illiberal societies out of principle.

Note that toleration, as such, need not be an all-or-nothing thing. I have already indicated, in previewing this chapter's main argument, that I believe that cosmopolitan-egalitarianism requires us not to tolerate the violation of "basic rights", but that it also at least defeasibly allows us to tolerate illiberal societies to the extent that they adequately respect those basic rights. What I am defending, then, is a "limited" (as well as defeasible) scheme of toleration. My view is not that cosmopolitan-egalitarianism defeasibly permits foreigners to tolerate anything and everything an illiberal society might do. It is only that we are defeasibly permitted to tolerate those societies to the extent that those societies to "adequately" respect basic rights (I will say more about the notion of "adequacy"

¹⁴³ King (1998): 22-3.

in due course). It is also worth noting that we might be justified in tolerating a certain thing in some ways but not others. So, for instance, there are various ways in which a foreign society might express an attitude of non-toleration toward another society. The former society might express its disapproval of the other society in various ways, such as by imposing political or economic sanctions upon it, by engaging in military action upon it, or perhaps merely by providing the society with positive political or economic incentives to become more liberal.

In light of the considerations just discussed, I propose the following definition of toleration as adequate for our purposes:

Definition of Toleration: An agent S tolerates X in some way W if and only if (i) S morally disapproves of X, and (ii) S engages in W to allow X to continue to obtain on the basis of some principle of morality or justice that S endorses.

We can then move from this definition to the following definition of justified toleration:

Definition of Justified Toleration: An agent S is morally justified in tolerating X in some way W if and only if (i) S morally disapproves of X, and (ii) S engages in W to allow X to continue to obtain on the basis of some (true) principle of morality or justice that S endorses.

Now that we have these definition on hand, let us evaluate from a cosmopolitan-egalitarian perspective the sorts of arguments that have been given for and against the view that foreigners should tolerate illiberal societies.

§4.2. CRITIQUE OF ARGUMENTS FOR AND AGAINST INTERNATIONAL TOLERATION

I will argue in this section that actual and potential arguments both for and against international toleration of unjust societies are unconvincing.

§4.2.1.b. *Communitarian Arguments*

Contemporary arguments for international toleration often stress how happy or secure individuals feel under the conditions in which they find themselves, and how disorientating and alienating they find liberal conditions.¹⁴⁴ The Stanford Encyclopedia's entry entitled "Nationalism" suggests four variants of the sort of "communitarian" argument suggested here for international toleration. The first variant, the "Argument From Flourishing," states that an "ethno-national community is essential for each of its members to flourish."¹⁴⁵ One potential argument for international toleration, then, might be this:

THE FLOURISHING ARGUMENT

- (a) Failure to tolerate unjust societies undermines those societies' ethno-national communities *and therefore the ability of their members to flourish.*
- (b) Justice requires advancing or at least protecting the ability of people to flourish.
- (c) So, justice requires the toleration of unjust societies.

¹⁴⁴ See e.g. Beitz (2001): 271-4 for a nice overview and brief discussion of some such arguments.

¹⁴⁵ §3.2., <http://plato.stanford.edu/entries/nationalism/>

A second argument, the “Argument From Identity,” is similar but focuses not on human flourishing but on human *identity*. As Neilsen says,

We are, to put it crudely, lost if we cannot identify ourselves with some part of an objective social reality: a nation, though not necessarily a state, with its distinctive traditions. What we find in people — and as deeply embedded as the need to develop their talents — is the need not only to be able to say what they can do but to say who they are. This is found, not created, and is found in the identification with others in a shared culture based on nationality or race or religion or some slice or amalgam thereof. ... Under modern conditions, this securing and nourishing of a national consciousness can only be achieved with a nation-state that corresponds to that national consciousness.¹⁴⁶

We can, then put the Argument from Identity (or simply, the Identity Argument) as follows:

THE IDENTITY ARGUMENT

- (a) Failure to tolerate unjust societies undermines the ability of members of those societies to form and maintain their own identity.
- (b) Justice requires advancing or protecting the ability of persons to form and maintain their identity.
- (c) So, justice requires foreigners to tolerate unjust societies.

¹⁴⁶ Nielsen (1998): 32

A third argument, the “Argument From Moral Understanding”, suggests similarly that toleration might be justified because it is only through their own cultural situation that individuals are able to engage with and understand moral ideas and arguments.¹⁴⁷ Finally, there is the “Argument From Diversity,” an argument that suggests that toleration might be justified somehow by the fact that “each [culture] presents a wonderful exfoliation of human potentialities in its own time and place and environment.”¹⁴⁸ There are other variations on the general of theme of these arguments as well.

There are these kinds of arguments for international toleration of unjust societies. One problem is empirical. All of the arguments just mentioned depend on empirical claims (e.g., about flourishing, identity, the ability to form conception of the good, etc.). Are the empirical claims true? Mere intuition is not in general a good guide to empirical matters. You may think that the ability of individuals to flourish, form an identity, or form and pursue a conception of the good, all depend on a relatively stable culture; I may disagree. What can settle the issue? Some of the claims these arguments make – such as the claims about identity – seem difficult, if not impossible, to test (how can we operationalize the relevant notion of identity?). The empirical claims that these arguments make that do seem testable, on the hand – such as claims about happiness and flourishing – seem, however, to be demonstrably false. Empirical studies have repeatedly supported the idea that liberal conditions correlate

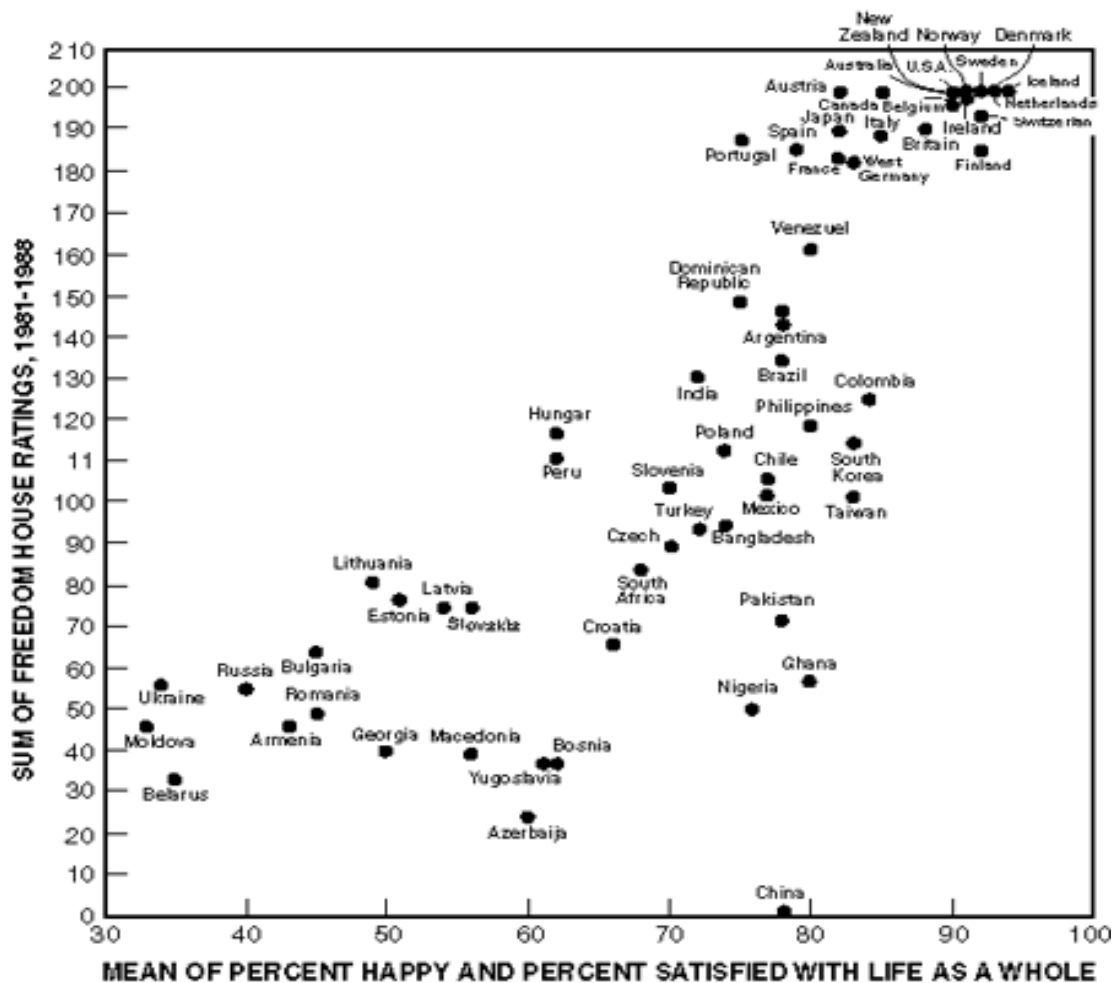
¹⁴⁷ §3.2. of “Nationalism”, the Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/nationalism/>

¹⁴⁸ Ibid.

strongly with both “subjective” (i.e. self-reports) and “objective” (e.g. incidents of crime, average levels of wealth, etc.) measures of human happiness or well-being. Table A (below) illustrates the widely confirmed positive correlative relationship between reports of subjective well-being and liberal-democratic conditions, as and widely confirmed negative correlation between “subjective” reports of well-being and illiberal/unjust conditions.¹⁴⁹

¹⁴⁹ Cf. Veenhoven (1996a, b; 2005), Oishi (2002), Wilkinson (2007), and the World Values Survey (www.worldvaluessurvey.org).

TABLE A

Subjective well-being and democratic institutions¹⁵⁰

¹⁵⁰ Inglehart and Klingemann (2000). Vertical axis is the sum of the Freedom House ratings for Civil Liberties and Political Rights, from 1981 through 1998. Horizontal axis reflects each public's mean factor score on happiness and overall life satisfaction and subjective well-being. $r=.78$ $N=62$ $p=.0000$. Cf. <http://www.freedomhouse.org> and yearly Freedom in the World reports at <http://www.freedomhouse.org/template.cfm?page=15>.

A similar relationship is (as I already mentioned) also widely recognized with respect to “objective” measures of human well-being (e.g. incidences of crime, economic growth, public violence, etc.). As Jeffrey Haynes puts it, “it is generally the case that the democratic regime-type has a notable performance profile. In most cases, the democratic regime-type seems to perform better than any other regime-type”, including regimes categorized as “illiberal democracies.”¹⁵¹

An even more serious problem with communitarian arguments for international toleration, however, is that it is hard to see how, even if they were empirically correct, the considerations they adduce – human flourishing, identity, and so on – could be sufficient to justify toleration. Most of us do not think that people who benefit from injustice have any *right* to flourish, or found their identity, and so on, on the backs of those who suffer injustice. Consider, for example, the era of slavery in the United States. Defenders of the institution of slavery evidently often claimed that slaveholders and slaves alike flourished, staked their identities, and so on, under the institution of slavery. But so what? Slavery is *unjust* – and few, if any, of us today take seriously the idea that it should have been tolerated by anyone, even if (as a matter of fact) tolerating it would have promoted such things. In order for communitarian arguments for international toleration to be compelling, then, communitarians must show why the kinds of flourishing, identity, or other values they mention could be of sufficient moral importance to justify tolerating deeply unjust conditions. The arguments, at least as they are presented, affirm the importance of flourishing,

¹⁵¹ Haynes (2001): 50, and Ch. 3 more generally. See also the World Values Survey (www.worldvaluessurvey.org) and Wilkinson (2007).

identity, and so on. They do not, however, establish the *greater* importance of these things to justice.

§4.2.1.b. Collective Right to Self-Determination Arguments

Michael Walzer and many others have defended the idea that political societies must be presumed to enjoy a collective right to self-determination.¹⁵² One version of this argument is empirical. So, for example, Walzer says, “The members of a political community must seek their own freedom...They cannot be set free...by any external force...Self-determination is the school in which virtue is learned (or not) and liberty is won (or not).”¹⁵³ We can set aside this sort of argument, however, for two reasons. First, it is not an argument for toleration per se, but for mere acquiescence. It purports to derive a moral right to national self-determination from the impossibility of “setting people free.” Second, the empirical claims the argument is based on seem dubious. It may not be easy to promote the achievement of liberal/democratic conditions by external force or pressure, but there are as far as I know no conclusive reasons to think that it cannot be done.

In any case, the more interesting (and relevant) Argument from Collective Self-Determination is a philosophical argument. The Stanford Encyclopedia of Philosophy’s entry on “Nationalism” asserts that, “A sufficiently large group of people has a prima face right to govern itself and to decide its future

¹⁵² See Walzer (2000): 53-8 and 86-95, the Stanford Encyclopedia of Philosophy’s entry on “Nationalism”, §3.3., and also Gans (2003) and Moore (1998).

¹⁵³ Walzer (2000): 87.

membership, if the members of the group so wish. It is fundamentally the democratic will of the members themselves that grounds the right to an ethno-national state and to ethno-centric cultural institutions and practices.”¹⁵⁴ The problem with this argument should be clear, however. Even if we grant the prima facie claim that a group has a right to govern itself if its members so wish, it is hard to see how persons are treated as “free and equal” when they are subject against their will to conditions that treat them unequally. As Bruce Ackerman puts the worry,

There is no Islamic nation without a woman who insists on equal rights; no Confucian society without a man who denies the need for deference. Sometimes these liberals will be in a minority in their native lands...[Why] should we betray our own principles and side with the oppressors rather than the oppressed?¹⁵⁵

Indeed, it would seem that as long as there is even one member of an illiberal society who wants to enjoy the liberal-democratic conditions, that person is owed those conditions as a free and equal person (regardless of what anyone, even a majority, wants).

§4.2.1.c. Rawls’ Argument for Toleration in The Law of Peoples

Rawls’ Law of Peoples has been widely criticized for, among other things, eschewing cosmopolitan-egalitarianism. One might wonder why, if indeed Rawls rejects cosmopolitan-egalitarianism, it is worth critiquing his arguments for the

¹⁵⁴ Stanford Encyclopedia of Philosophy’s entry on “Nationalism”, §3.3..

¹⁵⁵ Ackerman (1994): 382-3

toleration of (what he calls) “illiberal but decent societies” from a cosmopolitan-egalitarian point-of-view. One reason for doing so, we will now see, is that one of Rawls’ main (although merely implicit) arguments for tolerating decent societies can plausibly be transformed into a genuinely cosmopolitan-egalitarian argument (ableit a weak one).

Rawls argues that only a very restricted class of illiberal societies are worthy of toleration. These “decent” societies, for Rawls, are illiberal societies that (i) adequately respect a small class of “human rights”; (ii) are non-aggressive towards other societies; (iii) are organized around some “common good” conception of justice, (iv) ensure that all of their members can play a meaningful (though non-democratic) role in political decisions, and (v) are capable, as societies, of engaging in reciprocity with other liberal and decent societies.¹⁵⁶ One problem is that it is not clear whether any present-day societies qualify as decent in Rawls’ sense. The only actual example Rawls gives is of the Ottoman Empire.¹⁵⁷ Rawls explicitly denies that aggressive, or human-rights-violating, “outlaw regimes” ought to be tolerated¹⁵⁸, as well as that “benevolent absolutisms” – societies that respect basic human rights but do not allow all of their members to play a meaningful role in politics¹⁵⁹ – ought to be tolerated. Let us set these issues, however, and consider Rawls’ reasons for tolerating decent societies.

¹⁵⁶ See Rawls (1999b): 4, 23-30, 32-5, and Part II.

¹⁵⁷ Rawls (1999b): 76, fn. 18.

¹⁵⁸ Rawls (1999b): 4-5, 48, 80-1, 90, 94-5.

¹⁵⁹ Rawls (1999b): 4, 63.

Rawls says in the Introduction to *The Law of Peoples* that his account is motivated by that “once the gravest forms of political injustice are eliminated” the great evils of “unjust war and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder” will “eventually disappear.”¹⁶⁰ Rawls also says that, “the basic idea is to follow Kant’s lead as sketched by him in *Perpetual Peace* (1975) and his idea of *foedus pacificum*”¹⁶¹ – Kant’s the idea that a long lasting and stable international peace is achievable. Rawls’ assertions of purpose here should not be underestimated. Rawls is well known for emphasizing interpreting texts in favor of the stated aims their authors make at the outset.¹⁶² Rawls also spends a great deal of time, moreover, discussing the idea of “democratic peace”, and of trying to show that decent societies possess many of the same features as democratic societies. He endorses the claim that democratic societies lack reasons to go to war with one another, as well as the claim that since 1800 firmly established liberal societies have not fought one another.¹⁶³ Rawls appears to want to say that because decent societies share many features of liberal societies, an international order that tolerated both liberal and decent societies would stand the best chance of achieving prolonged peace.¹⁶⁴ He remarks that a lack of respect toward decent peoples “may wound the self-respect” of those peoples, which he thinks in turn is

¹⁶⁰ Rawls (1999b): 7.

¹⁶¹ Rawls (1999b): 10.

¹⁶² Freeman (2007): 8.

¹⁶³ Rawls (1999b): 44-54.

¹⁶⁴ Rawls (1999b) Part II.

likely to lead to a “lapsing into contempt on one side, and bitterness and resentment on the other side, only causing damage.”¹⁶⁵

Now if Rawls could substantiate the idea that a Law of Peoples that includes toleration of decent societies is the best system for achieving prolonged international peace, as well as for reducing the incidences of other evils such as genocide and so on, he might have a liberal argument for tolerating “decent” societies. Or, at least, we might be able to construct such an argument on his behalf. Many “Rawlsian-Cosmopolitans”, after all, have suggested, against Rawls’ own view, that his original position from *A Theory of Justice* should be applied to the global order as a whole. Rawls, however, is notable for claiming that the parties to his original position ought to deliberate according to the “maximin” rule for social choice. If we assume (i) that Rawls is right about the empirical facts of war and genocide, (ii) that the parties to a global original position would reason by maximin, and (iii) that maximin requires the avoidance of war and genocide above all else (as seems plausible), then we would seem to have a strong Rawlsian-Cosmopolitan argument, at least, for tolerating decent societies. It does seem, after all, that it would be much for any person in a decent society to continue living under those conditions than live under, or die as a result of, conditions of war. There are two serious problems with this sort of argument, however. First, claim (i) is questionable at best. The root causes of war are still very much a mystery. Second, claim (ii) – the claim that the parties to a cosmopolitan-egalitarianism would reason according to maximin – seems questionable as well. Rawls’ case for maximin in the domestic case is predicated

¹⁶⁵ Rawls (1999b): 61, 62.

upon, among other things, his claim that free and equal individuals would not have much to gain from results above what they would obtain above maximin. It is far from obvious, however, that this is true in the cosmopolitan case at hand. It is far from obvious that free and equal individuals would want to avoid war at all costs. After all, if international strife that led to the occasional war could also be expected to promote liberal conditions in illiberal societies, then free and equal individuals would have much to gain from such strife – namely, liberal social conditions that treat them as free and equal individuals. In any case, why should we think that free and equal persons in a cosmopolitan original position would want the avoidance of war to always take precedence over social progress? Why should we not suppose that the parties to a global original position would be willing to bear the risks of international strife, and perhaps the occasional war, if the benefits of that strife in the longer run might be liberal conditions everywhere? I have a hard time seeing how anything close to conclusive argument could be made one way or the other here.

Rawls also appears to provide other reasons for tolerating illiberal societies, however. First, Rawls is clear both in *Political Liberalism* and *The Law of Peoples* that he is concerned with describing systems of social cooperation that are not imposed on people coercively.¹⁶⁶ He says in *Political Liberalism* that a political order organized around a single “comprehensive doctrine” – such as utilitarianism, Christianity, and so on – “can be maintained only by the oppressive use of state power.”¹⁶⁷ He calls this “the fact of oppression” and states

¹⁶⁶ Rawls (2005): 37; Rawls (1999b): 31.

¹⁶⁷ Rawls (2005): 37.

that his aim is to describe, in this case for a domestic society, how a liberal society can be stable over time without oppression. His claim there is that liberal conditions of equality can be brought about without oppression in liberal societies because liberalism is not a single comprehensive doctrine, but one that the many reasonable conceptions of the good in a liberal society all in some sense accept as a matter of “public reason” (the idea, roughly, is that Christians, Atheists, Muslims, and so on, in a democratic society all share an “overlapping consensus” on issues such as free speech, religious freedom, and so on).¹⁶⁸ Rawls clearly has a similar concern in the international case. He says, “The idea of public reason for a Society of Peoples is analogous to the idea of public reason in the domestic case when a shared basis of justification exists and can be uncovered by due reflection.”¹⁶⁹ He takes the Law of Peoples to consist of principles that all liberal and decent societies could accept without oppression or merely as a “modus vivendi.”¹⁷⁰ The basic problem with argument, however, is that it is not clear why liberal societies should engage in public reason as such with “decent” societies. Such societies oppress their own members, after all. They fail to treat their members as free and equal individuals. How is it oppressive to release persons from conditions that treat them as less than free and equal?

In reply to this, Rawls might appeal to his claim that decent societies are minimally cooperative social systems that treat people “decently.” Rawls seems

¹⁶⁸ Rawls (2005), particularly Lectures I and IV.

¹⁶⁹ Rawls (1999b): 19.

¹⁷⁰ Ibid.

to take the idea that decent societies are organized around some “common good” conception of justice, after all, as “[imposing] bona fide moral duties on obligations (distinct from human rights) within all persons within the people’s territory”, and their members as, “[recognizing] these duties and obligations as fitting with their common good idea of justice and do not see their duties and obligations as mere commands imposed by force.”¹⁷¹ There are two problems with this argument, however. First, as we have already seen, it will presumably be the case that some members of any decent society will (correctly) regard their unequal social position as unjust and unworthy of toleration. Thus, even if many members of decent societies do not regard their presumed duties and obligations to be mere commands imposed by force, other members presumably will – in which case it is not clear that there is a truly common good conception of justice at all. Now, in reply, one might ask in Rawls’ defense, “Why should one liberal, or a small dissenting minority in an illiberal/undemocratic society, get to determine how the rest shall live?” This question brings us, however, to the second problem for Rawls’ argument, which is that even if we suppose that every member of an illiberal/undemocratic society were to accept its conception of justice as imposing bona fide duties upon them, why should outsiders conceive themselves as under a duty to tolerate the society? If, as members of liberal-democratic societies, we truly believe that all persons should be treated as equals, why should we refrain from attempting to change decent societies? Rawls appears to recognize the force of this question when he says, “Some may feel that permitting this injustice and not insisting on liberal principles for all societies requires strong reasons.”¹⁷² His

¹⁷¹ Rawls (1999b): 65-6.

¹⁷² Rawls (1999b): 62.

reply fails to address the cosmopolitan-egalitarian worry, however. He says, “Most important is maintaining mutual respect among peoples. Lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage.”¹⁷³ Yet why should we think that attempts to influence illiberal but “decent” peoples can only cause damage? International criticism, sanctions, and other actions toward Rawlsian decent societies might indeed cause some bitterness and resentment, and it might even provoke strong words or threats. All the same, if doing so might lead to greater justice – that is, to individuals enjoying the liberal-democratic conditions they are due as individuals – wouldn’t this “damage” be outweighed (by individuals finally enjoying the sorts of conditions they are due)?

§4.2.1.d. Conclusion

We have just considered three well-known sources of argument for tolerating illiberal/undemocratic societies. Some of those arguments may be compelling to non-cosmopolitan-egalitarians. If we do not assert a global right of all persons to free and equal treatment, then perhaps these arguments succeed. It is clear, however, that these arguments do not succeed from a cosmopolitan-egalitarian perspective. If we are to show that cosmopolitan-egalitarianism allows or requires the toleration of illiberal/undemocratic societies, we must look elsewhere.

¹⁷³ Rawls (1999b): 62.

§4.2.2. A Critique of the “Standard Liberal Argument” Against International Toleration

Liberal political philosophers typically provide a simple argument for the claim that liberalism cannot permit toleration of illiberal societies. We have seen this argument repeated again and again, in fact, in the previous section. It is this:

THE STANDARD LIBERAL ARGUMENT AGAINST TOLERATING
UNJUST SOCIETIES

- (1) Liberalism requires the free and equal treatment of persons.
- (2) To tolerate an illiberal society is to tolerate the treatment of persons otherwise than as free and equal.
- (3) Therefore, liberalism is inconsistent with tolerating illiberal societies.

This line of thought is evident in the following passage by Pogge: “...the basic political structure of a society or the world as a whole “can be structured or organized in only one way...There is no room for accommodation here” since it is precisely the characteristic of a liberal fundamental law that it [and it alone] must apply to and be justifiable to all.”¹⁷⁴ It is also evident when Barry writes, “there are certain rights against oppression, exploitation, and injury, to which every single human being is entitled to lay claim, and...appeals to cultural diversity and pluralism under no circumstances trump the value of basic liberal rights.”¹⁷⁵ Ackerman, Beitz, Caney, Kuper, and Tan all make similar remarks.¹⁷⁶

¹⁷⁴ Pogge (1994), 217.

¹⁷⁵ Barry (2001): 132-3.

¹⁷⁶ Ackerman (1980): 382-3; Beitz (2000), Caney (2002), Kuper (2000): §2, and Tan (1998).

The simple liberal argument against tolerating illiberal societies omits any analysis, however, of which sorts of transition-costs can be justly imposed upon individuals, qua free and equal persons, to eliminate illiberal conditions. No one will deny, after all, that particular actions to promote conditions of greater justice will often, if not always, impose costs (and possibly even benefits) upon individuals. So, for instance, consider the “Little Rock Crisis” during the black American civil rights movement.¹⁷⁷ After the U.S. Supreme Court ruled in *Brown vs. Board of Education of Topeka* (347 U.S. 483) that public schools must be desegregated, the National Association for the Advancement of Colored People (NAACP) attempted to register black students in previously all-white schools in cities throughout the South, including nine black students at Little Rock’s Central High School. On the first day of school, however, only one of the nine black students enrolled at Central High showed up. She was harassed by whites and had to be escorted home in a police patrol car. Then, on the first day that all nine students did show up, they had to pass through a “gauntlet of spitting, jeering whites.” For the rest of the year, the nine students had to be escorted to school by military personnel in jeeps, and to and from classes by federal troops. One of the “Little Rock Nine” was eventually expelled for dumping a bowl of chili on a white student who was harassing her, and only one of the Little Rock Nine graduated. Finally, at the end of the 1957-8 school year, the Little Rock school system shut down completely in order to avoid further integration, and many other schools in the South did the same.

¹⁷⁷ Cf. Jacoway (2007).

The black students who underwent integration endured some severe costs for the sake of social progress, then. Similarly, consider the Mississippi Summer Project, a civil rights group that is most well known for the fact that three of its participants disappeared after being released from police custody and whose bodies were later found along with several corpses of other black Mississippians whose disappearances had not attracted any public attention.¹⁷⁸ Here again, we see individuals suffering significant costs – indeed, perhaps the greatest cost of all, death – for the sake of social progress: the process of mobilizing as an activist group under severely unjust conditions.

Now I take it that most of us believe that it was just for the NAACP to strive for the integration of public schools, despite the costs its strategies had on the aforementioned students and others. Similarly, I take it that most of us believe that it was just for the Mississippi Summer Project to mobilize its members for the cause of overthrowing racial injustice, even though in the end its activities cost some innocent individuals their lives. Few of us believe, however, that just any costs can be imposed on upon people for the achievement of just future conditions. Many of us do not believe, for instance, that war is a morally permissible, or just, means to promote liberal/democratic values. But now how are we to distinguish legitimate transition-costs for the achievement of justice from illegitimate ones? Since liberals are committed to the free and equal treatment of persons, we should aim to put together a systematic theory of which sorts of transition-costs (and perhaps, transition-benefits) are consistent with treating persons as free and equally. However, as I argued in Chapter 1, we do

¹⁷⁸ Cf. McAdam (1990).

not presently have such a theory. We should be therefore be suspicious of the simple liberal argument against tolerating illiberal societies. In order to determine whether liberalism permits, requires, or prohibits the toleration of such societies, we need a systematic theory of the sort just mentioned – and it is precisely this kind of theory that I have defended in this dissertation.

§4.3. THE NON-IDEAL THEORY OF JUSTICE DEFENDED IN THIS DISSERTATION: A BRIEF REVIEW

We saw in Chapter 1 that existing theories of justice are incomplete in the sense that they fail to account for the kinds of transition-costs (and benefits) we can justly impose on people in order to eliminate injustices. The non-ideal theory of justice that I have defended so far in this dissertation aims to rectify this omission. I argued, first, for reasons I will not belabor repeating, that political philosophers in general ought to adopt a “non-ideal theoretic” version of Rawls’ famous original position (the “Non-Ideal Original Position”) to arrive at principles of non-ideal theory. I then argued, second, that the parties to the Non-Ideal Original Position would agree upon the following generic principle:

The Fundamental Principle of Non-Ideal Theory: For any action A, agent B, and less-than-fully-just social conditions C (past or present), social justice requires B to perform A given C if and only if, of all available actions, B has sufficient reason to expect A to best satisfy the social preference ordering that would exist if every relevant individual (defined relative to ideal theory) were (i) rational, (ii) adequately informed, (iii) endorsed the correct principles of ideal theory (and rectification), but (iv)

otherwise desired to advance his/her transition-related preferences (v) within the broader constraints of ordinary morality, (vi) given C.

Finally, I argued the following “secondary” principle of non-ideal theory is the best available practical (i.e. epistemic) guide to whether any particular action satisfies the Fundamental Principle:

The Principle of Application: For any action A, agent B, and less-than-fully-just conditions C, we should tailor our confidence that social justice requires B to perform A in direct proportion to the extent to which we can expect B’s performance of A to either

(i) Best advance the overall aims of whichever reformist group – past, present, or hypothetical -- best satisfies the following desiderata:

- a. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- b. Its members are voluntary participants;
- c. Its leadership is equally responsive to each of its members’ interests;
- d. It has more members than rival reformist groups;
- e. Its leadership and members are rational and adequately informed; and
- f. Its membership is more similar to the complete class of individuals who suffer C’s injustice(s) than any other group;

Or, if more than one reformist group appears to satisfy these desiderata roughly equally well,

- (iv) Best advance a fair compromise between the overall aims of the reformist groups in question.

Let us now apply these principles to the question of whether liberalism can allow for, or even require, toleration of illiberal societies.

§4.4. FROM THE FUNDAMENTAL PRINCIPLE OF NON-IDEAL THEORY TO THE POSSIBILITY OF INTERNATIONAL TOLERATION

Some readers might suggest that the Fundamental Principle of Non-Ideal Theory, when combined with the liberal idea that all persons must be treated as free and equal equally, implies straightforwardly that any form of toleration for illiberal societies is unjust. The Fundamental Principle tells us, after all, to aim to advance the social preference ordering composed of the preferences that rational, adequately informed, and otherwise moral, individuals would have if they desired the achievement of fully just (i.e. liberal) conditions. One might then suppose that if liberalism is true, every such person must prefer liberal conditions, and thus, that the Fundamental Principle of Non-Ideal Theory will be satisfied by those, and only those, actions that can be expected to eliminate illiberal social conditions – in which case toleration for illiberal societies is ruled out immediately.

This is too quick. The Fundamental Principle allows that persons who desire fully just conditions can have transition-related preferences related to how

those conditions are achieved. This point is crucial. It takes only a few moments of reflection to note that individuals who are subject to injustice, and who want to be treated as free and equal very much, often seem to want to deal with and overcome those injustices themselves. Consider, for example, the policy aims of the One Million Signatures Campaign, which is one of the most visible liberal activist campaigns today in Iran. The One Million Signatures campaign asserts that it aims “to identify the everyday concerns of women, especially their legal needs and problems...relying on the needs identified by women themselves”, “to carrying out bottom-up reform and to creating change through grassroots and civil society initiatives, and seeks to strengthen public action and empower women”, and finally, goes out of its way to restrict participation in the movement to Iranian men and women.¹⁷⁹ Indeed, the One Million Signatures Campaign’s statement of aims here suggests two reasons why, in the view of its organizers, it is important for Iranians to achieve conditions of greater gender equality themselves. First, there seems to be a concern for the sorts of costs that women in Iran can be expected to incur as a result of social change. It is claimed that it is important to be sensitive to the everyday needs of women as identified by those women. This suggests, not implausibly, that women in the ground in Iran are more knowledgeable of their own everyday needs than outsiders. There also seems to be a clear suggestion, however, that there are benefits to be achieved by women in Iran through “bottom-up reform” – roughly, the “empowerment” of women.

¹⁷⁹ <http://www.we-change.org/spip.php?article18>

Now of course it is important not to overly romanticize the benefits of social movements to the oppressed. It would seem just as important, however, not to summarily dismiss the idea that there may be such benefits. After all, consider the following autobiographical account of a member of the One Million Signatures Campaign, a story which I first recounted in Chapter 1:

...the experience that I want to tell is in regards to one of my closest family members, my father. My father is a very kind, sincere, religious and pious human being. At the same time he is drawn to knowledge, reflection and logic as well. At first, he would try to answer my criticisms of the status quo laws with kindly advising me not to seek the reasons and causes for these historic injustices and discrimination between men and women. He would say “Probably there is some wisdom embedded in the unequal laws that I have not found, and for this reason I should study more.” Due to this rationale, my father was against changing the laws. I listened to my father, so with much persistence and diligence I researched the literature, but the more I studied, the deeper my convictions became that the laws were discriminatory and unjust.

With all this, a subconscious fear grew in me. What if my patient father, who has spent his life in promoting science and religion and has no expectations from anyone or any rankings, was to become offended and take away his kindness from me? Because of this, I stopped the discussing this topic with him, but I kept up on my research.

After joining the campaign and battling with myself, I broached the subject of the movement and its goals with friends and neighbors. All the while I was afraid of worrying my father. From the corner of my eye, I kept watching for his reactions.

Talking of the campaign among family and friends resulted in a variety of questions regarding the validity of its goals (questions that rarely come up when talking with other activists.) Of course, I defended the woman's rights movement of my country as well as the inalienable rights of Muslim women with strong reasons and I explained that the current laws are creating many problems for women. I also described the positive new movements in other Islamic countries that were attempting to correct their own discriminatory laws. Since I believe that Islam is a religion that defends justice and equality, at least that is what my father taught me, why should Muslim women be quiet in the face of injustice? Are we less deserving than other women? Since we are Muslims, does this mean we should be without rights?

These questions continued for some time and I noticed my father carefully monitoring my answers. Days and weeks passed by in similar fashion until I gradually felt that the clouds of sadness and worry were starting to lift from my father's kind and compassionate face. Little by little, he developed a smile of support for me and my fellow campaigners. Finally, one day while signatures were being collected from various friends and family, my father asked to sign and be part of the campaign as well.

That night, I cried tears of joy. The relief I felt made me lighter, as if I could fly. For some time I felt that my dear father was distancing himself from me and I thought that I was going down a path that he disapproved of. His becoming part of the campaign brought us closer. I was so happy.

Yes, I have learned a big lesson that change takes time and I have to be more patient. I have realized that influencing other people's beliefs and opinions takes time and doesn't happen over night!

What is interesting is that my father is now very persistent in wanting to collect signatures from friends and co-workers. I have witnessed many of his arguments and discussions in the effort to convince his friends for the need for women's rights, as well as the need to interpret religion based on changing times. I get unbelievable energy from him and I bask in the happiness this brings me.¹⁸⁰

This account brings to the fore, I believe, the sorts of "hidden", but nevertheless very real, costs and benefits that free and equal persons might be concerned with vis-à-vis social progress toward liberal conditions. This particular woman – a woman who truly wanted gender equality – is, as I think most of would be, concerned with maintaining one of her most cherished personal relationships, her relationship with her father, through social progress. She also seems to believe that the very process that she engaged in with her father has been beneficial to both of them. Finally, as she indicates in the following passages, she

¹⁸⁰ <http://www.we-change.org/spip.php?article326>

conceives of herself as having developed her own personal capacities, self-respect, and identity as a person, as a result of her engagement in the Campaign. She writes,

Long before the start of the “One Million Signature” campaign, I was frustrated with the difficult plight of women and I wished from the bottom of my heart for these unfair laws against women to change. In gatherings and various get-togethers, I would broach the topic of the problems that women face today, but there were times when I would lose the motivation for discussions and arguments. It was as if, I was devoid of hope. In fact, prior to working with the campaign, I would only speak with specific people such as close friends and some family members, and I would generally avoid bringing up the topic of women’s difficulties in larger groups or in the presence of strangers. Sometimes I would be ashamed. Low self esteem and not knowing all the facts would cause me to stop short of mentioning women’s issues and I would allow the social gathering to go about its traditional routine.

However, since joining the campaign, I slowly began to feel a sense of conviction and responsibility in articulating the pain and difficulties of women, and my self confidence in discussing these issues in social gatherings grew, especially in the presence of my family elders. In a way, answering people’s questions about the various details of the laws made me even more aware of feminism and the situation of the women in my country. More importantly, I knew that I was not alone. Knowing that

many unacquainted friends of the campaign in Tehran and other parts of Iran were busy collecting signatures gave me a good feeling. No longer feeling alone in this small city gave me a sense of support and hope. Being a member of the campaign gave me a new sense of identity.¹⁸¹

Now, it would be presumptuous to take this woman's experiences to be typical of Iranian women, or even members of the One Million Signatures Campaign. This is not the question, however, to ask in considering whether cosmopolitan-egalitarianism could in principle require foreigners to tolerate illiberal societies. In order to establish the in-principle possibility that cosmopolitan-egalitarianism might require foreigners to tolerate illiberal societies, we must establish only that it would be possible for free and equal persons, generally speaking, to share this woman's attitudes. I submit that this clearly is possible for the sorts of reasons just mentioned. We have seen that, for all sorts of reasons, it seems possible for rational and adequately informed persons who desire liberal justice to desire to achieve it themselves, without any sort of pressure or intervention by foreigners.

Some readers might want to deny that it is really possible, however, for rational and adequately informed individuals to have such preferences, given what we know about the relationship between liberal-democratic conditions and basic rights. Amartya Sen has famously argued, on the basis of his research about the cause of famine, that certain basic rights – the right to subsistence in particular – are never secure without liberal-democratic conditions.¹⁸² Sen

¹⁸¹ <http://www.we-change.org/spip.php?article326>

¹⁸² See Sen (1981, 1984, 1992, 1999).

contends that illiberal/undemocratic conditions lend themselves to famine, whereas famines almost never occur under liberal-democratic conditions. Some readers might then suggest that if the members of illiberal societies who desire liberal-democratic conditions (such as the aforementioned Iranian woman) were fully aware of this, they would surely desire liberal-democratic conditions to be brought about as quickly as possible (the thought being that, surely, people who are properly opposed to injustice ought to rationally care more about avoiding famine than about offending their family members).

There are two problems with this argument. First, it is not the case, as Andrew Kuper claims, that, “there is simply no more impressive body of theory and evidence”, than Sen’s claims about famine.¹⁸³ Although Sen won the Nobel Prize for his work on famines, his data, methodology, and interpretation of his data on famines have not only been the subject of severe criticism in the academic press in recent years¹⁸⁴; it also now widely recognized that “Causation is the central, most important, and most controversial issue in the literature and theory of famines.”¹⁸⁵ Second, I see no reason why a rational and adequately informed individual must prefer to avoid the possibility of famine at all cost. Even if famines were more common in illiberal-undemocratic societies than in liberal-democratic ones, they are surely fairly uncommon in both cases. Accordingly, even if famine is a possibility, it might be a fairly remote one. I see no reason why a rational and adequately informed individual might prefer to risk

¹⁸³ Kuper (2000): footnote 81.

¹⁸⁴ See e.g., Bowbrick (1986, 1987, 1999), Basu (1994, 1996), Goswami (1990), Kumar (1990), Padmanabhan (1973), Dyson (1991, 1996), Dyson and Maharatna (1991).

¹⁸⁵ Taugher (2003): 45. Cf. Devereux (1993) for a survey of different theories of famine.

such a remote possibility for the sake of almost certainly protecting other things she values, such as relationship with her family. As an analogy, the mere fact that it is more far more likely for a house in Louisiana to get destroyed by a hurricane than a house in California is not, in itself, reason to suppose that no rational or adequately informed individual could prefer to have a house in Louisiana than in California. Many of us are willing to endure certain possibilities of absolute disaster so that we can enjoy other things we value greatly (such as Louisiana culture, food, etc., or in the case of illiberal societies, our familial relations, etc.). I see no reason, furthermore, to think that individuals such as the Iranian woman I discussed should be thought to be ignorant of the relevant facts. If anyone knows the relevant facts on the ground about (e.g.) Iran – such as the state of the availability of food, etc. – it is surely the very individuals on the ground who are in a good position to be aware of, and weigh, the relative importance (to them) of the various possibilities for themselves.

In any case, I will now utilize the Principle of Application to argue that because the evidence we presently have stands approximately equally in favor of and against the proposition that individuals in illiberal societies, qua free and equal individuals, prefer foreigners to tolerate illiberal societies in particular ways, it follows (qua the Principle of Application) that liberalism defeasibly requires foreigners to tolerate illiberal societies that adequately respect basic rights.

§4.5. FROM THE PRINCIPLE OF APPLICATION TO A DEFEASIBLE INTERNATIONAL DUTY TO TOLERATE
 “BASIC-RIGHTS-RESPECTING” SOCIETIES

The Principle of Application, if you recall, is (or so I have claimed) the best available epistemic indicator to us, here and now in the real world, of whether a particular response to injustice is just (qua the Fundamental Principle). Let us apply it, then, to the question of international toleration.

The Principle of Application instructs us to proportion our confidence that a particular response to injustice is just to the extent that we can expect that response to either best advance the overall aims of whichever reformist group best satisfies the following desiderata; or, if two or more reformist groups satisfy these desiderata equally well, to the extent that we can expect that response to advance a fair compromise among the aims of those competing groups:

- a. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- b. Its members are voluntary participants;
- c. Its leadership is equally responsive to each of its members' interests;
- d. It has more members than rival reformist groups;
- e. Its leadership and members are rational and adequately informed; and

- f. Its membership is more similar to the complete class of individuals who suffer C's injustice(s) than any other group.

There are, when it comes to the question of international tolerance, a number of candidate reformist groups as such. Liberal-democratic states and various international organizations (such as the United Nations and Human Rights Watch) clearly regard illiberal/undemocratic societies as unjust, and thus appear to satisfy the Principle of Application's first desideratum. These are not the only reformist groups to consider, however – nor, in fact, are they the groups that can plausibly stake a claim to best satisfy the Principle of Application's desiderata. Let me explain.

§4.5.1 Liberal Reformist Groups Within Illiberal/Unjust Societies as Best Satisfying the Principle of Application's Desiderata

Although, as I just noted, some of the candidate groups that I have already mentioned – particular liberal-democratic societies (such as the United States, Canada, France, etc.), as well as international organizations, such as the United Nations and Human Rights watch – appear to satisfy the Principle of Application's first desideratum, there are often reasons to doubt whether the aims of these groups, specifically as they relate to illiberal/unjust societies, are in fact *motivated* by correct principles of ideal theory. The United States and members of the United Nations have, for example, all kinds of military/strategic interests at stake in their dealings with unjust societies. Similarly, non-

governmental organizations such as Human Rights Watch also have much at stake besides justice. They are very much dependent upon monetary contributions by individuals and other interest groups, and have a great deal of money at stake in their endeavors (Human Rights Watch, in particular, is as of 2007 a \$123 million dollar organization).¹⁸⁶ I do not mean to suggest here that we should doubt the sincerity of these organizations *vis-à-vis* justice. I only mean to point out that they do have other interests at stake besides justice.

I want to draw attention now to what I will call “local” reformist groups – groups within illiberal/undemocratic societies that, in their actions and proclamations, display similar interests in eliminating injustices. I have in mind here groups such as the One Million Signatures Campaign in the case of Iran¹⁸⁷, the African National Congress (ANC) in the case of Apartheid-era South Africa, the NAACP and Student Non-Violent Coordinating Committee in the Jim Crow-era United States, and so on. My claim here is that when it comes to the Principle of Application’s first desideratum – the “correct principles of justice and morality requirement” (as I call it) – these groups fare *at least as well* as the other groups just mentioned (i.e. the U.S., the U.N., Human Rights Watch, etc). Insofar as both kinds of groups exhibit concerns for justice, they all have at least *roughly* similar claims to satisfy desideratum (a) as one another.

Let us turn now, however, to the Principle of Application’s other desiderata. Desideratum (b) asks us to consider whether a reformist group’s

¹⁸⁶ <http://www.hrw.org/annual-report/finStmt2007.pdf>

¹⁸⁷ <http://www.we-change.org/spip.php?article19>,

<http://www.learningpartnership.org/advocacy/alerts/iranmillionsigns0207>.

members are voluntary participants. Liberal nations such as the United States and international institutions such as the United Nations score poorly with respect to this desideratum. It is simply not the case, in any ordinary sense of the word, that U.S. citizens are *voluntary* members of the U.S.-*qua-international-reformist group*. Most U.S. citizens would remain U.S. citizens *regardless* of whether the U.S. government decided to tolerate illiberal/undemocratic regimes or not. The U.S. government's policies toward illiberal/undemocratic societies are simply not the *reason* that most (if not all) of us are U.S. citizens. Groups such as Human Rights Watch, on the other hand, and the One Million Signatures Campaign, seem paradigmatically voluntary. Generally speaking, it is surely the case that people who join Human Rights Watch do so because they voluntarily accept and support its aims *vis-à-vis* human rights, including its stance on how to deal with unjust societies that fail to respect human rights. The One Million Signatures Campaign is voluntary in much the same way, in that every member who participates in the campaign – by signing its petition – voluntarily signs his/her name in support of the Campaign's aims.

Now consider desiderata (c) and (d). The former desideratum instructs us to evaluate reformist groups in terms of how responsive they are to their members, whereas the latter has us evaluate reformist groups in terms of sheer numbers: in terms of how many members they have. Although it might at first come as somewhat of surprise, I submit that non-governmental organizations such as Human Rights Watch and the One Million Signatures Campaign fare at least as good, if not better, than, the U.S., other liberal nations, the United

Nations, and other such bodies. This claim might seem bizarre insofar as, clearly, the U.S. and U.N. have more *members*, strictly speaking, than Human Rights Watch or the One Million Signatures Campaign. It is important to remember, though, that we are evaluating these groups *as reformist groups*. What we want to know, in other words, is *how many members these groups have qua their concern with eliminating injustice*. In this case, I think it is hard to say how many members the U.S. and United Nations really have. Once again, most U.S. citizens are presumably not U.S. citizens specifically *because* of the U.S.'s aims vis-à-vis unjust nations. Though of course many U.S. citizens care deeply about international terrorism, it is still surely the case that few, if any, U.S. citizens are U.S. citizens because they want to eliminate injustices in other societies. It is hard to say, then, how many real *members* the U.S. or U.N. have *qua* international reformist groups. The correct answer is probably: not many. Since the average U.S. citizen would presumably remain a U.S. citizen regardless of the U.S.'s stance toward unjust societies, it is implausible to regard most U.S. citizens as members of the U.S. (or UN), so far as we are thinking of them as *international reformist groups*. The same is not true of Human Rights Watch or the One Million Signatures Campaign. Their members, once again, voluntarily “sign on” to those organizations either by donating money or by (in the One Million Signatures case) literally signing a piece of paper.

So far, then, when it comes to the Principle of Application's desiderata, no group really stands out. We are not finished however. Desiderata (e) and (f) are still in question. Let us consider each of them in turn. Desiderata (e) instructs us

to evaluate reformist groups in terms of how “rational” and “adequately informed” they are. Here again, I think that of the groups we have been considering are roughly on a par. It is hard for me to see how any of the groups we have been discussing can be said to be clearly more rational or better informed than the others. Desiderata (f), however, is a very different story. The United States, U.N., Human Rights Watch, and other *international* bodies or organizations simply are not very similar, in terms of their composition, to the complete class of individuals who the kinds of injustices that are at issue in the case of international toleration. It is not U.S. citizens, members of the U.N., or Human Rights Watch volunteers who suffer, say, the injustices we see in Iran, Saudi Arabia, China, and other illiberal/undemocratic societies. It is instead the members of what I have called “local” reformist groups – groups of reformists located within the societies in question – whose members actually suffer injustice.

I believe, as such, that desideratum (f) is the turning point, so to speak, with respect to the justice of international toleration. What distinguishes “local” reformist groups as such from all other candidate reformist groups is the simple fact that it is the members of *those* groups (i.e. women in Iran) who actually suffer the brunt of whatever injustices are at issue. Let us look, then, at what kinds of aims these groups have.

§4.5.2. Local Reformist Group Consensus Against Toleration of “Basic Rights” Violations

Local reformist groups (within unjust societies) have a long history of urging foreigners not to tolerate illiberal societies when individuals’ basic rights are seriously threatened. So, for instance, consider Oliver Tambo’s 1963 speech to the U.N. General Assembly on behalf of the African National Congress:

As early as 1958, we in South Africa were convinced that if nothing was done to bring pressure to bear upon South Africa in addition to what we were doing, so as to compel abandonment of [Apartheid], the stage would be reached which is contemplated in a paragraph of the preamble of the Universal Declaration of Human Rights. I quote from that paragraph:

“... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...”

We were aware that the rule of law in South Africa was fast becoming a dead letter, that our own pressures internally were not bringing about the peaceful changes in which we believed, and that it had become necessary to supplement these pressures with what could be done from outside. So, in 1958, at the first meeting of the All-African People's Conference the South African delegation tabled a resolution for an international boycott of

South African goods. That resolution was adopted and picked up in a number of countries by various organisations.¹⁸⁸

Or consider the “Stop Stoning Forever Campaign” in Iran. The Stop Stoning Forever Campaign, “invites all citizens of the world to contact the Iranian officials by phone and/or fax and ask them to stop the public stoning of Mokarrameh Ebrahimin, the 43 year old mother of three children, and her partner, the father of her 11 year old child.”¹⁸⁹

We see the same sort calls for international action from opposition groups in Zimbabwe and Kenya – societies where the most basic human rights to life and security of the person are systematically violated. According to various human rights organizations, Zimbabwe systematically violates the rights of personal freedom and integrity by regularly assaulting, torturing, threatening, kidnapping, arresting, and detaining civilians, particularly members of opposition groups.¹⁹⁰ It is thus not surprising that Zimbabwe’s opposition leader, Morgan Tsvangirai, has urged the United Nations and African Union to intervene to put an end to the present election crisis there (Zimbabwean President Robert Mugabe has failed to step down after being soundly defeated by Tsvangirai in general elections).¹⁹¹ Similarly, in the case of Kenya, the spokesman for the main opposition group openly asked the United Nations and African Union to intervene, saying, “The

¹⁸⁸ <http://www.anc.org.za/ancdocs/speeches/1960s/sp631029.html>

¹⁸⁹ [http://www.wluml.org/english/actionsfulltxt.shtml?cmd\[156\]=i-156-554170](http://www.wluml.org/english/actionsfulltxt.shtml?cmd[156]=i-156-554170)

¹⁹⁰ <http://www.africasia.com/services/news/newsitem.php?>

[area=africa&item=080421174224.rayqvnwu.php](http://www.africasia.com/services/news/newsitem.php?area=africa&item=080421174224.rayqvnwu.php)

¹⁹¹ Ibid.

level of violence in Kenya is unprecedented. It's on a terrifying scale and it has not really diminished...For sure, international assistance is needed.”¹⁹²

These groups are not alone in their agreement that the international community ought not to tolerate violations of basic rights. The idea that the international community has a duty to protect against grave and persistent violations of individuals' basic rights is enshrined in literally every international covenant on human rights.¹⁹³ Thus, if the Principle of Application is correct, it follows that we should be very confident that the international community ought not to tolerate these sorts of human rights violatons.

§4.5.3. The Evident Openness to Toleration of “Basic-Rights-Respecting” Societies Among Local Reformist Groups

Local reformist groups commonly appear, however, to have very different attitudes and aims with respect to international toleration for other kinds of injustices (injustices that are not violations of the most basic rights of individuals). Now unfortunately, there is to my knowledge no systematic research on the aims of local reformist groups *vis-à-vis* international toleration. This is not to say that we lack any good evidence of what these sorts of groups prefer or aim for, however. I will now argue, to the contrary, we have a great deal of anecdotal evidence that local reformist groups in unjust societies tend to prefer

¹⁹² <http://www.cnn.com/2008/WORLD/africa/02/03/kenya.violence/index.html>

¹⁹³ Cf. The Universal Declaration of Human Rights, as well as The United Nations Covenant on Civil and Political Rights.

the international community to *tolerate* their society, even when their society is unjust, up to the point that their society violates “basic rights.”

I want to concede, before making my case, that the evidence I shall provide is indeed incomplete, as well as largely anecdotal. I believe, however, that there is nothing wrong with using the best evidence we have, even if it is not very good, to settle upon *defeasible* conclusions about what justice requires or permits. I am more than open to the idea that we should revise our judgments in the light of better evidence. All I shall claim is that our *present* evidence supports tentative conclusions in favor of international toleration of unjust societies (up to the point, once again, that those societies violate basic rights).

§4.5.3.a. Domestic Reformist Groups in Apartheid-Era South Africa

Apartheid had formally existed in South Africa as far back as 1948 (and informally for many years before that). Why was it not until 1958, at the All-African People's Conference, that the South African delegation asked for an international boycott of South Africa? And why did it take until 1963 for the ANC to make the aforementioned speech to the U.N. General Assembly? Oliver Tambo explicitly gave some reasons in the part of his speech to the U.N. cited earlier, which I repeat below,

We were aware that the rule of law in South Africa was fast becoming a dead letter, that our own pressures internally were not bringing about the peaceful changes in which we believed, and that it had become necessary to supplement these pressures with what could be done from outside.

Tambo says here, quite clearly, that the ANC only regarded international action to be “necessary” once it became clear that the rule of law was a “dead letter”, and that the pressures they were providing “internally” were not working. It is also of particular note, I think, that Tambo refers to the year 1958 as the time at which the ANC came to hold this view:

As early as 1958, we in South Africa were convinced that if nothing was done to bring pressure to bear upon South Africa in addition to what we were doing, so as to compel abandonment of [Apartheid], the stage would be reached which is contemplated in a paragraph of the preamble of the Universal Declaration of Human Rights. I quote from that paragraph:

"... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."

The year 1958 is important, I think, because as a matter of history it is clear that it is really only at that time, with the lack of any rule of law, that individuals' most basic rights – the rights to security of the person in particular – were clearly inadequately protected. 1958 was the year that the “Grand Apartheid” was instituted. Grand Apartheid began an era of the forced removal of blacks from designated white areas, which in turn instigated the Sharpesville Massacre in which 69 blacks were killed and 169 injured by police gunmen, which in turn led

to the arrest and detention without trial of over 18,000 people, including much of the ANC and Pan African Council (PAC) leadership.¹⁹⁴

I submit, then, that in the case of South Africa we see that its largest and most influential liberal reformist group clearly preferred international non-toleration – or, at least, saw non-toleration as required – only when individuals’ basic rights were widely and routinely violated.

§4.5.3.b. Domestic Reformist Groups in the Islamic Republic of Iran

We have already seen, for example, how the organizers of the One Million Signatures Campaign have gone out of their way to state a preference in favor of “bottom-up” reform fuelled by people who actually reside in Iran – and we have seen some of the reasons why its members seem to prefer this approach (e.g. self-respect, their ability to maintain important familial relationships, etc.). It is also of note that the Stop Stoning Campaign mentioned earlier never requests a general stance of foreign non-toleration toward Iran, but merely requests that the international community not tolerate the stoning of individuals. What we have so far, then, are two domestic liberal groups in Iran that appear to desire international toleration for Iran so long as non-basic rights are at issue.

These are not the only domestic reformist groups in Iran that espouse this view, however. The same view is espoused by many reformists in Iran on the internet. A recent Harvard Law School study of the internet “blogosphere” in Iran indicates that,

¹⁹⁴ <http://en.wikipedia.org/wiki/Apartheid>

Arguing about stuff, arguing about public affairs is taking root in the blogosphere, on the conservative side, on the reformist side, all over.¹⁹⁵

and indeed, that

...the inherent freedom of the Internet (anonymity, decentralized control, etc.) allows the true minds of Iran's youth, journalists, and intellectuals to be known publicly. In their blogs and online chats we see their rejection of the regime, its brutal paternalistic control, its enforcement of archaic sexual mores, its corruption and incompetence, and of the legitimacy of the Islamic Republic itself...the Iranian blogosphere is a place where women speak out for their rights, young people criticize the moral police, journalists fight against censorship, reformists press for change, and dissidents press for revolution...¹⁹⁶

...the story about Iranian online discourse usually reported in the West is... inadequate. Perhaps the most remarkable thing about the larger network of bloggers is its sheer diversity.¹⁹⁷

Dissidents within the Iranian blogosphere and elsewhere, however, do not generally support international attitudes of non-toleration toward Iran.¹⁹⁸ In his article, "Is American Support for Middle Eastern Dissidents the Kiss of Death", Michael Rubin recounts the remarks of a well-known Iranian dissident, Akbar

¹⁹⁵ "Diversity in Unlikely Spot: Iranian Blogosphere Tests Government Limits," *The New York Times*, International Report, Sunday April 6, 2008, page 20.

¹⁹⁶ Kelly and Etling (2008): 6.

¹⁹⁷ *Ibid.*: 17.

¹⁹⁸ Kelly and Etling (2008).

Ganji, who is a former member of the Iranian Revolutionary Guard who served ten years in an Iranian prison for dissidence. Rubin reports,

As he traveled through the United States, Ganji was vocal in his opposition to funding other dissidents. “What we need in our fight for freedom is not foreign aid but the conditions that would allow us to focus all of our energies on the domestic struggle and to rest assured that no one is encouraging the regime’s oppression.”¹⁹⁹

§4.5.3.c. Domestic Reformist Groups in China

Similar attitudes are also found among the blogs of Chinese dissidents. A recent systematic study of the Chinese blogosphere by the RAND Corporation found that “Chinese language BBS sites are filled with messages denouncing various dissidents, lamenting the ineffectuality – and sometimes questioning the patriotism – of the overseas democracy movement...”.²⁰⁰ Indeed, in a somewhat humorous footnote, the RAND study recounts the following example:

A recent message entitled “To Every Overseas Democratic Personage” illustrates the persistent divisions between the mainland and overseas dissident movements. The poster decries members of the exile dissident community as “Yankee’s lackeys” and suggests that they engage in several

¹⁹⁹ http://www.aei.org/publications/pubID.25243/pub_detail.asp

²⁰⁰ Chase and Mulvenon (2002): 39.

alternative pastimes (none of which is suitable to mention here) rather than “interfering with Chinese affairs.”²⁰¹

§4.5.3.d. Domestic Reformist Groups in Saudi Arabia

Finally, we see similar attitudes in the case of Saudi Arabian dissidents. One of the most well-known Saudi dissidents, Dr. Saad al-Faqih, the head of the “Movement for Islamic Reform in Arabia (MIRA)” and formerly a leading figure of the “Committee for Defense of Legitimate Rights (CDLR)”, has asserted that “In Islam there is no clear justification for denying [women the rights to drive and vote].”²⁰² Moreover, the MIRA homepage asserts, “MIRA seeks major reforms in Arabia; in particular, freedom of expression, freedom of assembly and the abolition of the Secret Police units subverting political movements and activity.”²⁰³ It would appear, then, that Dr. al-Faqih and the organizations he has spearheaded are sincerely concerned with bringing about liberal conditions. Once again, however, we see that Dr. al-Faqih’s aims, and the primary aims of the organizations he has worked with, are domestic in nature. In response to the question “What is your strategy for engineering the [Saudi] regime’s collapse?”, Dr. al-Faqih asserts,

We are working to inform, empower, and mobilize the people through radio and television broadcasts and other means of communication. The first test [of this strategy] came in October, when we succeeded in

²⁰¹ Ibid.: footnote 96.

²⁰² http://www.meib.org/articles/0311_saudii.htm

²⁰³ http://ssgdoc.bibliothek.uni-halle.de/vlib/css_ssgfi/infodata/001444.html

organizing an unprecedented demonstration in Riyadh. However, while we're working to change the regime ourselves if necessary, we anticipate that it will fall on its own from internal problems. And our role then would be to prevent the chaos rather than remove the regime.²⁰⁴

He also asserts, of the CDLR,

The first principle was that CDLR should be focused on Saudi Arabia. It should not involve itself with any other country. The second was that CDLR should be a discreet and independent group. It would respect other groups and might even exchange ideas and experience, but it would not make an alliance or affiliate itself with any other group. The third principle was that decision-making in CDLR should be based on collective consultation. The fourth was we saw our role as ambassadors and messengers. We don't sell or promote ourselves as the future presidents or future leaders of the country. The real action is inside the country.²⁰⁵

Finally, of the United States, Dr. al-Faqih has says, “There should be no special relationship. This domination and huge influence should stop.”²⁰⁶

²⁰⁴ http://www.meib.org/articles/0311_saudii.htm

²⁰⁵ Ibid.

²⁰⁶ Ibid.

§4.5.4. *Conclusion: The Principle of Application Provides Defeasible Grounds for Tolerating of “Basic-Rights-Respecting” Societies*

We have just seen that anecdotal evidence supports the claim that local reformist groups (groups within unjust societies that are opposed to those societies’ injustices) commonly appear to *prefer* international toleration for their societies up to the point at which their societies violate the basic rights of individuals. If this is right, and if (as I have argued) local reformist groups as such satisfy the Principle of Application’s desiderata better than other reformist groups, it follows that we have sufficient reason to adopt the defeasible view (one that further evidence could disprove) that justice requires international toleration of unjust societies up to the point that those societies violate the basic rights of individuals.

§4.5.5. *Why a Similar Argument Does Not Justify Domestic Toleration of Injustices Within Societies*

Some readers might wonder whether the argument I have given might lead to the view that people should tolerate injustices within their *own* societies. The answer is that it does not.

There are typically vigorous debates in domestic societies not only over which sorts of conditions are unjust (those in oppressing majorities often seem to see nothing wrong with the injustices they inflict upon others), but also over which sorts of ways of dealing with injustice are just. So, for instance, consider Martin Luther King Jr.’s famous “Letter from Birmingham Jail”, a letter in which Dr. King vigorously rejected the view, apparently commonplace among white clergy and many white Americans, that the tactics of civil rights groups –

including, notably, forms of civil disobedience – were too socially destabilizing: in short, “too much too soon.” Dr. King rejected this view by stating, essentially, that blacks had endured enough injustice and had every right to achieve the equality they were due by the sorts of non-violent tactics the mainstream civil rights movement employed. Dr. King, in other words, espoused the view that blacks, as a group, had the right to undermine social stability in the ways they did.

Now of course there was at least one other side in this debate, namely, the side of the white “reformists” Dr. King was arguing against: the clergy members and other white individuals who claimed to desire racial equality, but who did not approve of the mainstream civil rights movement’s tactics. It is crucial to note, however, that this “reformist” group fares nowhere near as well on the Principle of Application’s desiderata as the groups, such as the NAACP, that constituted the mainstream civil rights movement. First, there is every reason to be suspicious of whether “reformist” groups dominated by white individuals really were committed to correct principles of justice (*qua desideratum* (a)), or whether they were merely paying lip service to racial equality in order to prevent advances in the civil rights movement. Second, these groups, just insofar as they were largely composed of by white individuals, fare far more poorly with respect to desideratum (f), the “compositionality” requirement. The disagreement between these sorts of groups on a domestic level, as such, is very different than the sort of disagreement about international toleration I have highlighted.

The cases of international toleration (i.e. toleration of injustices in other societies) and domestic toleration (i.e. toleration of injustices within one's *own* society) are, then, very different. In the international case, the Principle of Application pushes us to toleration for the simple reason that local reformist groups typically appear to prefer to deal with their society's injustices without international interference. In the domestic case, on the other hand, the Principle of Application very clearly leads us to a doctrine of *non-toleration*, as it is rarely, if ever, the case that reformist groups within unjust societies prefer the status-quo to domestic reform.

§4.6. CONCLUSION

We have seen, contrary to received wisdom, that liberalism can not only require foreigners to tolerate “basic-rights-respecting” illiberal societies, at least in principle, but also, that given the (admittedly poor) empirical evidence we presently have, it permits foreigners to do so. Future empirical evidence may indeed require us to reconsider the latter issue, but for now, at least, we have reason to take it to be permissible for foreigners to tolerate such societies.

CHAPTER 5

FROM THE TWO PRINCIPLES OF NON-IDEAL THEORY TO DUTIES TO AMELIORATE GLOBAL POVERTY AND ENGAGE IN FAIR INTERNATIONAL TRADE

Many political philosophers maintain that the global economic order is unjust. Simon Caney and Darrel Moellendorf argue, for example, that a just global economic order would provide all persons with roughly the same economic opportunities.²⁰⁷ Charles Beitz, Andrew Kuper, and Caney have argued that a just global order would conform to a “global difference principle,” a principle requiring the rules and institutions of the global order to be to the maximum benefit of the worst off.²⁰⁸ Thomas Pogge has argued that a just global order would implement a “global resources dividend” (or GRD), or compensate for differences in natural resources across different societies by virtue of a tax on resource extraction.²⁰⁹ And so on. These philosophers never systematically consider the question, however, of which kinds of costs it is just to impose upon people for the realization of these ends (and why). Economic reform imposes costs upon people, after all. Critics of “globalization”²¹⁰ and free trade often maintain, as we will see, that whatever economic benefits these things may have

²⁰⁷ Caney (2000, 2001, 2005: Ch. 4.), Moellendorf (2002).

²⁰⁸ Beitz (1983, 1999, 2000), Kuper (2000; 2006).

²⁰⁹ Pogge (2002).

²¹⁰ “Globalization” is a term that belies a simple definition. It is typically used to refer to a number of distinct phenomena, ranging from the liberalization of international markets and development of international economic institutions to the manners in which capital, goods, and services are traded globally.

for people (and, of course, their economic benefits are contested), the costs they impose upon people – social, political, environmental, and personal costs – outweigh the benefits. Proponents of globalization and free trade, of course, do not buy these arguments. They often point out (as we will also see) that empirical studies of human happiness and well unequivocally show that economic growth associated with globalization and free trade make people happier and better off. How compelling are these kinds of arguments, however? This dissertation has advanced a fully general and systematic “non-ideal theory” of justice: a theory of just social progress. This theory should enable us to determine which kinds of costs can be justly imposed on people for the sake of global economic reform, and why. I will use the theory, at any rate, to argue that justice requires economic injustices to be dealt with through “fair trade” practices.

§5.1 shows how philosophical arguments for principles of global economic justice, in setting aside questions related to transition, at best establish *ceteris paribus* requirements to reform the global order. §5.2 then briefly reviews the non-ideal theory of justice that I have defended in this dissertation. §5.3 argues that the Fundamental Principle of Non-Ideal Theory that I have defended cannot be appealed to directly in order to justify any particular responses to global economic injustices. §5.4 then argues from the Principle of Application that I have defended to the view that global economic reform should be accomplished as far as possible by “fair trade” policies. Finally, §5.5 responds to a number of potential objections.

§5.1. WHY ARGUMENTS FOR PRINCIPLES OF GLOBAL ECONOMIC JUSTICE AT BEST ESTABLISH
CETERIS PERIBUS DUTIES

Simon Caney and Darrel Moellendorf have advanced the following argument for global economic reform:²¹¹

THE EQUAL OPPORTUNITY ARGUMENT

- (1) Justice is a matter of treating all persons equally (definition of cosmopolitan-egalitarianism)
- (2) Treating persons equally means that a person's fate should not depend on "arbitrary" features of a person's life (i.e. features that are not chosen by the person, such as his/her race, sex, ethnicity, etc.).
- (3) Thus, all persons should enjoy the same economic opportunities, regardless of their race, sex, ethnicity, etc.
- (4) A person's nationality is no less an arbitrary feature of a person's life than his/her race, sex, ethnicity, etc.
- (5) So, persons of different nations should enjoy equal opportunities.

Is this argument valid? Consider Sam, a small farmer in a less-developed society who has fewer economic opportunities than the average United States citizen. Sam did not choose to be born in the society in which he finds himself, nor did he choose to have fewer opportunities than people in the United States. Suppose next that the only way to give Sam more economic opportunities is to subject his society to all kinds of "free trade" policies – policies which do not permit Sam's society to enact legislation or agree to trade agreements that will protect Sam's

²¹¹ Caney (2005): 122-3, Moellendorf (2002): Ch. 4.

small farm from international competition. Suppose, finally, that because Sam cannot compete with international competition, these policies will effectively force him off of his land and out of the occupation (farming) that he enjoys, that he has constructed his life and relationships around, and which has been a family business for generations. Free trade, as such, appears to carry enormous costs for Sam. It might promise him greater wealth in the longer run. In the shorter run, however, it promises to either whisk away or undercut much of what he values in life. The point to notice now, at any rate, is that free trade, as such, even if it gives Sam more economic opportunities, and therefore reduces one respect in which his life is determined by “arbitrary” features of the world, in another respect makes his life more determined by arbitrary features of the world, not less. Free trade will not allow Sam to choose whether to remain a farmer, after all. It imposes trade rules on him that can be expected to force him off his land, regardless of what he wants or prefers.

Are there really people like Sam? A recent article in the San Francisco Chronicle, entitled, ““Land is Priceless, Indian Farmers Tell Developers”, reports that vast numbers of peasant farmers in India have refused to sell their lands to developers for vast sums of money – sums (\$24,000) that are over forty times what they make off of their lands in a typical year (about \$600) – and have literally armed themselves with bamboo sticks to keep developers out of town, enduring violent clashes with police (at least 14 peasants were killed and 45 injured in clashes with police after of 12,000 acres were seized for a chemical plant and shipping yard in West Bengal State.²¹² The suggestion that these

²¹² *San Francisco Chronicle*, June 18, 2007, p. A13

farmers might be irrational or inadequately informed is implausible. They would have to be fantastically ignorant to be unaware of the things they could buy for themselves – better housing or remedial health care – with the large sums of money they have been offered. When asked why they want to remain on their lands, a common reply was, “our lands will feed our families throughout our lives.”²¹³ Evidently, economic development and factory work are just not very attractive to these farmers. Despite the fact that they are living far below the common definition of absolute poverty (\$2 per day), these farmers are evidently satisfied with the lives they live. They do not regard themselves as living a miserable existence out of which economic development can raise them.

I expect some readers to object at this point that free markets do allow people like Sam to choose between economic development and other things they value. If, after all, Sam can convince enough people in his society to “buy local,” Sam’s inability to compete with international prices will not force him off his land. The problem with this argument, however, is that is well established that actual markets, and particularly international markets, suffer from all kinds of “market failures,” or failures of the market to take into account individuals’ real preferences. One problem is informational. As Joseph Stiglitz famously argues,

Whenever there are “externalities” – where the actions of an individual have impacts on other for which they do not pay or for which they are not compensated – markets will not work well. But recent research has shown

²¹³ Ibid.

that these externalities are pervasive, whenever there is imperfect information or imperfect risk markets – that is always.²¹⁴

Another related problem is that free markets are often subject to various collective-action problems and can approximate the “Prisoners’ Dilemma.” The Prisoners’ Dilemma shows that, under certain conditions of uncertainty, individually rational agents will behave in ways that, collectively, lead to sub-optimal results that none of the individuals involved really want. The classic presentation of the Prisoner’s Dilemma goes as follows:

Two suspects are arrested for a crime, and the police lack sufficient evidence to convict either suspect. The police then separate the prisoners and offer them the same deal. Each prisoner is told (1) that if he testifies for the prosecution (if he “defects”) and the other prisoner remains silent, he will go free and the one who remains silent will be sentenced to ten years in prison; (2) that if both of them remain silent (if both “cooperate”), both will be sentenced to only six months in jail; and finally, (3) that if they both betray one another (if both “defect”), both of them will receive five-year sentences.

It is assumed, of course, that both prisoners want to spend as little time in prison as possible. What each prisoner really wants, then, is for him to defect and the other to remain silent – for in that case he will go free immediately. The problem, though, is that each prisoner is uncertain of what the other will do. This

²¹⁴ “Managing Globalization: Q & A with Joseph Stiglitz, International Herald Tribune, Oct 11 2006, <http://blogs.iht.com/tribtalk/business/globalization/?p=177>.

uncertainty generates the following situation. Each prisoner knows that whatever the other prisoner does, he is better off defecting. Each prisoner is, after all, in the following situation. Each knows, on the one hand, that if the other cooperates, he is better off defecting (he will get out of prison immediately if the other cooperates). Each also knows, however, that if the other defects, he is once again better off defecting (since if they both defect, they each get six months in jail, whereas if the other defects and he does not, he gets ten years in jail). It follows, as such, that it is rational for each person to choose to defect, given their uncertainty about what the other person will do. Notice, however, that this will lead both of them to a result that neither of them really wants. If both defect, they will both get five years in prison – something, once again, that neither of them really wants.

A similar problem can arise in the market, leading collectives of otherwise rational individuals to ends results that none of them really want. Suppose, for example, that every member of a particular society, S, prefers that S to retain its cultural traditions above all else, even economic growth. Suppose next that these same individuals believe that a new business in town, “Bigmart”, will undermine their society’s traditions if it succeeds financially. There is a very clear sense, then, in which no one in the society at issue wants Bigmart to succeed. Each of them would prefer Bigmart to fail. Suppose now, however, that as in the Prisoners’ Dilemma, each person knows that she is better off shopping at Bigmart irrespective of what others do. Suppose that each individual knows that her decisions will not determine whether Bigmart succeeds or fails. After all, it is

rarely the case that one person's shopping decisions spell success or bankruptcy for a business. Each person in this situation will know, on the one hand, that if enough people in her society shop at Bigmart, then Bigmart will succeed regardless of whether she shops there, and on the other hand, that if not enough other people shop at Bigmart, then Bigmart will fail regardless of whether she shops there. Suppose, finally, that each individual knows that if she shops at Bigmart, she will save money. The problem here is this. It seems clearly rational for every individual to shop at Bigmart under these conditions. Each individual knows that Bigmart's success or failure will not be decided by what she does individually, but that if she does shop there, she is assured of saving money. The problem, obviously, is that if every individual in S is rational, every individual will choose to shop at Bigmart. But that is just to say that the members of S will, as a collective, arrive at a result that literally none of them want. Bigmart will succeed, undermining what each of them cares about the most: their cultural traditions.

Let us return now to our hypothetical farmer, Sam. Sam did not choose to be a small farmer in any ordinary sense. He was born into the occupation. Now that he is a small farmer, however, subjecting him to free trade policies may force him off of his land whatever he actually wants. For Sam, free trade is a "bad deal" – one that makes his life less dependent on features of Sam's choosing, not more. (Sam's own thoughts on the matter might go roughly as follows: "First, this world I found myself in forced me to be a farmer. I didn't exactly ask to be a farmer, but whatever, it was my only option, I accepted it, came to enjoy it and the culture

that goes along with it, and so on. Now, some philosophers and economists want reform the world so I cannot be a small farmer. If they succeed, my life overall has been doubly the result of things I have not chosen. I didn't really choose to be a small farmer in the first place, but now, if I am forced off my farm, I haven't really chosen that either.")

We cannot assume, then, that free markets will best reduce the overall amount of "arbitrariness" in individuals' lives. But now insofar as this is the case, we can see that the Equal Opportunity Argument is of limited import. If we accept its premises, there is surely one sense in which Sam and others like him "should" enjoy the same opportunities as people in wealthier nations. The Equal Opportunities Argument entails that Sam "should" have the same opportunities as others setting questions of transition-costs aside. Until we have some account, however, of how to weigh different "arbitrary" features of Sam's life – the sense in which free trade would, for example, undermine Sam's culture and other things he values, and so on – against other "arbitrary" features, the Equal Opportunities Argument does not establish that the global economic order should be reformed at all, all-things-considered. For all that has been established, global economic reform of any sort may make Sam's life "more arbitrary" overall (by, once again, depriving him of things he values) rather than less.

Beitz, Kuper, and Caney's argument for a "global difference principle" faces the same problem:

THE RAWLSIAN-COSMOPOLITAN ARGUMENT

- (1) Justice is a matter of treating all persons as free and equal.
- (2) Rawls' original position argument from *A Theory of Justice* models persons as in a particular society as free and equal.
- (3) So, Rawls' original position argument ought to be extended to the global order as a whole (i.e. to include all persons).
- (4) Rawls argues from the original position to the "difference principle": a principle requires the laws and institutions of society to be to the maximum benefit of the worst off.
- (5) So, justice requires conformity to a global difference principle.

We saw in Chapter 1, however, that Rawls' original position is based upon an assumption of "strict-compliance": an assumption that, "everyone is presumed to act justly and to do his part in upholding just institutions."²¹⁵ Rawls only arrives at the difference principle, in other words, by setting aside less-than-fully-just conditions. And indeed, Rawls recognized this. He wrote,

...we must ask how well [the two principles of justice] apply under less than favorable conditions, and whether they provide any guidance for instances of injustices. The principles and their lexical order were not acknowledged with these situations in mind and so it is possible that they no longer hold....I shall not attempt to give a systematic answer to these questions.²¹⁶

²¹⁵ Rawls (1971): 8.

²¹⁶ Rawls (1999a): 215-6.

The Rawlsian-Cosmopolitan Argument at best establishes, then, that a fully just global order would conform to a global principle. It provides no analysis of whether a less-than-fully-just global order – such as the one in which we obviously find ourselves – ought to comply with such a principle. In order to answer this question, we must provide a systematic answer to the questions that Rawls sets aside. But this, of course, is precisely what my non-ideal theory of justice purports to do.

What about Pogge's argument for his Global Resources Dividend (GRD)? This argument faces the same problem as well. Although Pogge maintains that the GRD would impose relatively minor costs upon people, it is hard to know which kinds of costs really are minor without a non-ideal theory of justice. Costs that might seem minor to one person might seem enormous to another person. One obvious cost that a GRD would impose upon people is that it would undermine the political sovereignty of particular states. This cost might not seem like much to Pogge. What if, however, the GRD could be expected to force small farmers such as Sam off their land, or otherwise force people out of jobs and lifestyles to which they had been long accustomed? It is plausible, offhand, that the GRD would have these sorts of effects. Resource-rich nations, no longer able to exploit their previous advantages in terms of natural resources, would presumably have to overhaul their economies and social structure, focusing less on the industries that had traditionally advantaged them and more on developing other industries.

We cannot determine whether implementing Pogge's GRD would actually be just, then, until we subject the proposal to a systematic non-ideal theory of justice, such as the one developed in this dissertation.

§5.2. THE NON-IDEAL THEORY OF JUSTICE DEFENDED IN THIS DISSERTATION: A BRIEF REVIEW

We saw in Chapter 1 that existing theories of justice are incomplete in the sense that they fail to account for the kinds of transition-costs (and benefits) we can justly impose on people in order to eliminate injustices. The non-ideal theory of justice that I have defended so far in this dissertation aims to rectify this omission. I argued, first, for reasons I will not belabor repeating, that political philosophers in general ought to adopt a "non-ideal theoretic" version of Rawls' famous original position (the "Non-Ideal Original Position") to arrive at principles of non-ideal theory. I then argued, second, that the parties to the Non-Ideal Original Position would agree upon the following generic principle:

The Fundamental Principle of Non-Ideal Theory: For any action A, agent B, and less-than-fully-just social conditions C (past or present), social justice requires B to perform A given C if and only if, of all available actions, B has sufficient reason to expect A to best satisfy the social preference ordering that would exist if every relevant individual (defined relative to ideal theory) were (i) rational, (ii) adequately informed, (iii) endorsed the correct principles of ideal theory (and rectification), but (iv) otherwise desired to advance his/her transition-related preferences (v) within the broader constraints of ordinary morality, (vi) given C.

Finally, I argued the following “secondary” principle of non-ideal theory is the best available practical (i.e. epistemic) guide to whether any particular action satisfies the Fundamental Principle:

The Principle of Application: For any action A, agent B, and less-than-fully-just conditions C, we should tailor our confidence that social justice requires B to perform A in direct proportion to the extent to which we can expect B’s performance of A to either

(i) Best advance the overall aims of whichever reformist group – past, present, or hypothetical -- best satisfies the following desiderata:

- g. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- h. Its members are voluntary participants;
- i. Its leadership is equally responsive to each of its members’ interests;
- j. It has more members than rival reformist groups;
- k. Its leadership and members are rational and adequately informed; and
- l. Its membership is more similar to the complete class of individuals who suffer C’s injustice(s) than any other group;

Or, if more than one reformist group appears to satisfy these desiderata roughly equally well,

- (v) Best advance a fair compromise between the overall aims of the reformist groups in question.

Let us now apply these two principles to the question of what a just response would be to the sorts of global economic injustices commonly alleged by cosmopolitan-egalitarians.

§5.3. WHY THE FUNDAMENTAL PRINCIPLE OF NON-IDEAL THEORY ONLY DIRECTLY JUSTIFIES AN INTERNATIONAL DUTY TO AMELIORATE SEVERE POVERTY

We can presumably reach a relatively unsurprising conclusion about global economic justice by way of the Fundamental Principle of Non-Ideal Theory alone: namely, that the international community has a duty to aim to ameliorate the severest forms of absolute poverty (i.e. poverty resulting in widespread starvation, severe disease, and death). It is presumably the case, after all, that most (if not all) people, regardless of whichever ideal of justice is correct, would (if they accepted that theory) prefer not to live in such severe poverty. Thus, whatever else the Fundamental Principle of Non-Ideal Theory's social preference ordering includes – that is, whatever else the Fundamental Principle requires as a matter of justice – it will surely imply a duty on the part of the international community to ameliorate such poverty. This conclusion, however, while is not unsubstantial, is relatively uncontroversial. Most, if not all, Western moral and political philosophers appear to believe that the international community has some such duty.²¹⁷ There is, however, something about the precise nature of this

²¹⁷ I assume that the Fundamental Principle implies that the international duty to ameliorate severe poverty is a duty that falls primarily upon states and non-governmental organizations such

duty, at least so far as the Fundamental Principle establishes it. Presently, people are defined as living in severe poverty if they live on less than \$2 per day. The rural Indian farmers mentioned earlier, however, live on far less than \$2 per day (approximately, \$1.09 per day on average) – yet, as we have seen, by their very own lights, those farmers do not live miserable (ie. starvation or severe-disease-ridden) existences. As they put it themselves, “our lands will feed our families throughout our lives.”²¹⁸ The Fundamental Principle does not directly justify, then, an international duty to ameliorate severe poverty *as it is presently defined*. It requires us to be sensitive to actual conditions on the ground, not simply to assign the \$2 per day definition to all individuals in all situations. The Fundamental Principle requires us only to ameliorate poverty that causes great human suffering.

as the United Nations. The idea that the Fundamental Principle would impose a duty upon every *individual* to aim to ameliorate global poverty is implausible. Insofar as people have lives to live, care about their ability to live their lives very much, and do not generally consider themselves under an obligation to cast lives aside and devote themselves to poverty eradication, it is implausible to suppose that the social preference ordering that constitutes the Fundamental Principle’s satisfaction condition would include, at least very high in its ranking, a preference for every person to aim to ameliorate poverty. It is far more plausible to suppose that most people, if they satisfied the Fundamental Principle’s counterfactual conditions, would prefer that states and non-governmental organizations do so. As such, the Fundamental Principle of Non-Ideal Theory – and indeed, the non-ideal theory I have advanced here more generally – seems to avoid the sort of “overdemandingness” objection often leveled at utilitarianism, which seems to inevitably lead to overly strong moral claims, such as Peter Singer’s (1972) famous argument that wealthy individuals have a moral duty to devote most of their resources to poverty-reduction.

²¹⁸ Ibid.

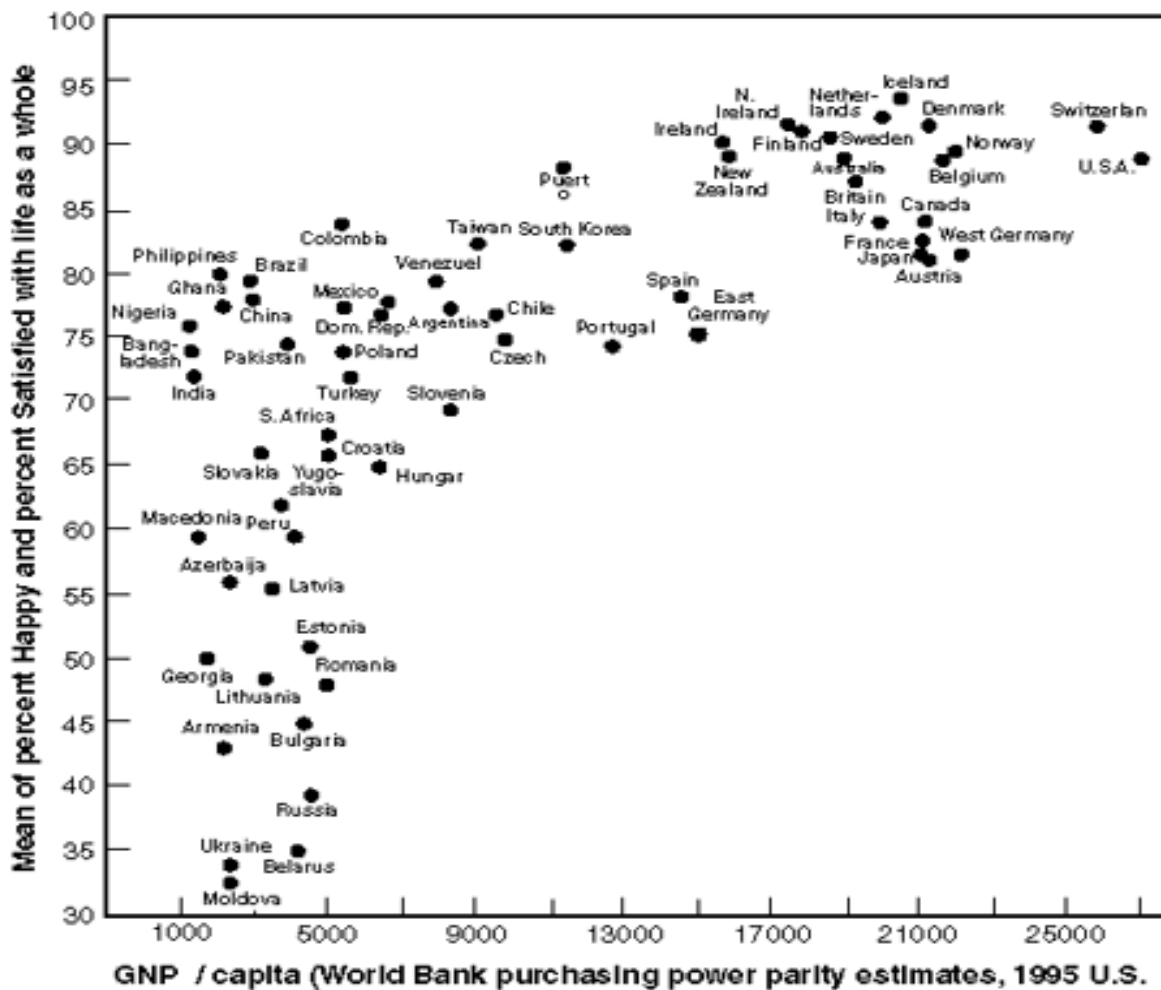
Can the Fundamental Principle of Non-Ideal Theory directly justify any more substantial conclusions about global economic justice than this? Some readers might think so. One argument might go as follows:

THE ARGUMENT FROM THE FUNDAMENTAL PRINCIPLE OF NON-IDEAL THEORY TO ECONOMIC GROWTH MAXIMIZATION

- (1) It is plain that people, generally speaking, prefer to be happy or “well-off” in their lives.
- (2) Economic growth has been observed to correlate strongly with higher average levels of human happiness and well-being.
- (3) Therefore, the social preference ordering that defines the Fundamental Principle’s satisfaction conditions (and thus, what justice requires), in the case of global economic reform, must be: prefer economic growth to all else.
- (4) So, justice requires the global social order to maximize economic growth.

This argument might seem particularly strong if we attend to the empirical evidence cited by premise (2). Consider, for example, the following table:

TABLE B



Cross-national differences in satisfaction with one's life as a whole, 1973-1998. Subjective well-being by level of economic development. World Values Surveys, GNP/capita purchasing power estimates from World Bank, World Development Report, 1997. $R=.70$ $N=65$ $p<.0000$. (Inglehart 1997)

These trends have been widely observed: wealthier societies are, on average, far “happier” than less wealthy societies.²¹⁹

There two problems with this kind of argument, however. The first, and less serious, problem is that particularly rapid periods of economic growth have been observed to have a negative overall effect on various measures of quality of life of the worst off – leading, in fact, to the four “D’s”: disruption, deprivation, disease, and death.²²⁰ This speaks against the claim that we should aim to overcome the global social order’s injustices by maximizing economic growth. A much more serious problem, however, is philosophical. Empirical studies of human happiness and well-being tend to understand these notions in one of two ways: either in terms of individuals’ own subjective reports of their own levels of happiness (i.e. “subjective” happiness), or in terms of particular “objective indicators” of human well-being, such as availability of health care, levels of violence, economic freedom, and so on.²²¹ Both ways of understanding human happiness and well-being are seriously deficient, however. Few of us think that human well-being is nothing more than, or even primarily, a matter of how people feel about their lives subjectively, or even how well provided for people are in more objective terms (i.e. how much health care a person has). Aldous Huxley’s famous novel, *Brave New World*, describes a dystopia in which all of humanity lives in a carefree, luxurious, technologically advanced society – a society in which poverty has been eliminated and in which everyone is in a

²¹⁹ Wilkinson (2007).

²²⁰ Szreter (1997).

²²¹ Diener and Lucas (2000), Wilkinson (2007)

permanent state of bliss, thanks to government-provided conditioning and drugs. One of the main points of *Brave New World*, of course, is that few (if any) of us regard the people Huxley describes as truly happy and flourishing. Their “happiness”, if we call it that, seems shallow and not worthwhile. Their lives are not ones we would actually choose to live for ourselves. Why? The reason seems to be that their lifestyle – the elimination of poverty and their carefree, hedonistic existence – has been achieved precisely by the elimination of things that most of us take to central to our identity and valuable in life: family, culture, literature, art, religion, and so on. Indeed, one of the most disturbing things about *Brave New World* is that none of the people, aside the protagonist, Bernard Marx, make much of an impression at all. It is almost as if the “people” in *Brave New World* have no identity at all. They seem more like robots than people. They all do the same things (i.e. engage in casual sex and take the same drug, Soma); they all say the same things, engaging in nothing but banal small-talk; and so on. They do not have real values of their own. The only thing they all understand and strive for are carefree, hedonistic lives. And it seems sad to us.

Notice that it is precisely these things – family, culture, literature, art, and religion – that critics of globalization, international free trade, and so on, tend to worry about. So, for example, consider the following criticism of globalization and free trade:

The question, as propounded by corporations, is how to make trade rules more uniform. The proper question, it seems to me, is How do we make trade rules more differentiated so that different cultures, cities, peoples,

places, and countries benefit the most?...Nations, for all their faults, set trade standards. Those who are willing to meet those standards can do business in their countries. Do nations abuse this? Always and constantly...But nations do provide, when democracy prevails, a means for people to set their own policies, to influence decisions and determine their future. Globalization supplants the nation, the state, the region and the village. While eliminating nationalism is indeed a good idea, the elimination of national sovereignty is not...Globalization leads to concentration of wealth inside such large multinational corporations as Time-Warner, Microsoft, General Electric, Exxon, and Wal-Mart. These giants can obliterate social capital and local equity, and create cultural homogeneity in their wake.²²²

Or consider the following passage by Joseph Stiglitz:

Globalization had succeeded in unifying people from around the world—against globalization. Factory workers in the United States saw their jobs being threatened by competition from China. Farmers and developing countries saw their jobs being threatened by the highly subsidized corn and other crops from the United States. Workers in Europe saw hard-fought-for job protections being assailed in the name of globalization. AIDS activists saw a new trade agreement raising the prices of drugs to levels that were unaffordable in much of the world. Environmentalists felt that globalization undermined their decade long struggle to establish

²²² Hawken (2007): 63.

regulations to preserve our natural heritage. Those who wanted to protect and develop their own cultural heritage saw too the intrusions of globalization.²²³

Neither of these authors seem primarily concerned with “subjective” or “objective” measures of well-being. They seem concerned, quite differently (and, I think, in conformity with our judgments about the case of *Brave New World*) with the fact that globalization, as they see it, tramples all over the deepest values of individuals.

Indeed, consider a devout Hindu or Muslim who cares deeply about her society’s longstanding Hindu/Islamic culture and traditions (suppose her society is not blatantly unjust – that women and men in her society are treated roughly as equals). Suppose that this person believes that there are morally regrettable aspects of Western society and culture. Suppose that when she considers wealthy societies such as the United States and European nations, she sees their economic, capitalist traditions as making worse people – greedy, self-centered people, perhaps. This person sincerely believes, let us suppose, that it is morally better for people – morally better, more to the point, for her – to lead a more traditional Hindu/Islamic life. She recognizes how “subjectively happy” women in Western societies may be, but at the same time, she regards their “happiness” as “false,” and indeed debased, from a moral point-of-view. She does not want to live in, or her children to be raised in, a society in which “*Sex and the City*” (a television show about four sexually promiscuous older women in New York City)

²²³ Stiglitz (2006): 7.

is one of the most popular shows on television. By a similar token, let us suppose that this woman accepts that economic growth in her society would provide her important goods – such as health care – but that, at the end of the day, she thinks it is more important for her to live in a society whose values she believes in than for her to sacrifice those values for better health care. It is hard to see however, as a matter of justice, this woman’s own preferences – what she values in life – should come in second to empirical studies about human “happiness” and well-being. Most of us do not want to be “subjectively” or “objectively” happy at any and all costs. We want to be subjectively and objectively happy only insofar as those things are consistent with our most deeply held values. A devout Christian wants to feel “happy”, and have objective goods such as health care, only insofar as those things are consistent with his/her Christian values. An Atheist wants to feel “happy”, and have other goods, only insofar as those things are consistent with his/her Atheist values. For these reasons, it hardly seems right to say that economic growth makes people truly better off simply because it makes people “subjectively happier” or “objectively better off.” As we see in the hypothetical case of the Hindu/Muslim individual we have been considering, such an individual might know that economic growth can be expected to make her happier and better off in these ways, and yet rationally reject those particular ways of being happy and well off as desirable.

Now I expect some readers to object that there is a critical difference between the world described in *Brave New World* and the actual world: namely, the fact, displayed in Table B and even more explicitly in Table C (below), that

individuals in wealthier nations are far happier, on average, than people in less wealthy nations.

TABLE C

Subjective well-being rankings of 82 societies
(based on combined Happiness and Life Satisfaction scores)

	HIGH	MEDIUM HIGH	MEDIUM-LOW	LOW
Puerto Rico	4.67	Saudi Arabia 3.01	S. Africa 1.86	<u>Estonia</u> 0.24
Mexico	4.32	Singapore 3.00	<u>Croatia</u> 1.55	<u>Serbia</u> 0.21
Denmark 4.24		Britain 2.92	Greece 1.45	Tanzania 0.13
Ireland 4.16		W. Germany 2.67	Peru 1.32	<u>Azerbaijan</u> 0.13
Iceland 4.15		France 2.61	<u>China</u> 1.20	<u>Montenegro</u> 0.06
Switzerland 4.00		Argentina 2.61	S. Korea 1.12	India 0.03
N. Ireland 3.97		<u>Vietnam</u> 2.59		<u>Lithuania</u> -0.07
Colombia 3.94		Chile 2.53	Iran 0.93	<u>Macedonia</u> -0.14
Netherlands 3.86		Philippines 2.32		Pakistan -0.30
Canada 3.76		Taiwan 2.25	<u>Poland</u> 0.84	<u>Latvia</u> -0.70
Austria 3.69		<u>Domin.Rep.</u> 2.25	Turkey 0.84	<u>Albania</u> -0.86
El Salvador 3.67		Brazil 2.23	<u>Bosnia</u> 0.82	<u>Bulgaria</u> -0.87
Venezuela 3.58		Spain 2.13	Morocco .74	<u>Belarus</u> -0.92
Luxembourg 3.52		Israel 2.08	Uganda 0.67	<u>Georgia</u> -1.11
U.S. 3.47		Italy 2.06	Algeria 0.57	<u>Romania</u> -1.30
Australia 3.46		E. Germany 2.02	Bangladesh 0.54	<u>Moldova</u> -1.63
New Zealand 3.39		<u>Slovenia</u> 2.02	Egypt 0.52	<u>Russia</u> -1.75
Sweden 3.36		Uruguay 2.02	<u>Hungary</u> 0.41	<u>Armenia</u> -1.80
Nigeria 3.32		Portugal 1.99	<u>Slovakia</u> 0.40	<u>Ukraine</u> -1.81
Norway 3.25		Japan 1.96	Jordan 0.39	Zimbabwe -1.88
Belgium 3.23		<u>Czech Rep</u> 1.94		Indonesia -2.40
Finland 3.23				

High-income countries are shown in bold face type. All 28 high-income countries (in **bold type**) rank high or medium-high on subjective well-being; all 10 Latin American countries (in italics) except Peru also rank high or medium-high. (Inglehart, 2004)

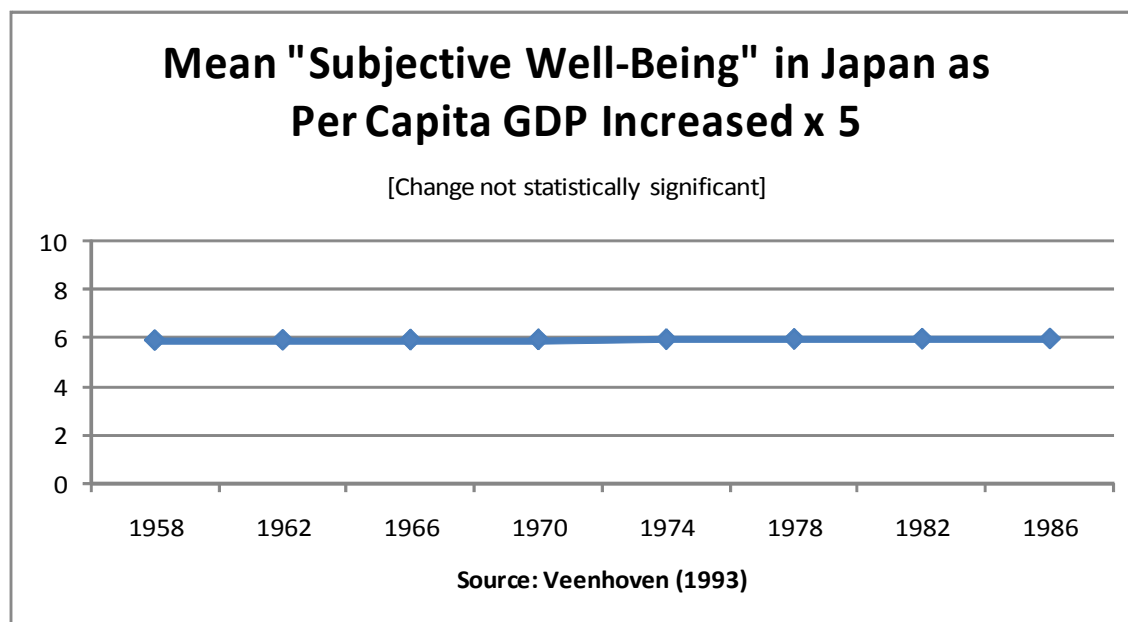
Some readers might suggest that when differences in subjective happiness levels between wealthy and less wealthy societies are this enormous, it is surely irrational for a person to care so much about preserving things she values. The idea that people can rationally care about preserving their culture, and so on, is plausible in itself. The idea that people can rationally prefer to be miserable to being happy (and indeed, Table C, seems to indicate that the poorest societies tend to be far less happy than people in wealthier nations) is far less plausible. As Jagdish Bhagwati puts it, “if reducing poverty by using economic analysis to accelerate growth and therefore pull people up into gainful employment and dignified sustenance is not a compelling moral imperative, what is?”²²⁴

The objection that it is patently irrational for a person to prefer the preservation of her culture and other such things to economic growth might have some real bite if economic growth actually had the sort of misery-ameliorating effects that Bhagwati, and Tables B and C, seem to suggest. The problem is that the relationship between wealth and happiness is far more complicated than it first appears. For although the positive correlation between societal wealth and mean reported happiness levels indicated in Tables B and C is well-confirmed, there is also a well-confirmed body of research indicating that economic growth, even when it is very strong and provides people with an enormous array of goods they previously lacked, does not lead to significantly significant increases of mean happiness levels over time, even over the course of several decades.

²²⁴ Bhagwati (2004): 17.

So, example, consider life in Japan between the years of 1958 and 1987. During this period real per capita income in Japan multiplied five-fold.²²⁵ In 1958, few households in Japan had television sets, washing machines, refrigerators, and other durable goods; by 1987, virtually every household had these goods; and similarly, whereas in 1958 roughly 1% of Japanese owned cars; by 1987, 60% did.²²⁶ In purely economic terms, Japan's standard advanced from far short of western standards to about two-thirds that of the United States.²²⁷ As Table D indicates, however, that there was no statistically significant increase in mean reported levels of subjective happiness in Japan during that period.²²⁸

TABLE D



²²⁵ Summers and Heston (1991).

²²⁶ Yasuba (1991)

²²⁷ Summers and Heston (1991).

²²⁸ Veenhoven (1993), see also Inglehart and Rabier (1986): 44.

These results are not unique to Japan. The very same failure of economic growth to lead to appreciable increases in mean reported happiness levels has been found in many societies, including the United States.²²⁹

The obvious question is how this can possibly be the case. How can it possibly be, as Tables B and C indicate, that there is such a strong positive correlation between wealth and happiness, but no significant positive correlation over decades between economic growth and increases in mean reported happiness levels in societies? These puzzling set of facts, known as the Easterlin Paradox, appear to have two explanations. The first explanation is that economic growth does lead to increases in mean reported happiness levels in society; it just takes a very long time. One hypothesis is that while economic progress fails to lead to any appreciable affects on the happiness of individuals during their own lifetimes, it does have statistically significant effects on happiness over generations.²³⁰ So, for instance, according to one estimate will take 167 years of current levels of economic growth for the mean level of reported subjective well-being in the United States to rise by one full point.²³¹ Table B that something similar is the case in Japan. One can see by looking at Table B that there was an extremely small (though not statistically significant) increase in mean reported happiness levels during the period between 1958 and 1986. If this explanation is right, economic growth does have significant effects on human happiness over the very long run; it is just that these effects happen so slowly that they do not

²²⁹ Easterlin (1995).

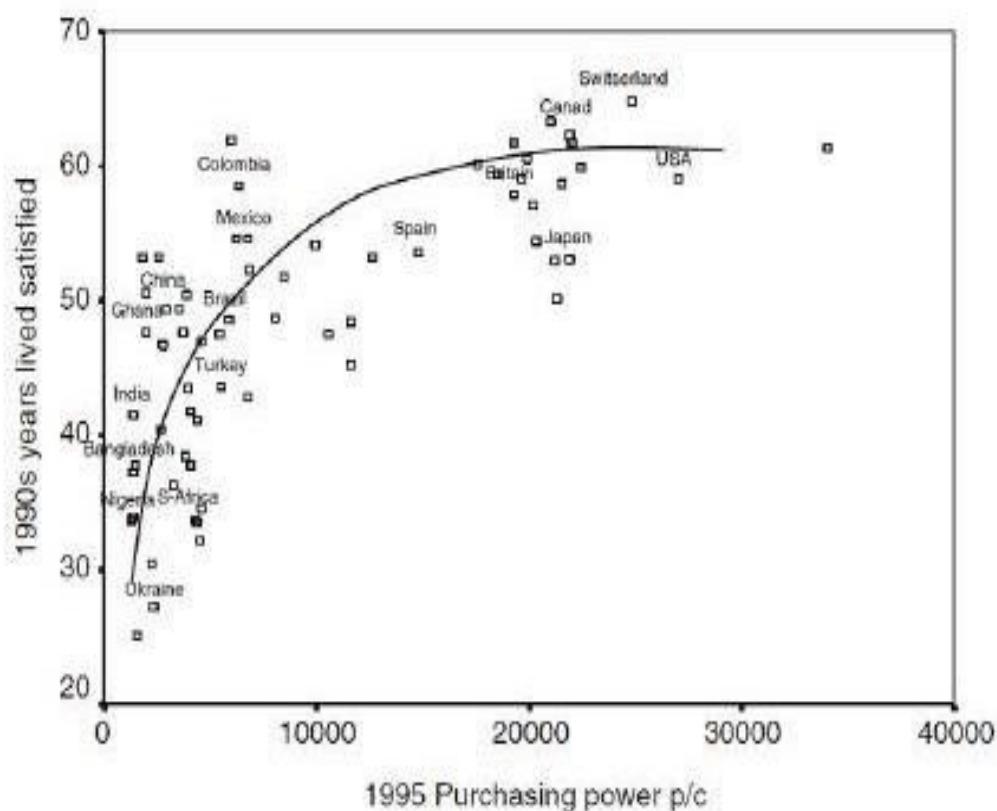
²³⁰ Eckersley (2000): 271.

²³¹ Veenhoven and Haggerty (2006): 429.

appreciably affect any particular person's life. A second explanation of the Easterlin Paradox, on the other hand, is that if we take into account increases in life span and health, we find that economic growth in a society increases the number of "happy life years" a person in that society is likely to live.

TABLE E²³²

Wealth and Happy Life-Years in 66 Countries in the 1990s



Let us return, however, to the objection with which we began. According to that objection, while there is nothing irrational per se about people preferring things

²³² Veenhoven (2005): 6186.

they values – such as the preservation of her culture, traditions, and so on – to expected increases in “subjective happiness” or standard “objective” measures of happiness (affordability of health care, etc.), it is patently irrational for people to prefer things they value to economic growth that can be expected to ameliorate abject misery. The Easterlin Paradox seems to show, however, that economic reform and growth do not ameliorate abject misery. Recall the aforementioned estimate (published in the year 2000) that it will take 167 years of existing levels of economic growth in the United States for average subjective reports of human well-being to increase one full point. If, as the Easterlin Paradox suggests, roughly the same thing is true of societies in general – if, that is, economic growth only causes increases of happiness in societies over the very long run – it is hard to see how it is patently irrational for individual to prefer the preservation of their cultures and traditions over the “fruits” of economic growth.

We cannot simply assume, then, that people want to be subjectively or objectively happy in the senses measured by empirical studies, nor that free markets will be appropriately responsive to individuals’ deepest values. The Fundamental Principle of Non-Ideal Theory all alone is too crude for our purposes. In order to determine what justice requires, we must utilize the Principle of Application. Let us now apply the Principle of Application to the problem of global economic justice, then, to see which sorts of reforms, if any, it supports.

§5.4. FROM THE PRINCIPLE OF APPLICATION TO FAIR TRADE

The Principle of Application states, once again, that we should advance the aims of whichever particular reformist groups best satisfies the following class of desiderata, or, if more than one group satisfies these desiderata roughly equally well, to aim to advance a fair compromise among aims of the relevant groups:

- a. Its members (at least tacitly) pursue correct, and relevant, principles of ideal theory, rectification, and morality;
- b. Its members are voluntary participants;
- c. Its leadership is equally responsive to each of its members' interests;
- d. It has more members than rival reformist groups;
- e. Its leadership and members are rational and adequately informed; and
- f. Its membership is more similar to the complete class of individuals who suffer C's injustice(s) than any other group.

Offhand, it is hard to see which “reformist group”, in the case of global economic justice and reform, could possibly have the best claim to satisfy these desiderata. A brief look at the literature on globalization, free trade, fair trade, and so on indicates a truly astounding amount of educated disagreement about the basic issue of what is relevant from the point-of-view of justice. Proponents of globalization and free trade sometimes dismiss opponents of globalization and

free trade as poorly informed. So, for example, Jagdish Bhagwati opines, “I think that...anti-capitalist attitudes...[come from] the dissonance that now exists between empathy for others elsewhere for their misery and the inadequate intellectual grasp of what can be done to ameliorate that distress.”²³³ This kind of criticism misses the point, however. For although many opponents of globalization and free trade contest economists’ views about the effectiveness of globalization and free trade, many (and probably most) opponents to globalization and free trade do not regard economic facts as settling the debate. A central component of debates about global justice and economic reform has to do with the question that I have focused on in this chapter: the question of whether whatever economic benefits globalization and free trade might have outweigh their social, political, and cultural costs. Indeed, I have only mentioned some such costs, such as the costs that small farmers might face as a result of their inability to compete with international prices. These are not the only potential social, political, and cultural costs. Some critics of globalization and free trade worry, not implausibly, that globalization and free trade lend themselves to fascism and terrorism:

...it is important to retain a historical perspective. During the first phase of globalization, an era that spanned the nineteenth century and ended in 1914, the reaction to capitalism’s inexorable commodification of the natural and social world was a search for community, for a new basis of social solidarity beyond the market. In retrospect, socialism, communism, social democracy and national liberation movements can all be seen as

²³³ Bhagwati (2004): 18.

expressions of this countervailing thrust. Fascism...was also part of this countervailing drive, one that hijacked the search for community in the service of reaction, counterrevolution, and racism...

Similarly, the second phase of globalization, which began with the dismantling of the Keynesian state in the 1980s and reached an apogee in the mid-1990s, has provoked diverse expressions of a search for community, not all of them progressive. One of them is radical Islamism, which saw US corporate and military hegemony as the apogee of the long-running Western effort to erode the integrity of Islamic societies...²³⁴

In any case, much of the (often fiery) debate about globalization, free trade, and global economic reform has to do with the very question that Bhagwati treats as merely rhetorical. Bhagwati, once again, asks: “if reducing poverty by using economic analysis to accelerate growth and therefore pull people up into gainful employment and dignified sustenance is not a compelling moral imperative, what is?”²³⁵ Opponents of globalization and free trade often seem to regard this question as not nearly so easily answered. What right do we have, they ask, to impose trade standards on small farmers “for their own sake” when, as a matter of fact, those farmers do not want to leave their farms? Indeed, for my own part, I think the best answer to Bhagwati’s question is: reducing poverty is a compelling moral ideal only insofar as it does not impose costs on individuals that conflict with those very individuals’ deepest values. Kant once wrote, after

²³⁴ Bello (2004): 28.

²³⁵ Bhagwati (2004): 17.

all, that, “Nobody may compel me to be happy in his way...Paternalism is the greatest despotism imaginable.”²³⁶ While this may be an overstatement (Nazism was surely a greater despotism), I think it is critical to deal with whatever global economic injustices there may be, including poverty, in ways that respect individuals’ own views about what is important in life. As Isaiah Berlin wrote,

[paternalism] is to treat men as if they were not free, but human material for me, the benevolent reformer, to mould in accordance with my own, not their, freely adopted purpose...to manipulate men, to propel them towards goals which you – the social reformer – see, but they may not, is to deny their human essence, to treat them as objects without wills of their own, and therefore to degrade them. That is why to lie to men, or to deceive them, that is, to use them as means for my, not their own, independently conceived ends, even if it is in their own benefit, is, in effect, to treat them as sub-human, to behave as if their ends are less ultimate and sacred than my own.²³⁷

The Principle of Application makes good sense of these worries about paternalism. It requires us not to simply judge for ourselves what we consider to be best for people; it has us defer our judgments to reformist groups, particularly (in virtue of its last desideratum) groups that are more similar overall in composition to the complete class of individuals who suffer injustice. In a

²³⁶ Kant (1793).

²³⁷ Berlin (1969): 137.

manner of speaking, then, the Principle of Application purports, as far as possible, to give the poor a proper say over what happens to them “for their sake.”

The problem, though, with respect to global economic justice is that it is simply not clear which reformist group, if any, can stake the greatest claim to satisfy the Principle of Application’s desiderata. Pro- and anti- globalization and free trade forces both purport to be concerned with making the poor better off. Since all of the arguments covered so far – those by Caney, Moellendorf, Beitz, Pogge, and so on – all direct our concern toward the life-prospects of the poor, it seems that both sides of these debates have roughly an equal claim to satisfy the Principle of Application’s first desideratum: the desideratum which instructs us to evaluate reformist groups in terms of how concerned they are with correct principles of ideal theory. And the same seems true of the Principle of Application’s other desiderata. Roughly speaking, just about every side of mainstream debates about globalization, free trade, and other proposals for global economic reform, seems to satisfy the Principle’s desiderata roughly equally well. Each side can claim to have, and be responsive to, a large number of voluntary participants (qua desiderata (b)-(d)); each side enjoys support from highly educated and informed individuals (qua desiderata (e)); and each side can even purport to enjoy a great deal of support from the global poor themselves (qua desideratum (f)), given that many members of the global poor evidently enjoy the opportunities and wealth that globalization and free trade have given

them, while other segments of the global poor have protested and lobbied against these policies.²³⁸

That the Principle of Application does not univocally lead us to prefer any one of these groups' aims over the others is not, I think, surprising. Every side of mainstream debates about global economic reform seems, as we have seen, to have a legitimate point. Those on the side of globalization and free trade rightfully point out that economic growth does lead to higher "subjective" and "objective" levels of human happiness and well-being, at least over the longer run. Those who are against globalization and free trade, on the other hand, seem to rightfully point out that there are all kinds of social, political, and cultural costs to these things. It should be no surprise, as such, that both sides enjoy a great deal of voluntary support by educated individuals, and indeed the poor themselves. I submit, furthermore, that the Principle of Application, as such, leads us to a highly plausible conclusion: namely, that in the case of global economic reform, we have every reason to accept a compromise position – a position that accepts the pro-globalization/free trade claim that economic growth is generally speaking a good thing, but also, the anti-globalization/free trade view that economic growth should be tempered by the legitimate concerns that people have to protect political, social, and cultural things they find valuable. The question now is whether there any particular policy approach approximates such a compromise.

²³⁸ Bello (2004) repeatedly notes how protests against globalization, the WTO, and so on, are often attended by large numbers of the global poor themselves, at least when it is financially possible for them to attend.

I propose that “fair trade” policies best approximate such a compromise. Fair trade is a market-based approach to alleviating poverty – one that aims for “fair” economic growth: growth that stabilizes and increases the poor’s standards of living over time, but which at the same time empowers them to join unions and engage in democratic bargaining for social, cultural, and political goods that matter to them.²³⁹ According to the Fair Trade Federation,

Fair trade is a system of exchange that seeks to create greater equity and partnership in the international trading system by

- Providing fair wages in the local context,
- Supporting safe, healthy, and participatory workplaces,
- Supplying financial and technical support to build capacity,
- Ensuring environmental sustainability,
- Respecting cultural identity,
- Offering public accountability and transparency,
- Building direct and long-term relationships, and
- Educating consumers.

FTF members foster partnerships with producers, because they know these connections are a highly effective way to help producers help themselves.

Fair trade is not about charity. It is a holistic approach to trade and development that aims to alter the ways in which commerce is conducted,

²³⁹ <http://www.fairtradefederation.org/>

so that trade can empower the poorest of the poor. Fair Trade Organizations seek to create sustainable and positive change in developing and developed countries.²⁴⁰

It should not come as much of a surprise that fair trade has come under attack from both poles of the political spectrum. Economists and conservative think tanks often deride fair trade as a form of subsidy interfering with free markets.²⁴¹ Others on the far left, on the other hand, advocate “deglobalization”, or a move away from international trade altogether toward “the local”, instead of fair trade.²⁴² The Principle of Application, however, implies that it is this very sort of disagreement that supports fair trade over these alternatives. Fair trade is the fairest compromise among the various positions that different reformist groups have staked out within global economic justice debates.

§5.5. REPLIES TO POTENTIAL OBJECTIONS

§5.5.1. Is Fair Trade Compromise, or Just Wishy-Washy?

I expect some readers to recoil from the idea that we should judge justice as supporting fair trade because of the amount and kind of public debate over global economic justice. “Why”, these readers might ask, “should I abandon my own views about what is just – about free trade, deglobalization, or what have you – merely because there are large groups of people who disagree with me?”

²⁴⁰ <http://www.fairtradefederation.org/ht/d/sp/i/2733/pid/2733>.

²⁴¹ Singleton (2005), see also http://www.economist.com/business/displaystory.cfm?story_id=8380592.

²⁴² Bello (2004), Jacquiau (2006).

My reply is that the Principle of Application does not require us exactly to give up our views. It merely requires us, plausibly I submit, to give up a certain amount of confidence in our views. Here is what I mean. For all that the Principle of Application says, I can really believe that free trade is best for people. All that the Principle requires is that, when I am thinking about policy, I do not regard myself as having a right to impose my view about what is best for people upon them. According to the Principle, I should realize that there are many rational, highly educated people out there just like me who hold a very different point-of-view, and as a result, when it comes to actually implementing policy, I should be willing to compromise my view with theirs.

I recognize that this still might seem overly wishy-washy to some (and perhaps many) readers. It is not only hard, psychologically, to compromise one's views when one thinks one is right and others are wrong; it is also not something that we ordinarily expect. In democratic elections and public debate, for example, we typically expect people to "vote their conscience" and "speak their minds," not to compromise their most strongly-held views. I submit, however, that this is a very different kind of case. When it comes to ordinary public debate and democratic elections, it is the people themselves – those who are speaking and voting – whose interests are at issue. Debates about global economic reform, on the other hand, typically involve very well off people speaking for the poor. I believe that this fact makes an enormous difference. To recall the earlier worries about paternalism, the problem with regarding one's own views about what is best for the poor as correct, instead of settling on a compromise between various

views, is that in this case it is not our lives that are primarily at stake. The Principle of Application draws our attention to the fact that, when we are deliberating about how to deal with injustices, we are deliberating about other people's lives. My claim, once again, is that the Principle of Application rightly places an onus upon us not to take our own views as authoritative. It recognizes that insofar as we are concerned with other people's lives, they should have the final say about what we do "for their sake." The Principle's desiderata and fair compromise clause are simply means to this end. Accordingly, I claim, there is nothing wishy-washy about the Principle, nor its leading us to fair trade. In this case, accommodating others' views is not wishy-washy; it is giving them, as far as possible, the say they are due as a matter of justice.

§5.5.2. Do Anti/De-Globalization Groups Really Satisfy the Principle of Application's "Correct Principles of Justice" Desideratum?

The Principle of Application, recall, requires us to evaluate different reformist groups along a particular class of desiderata. The very first among these desiderata, however – desideratum (a) – instructs us to evaluate reformist groups in terms of whether they are pursuing correct principles of ideal theory: correct principles, that is, of what would constitute a fully just social order. One worry at this point might be that the anti- and de- globalization groups I have referred to appear not to be concerned with the correct principles of ideal theory. Suppose, for example, that Caney and Moellendorf are correct that a fully just global order would conform to a principle of equal economic opportunity. What if, next, as

advocates of globalization and free trade claim, it is true that these things can be expected to lead to more equal opportunities for people over time?

This objection is clearly misplaced. The very point of the Principle of Application – indeed, the point of the non-ideal theory that I have defended more generally – is that we seek an answer to the question: “At what costs can just ends (such as equality of opportunity) be justly achieved?” One would be hard-pressed to argue that anti-globalization groups, generally speaking, would not prefer the global poor to have more economic opportunities, or even the same opportunities as people in wealthier nations. For although some anti-globalizations do seem to be nothing more than nationalists – members of wealthy societies often oppose globalization and free trade because they fear losing the economic advantages they enjoy – as a general matter the anti-globalization movement is marked by an overwhelming concern for the global poor themselves. Anti-globalizationists do not in general deny that a world in which the poor had much greater opportunities than they do would, all-things-being-equal, be more just than the world in which we live. They simply deny that all things are equal. They believe that global/international efforts to equalize opportunities, and so on, by their very nature take things of great value from the poor, such as the ability of poor farmers to live as they want to live, and so on. What, many anti-globalizationists ask, is so good about economic opportunities for a poor farmer when, all-things-considered, that very farmer would rather continue to be a farmer than enjoy those opportunities? The choice, these anti-globalizationists think, should as far as possible be his. But that, they think, is

something that can only occur if decision-making is located at a more local level – if, that is, it is not the WTO and IMF which give the farmer opportunities regardless of what he might want himself, but rather his society (which, although it is not under his direct control, will in most cases more sensitive to his preferences, and the preferences of others like him, than an international body that meets thousands of miles away in Geneva, or Qatar, and so on, as international bodies do).

§5.5.2. Does Fair Trade Work? Does it Reduce Severe Poverty?

Critics of fair trade often claim, once again, that free markets produce greater amounts of economic growth and poverty reduction than regulated markets. It is important to remind ourselves, however, that we have seen here that economic growth and poverty reduction – at least as poverty is presently defined (\$2 per day) – are not the only things that are relevant from the perspective of justice. We arrived at fair trade as a *fair compromise* between the values of pro-globalization and free trade groups (roughly: economic growth is good) and the values of anti-/de-globalization and anti-free trade groups (roughly: culture, tradition, social integrity, and political sovereignty, are all important). The question of whether fair trade “works,” then, is not as simple – at least not if we are concerned with justice – as free-market economists might take it to be. Indeed, if the arguments I have given here are correct, the question of whether “fair trade” works is a two-pronged question. Since I have purported to establish an international duty to ameliorate the most severe forms of absolute poverty

(poverty resulting in great human suffering and death), as well as a duty to compromise between economic growth, on the one hand, and preservation of culture, traditions, and so on, we must evaluate fair trade with respect to these outcomes. How well, then, does fair trade fare?

Impact studies indicate that fair trade works, at least when there is enough demand for fair trade products. In Costa Rica, “fair trade can be said to have accomplished its goal of improving the returns to small producers and positively affecting their quality of life and the health of the organisations that represent them locally, nationally and beyond.”²⁴³ In Latin America, fair trade has, “in a short time greatly improved the well-being of small-scale coffee farmers and their families,”²⁴⁴ increasing their access to credit and development funding²⁴⁵, as well as their access to childhood education and overall stability.²⁴⁶ In Bolivia, fair trade has not only had a positive impact on coffee prices, benefitting *all* small coffee producers (not just fair trade producers); it has also significantly strengthened producer organizations and increased the political influence of small producers.²⁴⁷ Finally, and more generally, as Daniel Jaffee states,

Fair trade's higher prices increase gross household income...Participation in fair trade reduces households' debt and enhances their economic options, affording them the possibility of better feeding and educating their children. Fair trade affords peasant farmers partial protection from

²⁴³ Ronchi (2002): 25-6.

²⁴⁴ Murray, Raynolds, and Taylor (2003): 28.

²⁴⁵ Taylor (2002): 18.

²⁴⁶ Murray, Raynolds, and Taylor (2003): 6.

²⁴⁷ Eberhart (2005): 29

some of the worst aspects of commodity crises and in many cases allows them the breathing room needed to engage in more sustainable agricultural practices. Furthermore, the extra capital from fair trade can generate important economic ripple effects within communities, providing additional employment even for nonparticipating families. However, fair trade is not a panacea, and it does not bring the majority of participants out of poverty. (...) Demand for fair trade products must increase dramatically in order to augment the economic benefits for such small farmer families and allow the system to include many more producers of coffee and other commodities around the world.²⁴⁸

The fact that fair trade has not brought a majority of its participants out poverty (defined, once again, as \$2 per day) is not sufficient reason to doubt its effectiveness. As we have just seen, a number of case studies support the efficacy of fair trade, as well as (as Jaffee notes) the idea that a greater demand for fair trade will increase the benefits it bestows upon the poor.

§5.6. CONCLUSION

This chapter has argued that whatever a fully just global economic order would be like, justice requires the international community to seek to ameliorate the most severe forms of global poverty, and beyond that, to implement “free trade” practices.

²⁴⁸ Jaffee (2007).

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