

# Justice in Nonideal Theory

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## 1. Introduction

It is fairly safe to say that current debate on so-called “ideal theory” has been obscured by both its sheer complexity and lack of clarity. Not only is there sharp disagreement as to the value of ideal theory as a method of normative problem-solving, but there is not even a rough consensus as to what exactly ideal theory is. What’s more, there seems to be even greater confusion as to what (if anything) is the alternative. My aim in this paper is to remedy these defects.

To that end, my argument proceeds in three stages. First, in contrast to the widespread assumption that the dispute between ideal theory’s defenders and critics concerns the role or purpose of ideal theory within the tradition of normative political philosophy, I demonstrate that what is fundamentally at stake in the controversy on this subject is the question of the proper *relation* between ideal and nonideal theory: that is, of whether it is necessary to first work out an ideal conception of justice in order to determine the correct principles for responding to injustice, or whether those principles ought instead to be independently formulated in the light of the distinct practical problems that nonideal theory raises. Building on this account, I introduce a distinction between what I call *monist* as opposed to *dualist* conceptions of justice as an intuitive way of mapping out the different relations between ideal and nonideal theory. Finally, I conclude by showing how the difficulties of monist conceptions of justice help to lay the groundwork for a novel account of justice in nonideal theory. At the core of that account is a theoretical framework for addressing problems of *moral choice under uncertainty*, that is, a set of principles that provides us with guidance for answering the question of what we ought to do when we are fundamentally uncertain as to both the nature of the outcome in question and the motives and aims of other political actors.

## 2. On the Relation Between Ideal and Nonideal Theory

One of the fundamental limits to Rawls’ discussion in *A Theory of Justice* is that, generally speaking, he only examines the principles of justice that would regulate what he calls a “well-ordered society.” As he says, “Everyone is presumed to act justly and to do his part in upholding just institutions” (1999a, 8). Hence the primary focus of *Theory* is on what Rawls calls *ideal* as opposed to *nonideal* theory (1999a, 7-8, 215-16; 1999b, 4-5, 89-91). Roughly, the distinction is that while ideal theory concerns those principles that would apply to a society whose set of institutions and body of citizens fully complies with a given conception of justice, nonideal theory answers the question of what we ought to do in those circumstances where the requirements of justice have *not* been fully realized.

Nonideal theory has, to be more precise, two rather different parts. One part consists in the principles for governing adjustments to what Rawls calls the “natural limitations and accidents of human life, or from historical and natural contingencies” (1999a, 215). It concerns, that is, certain unfavorable conditions of political communities or of persons whose natural, social, or economic circumstances make their achieving a well-ordered society difficult if not impossible.<sup>1</sup> For example, irrespective of political will or motivation, the existence of widespread drought and disease might make it extremely difficult for a given society to eradicate

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<sup>1</sup> For further discussion of this aspect of nonideal theory, see Schapiro (1999).

poverty and human suffering. The other part of nonideal theory—*partial compliance* theory<sup>2</sup>—studies the principles that determine how we ought to relate to unjust social arrangements that already exist, or, alternatively, how we ought to conduct ourselves towards those individuals who refuse to comply with or seek to subvert society's regulative principles of justice. The underlying problem of this part of nonideal theory—and the subject of this paper—is of what we are required to do in those circumstances where at least some others and/or the institutions they share are not doing what they ought ideally to do.<sup>3</sup> The example of, say, illiberal groups who wish to deny other citizens an equal claim to religious liberty illustrates one such possibility; as, too, does the existence of basic laws or institutions that restrict freedom expression to an intolerable degree. The problem here is how to determine the just way in which to answer *injustice*—a problem that is on its face very different from the problem of how best to cope with the inevitable limitations and accidents of human life.

Hence if we are to exclude from the scope of discussion that part of nonideal theory that does not directly concern the problems arising from injustice, then there remains four logically possible states of the world, depending as they do upon the variation they admit in both (1) the *level* of compliance with the given conception of justice in question—whether it is, for example, a case of *perfect* or *imperfect* compliance—and (2) the *subject* of compliance, that is, whether the specification of a particular level of compliance applies to a given society's major political, social, and economic *institutions*, or whether it applies to the action of *individuals* alone. The combination of these two distinct factors thus yields one (and only one) instance of ideal or *strict compliance* theory—wherein both society's major institutions *and* its individuals perfectly comply with a given conception of justice—and three distinct permutations of partial compliance theory—one case wherein a society's *institutions*, but not individuals, exhibit perfect compliance (hereafter Case One); another wherein only *individuals*, but not institutions, are strictly compliant (hereafter Case Two); and, finally, one wherein both a society's institutions *and* its individuals fail to comply with a given conception of justice (hereafter Case Three). Our answer to the question of what is the just way in which to meet injustice may thus depend upon the particular state of the (nonideal) world in which we happen to find ourselves.

The fact that Rawls' discussion is limited to ideal theory, however, raises the following question: What is the proper *relation* between ideal and nonideal theory? Given that, as Rawls says, the problems of nonideal theory are the more “pressing and urgent matters, the things we are faced with in everyday life” (1999a, 8), it would seem, at first glance, that the principles governing partial compliance theory would take precedence over those that govern a fully just society. Since we live in a world that is far from perfectly just, the principles we affirm in dealing with injustice ought to reflect that reality. Rawls' approach to political philosophy, however, proceeds from the exact opposite assumption. In other words, his view is that in order to gain a firm grasp on how we ought to deal with injustice, we must first construct an account of a just society as it would be realized under conditions of full compliance. Why? For it is only after having established the appropriate ideal of a just society that we can even begin to consider the proper way in which to meet injustice. The reason is that principles regulating a just society are

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<sup>2</sup> Stemplowska (2008, 320) has objected that characterizing the distinction between ideal and nonideal theory in terms of compliance is too narrow: although compliance may be a necessary condition for determining what it means for a conception of justice to be ideal, it is not sufficient. As my remarks concerning the division of ideal and nonideal theory into two parts suggests, I agree. It is important to recognize, however, that this does not imply that inquiry into the subject matter of partial compliance theory is not worthwhile in its own right.

<sup>3</sup> For this formulation of the nature of nonideal theory, see Murphy (2000, 5).

to provide us with *guidance* under nonideal conditions as to the nature and ends of practical political action. As Rawls explains, “Nonideal theory presupposes that ideal theory is already at hand. For until the ideal is identified, as least in outline—and that is all we should expect—nonideal theory lacks an objective, an aim, by reference to which its queries can be answered” (1999b, 89-90).

Here it may be helpful to introduce a distinction between what I shall call *monist* as opposed to *dualist* conceptions of justice.<sup>4</sup> Monist conceptions of justice—of which Rawls’ conception of justice as fairness is the paradigmatic example—claim that *one* set of normative principles apply to both ideal and nonideal circumstances, either because of the *identity* between both sets of principles, or, more generally, because the latter can only be *derived* from the former (1999a, 8).<sup>5</sup> They hold, that is, that we ought to derive guidance for responding to injustice from principles designed for the regulation of a perfectly just society. Dualist conceptions of justice, by contrast, maintain that the two different practical problems of ideal and nonideal theory require, at the fundamental level, *two* different sets of normative principles: one set of principles for ideal circumstances and one set of principles for nonideal circumstances. For to derive guidance as to the just way in which to meet injustice from principles designed for the regulation of a perfectly just society is, on this view, fundamentally mistaken.

In framing the debate between ideal theory’s defenders and critics as one concerning the relative merits of monism and dualism, I thus hope to capture what is fundamentally at stake in the controversy on this subject. For that debate is not concerned with whether ideal theory has *any* role or value within the tradition of normative political philosophy. Critics of monism can, for example, wholeheartedly accept the claim that ideal theory possesses value in virtue of the fact that it establishes the *truth* about justice in an ideal world, irrespective, that is, of whether it is possible to realize that truth in society’s major institutions (Cohen 2008; Swift 2008, 366);<sup>6</sup> or that the fundamental role of ideal theory is to provide us with “evaluative” criteria for ranking alternative ways of organizing political communities in terms of their comparative normative desirability (Swift 2008, 369). Not only might there be a good reason to embrace ideal theory so defined, but doing so does not, in any event, force one to adopt a particular stance regarding the question of the proper *relation* between ideal and nonideal theory: that is, of whether it is necessary to first work out an ideal conception of justice in order to determine the correct principles for responding to injustice, or whether those principles ought instead to be independently formulated in the light of the distinct practical problems that nonideal theory raises.<sup>7</sup>

Seen in this light, the fundamental question that we face here is one concerning the *ethics of transition*.<sup>8</sup> Or, to be more precise, the problem is how we are to achieve the transition from an unjust set of institutional arrangements to a just one and/or how we are to determine the just way

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<sup>4</sup> To save words, I shall henceforth refer to them as monism and dualism for short.

<sup>5</sup> For that reason, it is a mistake to claim, as Stemplowska (2008, 324) does, that ideal and nonideal theory can be distinguished by virtue of the fact that it is the purpose of the latter but not the former to issue recommendations that are both achievable and normatively desirable. The underlying motivation for constructing ideal principles of justice is, after all, to guide us in making recommendations of precisely this sort.

<sup>6</sup> Of course, that is not to say that Rawls himself would endorse such a claim about the value of justice.

<sup>7</sup> In failing to foreground this distinction, critics of ideal theory have, therefore, had the unfortunate tendency to obscure precisely what is at issue. See, e.g., Baier (1985); and Mills (2005).

<sup>8</sup> As Rawls puts it, the questions that nonideal theory examines are “questions of transition,” of how one is to move from a world marked by injustice to one in which the requirements of justice are finally realized (1999b, 90). Cf. Sreenivasan (2007).

in which to respond to those individuals who wish to perpetrate injustice in a society whose institutions already comply with the demands of justice. My aim in this paper is thus to examine the difficulties posed by monism and thereby to lay the groundwork for a novel account of nonideal theory. For despite Rawls' assurances, it is an entirely open question as to whether this particular strategy for responding to injustice is a viable one. There is, in other words, just simply no reason to assume *a priori* that ideal theory provides the most adequate guidance for the task of realizing the transition from an unjust to a just society. We must still ask how well a set of principles designed for the regulation of a perfectly just society applies under the distinct circumstances of partial compliance. For the latter includes institutions and/or individuals that fail to comply with what ideal justice requires, no matter how well these principles are justified and defended; and this may create a situation in which rigorous adherence to principles of justice designed for an ideal world proves to be harmful or destructive in the here and now.<sup>9</sup>

### 3. Some Related Contrasts

To fix ideas, let us begin our preliminary discussion of the difficulties posed by monist conceptions of justice by distinguishing the monism/dualism distinction from two related but nevertheless distinct problems, that is, (1) the problem of *fact-sensitivity*; and (2) the problem of *idealization*. These remarks are designed to set the stage for my more constructive response to the problem of the just way in which to meet injustice, and, more broadly, to indicate the way in which I shall proceed.

First, how is the relation between monism and dualism different from what may be called the problem of “fact-sensitivity” (Farrelly 2007; Cohen 2003; Mason 2004). To explain: the problem of fact-sensitivity concerns the question of whether or not the normative justification of principles of justice is conditional upon empirical facts such as political feasibility or the psychological limits of human nature. One view is that the truth or falsity of principles of justice is logically independent of such facts, while another holds, on the contrary, that the justification of a conception of justice is ultimately contingent on the above considerations, such that is fundamentally incoherent to say that a conception of justice is correct despite the fact that, say, it lies beyond the realm of human possibility. On the latter view, a conception of justice fails as a normative theory just in case it cannot function as a practical guide to political action in the real world.

But to see why the problem of fact-sensitivity is not to be confused with the monism/dualism distinction, note that the question of just how fact-sensitive a conception of justice is cuts across the question of how we are to determine the proper relation between ideal and nonideal theory. For, as I have said, the distinction between monism and dualism turns solely on the question of whether or not the two practical problems of ideal and nonideal theory require two different sets of normative principles, and not on how empirically-grounded those principles actually are.

To illustrate, consider Rawls' conception of justice as fairness. As indicated above, justice as fairness is a monist conception of justice insofar as in evaluating alternative conceptions of justice by which to regulate society's division of social advantages, we are to proceed under the

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<sup>9</sup> Gilabert (2008) argues in a similar vein that in determining how to respond to injustice, one must adopt what he calls a “transitional standpoint.” Our accounts differ, however, in that not only does he assume that ideal theory is able to provide the necessary guidance in achieving such a transition, but that his idea of a transitional standpoint also crucially ignores the way in which both institutional and individual non-compliance sets constraints on the range of permissible political action. I shall have more to say about the latter point further below.

assumption that one set of normative principles apply to both ideal and nonideal circumstances. As a result, the reason why justice as fairness is selected over rival conceptions of justice—why it is judged in the original position to be superior to utilitarianism or rational intuitionism—is that it is regarded by Rawls to be the most appropriate conception of justice in the circumstances of both strict and partial compliance theory (1999a, 123-30). Rawls' argument for justice as fairness is, therefore, completely orthogonal to the question of just how fact-sensitive principles of justice ought to be: they are *all* to be ranked or evaluated on the basis of the assumption that they are to be strictly complied with.

Put another way, there is simply no logical connection between a particular conception of justice's level of fact-sensitivity and its assumption concerning the monism/dualism distinction. A conception of justice may in fact hold that we ought to derive guidance for responding to injustice from principles designed for the regulation of a perfectly just society, and yet still operate under the assumption that a viable conception of justice holds only under a distinct set of empirical circumstances, for example, under the circumstances of moderate scarcity and limited altruism.<sup>10</sup> Indeed, a prominent recent objection to justice as fairness is that its principles of justice are *too* fact-sensitive (Cohen, 2008)! To be sure, this is not to suggest that the issue of fact-sensitivity is not of great significance in determining the proper justification of principles of justice; the point is rather that the monism/dualism distinction and the problem of fact-sensitivity are not one and the same.

Second, let us clearly distinguish between the monism/dualism distinction and the problem of “idealization” (O'Neill 1987). As I have argued, a monist conception of justice is a conception of justice that claims that one set of normative principles applies to both ideal and nonideal circumstances. For that reason, it would be a fundamental mistake to confuse monism with the practice of making “idealized” assumptions concerning the nature of political reality for the purposes of normative political theorizing, or, for that matter, the intuitive idea of acting from or in accordance with an ideal. For one thing, all normative theories must surely idealize from the realities of existing political societies in order to issue normative recommendations at any level of generality or abstraction. The question is not whether to idealize (since it is simply not possible to avoid doing so), but rather how and in what ways. For another thing, an ideal is simply a normative standard or principle to be aimed at, and so to be guided in one's action by the pursuit of, say, the ideal of equality is plainly not the same thing as to be guided by a theory that is predicated upon the assumption that it will be fully complied with, or, *a fortiori*, a particular understanding of the relation between ideal and nonideal theory. For we must always ask ourselves what is the nature of the ideal upon which we are to act in the first place. And although it may be the case that the ideal upon which our actions is based is one that is designed for the regulation of a perfectly just society, it may be framed in accordance with far less strict assumptions as well.<sup>11</sup>

It is, therefore, false to say that there is a sense in which resort to ideal theory is “inescapable” (Valentini 2009, 333), or that it is impossible to even formulate judgments concerning the justice or injustice of a society in the absence of a systematic understanding of what a perfectly just society would look like. The problem with this claim is that it is ambiguous between two different senses of what it means for a theory of justice to be “ideal.” For either an

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<sup>10</sup> For Rawls' endorsement of these (roughly Humean) circumstances of justice, see 1999a, 109-10.

<sup>11</sup> Viewed from this perspective, ideal theory is, as Sidgwick (1981, 20) observed, “doubly ideal: as it would not only prescribe what ought to be done as distinct from what is, but what ought to be done in a society that itself *is* not, but only *ought* to be.”

ideal theory means (a) a theory of a just society as it would be realized under conditions of full compliance; or it means (b) a theory the aim of which is to guide one's actions in the pursuit of a particular normative principle or ideal. If we opt for interpretation (a), then we cannot immediately infer that "any sound theory of justice is ideal" (Valentini 2009) in that sense: for that is precisely the argument under consideration. If, however, we opt for interpretation (b), then the claim that any sound theory of justice is ideal is indeed true, but trivial; of course a theory that seeks to specify principles for responding to injustice needs to be ideal in this sense, but that does not further imply that monism is correct.<sup>12</sup> Thus if we equivocate between these two different interpretations of what it means for a theory of justice to be ideal, then we can wrongly conclude that it is both true (because of interpretation (b)) and non-trivial (because of interpretation (a)) that any sound theory of justice is ideal, when it is neither trivial nor (as I shall endeavor to show) true. The upshot is that one does not have to abandon the pursuit of one's ideals or the traditional understanding of the action-guiding aim of normative political philosophy just in case one decides to abandon the central thesis of monism, i.e., that one set of normative principles ought to apply to both ideal and nonideal circumstances.

#### 4. The Difficulties of Monism

With the above points as background, I shall now begin my discussion of the difficulties posed by monism. Recall that I defined a monist conception of justice as a conception of justice that claims that one set of normative principles apply to both ideal and nonideal circumstances, *either* because of the identity between both sets of principles, or, more generally, because the latter can only be derived from the former. As this definition makes clear, it is possible to distinguish between two different forms of monism: call them "strong" and "weak" monism, respectively. Whereas strong monism would assert an *identity* between the principles of justice in ideal and nonideal theory, weak monism would, by contrast, merely claim that nonideal principles ought to be *derived* from ideal ones. In what follows I argue that, on either version, monism falls.

As an example of strong monism, consider first Liam Murphy's (1993; 2000) broadly utilitarian "principle of beneficence." According to this principle, the moral demands of an agent under conditions of partial compliance cannot exceed that which is demanded of them under ideal circumstances, where, that is, the very same principle is fully complied with. As this formulation implies, then, what is required of an individual under nonideal conditions is wholly identical to that which is required of them in ideal theory. In particular, Murphy's argument is that an individual's "fair share" of an overall contribution is the maximum amount they would have a moral duty to provide under conditions of full compliance, whether or not full compliance actually obtains. On this view, the content of an individual's moral duties ought not to depend on the compliance or lack thereof of others: I ought not to be required, for example, to increase my overall contribution to the provision of a good simply because others have failed to discharge their comparable moral duties. To the contrary, an individual ought only to do what would be required of them if (counterfactually) all others were in fact doing what they were required to do.

The problem with the strong monist understanding of the relation between ideal and nonideal theory is that it is self-defeating. That is to say, the consequences of adopting strong monism will be worse—as judged by its own moral standards or aims—than if it had not been adopted in first place (see Parfit 1984). For if our desire is indeed to promote the well-being of others, then what is the justification for refusing to help those who are in need simply because we

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<sup>12</sup> Gilabert (2008, 417) seems to make this very mistake when he argues that "what makes a theory ideal is that it points beyond certain social settings towards morally more desirable ones."

have already performed our fair share of the burden. To say that the reason why we ought not to help them is that we would not be required to do so under counterfactual circumstances in which everyone was doing their part seems to be fundamentally misguided when the latter condition does not in fact obtain. Of course, one might object that is unfair that (given the non-compliance of others) our moral demands are now that much more burdensome, but that would only add insult to injury to those whose lives could actually go much better save for the fact that we failed to assist them at little or no cost to ourselves. Perhaps even more perverse, however, is the following upshot of Murphy's principle. Since the moral demands that we face on this view are fully satisfied just in case we have performed what our fair share of the burden would be under conditions of full compliance, it follows that our obligations to others cease no matter what the real-world consequences are. If that is the case, however, then what incentive do we have for realizing the transition to a more just society in the first place? So much, then, for strong monism.

But perhaps there is nevertheless some important connection between ideal theory and what we normally view as the requirements of justice even under conditions of partial compliance. For how else could we make sense of the widespread assumption that the demands of justice in ideal theory place constraints on us now in our nonideal world. Turn, therefore, to a paradigmatic example of weak monism instead: Rawls' conception of justice as fairness. Here my claim is that defenders of weak monism are caught on the horns of a dilemma. For nonideal principles derived from ideal ones either (1) reflect the distinctive structure and content of a conception of justice designed for the regulation of a perfectly just society, or (2) they do not. If they do so reflect that distinctive structure and content, then defenders of weak monism face the risk of being vulnerable to the same kinds of difficulties identified above, and, in particular, that of self-defeatingness. If, however, they do not reflect the distinctive structure and content of an ideal conception of justice, then the problem is that this will only come at the expense of weakening the rationale for monism entirely. For defenders of weak monism will no longer be deriving anything substantive from ideal principles themselves: their derivation of nonideal principles will instead follow directly from the goal that is said to ground that ideal in the first place. On either interpretation, therefore, the defense of weak monism fails.

To motivate this discussion I shall proceed by way of an examination of the only problem of the partial compliance part of nonideal theory that Rawls himself subjected to sustained reflection, namely, the problem of civil disobedience. For Rawls believes that an understanding of this case will be sufficient to clarify the more difficult problems of nonideal theory more generally. As he notes, "the only question of nonideal theory examined in any detail is that of civil disobedience...If ideal theory is worthy of study, it must be because...it is the fundamental part of the theory of justice and essential for the nonideal part as well" (1999a, 343). The discussion of this problem acts, in effect, as a model for Rawls' argument for monism as a whole.<sup>13</sup>

In examining the problem of civil disobedience at length I shall, therefore, be challenging Rawls' argument that we must already have a detailed conception of ideal theory firmly in place in order to ascertain what we ought to do when confronted with injustice. This implies, however, that our question here is not, strictly speaking, whether Rawls' account of civil disobedience is

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<sup>13</sup> For reasons of space, I shall not examine Rawls' discussion in *The Law of Peoples* of how just societies are to act in their foreign policy towards unjust or illiberal regimes. At any rate, I believe that with appropriate modifications the arguments put forward here can be extended to this case of nonideal theory as well.

more or less persuasive or correct,<sup>14</sup> but instead whether guidance on the matter of the appropriate justification of civil disobedience is *best* provided by ideal theory.<sup>15</sup> That is, after all, precisely what is at stake in the case for monism, and why, furthermore, the argument that “there is nothing wrong with ideal theory per se, but that there can be good or bad forms of it” (Valentini 2009, 355), misses the point entirely. For it is one thing to show that there are better and worse ways of formulating an ideal conception of justice, and quite another to show, as defenders of ideal theory must, that resort to ideal theory offers us the most appropriate guidance for determining how to respond to injustice. The latter claim simply does not follow from the former one, but it is one that defenders of ideal theory must vindicate in order meet the challenge at hand. For if, as Rawls asserts, “The reason for beginning with ideal theory is that it provides...the *only* basis for the systematic grasp of these more pressing problems” (1999a, 8; emphasis added), then a defense of ideal theory that failed at that task would be one that, in effect, directly undermined its stated aim.

Let us begin our critical examination of Rawls’ account of civil disobedience by briefly reconstructing his argument for (weak) monism. The central thesis of that argument can be provisionally stated as follows:

*Injustice Thesis (IT):* An injustice is to be permitted *if and only if* doing so is necessary to prevent an even greater injustice (1999a, 4, 13, 54).<sup>16</sup>

This formulation of IT is provisional in that it does not enable us to precisely distinguish justice as fairness’ strategy for responding to injustice from its main rivals. In particular, it leaves unspecified (a) what, for Rawls, counts as an injustice; and (b) what are the principles by which we are to rank one injustice as “greater” or “lesser” than another. Spelling out Rawls’ argument for monism more precisely thus requires us to connect IT with both the substantive *content* of Rawls’ two principles of justice, and the particular *structure* according to which those principles are ordered. To identify what an injustice is, therefore, we must first identify, per Rawls, what justice is; and then having done so we must further specify the priority rules by which injustices are to be ranked.

In light of the above ambiguities, we can reformulate IT as comprising two distinct elements: first, a list of political values or goods the violation of which constitutes an injustice, viz., rights, liberties, opportunities, income, and wealth; and, second, a lexical ranking of those values that specifies which among them are relatively more urgent and hence are to have priority in cases of conflict. Consequently, what distinguishes Rawls’ strategy for responding to injustice from its main rivals is its emphasis on the *priority of liberty*: the conjunction of the claims that justice denies that the violation of the liberty of a few is made right by the greater good shared by others (in terms of an increase in aggregate welfare) *and* that, therefore, the only legitimate ground for limiting liberty is to avoid an even greater loss of liberty itself (1999a, 3, 23, 56, 188; 1993). The force of justice as fairness derives, then, from the way in which this principle carries over to partial compliance theory.

Turn now to Rawls’ account of civil disobedience. Towards that end, Rawls defines civil disobedience as a “*public, non-violent, conscientious yet political act* contrary to law usually

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<sup>14</sup> For an overview of the critical literature on Rawls’ account of civil disobedience, see Brownlee (2008).

<sup>15</sup> For a discussion of this problem along lines quite different than those presented in this paper, see Feinberg (1973).

<sup>16</sup> For brevity’s sake I shall assume knowledge of Rawls’ theory of justice in general and concentrate only on his argument for monism.



done with the aim of bringing about a change in the law or policies of the government” (1999a, 320).<sup>17</sup> Accepting for the sake of argument Rawls’ characterization of the nature of civil disobedience, let us consider each of these elements of his account in order.

### **A. Publicity**

First, what does it mean to say that an act of civil disobedience is “public?” For Rawls, to say that an act of civil disobedience is a public act is to say that it must be “done in public. It is engaged in openly with fair notice; it is not covert or secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum” (1999a, 321). Moreover, the reason why civilly disobedient acts must necessarily be committed with fair notice to legal authorities (and why, by implication, covert or secretive acts of civil disobedience are *eo ipso* unjustifiable) is that the very nature of civil disobedience is such that although those who engage in it are willing to disobey a particular (unjust) law or policy, their doing so is moderated, at the same time, by their further desire to display a commitment to the legitimate authority of the law in general. As such, it is incumbent upon them to express that commitment by evincing to the relevant authorities that their actions are being taken in good faith, and thus in an open and transparent manner.

I shall have more to say about why those engaged in civil disobedience must be willing to display a commitment to the legitimate authority of the law in general when I turn to Rawls’ discussion of the non-violent nature of civil disobedience. But it suffices here to note two reasons why this argument for publicity is not *prima facie* compelling. On the one hand, such a requirement seems difficult to justify in the context of societies that are far from just, for the simple reason that the prospect of alerting the authorities to one’s impending illegal activity might result in great harm both to oneself and to others (including those who are already the victims of injustice). On the other hand, and directly related to the above point, this requirement is far from compelling even in the highly special case of a nearly just society. For if (as Rawls assumes) the value of civil disobedience as a mechanism for social change lies, *at least partly*, in its contribution to the alleviation of injustice, then it ought (other things being equal) to be judged in virtue of its effectiveness in bringing about justice-promoting changes in government law or policy.

In other words, if one’s overriding aim in engaging in civil disobedience is to remedy injustice, then the (predictable) consequences of one’s acts are of the first importance. That is not to say that anything goes, but merely that in assessing the rightness of a civilly disobedient act, its expressive or non-instrumental value ought to be of secondary moral significance. But if that is the case, then it is not clear why there ought to be such a restriction on the nature of civil disobedience in the first place—before, that is, the contingencies of the case are at hand. In short, if in either of these contexts there is a reliable expectation that forewarning the authorities about one’s civilly disobedient act will radically weaken its impact, and further place oneself and others in danger, then there must equally be a strong presumption against making the publicity of one’s act a necessary condition of the justification of civil disobedience.

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<sup>17</sup> There are two further glosses on Rawls’ definition of civil disobedience, i.e., that civil disobedience may be “indirect,” in that it does not require that the civilly disobedient act breach the same law that is being protested; and that those who engage in civil disobedience are not simply preparing a test case for constitutional adjudication: disobedience to the law in question would not cease simply because it was subsequently deemed constitutional. As these matters do not alter the underlying substance of Rawls’ account, I shall not discuss them any further here.

## B. Non-violence

Second, why is civil disobedience “non-violent?” Civil disobedience is non-violent, according to Rawls, for two reasons. It is non-violent, first, because, “To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's acts” (1999a, 321). Civil disobedience is non-violent, moreover, because, “It expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof. The law is broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct” (1999a, 322).

In reply, however, it is difficult to see why violence might not be, under certain circumstances, justifiable, and hence compatible with the underlying nature of civil disobedience. Limited acts of violence, to the contrary, could be used to successfully reduce injustices that may already exist, and, perhaps just as importantly, to heighten the communicative quality or effect of one's act by ensuring that it receives far greater attention from a public that would otherwise be indifferent to the injustice in question. For that reason, if the overall benefits of engaging in limited acts of violence significantly outweigh the human costs of doing so, then there might be warrant for believing that violence, in particular cases, is all-things-considered justifiable.

One might object, however, that there ought to be constraints on what an individual may permissibly do in order to promote social justice, and that one such constraint is the constraint against the use of violence. The problem with this objection, however, is that, whatever force it may have in other contexts, it completely misses the mark in the circumstances of nonideal theory. The reason is that acting in accordance with the requirements of an ideal conception of justice in a society whose institutions and/or individuals fail to comply with that very same conception may in fact make it more difficult to achieve ideal justice. For in nonideal theory, the problem is not whether one individual, in the abstract, ought to be permitted to violate a constraint against doing harm to others just in case doing so increases the overall good, but rather whether, *given* the fact that some individuals are already violating such a constraint by actively perpetrating violence or injustice against others, it could be justifiable for that individual to commit acts of violence against them for the sake of minimizing the total amount of constraint-violations committed overall. To reply in the face of such a problem that no one ought to be permitted to act violently, despite the fact that their doing so might cause a global reduction in violence, seems to commit oneself to the irrational view that more violations of a constraint ought to be preferred to less.<sup>18</sup> As a result, there may be cases in which it is wrong to act in accordance with an ideal conception of justice in nonideal circumstances, even on the assumption that the ideal in question is the right one.<sup>19</sup>

Similar considerations apply to Rawls' insistence that those who engage in civil disobedience ought to be willing to accept being punished for their conduct, or that they ought to display fidelity to the law in general. In the circumstances of nonideal theory, however, this might be mistaken. For one thing, it is not clear why those engaged in civil disobedience ought to be obliged to accept punishment for their acts given that their so doing might significantly compromise the extent to which they might be able to successfully mitigate injustice in the

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<sup>18</sup> For the general structure of such an argument against deontological constraints, see Scheffler (1994).

<sup>19</sup> My discussion here has benefited from Phillips (1985).

future.<sup>20</sup> For another thing, even if one holds the view that citizens have a *pro tanto* obligation to obey the law in just or nearly just societies, it does not follow that such a presumption ought equally to hold in regimes that are far from just (e.g., in Cases Two and Three). Although there might be prudential reasons to obey the law and perhaps even strong moral reasons to follow particular laws that are themselves just, it seems unwarranted to assume that citizens ought to display fidelity to the law in general in regimes of the latter type.

### C. Conscientious and Political

Third, what distinguishes civil disobedience as a “conscientious yet political” act? The basic idea here is that civilly disobedient acts, in contrast to other kinds of political opposition, are ones that are grounded on moral conviction and hence are to be taken from a certain sense of duty or obligation. For that reason, civil disobedience, as a specifically conscientious act, is not to be taken for self-interested reasons, nor on the basis of a calculation of one's own rational advantage. But what further distinguishes civil disobedience from other kinds of political opposition is that, for Rawls, it is to be founded upon moral convictions of a certain type. For by saying that civil disobedience is a “political” act, Rawls means that the act in question is “guided and justified by political principles,” and that by acting in this manner one “invokes the commonly shared conception of justice that underlies the political order” (1999a, 321). Civilly disobedient acts cannot, then, be justified by appeal to non-publicly shared standards of justice or morality, e.g., by appeal to religious doctrine, despite the fact that the latter may arguably include a recognizably moral dimension. The reason is that, on Rawls' view, only by acting on the basis of political principles does one properly address “the sense of justice of the majority of the community and declare that in one's considered opinion the principles of social cooperation among free and equal men are not being respected” (1999a, 320).

Now, one immediate consequence of Rawls' construal of civilly disobedient acts as necessarily political acts that invoke the underlying conception of justice of the community is that it is altogether unclear how individuals willing to combat injustice are to proceed in the absence of such a commonly shared standard. But that is precisely the problem under certain permutations of nonideal theory, i.e., in instances of Case Two mentioned above, wherein a society's individuals, but not its institutions, are willing to comply with what justice requires. For there are, roughly, two ways in which society's major social, political, and economic institutions can themselves be unjust: they can be unjust either in that they depart from the publicly accepted standard of justice—the background assumption of Rawls' account of civil disobedience—or the conception to which those institutions conform might itself be unjust (1999a, 309). Distinguishing between these two sub-cases matters because while an appeal to society's sense of justice is presumably available in the first scenario, such an appeal is, *ex hypothesi*, not available in the second one. One might legitimately question, then, whether Rawls' conception of civil disobedience is, for that reason, able to provide us with guidance in nonideal theory, given that it seems reasonable to assume that most extant societies are both far from just (on Rawls' own criteria) and marked by widespread disagreement not only about the nature of the good life, but about the nature of a just society as a well. The latter scenario could, therefore, characterize the vast majority of cases overall. Appealing to the sense of justice of the majority in such a context would (once again) be self-defeating, since the very problem in those societies is either that the

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<sup>20</sup> This consideration is strengthened, furthermore, by the fact that severely unjust societies might be especially prone to punish those who commit civil disobedience in a manner that is quite disproportionate to the gravity of their offense.

majority do not in fact recognize the grievances of minorities as actual instances of injustice (the majority are operating, say, under a false conception of what justice really is), or, even worse, the views of the majority might be of insufficient consequence in such societies because, being unjust, they are also undemocratic.

Indeed, if Rawls' view is that reasonable and effective civil disobedience presupposes the capacity to address the sense of justice of the majority (1999a, 339), then it is difficult to make sense of the (presumptive) impact of civil disobedience in cases such as the Indian struggle for independence from British rule or Apartheid South Africa. Positive social change proceeded in those societies, not by appeal to, but rather in spite of, the sense of justice of the dominant community. And this might in fact be exactly what we should expect: for it is not clear why the appropriate model of civil disobedience in such contexts must be derived from the model that best applies to the highly special case of a nearly just society. Nor, for that matter, is it clear why it is not just as equally plausible to proceed from the exact opposite assumption instead. For one might argue, to the contrary, that civil disobedience normally presupposes the absence of agreement about the nature of a just society, in that the very point of engaging in an act of civil disobedience is to demonstrate on the basis of one's own example that the sense of justice of the majority is fundamentally wrong or mistaken, and ought, for that reason, to be revised or rejected altogether.

#### **D. Objects of Civil Disobedience**

Finally, and most importantly for our present purposes, consider the question of the kinds of wrong that are appropriate objects of civil disobedience. To that end, Rawls believes “there is a presumption in favor of restricting civil disobedience only to serious infringements of the first principle of justice” (1999a, 326). For he assumes that civil disobedience is only justified in the face of a “substantial and clear injustice,” and hence not for the perpetration of wrongs that are (on his view) far less urgent to overcome, i.e., injustices pertaining to the distribution of social and economic inequalities, and/or to political values such as human excellence or general welfare. The violation of citizens' basic rights and liberties are, then, the more appropriate objects of civil disobedience.

There are two reasons why, however, we ought to resist the claim that only these types of violations are necessary to trigger justified acts of civil disobedience. The first is that it is not at all clear why, say, in the special case of a nearly just society, political values such as the promotion of the general welfare or the minimization of human suffering are insufficient bases upon which to ground civil disobedience. Consider, for example, the moral issues raised by the existence of nuclear weapons (see Hardin et al., 1985). Whatever view one holds as to the moral permissibility of employing them as means of deterrence, or of acquiring them to begin with, they are, unquestionably, a grievous moral bad. There is, then, a strong *prima facie* case to be made for promoting the aim of nuclear disarmament—through civil disobedience if necessary—and this has nothing to do with a concern for the violation of rights and liberties.<sup>21</sup> Or consider the problem of global climate change. If it is the case that the warming of our planet will cause irreparable harm both to ourselves and to future generations, then it seems unwarranted to assume that civilly disobedient action directed towards its reversal lacks moral justification simply because it is not directly concerned with the violation of Rawls' first principle of justice. The second ground for resisting this claim proceeds directly from the first: for it might be argued

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<sup>21</sup> No one, after all, would be alive to enjoy the benefits of the possession of rights and liberties if a large-scale nuclear catastrophe were to occur.

that it is far more morally urgent to promote the general welfare or to minimize human suffering in societies that are themselves far from just. The reason is that in the absence of doing so, the rights and liberties granted in those societies would be merely formal and hence without substantive content. Our priority under such circumstances would thus not be to resist the violation of rights and liberties, but rather to create the conditions under which those rights and liberties can be adequately enjoyed in the first place.

One might object, however, that under more extreme nonideal conditions, a weak form of monism might consider it more appropriate to apply Rawls' "general"—rather than his "special"—conception of justice, since the former, unlike the latter, does not assign strict lexical priority to the protection of the basic liberties. And in so doing, a weak form of monism would, so the objection goes, fare better than its strong counterpart in responding to injustice: for while the priority of liberty would still apply to some extent in nonideal theory on this weaker version, it would do so more as a "goal" to be achieved rather than as an ideal that is to be unconditionally respected (Korsgaard 1996; Schapiro 2003). But not only is it extremely disingenuous to argue for the permissibility of departing from an ideal just in case doing so would enable one to better realize the goal that purportedly underlies it, it is also far from clear how we are to determine the goal of an ideal conception of justice to begin with. Is the goal of an ideal conception of justice the basic value or aim that conception seeks to promote? If so, how are we to determine what that value or aim is, and, how, for that matter, are we supposed to determine how to act upon it? What is the fundamental value or aim of, say, justice as fairness? Finally, if the fundamental purpose of weak monism is to guide our conduct towards the best realization of a particular moral aim, then what distinguishes it from consequentialist theories such as utilitarianism that define right action in terms of the maximization of the good? In the end, it seems, this proposal raises far more questions than it answers.<sup>22</sup>

This, in turn, raises a far more general difficulty concerning the application of the priority of liberty within partial compliance theory. To say that these liberties are to have priority does not mean that they are absolute; it simply means that, in practical political deliberation, they are to be given special weight over other political values. But what if, as a result of the noncompliance of some citizens with what ideal justice requires, we are forced to choose between two states of the world, one in which others' religious liberties are sacrificed versus one in which their political liberties are sacrificed?<sup>23</sup> How are we to decide which basic liberty is to be restricted and which is to receive priority?

Since the state may be compelled to specify a ranking among the various basic liberties in cases when they conflict, the question therefore arises as to whether a satisfactory criterion is given by Rawls for adjusting the basic liberties to *one another*.<sup>24</sup> Rawls' answer is to introduce the criterion of the *significance* of a basic right or liberty, and to argue that adjustments to the entire scheme of basic liberties guaranteed under the first principle are to be made in such a way that the more significant liberties involved are more adequately protected (1993). To explain: the significance of a particular basic liberty is, according to Rawls, determined by the degree to

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<sup>22</sup> I should further add that this way of rescuing monism overlooks the fact that, according to Rawls, the application of the priority of liberty is predicated on the existence of certain "favorable" conditions in which the basic liberties can be "effectively" established and exercised, and that it is *only* under conditions less favorable to the establishment and exercise of liberty—roughly, those "natural limitations and accidents of human life" that make the achievement of a well-ordered society difficult if not impossible—that the "general" conception of justice can be said to apply (1999a, 132).

<sup>23</sup> This example is, unfortunately, far from academic, as the cases of, say, Turkey and Algeria attest.

<sup>24</sup> A question first raised by Hart (1975).

which its protection is necessary for the full development and exercise of the two moral powers of citizens: their capacity for a sense of justice and their capacity for a conception of the good. As a result, there are two fundamental cases to consider: one which concerns those liberties necessary for the application of the principles of justice, e.g., the equal political liberties, and one which concerns those liberties necessary for the pursuit of the good life, e.g., freedom of conscience. The idea is, then, that if two or more basic liberties conflict, we are to secure the more significant liberty within each particular case.

My concern with this reply, however, is twofold: first, that the criterion of significance lacks adequate theoretical precision and, second, that it does not offer us adequate practical guidance. On the one hand, the idea of ranking basic liberties on the basis of their significance strikes me as simply too vague. For although Rawls says that the significance of a particular liberty is to be determined by the extent to which it contributes to citizens' capacities for a sense of justice or conception of the good, it is far from clear just how this is to be *measured*. In the light of which standard or metric can we independently assess the validity of one particular spelling-out of a liberty's significance from another? How, in other words, can we reliably ascertain that this liberty is, among the alternatives, the most significant one? In the absence of a reasonably precise procedure for identifying how to apply this criterion, Rawls' reply simply cannot get off the ground.

On the other hand, the problem is that even if we can make sense of this idea, it might nevertheless still fail to provide us with determinate practical guidance. For over and above any theoretical difficulty is the fact that adjustments to the entire scheme of basic liberties in nonideal theory would need to further address the distinct set of practical problems that partial compliance poses. In particular, it would need to specify the proper criteria by which to rank tradeoffs among basic liberties in cases both wherein there is either institutional *or* individual noncompliance (Cases One or Two) and in cases wherein both institutions *and* individuals fail to comply with a given society's conception of justice at the same time (Case Three). Rawls' criterion of significance does not, however, speak to these problems at all. What is more, it does not specify how to prioritize two basic liberties that, while both significant within each of their own fundamental cases, conflict with each other, e.g., the political liberties and freedom of conscience. But that is precisely the concern that motivated our discussion in the first place.

The upshot of this discussion is that even in the example that serves as a model for Rawls' argument for monism as a whole, it does not seem to be the case that one set of normative principles ought to apply to both ideal and nonideal circumstances. There is thus a good *prima facie* reason for believing that, as a general matter, the monist strategy for responding to injustice fails. Determining the proper way in which to respond to the distinct set of practical problems raised by nonideal theory might, therefore, require a distinct set of normative principles. It is to that task that I shall now turn.

## **5. Moral Choice Under Uncertainty: Towards an Account of Nonideal Theory**

It is worth pausing here to review the arguments presented thus far. I began by outlining the distinction between monist and dualist conceptions of justice. More specifically, I paid particular attention to the way in which the monism/dualism distinction contrasted with two related but nevertheless distinct problems, that is, (1) the problem of fact-sensitivity; and (2) the problem of idealization. Next, I demonstrated that, *pace* defenders of both strong and weak monism, ideal theory does not offer us appropriate guidance under conditions of partial compliance. In order to adequately defend that claim, however, I must clarify that even if it is intuitively clear that

principles designed for the regulation of a perfectly just society have difficulty in responding to injustice, it is not entirely clear *why* that is the case. Yet without a compelling theoretical explanation or rationale for that intuitive judgment, our understanding of the difficulties of monism will remain inadequate. My claim in this section is that the above difficulties with the monist strategy for responding to injustice can be traced to a common source. Hence if we can identify such a source, then we can begin to lay the groundwork for a novel account of nonideal theory.

Before we launch into the thick of our discussion, however, a caveat is in order. I must emphasize that one consequence of attempting to develop an alternative theoretical framework for responding to injustice is that my argument here is necessarily partial and tentative; for the most part, an adequate analysis of the topic would require a level of reflection that is far beyond the scope of this paper. Nevertheless, I believe that the following might, at the very least, go some way towards establishing the usefulness of my approach to the analysis of a problem that is fundamental to both political theory and practice.

I begin by noting that political philosophers have not adequately appreciated how great the gulf is between, on the one hand, the normative justification of ideal theory and, on the other hand, the demands of political morality in a nonideal world. The difficulty is that they fail to distinguish between two quite different types of question:

1. What are the requirements of justice?
2. What are the requirements of justice, *given* the nature of society's actually existing political, social, and economic institutions and the motives and aims of other political actors?

Both are questions of normative political theory. The first question is, however, posed in complete abstraction from the background within which injustice arises, and thus, even if answerable in a determinate enough manner, might nevertheless fail to provide us with appropriate practical guidance as to the just way in which to meet injustice. For by conflating these two different types of question, political philosophers wrongly assume that one can derive guidance as to the just way in which to meet injustice simply by devising the correct principles by which to regulate a perfectly just society.

Now the reason why these two types of question ought not to be conflated is that under conditions of partial compliance, political outcomes are the product of the joint actions of many individuals taken as a whole, including (inter alia) the actions of those who refuse to comply with or, alternatively, wish to subvert, society's regulative principles of justice, and/or those who comply with institutions that are themselves imperfect from the point of view of justice. As a result, it becomes incumbent upon those who *do* in fact wish to advance justice or to reduce injustices that may already exist to strategically modify their actions in anticipation of or in reaction to what those other individuals will or will not do.<sup>25</sup> Consideration of what would the morally appropriate principles of justice in nonideal theory thus requires that we consider not just the good or bad consequences of acting upon this or that principle, but rather the good or bad consequences of acting upon this or that principle *given* that others have also acted in a particular way. For by altering the background structure of strategic interaction that political actors face, we simultaneously alter the pattern of decisions that they make and thereby their moral calculus.

Given the above observation, then, it seems particularly evident why a conception of justice

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<sup>25</sup> For further discussion of the strategic structure of moral problems, see Hardin (1988, Ch. 2).

designed for the regulation of a perfectly just society would fail, under such circumstances, to provide us with appropriate guidance for responding to injustice. To see why, recall our earlier discussion of both Murphy's principle of beneficence and Rawls' account of civil disobedience. With respect to the former, the problem is that it fails to recognize that *if* some citizens refuse to comply with the appropriate principles of justice, then the background terms of interaction within which we associate is fundamentally altered. The consequence, however, is that it might no longer be the case that what is the morally right action under full compliance is the right course of action in the here and now as well. For under conditions of partial compliance, these terms of interaction no longer include the general understanding that everyone is acting justly and doing their part in upholding just institutions; to the contrary, these terms now include the recognition that there are at least some citizens who refuse to comply with society's regulative principles of justice. In order to determine what is indeed the right course of action in the here and now, one must instead take into account the manner in which the non-compliance of others alters the moral status of one's own actions. And this, as I argued, might require those who wish to advance justice to contribute more than their "fair share" of the moral burden.

In a like manner, the problem with Rawls' account of civil disobedience is that its justification is premised upon the very background features or assumptions that distinguish ideal from nonideal theory, e.g., certain facts about the level of compliance exhibited by society's major institutions. But since these assumptions do not, *ex hypothesi*, hold under conditions of partial compliance, treating them as if they did is likely to lead to the undesirable outcomes observed above. Why? The reason is that in order to realize the transition to a more just society, individuals must take into account the nature of society's actually existing institutions and the way in which they transform the moral landscape that they face. That is not to say that such institutions ought to be taken as given or that there exists a moral bias in favor of the status quo; to the contrary, the point is simply that determining the just way in which to meet injustice requires one to confront the nature of social, political, and economic reality as it actually is. For if one's aim is to rectify a particular institutional injustice, then the pursuit of that aim requires one to determine the most adequate means for the realization of that end. And that, in turn, requires one to specify how in the light of that reality it is possible to both modify those institutions that are currently in need of reform and to build the institutions of the future within society as it now exists. There is just simply no other way in which to effectively remedy injustice.

The upshot is that the practical problems raised by nonideal theory require a distinct set of normative principles. For, as we have seen, what is distinct about the circumstances of partial compliance is precisely the fact that there exists a great deal of *uncertainty*<sup>26</sup> regarding the steps necessary to make the transition to a more just society. To be more precise, nonideal theory is characterized by two distinct types of uncertainty. On the one hand, there is great uncertainty about the motives and aims of other political actors. Not only might there be individuals who simply refuse to comply with society's regulative principles or justice, but, more gravely, individuals may also be motivated by an active desire to subvert just institutions that already exist. On the other hand, there is also great uncertainty as to the predictable outcomes of one's own actions. Why? As I said earlier, outcomes in nonideal theory are not the product of

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<sup>26</sup> Here I adopt a familiar distinction between risk and uncertainty, i.e., whereas in the case of the former there is some reliable evidential basis for predicting the relative probabilities of alternative outcomes, in the case of the latter there is no such reliable basis and the knowledge that we have of their occurrence is both highly sketchy and lacking in confidence.



individual action alone but are instead the joint outcome of many individual actions taken as a whole. For that reason, it is not possible to select actions under partial compliance with a view to their intrinsic moral rightness. Instead, one can only select a particular action or set of actions on the basis of one's belief that, of those actions available, this one is likely to lead to the best consequences overall. Principles of justice in nonideal theory ought, then, to reflect these considerations.

At the core of such an account would be what I earlier referred to as a theory of moral choice under uncertainty, that is, a set of principles that provides us with guidance for answering the question of what we ought to do when we are fundamentally uncertain as to both the nature of the outcome in question and the motives and aims of other political actors. Generally speaking, the answer to this question is, I submit, contingent upon the following considerations: (1) the nature of the response or course of action that is being contemplated in order to respond to injustice at hand; (2) the interests of those individuals that will as a consequence be affected by the proposed course of action taken, viz., whether or not it involves coercive interference with, say, their basic rights and liberties; (3) what the benefits and burdens of that course of action are; (4) the concomitant risks to society if (counterfactually) those steps are not taken; and, finally, (5) how all of the above factors are to be balanced against the uncertainty involved in determining what is the just way in which to respond to injustice. We can roughly state the moral principle underlying this schema thusly: that the greater the moral risk involved in making a particular decision, the more demanding are the epistemic requirements for justified action. In other words, one needs the best possible grounds for *believing* that the course of action one is taking is correct if the consequences of acting wrongly are potentially morally disastrous. The consequence is that if there are few, if any, foreseeable benefits from a particular course of action and potentially high and fairly certain costs of doing so, then we ought to err on the side of caution and opt for inaction instead (and vice versa).

In emphasizing the significance of moral choice under uncertainty, moreover, my account of nonideal theory offers a fundamental contrast to the so-called *theory of the second best* (Lipsey and Lancaster 1956; Goodin 1995). For suppose, the argument goes, that one's ideal state of the world is characterized by conditions A, B, and C, and that those three conditions cannot all be realized simultaneously. Although one might initially assume that one's best course of action in such circumstances is to realize to the greatest extent possible as many of those ideals as one can, the theory of the second best cautions us against making such an inference. To the contrary, the second-best state of affairs may in fact be one in which there is systematic deviation from all three of the above conditions. Seen in this light, however, it is clear that my account differs from the theory of the second best in both its diagnosis of, and ultimate resolution to, the problem at hand. For if, as I have argued, the underlying aim of my account of nonideal theory is to determine the just way in which to respond to injustice, then it is clear that doing so does not necessarily require that one devise the most effective strategy for simultaneously realizing a number of competing values. Rather, in order to mark the transition to a more just society, one must instead determine which among the acts available will, in light of the non-compliance of others, have the best outcome overall. Not only, then, does the theory of the second best fail to take into account the strategic structure of political morality in conditions of partial compliance, but its prescription for how to proceed is far too vague and indeterminate as well. For the injunction to systematically deviate from all three of the conditions that characterize one's ideal state of affairs does not discriminate among the multiple, and perhaps competing, ways of doing so, nor does it tell us which value or good to give priority to in cases

in which we are forced to choose just one of them. But that is exactly what those who wish to advance justice must do when confronted with injustice. A theory that falls short on these two counts is, in sum, not a good candidate for an account of nonideal theory.

## 6. Conclusion

My argument in this paper has been that it is wrong to assume that one can derive guidance for responding to injustice from principles designed for the regulation of a perfectly just society, and hence that the particular understanding of the relation between ideal and nonideal theory advanced by monist conceptions of justice is fundamentally mistaken. To that end, I have shown that what are arguably the two most systematic and compelling accounts of monism—Murphy's principle of beneficence and Rawls' conception of justice as fairness—fail.

What ought we to do, then, in the face of injustice? Since guidance for responding to injustice is not to be found in monist conceptions of justice, it follows that the practical problems raised by nonideal theory require a distinct set of normative principles. And while I have not articulated a full-blown conception of these principles here, my sketch of what a plausible account of nonideal theory ought to take into account has hopefully taken a first step in the right direction. This is an important problem, and my brief remarks on the subject were merely intended to indicate how a more complete response might proceed. Nevertheless, I think that once it is recognized that there is a powerful arsenal for responding to some of the more challenging problems that nonideal theory forces us to consider, then it is that much less difficult to flesh out a more sufficient reply.

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