

8 Realistic Idealism

David Schmidtz

1 Theorizing for a Reason

Is moral philosophy more foundational than social philosophy? Is the question of how to live more fundamental than the question of how to live *in a community*? Are we getting down to philosophical foundations when we set aside contingencies regarding the communities in which political animals live, and proceed as if we were pure rational wills?

I see no reason to say yes to any of these questions.

To recover a measure of relevance to questions that practitioners need to answer – questions about how to live *as social beings* – theorizing about how to live together might take its cue less from moral philosophy and more from political economy. We can go beyond thought experiments. We can ask which principles have a history of being the organizing principles of flourishing communities. Let's say that realism studies the human condition as it is, while idealism studies the human condition as it should be.¹ Thus characterized, realism and idealism are distinct but compatible projects.

Realistic idealism, one of the many possible forms of idealism, studies what should be in light of a sober assessment of what could be, here and now. It aims to identify real possibilities, then ask whether an ideal response is among those possibilities. Realistically, it need not be. An ideal response is a best response, and intuitively something more: we call the best available response ideal only if we accept some fairly strong version of the thought that we could not have done better. Suppose we say Plan A is ideal, then find that Plan A is no solution at all – maybe it is infeasible because a key ingredient is missing. When we switch to our actual best response, Plan B, we do so with regret about a solution that *seemed* within reach and that *would* have been better. If we also restock the missing ingredient so that Plan A will be a real option next time, that implies that Plan B is merely best under the circumstances, not ideal.

¹ See also Robert Jubb's chapter on realism in this volume, and Sleat (2013).

Realistically, not all problems have solutions, let alone ideal solutions. Sometimes studying a problem helps us see what would solve it. Sometimes we learn that the best we can do is mitigate. To introduce the main bits of advice given in this chapter:

- (a) **Start with problems.** We were taught to see sound theory as grounding sound practice and therefore as needing to come first. In practice, theories are answers; questions come first.
- (b) **Start with diversity.** We need to coordinate on terms of engagement that are apt even among people who do not agree that those terms are apt. Theorizing does not help. We navigate the terrain of respect for separate persons with a compass far older than any theory.
- (c) **Start with injustice, not justice.** In the real world, we have no vision of ‘peak justice’ in mind when deciding how to act. When deciding which car to try to drive home at the end of the day, we never consult the theory of justice we spent all day perfecting, except in self-mockery. Theory is not what teaches us how to avoid triggering people’s sense of injustice.

Finally, if I had a bit of meta-advice about *how to handle my advice*, it would be: **proceed with caution**. Some of my advice will survive the test of time and turn out to be good advice, but there is no substitute for exercising your own judgement, being sceptical of contemporary theorizing about morality and justice, and taking your cue from the world rather than from the literature.

2 We Are Political Animals

One enduring feature of the human condition is that we are, after all, political animals. (1) We are decision-makers. (2) We are decision-makers who want and need to live together. (3) As decision-makers, we respond to circumstances. (4) As social beings, we respond to the circumstance *that we live among decision-makers* – other political animals who treat our choices as part of their circumstances and respond accordingly.

Social theory done well is theory about a world of separate persons – separate not only in an aspirational Kantian moral sense, but in a straightforward descriptive sense that each person is a locus of agency. People decide for themselves. We choose well only if we choose with a view to what we thereby give others a reason to do in response – that is, only if we do not take others for granted, do not treat them as pawns, and do not treat them as if they have a duty to be gripped by whatever vision is gripping us at the moment. If we are not theorizing along those lines, then we are not theorizing about politics.

Consider how the mundane observation that we are political animals implies a need to take a slightly but importantly different approach to moral theory (as developed in Schmitz 2016; the following subsection is an overture for the argument set out in that essay).

2.1 *Solipsism in Theory*

(a) Kantians regard ‘What can be universalized?’ as a foundational question. People interpret that as a rough equivalent of ‘what if everyone did that?’ The subtle but crucial piece missing from this informal rendering: moral questions are questions for political animals living in a social world, which means a strategic world. The actual problem moral agents face is not a question of what maxim they could will everyone to follow. In a strategic world, interpreting universalizability in solipsistic terms – imagining a choice between everyone cooperating and everyone declining to cooperate – is not universalizable. It is a test that is blind to the strategically pivotal difference between reciprocating and unconditional cooperating. A strategic deontology acknowledges that we cannot universalize ignoring the fact that the exercise’s point is to identify maxims fit for members of a *kingdom of players* – beings who decide for themselves.

Therefore, in a strategic world, imagining yourself unilaterally making *the* choice between everyone cooperating and everyone defecting is nothing like imagining yourself choosing for everyone in situations *relevantly like yours*. The *essence* of your situation is that you are *not* choosing for everyone.

So, my proposal is: treat strategic deontology as an alternative to ‘act-deontology’ and envision a choice among strategies, not actions. Maxims like ‘I should cooperate’ versus ‘I should free-ride’ miss the moral core of your alternatives. Instead, describe your alternative maxims as ‘I should encourage partners to cooperate’ versus ‘I should encourage partners to free-ride.’ Now you see that what is properly universalizable is acting so as to teach your partners to grasp their place in a kingdom of ends and thereby mature in the direction of moral worth. Teach them to cooperate.²

(b) We might observe, similarly, that Peter Singer’s interpretation of the principle of utility – that we should sacrifice to a point of marginal disutility – is not straightforward. What I call parametric utilitarianism rests on an *empirical* premise: picking the act with the highest utility is like

² I do not suppose this move solves all of deontology’s puzzles. It does, however, address some ‘indeterminacy of description’ problems in articulating a maxim’s proper form as the subject of the universalizability test.

picking the outcome with the highest utility.³ Given that supposition, the only thing to consider is which of our two options, give versus don't give, has more utility. If giving has more, then give. *Keep giving until not giving would have more utility.*

But the essence of a strategic world is that it does not give us that supposition. It is not an a priori truth that the *action* with the highest number leads to the *outcome* with the highest number, and in strategic situations it is a howling non sequitur. The numbers that *count* are not numbers attached to available *acts*, but numbers attached to possible *outcomes*, where outcomes are consequences not of particular acts, but of *patterns* of cooperation. In a strategic world, someone who cares about consequences aims to *induce a response*. If the ideal response is cooperative, then an ideal move is a move apt to induce that cooperative response. If consequences matter, then being moral in a strategic world is about *inducing* cooperative responses, not per se *choosing* them. That means being moral involves knowing when to walk away from the act with the highest number. **In strategic situations, if you want the best outcome for all, don't worry about other people's payoffs; worry about their strategies.**

Scottish Enlightenment theorists focused on the nature and source of the wealth of nations. They cared enough about consequences to study what has a history of actually working. They observed that prosperous societies are places where traders build partnerships around principles of reciprocity. It mattered to them that, in our world, actions have more than one consequence, more than the intended consequence, and the consequence you don't see coming will matter. The kind of act-utilitarianism Peter Singer incarnated circa 1972 is remarkably inattentive to what has any robust history of good consequences. It is useless not because it is obsessed with consequences, but because it largely ignores them.⁴

When moral theory conceives our world in solipsistic terms, practitioners living in a strategic world have to ignore it, because real morality requires people to make choices apt for the strategic world they actually

³ In the terms of a Prisoner's Dilemma payoff matrix, the empirical premise I am warning against is the assumption that choosing a row ('cooperate') is the same thing as choosing a cell in the matrix ('mutual cooperation'). In a strategic world, it is nothing of the kind. One unilaterally chooses an act, a row, not as a way of unilaterally *choosing* an outcome, a cell, but rather as a way of *working towards* an outcome.

⁴ Amartya Sen identifies himself as within the tradition of Adam Smith. Sen earned his Nobel Prize for his work on twentieth-century famines, showing that not one was caused by lack of food. Famine is caused by eroding rights, not eroding soil. When local farmers lose the right to choose what to grow or where to sell it, they lose everything, and that is when people starve. This is what Scottish Enlightenment theorists studied: *consequences* (that is, long-term cause and effect) not imagined best responses to potted thought experiments.

face.⁵ To summarize an argument only hinted at here, the premise that moral problems are first of all political problems yields a landscape of moral theory somewhat unlike – relevantly unlike – what we see in our ethics textbooks today.

2.2 *Political Animals Live in a Strategic World*

Rawls says his assumption that bargainers choose for a closed society ‘is a considerable abstraction, justified only because it enables us to focus on certain main questions free from distracting details’ (1993: 12). In principle, this could be a legitimate move. As Alan Hamlin observes in his chapter in this volume, a map of the London Underground sets aside nearly everything about London, even distances and scale, so as to distil the one kind of information that the map’s users seek to glean from it, namely the sequences of stops making up the network’s lines.

Yet it is easy to slide from ignoring for clarity’s sake to ignoring *with prejudice*: setting details aside not because they don’t affect the answer, but precisely because they do (see also Hope 2010: 135). Although we must set aside distracting details and focus on the problem, one thing we must never set aside as a detail is *the problem*. Suppose an asteroid were about to collide with Earth. What would be an ideal response? Hypothesis: we first ask what would be right under ideal conditions. Leading our list of ideal conditions: ideally, there is no asteroid about to collide with Earth.

Having noted that ideally there is no asteroid, we respond in one of two ways. Either (1) we strive to make it true that there is no asteroid, or (2) we do what would be ideal if there were no asteroid. The latter overlooks what *should be* an obvious difference between doing what *is* ideal as opposed to doing what *would be* ideal under counterfactual conditions.

I say this should be an obvious point. Clearly it is no such thing, for overlooking the difference is a repeatedly observed blunder. Tucson’s city government once sought to manage traffic flows by designating inner lanes of major roads as one-way lanes toward the city centre during the morning rush. During the evening rush, the same lanes reversed and became one-way lanes *from* the city centre. At off-peak times, inner lanes reverted to being left-turn lanes. In a world of ideal drivers, it might have solved the problem. In Tucson, with its daily influx of elderly drivers not necessarily quick to adapt to novel conventions, where one indecisive driver is enough to create a dangerous mess, the system was a recipe for traffic jams, accidents, and road rage.

⁵ Singer himself is increasingly aware of such strategic considerations. See also Schmidtz (2015).

In effect, traffic managers set aside the problem. Or, instead of tackling a real problem, traffic managers solved an idealized problem. Their job was to optimize traffic flow, but they chose instead to do what *would* optimize traffic flow *if* drivers were ideal. **Beware of idealized problems.** In general, doing what would be ideal – if only the problem were the ideal problem! – is not a way of being a serious idealist.

Here is the kind of idealism that realistic idealists scorn: ‘My solution is a hammer; therefore, the problem *ideally* would be a nail. Reality is not a nail, obviously, so no one is saying my hammer is a *real* solution. Still, I just proved that the ideal problem is a nail! Therefore, impractical though my hammer may be in the real world, it remains an *ideal*.’

By contrast, to a realistic idealist, saying a traffic management system would work for ideal drivers says nothing in its favour *even as an ideal*. An ideal traffic *manager* works with an accurate picture of the real problem.

Some idealizations approximate reality, so some ideal solutions are approximate solutions to real problems. Tucson traffic managers blundered into misconceiving their ideal solution as an approximate solution to a real problem. That I am not alone but instead live in a strategic world of separate agents who decide for themselves is not a distracting detail. If a proposal stipulates that people will not react to our intervention in the way human beings *do* react, then the intervention is not an approximate solution, or even a real response. If Rawls is right to say ‘an important feature of a conception of justice is that it should generate its own support’ (1999b: 119), then a serious investigator does not set aside whether a conception of justice actually has that feature. A serious investigator *checks*.

2.3 Solipsism as a Snapshot of Justice

There is a literature on whether Rawls was warranted in assuming ideal bargainers would fully comply with principles of justice. But consider how much greater a stretch it is to assume ideal bargainers not only take their own compliance but the compliance of *others* as given. Once we cross that line, we are no longer checking to see whether a conception has the key feature of being able to generate its own support. Instead, we are imagining what it would be like not to need to check – not to have a political problem. In different words, once we cross that line, we are no longer stipulating simply that ideal bargainers are honest; we also are stipulating that they are clueless about the human condition’s core feature: that what

people need from each other more than anything is to create conditions under which they can afford to trust each other.

G. A. Cohen's objection to Rawls is that

[I]f we assume, following Rawls, that individuals are motivated to comply with justice, then the need to trade off equality and well-being disappears. It only arises in the first place because talented people demand incentive payments to become more productive. But people who are motivated to realize justice fully would not demand incentive payments but rather increase productivity without them. (Hamlin and Stemplowska 2012: 57, paraphrasing Cohen 2008)

Perhaps Cohen thought that people motivated by justice would not demand incentive payments. But even if that were true, the fact remains that even unshakably motivated Rawlsian bargainers would demand motivating incentives for *the people they represent*. Rawlsian contractors have a tough assignment: they are contracting on behalf of people other than themselves. Rawls can stipulate that *bargainers* are whatever bargainers need to be to get Rawls's desired solution, but bargainers can't stipulate the character of human psychology. By assumption, Rawlsian bargainers know human psychology. Therefore, their moral motivation does not blind them to the reality of what motivates the classes of people they represent. They know that the psychology of citizens at large is exactly what it is. (See also James 2012: chap. 4.)

It is a mistake to think we are imagining what *is* ideal when we imagine what *would* be ideal if compliance were something we got for free, rather than being the precarious achievement that it is. We are supposed to be theorizing about how to form a community, hold it together and make it worth holding together. (Let's not confuse this with talking about policy as opposed to theory. To say political theory is theory about what holds communities together and makes them worth holding together is not to propose a policy; it is to identify political theory's subject matter.) Setting aside compliance problems goes astray not because it bears on ideals, but because it *fails* to bear on problems. To say 'ideally we would not have compliance problems' is like saying 'ideally we would not need to drive defensively.' It is a remark about a world whose problems are not like ours. We have a history of solving compliance problems, but there is no recognizable rendering of the human condition on which we do not *have* compliance problems.

To set aside that we live amongst agents – beings who decide for themselves whether to comply – is to set aside the defining problem of political theory. If an institution is ideal in a given setting, it is by virtue of what it leads people to do in that setting. **Keep this in mind: what isn't an ideal incentive structure isn't an ideal institution.** Whenever we

choose an incentive structure, we choose the compliance problem that goes with it (Schmidtz 2011a).

2.4 *Sometimes, Ignoring Feasibility also Ignores Desirability*

When we ask whether we are looking at an ideal campground, we can ignore ravines standing between us and that supremely desirable campground. I agree with Estlund (2008: 269) and Cohen (2009: 10) that ravines bear on whether getting there is feasible, but not on whether getting there would be desirable. Further and crucially, the cost of getting there can affect whether *striving* to get there is desirable, but not whether *being* there is desirable.

But here is the key. In the imagined case, I agree that to ignore ravines is to ignore questions of feasibility, and that we can ignore feasibility and still be discussing an ideal. Yet we abandon anything recognizably ideal if we ignore whether a campground is *suitable as a place to camp*. To ignore what will befall us if we get there is to ignore not whether getting there is *feasible* but whether *being* there is *desirable*.

In a Carens Market, to use Estlund's (and Cohen's) example, we imagine everyone being taxed in such a way that everyone ends up with equal disposable income after taxes. Despite this, by hypothesis, we also imagine everyone working hard to maximize *gross* income. Estlund uses the example to stress: 'So the fact, if it is one, that we shouldn't institute the Carens Market because people won't comply with it, doesn't refute the theory' that people *should* comply (2011: 217). Estlund adds, 'it is doubtful that the content of social justice is sensitive in this way to untoward motivational features of people' (2011: 227).

But we choose how to conceive of justice, and whether we see human motivation as 'untoward' turns on whether the thing we want to *call* justice characteristically induces untoward behaviour. If we see that what we want to call justice has *that* characteristic feature, that is reason to stop calling it justice, or at least to stop calling it *ideal*. If it predictably would realize our worst potentials as human beings, the relevant lesson is not that the Carens Market is altogether infeasible, but that as an aspiration it is altogether unworthy.⁶ It does not solve a problem; it solves an

⁶ We can say, the *true* ideal here is not bare instituting, but rather a conjunction of instituting and complying. So, the actual Carens ideal is a conjunction of 'make sure work doesn't pay' and 'workers keep acting as if it does'. To Estlund, the fact that we should not implement the first conjunct when the second is false has no bearing on whether the conjunction as a whole is ideal – even if, in our strategic world, instituting the first conjunct is a paradigm of what *renders* the second one false. All sides seem to agree on this much: (1) The Carens incentive structure by itself is not ideal. (2) At best, it *would be* ideal only if we

idealized problem. The lesson is not that we have no way to get there, but that we have no reason to want to.

Some idealists think ignoring compliance problems is ignoring something analogous to whether a campground is *reachable*. Not so. Ignoring what an incentive structure would drive people to do is like ignoring whether a campground would be terrible.

2.5 *When Institutions Turn People into Monsters, Blame the Institutions*

Estlund is correct when he says ‘that a standard won’t be met might count against people’s behavior rather than against the standard’ (2011: 209). For example, we may predict that students will fail our exam, without blaming our exam. That point of agreement notwithstanding, the fact remains that responsible reflection on a predictably bad outcome begins with the role our standards play in bringing it about. That students predictably misread double negations is not a defect in our exam, but littering our exam with double negations is.

Of his utopian theory and its postulation of unrealistic standards, Estlund says:

People could be good, they just aren’t. Their failures are avoidable and blame-worthy, but they are also entirely to be expected as a matter of fact. So far, there is no discernible defect in the theory, I believe. For all we have said, the standards to which it holds people might be sound and true. The fact that people will not live up to them even though they could is a defect of the people, not of the theory. (2008: 264)⁷

Be that as it may, if we give people a system that trips them up, and don’t *want* to trip them up, then we don’t celebrate our ability to trip them up by saying, ‘People could be good at avoiding the trap I set for them; they just aren’t. That my system turns a normal human trait into a fatal flaw is entirely to be expected, but that is a defect of the people, not the system.’

Note: saying there is no *discernible* defect is not the same as saying there is no defect. If we want to discern whether our ideal is worth a try, then we will not treat our *tools for discerning defects* as distracting details. Yet, when

could assume workers will comply. But (3) if we can safely assume anything about worker compliance, it is the opposite.

What else needs to be said? Perhaps this: anything we have reason to regard as ideal surely has at least some potential not to be catastrophically misleading as a basis for practical proposals. There is no such potential in alleged ideals like ‘*when work stops paying, workers keep acting as if it does*’.

⁷ By ‘discernible defect’ Estlund has something like blatant self-contradiction in mind. Being unfit for people as they are evidently is not a discernible defect, but is instead a defect of the people.

we set aside whether our vision has a robust history of being a hideous response to the human condition, we are working to make sure our vision has no *discernible* defect, while doing nothing to make sure it has no defect.

I may imagine how ideal it would be to move my pawn to K4, but if I fail to anticipate my partner's response, then my so-called imagination is, to chess players, the paradigm of failed imagination. It takes imagination to be a realist. The player who anticipates what can go wrong is the one whose imagination other chess players have reason to admire. Imagining what *would* be ideal in a parametric world is no substitute for being able to imagine what *is* ideal in a strategic world.

Estlund speaks of 'motivational features that are themselves moral defects'. Yet only some institutions elicit predictably defective behaviour, whereas other institutions are exactly right as responses to characteristically human motivational features. If sexism were an underlying propensity, switched on or off by institutional settings, then we have a duty to choose institutions that switch it off. If we choose institutions that switch sexism on, it is our choice of institutions that is reprehensible, not human nature. When a theorist conceives of justice as answering to a *vision* rather than to *people*, the defect is not in the people. If our vision is poisonous for people as they are, the right response is to stop blaming people for being ill equipped to survive what we want to give them, and to start wanting something else.

Crucially, it is false that people 'just aren't good'. How good people are is variable, sensitive to how their institutional structure handles their separateness as decision-makers. When it comes to fostering society as a cooperative venture, it is misleading to say people are not good. Rather, people are not *as* good (not as cooperative, not as benevolent, not as trusting) when operating within frameworks that make free-riding pay.

Pablo Gilabert says, 'It is part of the job of political philosophy to keep ambitious ideals clear and visible, and to criticize a political culture when it becomes complacent and superficial' (2015: ms). I agree. Yet the phrase 'ivory tower' designates philosophy that is complacent and superficial, not ambitious. Insisting on tracking evolving reality is one way – I suspect there is no other – to keep ambitious ideals clear and visible.

It was not an ambitious ideal that drove G. A. Cohen's (2003) retreat into 'feasibility is philosophically irrelevant' mode, as communism fell apart before his eyes. If you are discouraged and hate to admit that your case for communism's economic superiority has been tested and found wanting, then you lean towards a particular kind of idealism. By contrast, **if you want to avoid complacency, don't judge people according to whether they fit your vision. Judge your vision according to whether it fits them.**

2.6 *Realism and Conservatism*

Judging your vision according to whether it is a competent response to the human condition is not a way of being conservative. Starting from here is a way of *starting*, not a way of *staying*, so realism is an orientation towards progress, not a form of conservatism. To a realist, reality is not what needs *justifying* so much as what needs *improving*.

Note that the relevant notion of feasibility here is dynamic; what can't be done today may one day be within reach. It's *realistic* to anticipate that the ceiling of possibility will someday look very different from how it looks today. In 1789, William Wilberforce arguably had no way to muster the votes to abolish England's slave trade, yet it manifestly was feasible to work towards a day when England would have the will to abolish it. We can be biased in an unrealistically conservative as well as an unrealistically radical direction. We underestimate prospects for change at least as often as we overestimate them.⁸

3 **We Are Diverse**

Theorizing about how political animals should live could start by observing the extent of disagreement and diversity in human society. One implication of diversity: diversity is only one of many places to start, and where we start matters.

Consider how idiosyncratic and incompatible our individual visions of perfection are, thus how unfit they are to be a blueprint for a community. Part of the essence of toleration, of mature adulthood and of being fit to live in a community at all is acknowledging that our personal visions do not obligate others – not even if we are so gripped by confirmation bias that we can talk ourselves into believing that our visions cannot reasonably be rejected.

The most primordial political fact of all is the fact that I am not alone. I live among beings who decide for themselves. I may feel that people cannot reasonably reject my deepest convictions about justice. But they can, and they know it. This fact makes politics what it is, and justice what it is.

Honestly taking the fact of diversity into account comes down to grappling with a question like this: 'what terms of engagement are

⁸ Was Wilberforce overconfident in the justness of his cause? I think not, but that may be the wrong question. As I understand, Wilberforce's opponents were overconfident in the justness of their cause, as majorities usually are. They talk themselves into feeling righteous when they bully those with minority views. To complicate things, majorities are not always wrong, and may even be right most of the time. But when they are wrong, and are holding back progress, they will be the last to know.

appropriate for people who do not even agree on which terms of engagement are appropriate?’ The question is not cute. It is the crux of the human condition. Rushing to treat our own intuitions about perfect justice as if our intuitions were rationally compelling would be a paradigmatic way of failing to rise to the level of seriousness that justice demands.

3.1 *Thinking We Should Be on the Same Page Is a Problem*

Theorists sometimes assume they have high standards (even when others can see that they don’t), and console themselves with the thought that human nature is too imperfect to live up to their high standards. In truth, the problem is not that other people cannot live up to ‘high’ standards. The simple reality is that there typically is no reason why they should. People have visions of their own. Liberalism is the insight that this is not a problem.

Some theories make it seem important that we cannot reach consensus on destinations. It is not. What matters is that under favourable circumstances we coordinate on norms of traffic management. We have no history of being able to agree on who has the superior destination. We have a robust history of being able to agree on who has the right of way.

Freedom of religion is an example of the latter; we reached consensus not on what to believe, but on who gets to decide. You need not decide whether my choice of religion is a good choice. You need only decide whether it is *my* choice. People saw that they could ignore the most colonial and brutal premises of their own religions and philosophies. What won the day was not a religion so much as people deciding that religion didn’t have to come up. There is no good reason not to let everyone decide for themselves.

What grew in the soil of religious freedom was more general than religious toleration. What flourished was liberalism: the idea that we need not presume to involve ourselves in running other people’s lives. Our greatest triumphs in learning to live together stem not from agreeing on what is correct, but from agreeing to let people decide for themselves. Freedom of speech has a similar point: *not* to get more speech or to promote anointed versions of ‘diversity’, but to stop presuming to decide as a society.

When discussion is *not* needed, that fact constitutes success in specifying terms of engagement. We make progress by defining jurisdictions that respect people who want and need to share the road, but neither want nor

need to share (or even justify) a destination. No one must accept being relegated to a category of persons whose destination is less important.

Thriving communities minimize our need to justify our destination to others. Indeed, the utility of a traffic management system largely lies in people not needing to justify themselves. We need not stop at intersections to justify our destinations. We stop only because it is someone else's turn. Underlying a healthy society is a logic of coordination rather than unified agency. In a healthy society, people's movements constitute a flow of traffic that moves smoothly, by virtue of people reaching consensus not on what their destinations should be so much as on who has the right of way. No one needs to agree about that. It is enough that we simply expect the people around us to adjust their expectations to fit with what they think others expect of them.

Ideally, we want to be able to co-exist with all of our neighbours, not only the ideal ones. Realistic idealism aims to identify what, if anything, is observably enabling people to thrive under actual conditions, not merely ideal ones. When disagreement is inevitable, our worthy ideal is to make disagreement non-threatening – to *make it safe to disagree*. **Aim not to minimize disagreement but to minimize the need for agreement.** The ideal of a mature political animal is not to win debates, but to avoid needing to win. Realistic idealism does not delude us into thinking other people should be on the same page as we are, and therefore avoids cursing us with the appearance of a mandate to bully those who see things differently.

Is there any alternative to consensus as a political aspiration? Is there a *realistic* ideal? Perhaps it would be something like *balance of power*. When people do not feel that they can safely abuse those with different views and values, society makes progress.⁹

It is (a not quite realistic) ideal that political power be justified to all citizens. No one expects total victory on this front any more than we expect a war on poverty to culminate in a poverty rate of zero. Respecting this ideal in practice involves minimizing how unjustified a regime's exercise of power is. One legitimate way to do that is to minimize the cost of exit (Pennington 2017). That is hardly a total victory, but approximate success marks a society as genuinely liberal. Being 100 per cent justified is not realistic, but it is entirely realistic that exit be a non-appalling option for any citizen appalled to be subject to a given regime.

⁹ Of course, liberal politics does not simply leave things where they were. It manages traffic (dictating that people get to choose their own religion, for example). It does not treat all destinations as equally valuable. It does try to make sure no one (apart from dangerous criminals) is left facing a light that never turns green.

4 Justice Is Not a Peak

John Rawls arguably was the most influential social philosopher of the twentieth century. His greatest work opens with the thought that ‘justice is the first virtue of institutions’ (1999a: 3), from which we infer that a theorist’s main task is to articulate principles of justice. Rawls’s sentence resonates. It is lyrical, poetic, compelling.

But it is not right. Historically, we make progress when we acknowledge that justice is *not* the first virtue. The first virtue of social institutions is that they enable us to be neighbours. In practice, the first thing we need from social institutions is a settled framework of mutual expectation that keeps the peace well enough to foster conditions that enable society to be, in the most rudimentary and non-theory-laden sense, a cooperative venture for mutual benefit.¹⁰

Institutions with this virtue make it safe for us to show up and become a community, contributing goods and services in reasonable expectation of reciprocation. They set up society to become the cooperative venture that Rawls wants it to be. They lay a foundation for a solidarity that frees us to think about what is fair – starting from here.

When we settle disputes, we don’t get resolution by deciding that our vision has a right to be colonial, and that we can condescendingly dismiss rival visions as unreasonable. Instead, real resolution starts by aiming for real resolution. To be in the grip of a vision – *any* vision – is problematic. What we need is not to envision, but to listen. That is, we need politics.

4.1 *Peaks Are Not Real, but Pits Are*

We each have our own theories and visions about the nature of justice: perfect justice. But our respective visions of perfect justice are too personal and idiosyncratic to be a basis for moral life in a social world. It is implausible that justice is *any* of our idiosyncratic peaks. A vision is not the kind of thing that could ever be good at managing traffic among diverse people.

Justice in practice arguably has no essence, which may be why we still lack an uncontroversial articulation of such essence. We would need to have an ideal in mind if there were a destination such that arriving at that summit is just, while arriving anywhere else is not. Yet there is another way of looking at it: justice is not a specific place (or distribution) we need to get to, and it is not a property, except insofar as it consists of an absence of properties that make for injustice. Specifying the essence of justice has turned out to be like specifying the essence of ‘non-circle’. The closest we

¹⁰ This is how I read Williams (2005).

come is to say that justice is (essentially) absence of injustice. If we somehow were to rid ourselves of all the grinding, vicious, overreaching meddling and bullying in the world, justice would simply be the opportunity to thrive in peace that was left over. There is no problem to solve unless people are in one of those pits. Something needs to be done – we need to be somewhere other than where we are – when, but only when, our situation has features that make for injustice.

A noteworthy virtue of this perspective is that defining justice primarily in terms of ‘Thou shalt nots’ (and thereby making justice revolve around an absence of properties that make for injustice) treats justice as *limiting* what we can do with other people’s lives rather than as *dictating* what we can do with our own. Justice so conceived leaves moral agents with room to live lives of their own, which is how justice has to be in order to be taken seriously as a practical guide to living well.

Pits of injustice are not theoretical visions, but real horrors. Justice on the ground is about avoiding the pits of slavery, persecution, and subjugation that lead to famine. Flourishing societies give people room to avoid the pits, pursuing their own personal peaks in their own way, ideally at no one else’s expense.¹¹ The peak metaphor misrepresents that crucial aspect of reality. Oppression and misery are real. Conceptions of justice representing justice as a peak are theoretical constructs. Resources we spend wrestling society towards our imaginary peak and away from someone else’s are wasted. Insisting that justice is a peak, more specifically *our* peak, is not what gets us out of the pits.

To be sure, there is such a thing as climbing. My objective here is not to debunk climbing, but to reflect on what climbing is. When societies climb, it is not towards a *peak*. When we climb towards a more just society, we climb towards an expanding, not a converging, frontier of possibility – an open rather than truncated future.

4.2 *Conflict Management*

Theorists treat justice as more foundational than conflict-resolving rules of practice, yet judges and other conflict management practitioners need to do the opposite. When judges ignore theorizing about what *would be* an

¹¹ Our personal peaks will of course have positive content, and may have to do with, for example, reciprocity, equality, need, or desert. I wrote on such things before (Schmidtz 2006), but did not then doubt that justice has an essence. Moreover, I do not currently believe we can altogether dispense with these positive elements of justice. We may exaggerate how compelling our own personal peaks can be to others, and thus may exaggerate how central a place they can hold as organizing principles for a diverse polis, but they might for all that remain in some way meaningful and relevant. Honestly, I do not know.

ideal response to ideal conditions, they are doing the right thing. Their role is to resolve conflict.

Judges play a role in enabling communities to climb, but see that climbing begins from where we are. It is natural but thoughtless to think a judge's job is to dream about how to do a reset from day one and rebuild society from the ground up according to a vision of justice. If you buy a house in the United States, you do a title search. The point is not to ascertain whether ideals of distributive justice single you out as having the most weighty claim, but simply to uncover any active dispute over title, or any unsettled dispute within the past forty years or so. If nothing turns up, we treat the deed as valid. No one needs reminding that there are no primordially clean land titles. Ascertaining that no one has disputed a title in forty years is not a way of giving up on justice; it is a way of getting on with the kind of justice that can ground society as a cooperative venture. To philosophers, forty years seems arbitrary, but it is property's role that dictates what works as a foundation for cooperative society. To coin a phrase, **foundation follows function**. Judges try to formulate simple rules, in a spirit of equality before the law, that enable litigants to get on with their lives, knowing how to avoid or minimize future conflict.

Property rights, including rights of self-ownership, are essentially rights to say no. The right to say no makes it safe to come to market and contribute to the community, thereby promoting trade, thereby promoting progress. When people have a right to say no and to withdraw, then they can afford *not* to withdraw. They can afford to trust each other. They can afford to live in close proximity and to produce, trade, and prosper without fear.

However, a right to say no is not a weapon of mass destruction. The operating idea is having a right to decline to be involved in a transaction, *not* to forbid transactions among others. Consider a case (see Schmitz 2011b). In *Hinman v. Pacific Air Transport* (1936), a landowner sues an airline for trespass, asserting a right to stop airlines from flying over his property. The court's predicament: because a right to say no grounds a system of property that in turn grounds cooperation among self-owners, it was imperative not to repudiate the right to say no. On the other hand, much of property's point is to facilitate commercial traffic. Ruling that landowners can veto air transport is a red light that would gridlock traffic, not facilitate it. In *Hinman*, a property system had come to be inadequately specified relative to newly emerging forms of commercial traffic. The plaintiff's interpretation of our right to say no implied a right to gridlock air traffic, so the edges of our right to say no needed clarifying.

In *Hinman*, Judge Haney ruled that the right to say no does not extend to the heavens, but only so high as a landowner's actual use. Navigation easements subsequently were interpreted as allowing federal governments to allocate airspace above 500 feet for transportation purposes. The verdict made the system a better solution to a particular problem confronting Judge Haney's court, leaving us with a system of rights that we could *afford*.

If *Hinman* had a right to veto peaceful cooperation, he would have a right to veto progress. If *Hinman* makes demands of people to whom he is of no use, and works to be someone whom society would be better off without, then *Hinman*'s neighbours will ignore him as best they can and seek out contributors: partners less intent on making demands and more intent on having something to offer.¹² That is the fairness that a society can afford.

Property's purpose in managing commercial traffic (the purpose at stake in *Hinman*) has to condition the contours of what we call justice, not the other way around. Taking justice seriously involves seeing justice as something that comes second, not first, because taking justice seriously involves seeing justice as something a society can afford to take seriously.¹³

From a mediator's perspective, the test of theory is how it works in practice, and in practice there is no progress without negotiation and compromise, aiming for what everyone can live with. It is one thing to win. It is another thing to get a result about which no one feels triumphant but to which all can adjust without feeling sacrificed on the altar of a vision they do not (and no one honestly expects them to) share.

Judges have to play fair with the cards they are dealt. Judges can theorize about cards they ideally would have been dealt, and such theorizing is not necessarily irrelevant. But the relevance of such theorizing stems from its implications regarding how best to play their actual cards. While a philosopher's job involves reflecting on how the world ought to be in the grand scheme of things, actual governance is the art of compromise in a world that is not a blank canvas. The practical relevance of political philosophy depends on how well we take our cue from effective conflict mediators.

¹² See Harrison Frye, 'A Different Camping Trip: Offers, Demands, and Incentives' (presentation at Chapman University, 10 July 2015) for the idea that there is a fine line between an offer (to bring a particular service to market for a price) and what others perceive as a demand (when they want the service but resent having to pay).

¹³ We cannot afford to think of justice in terms that will render it obsolete as a response to tomorrow's problems. See Rosenberg (2016).

Some questions have no answers until judges sort out what will help current and potential litigants in particular circumstances to stay out of court. After judges settle a dispute, citizens go forward not with personal visions of justice, but with validated mutual expectations about what to count as their due. Judges get it right when they settle it – when they establish mutual expectations that leave everyone with a basis for moving on.

Effective judges know this. To them, having personal convictions about fairness is not good enough. Judges aim higher, and thereby settle disputes in a way that philosophers and their theories almost never do. Philosophers spend their days convincing themselves that they have enough evidence for their view to justify ignoring the evidence against. Judges spend their days giving litigants a way to get on with their lives.

I have never been employed as a mediator, but after playing football in high school, I coached and served as a referee. Our task as referees was to interpret and apply the rules. With responsibility came power. With power came a measure of discretion. Our calls could determine a game's outcome. Crucially, it was not our place to *prefer* a particular outcome. Favouring a team would have been corrupt. Neither had we any right to prefer games ending in a *tie*. That too would have been incompatible with the unobtrusive impartiality that defines successful refereeing. We had a duty not to aim for *any* outcome, not even an equal one. It was not our place to win. Our aim was to let the players play, and let their futures be of their own making.

4.3 Corruption

Benjamin Barber notes Rawls's lack of realism in a stinging remark: 'When political terms do occasionally appear, they appear in startlingly naive and abstract ways, as if Rawls not only believed that a theory of justice must condition political reality, but that political reality could be regarded as little more than a precipitate of the theory of justice' (1989: 310). Robert Paul Wolff's criticism is equally sharp. He sees in Rawls 'no conception of the generation, deployment, limitations, or problems of political power'.

It would require very considerable political power to enforce the sorts of wage rates, tax policies, transfer payments, and job regulation called for by the difference principle. The men and women who apply the principle, make the calculations, and issue the redistribution orders will be the most powerful persons in the society, be they econometricians, elected representatives, or philosopher-kings.

How are they to acquire this power? How will they protect and enlarge it once they have it? Whose interests will they serve? (1977: 202)

It is indeed startling to see the work of the twentieth century's most influential political philosopher described as 'startlingly naive'.¹⁴ And yet, upon reflection, it is amazing that there is no contemporary philosophical literature on the idea that power corrupts.

Imagine concentrated power in the hands of the worst ruler in living memory. Assume what you know to be true: namely, concentrated political power actually does fall into the hands of people like that. This has an important implication. **When formulating theories about what is politically ideal, ask 'ideally, how much power would be wielded by people like *that*?' and not 'ideally, how much power would be wielded by ideal rulers?'** Which of these questions is a genuine question about the human condition?

One theoretical bottom line is this. The fact that power corrupts bears on how much power we have reason to want there to be. When we ask how much good *an ideal ruler* could do with absolute power, we obscure this. We are working on an idealized problem, and gravitating towards endorsing as much power as it takes to realize our vision of true justice. Yet, among actual corruptible human beings, we ought to regard the raw power to ram any vision of true justice down people's throats as the paradigm of what true justice forbids.

Ideal theory done well cannot be a question of how much power ideally would be wielded by ideal rulers. Ideal theory done well has to be a question about how much power ideally would be wielded by the sort of human being who actually ends up acquiring power in human societies as we know them (Schmidtz 2015).

¹⁴ It would be naïve indeed to suppose for example that, for the sake of fairness, university resources should be distributed among departments in whatever manner is to the greatest advantage of the least advantaged department. However, what Rawls actually says is: the principle applies only to the basic structure. We could simply stipulate this, or we could argue that the Principle more broadly applied often would fail self-inspection. For example, would it be to the greatest advantage of the least advantaged to treat rules of university budgeting as mere summary rules that answer case by case to the Difference Principle? (Would we distribute grades so as to be to the greatest advantage of the least advantaged student?) By the lights of the Difference Principle itself, ignoring empirical aspects of such questions is precisely what we have no right to do when evaluating society's basic structure and when evaluating the proper scope of the Difference Principle's application. If this is Rawls's view, then his view has none of the naïveté that Barber and Wolff find in the Difference Principle. The Difference Principle informs one and only one practice: namely the practice of *judging the fairness* of society's basic structure.

5 Conclusion

This chapter offers several conjectures about what it takes to make theorizing about political animals worthwhile. Formulated as practical advice, my conjectures are:

- (a) **Theorize about players, not pawns.** We are political animals living in a strategic world. To theorize about which institutions are realistically ideal for political animals, we need to theorize about which *incentive structures* are ideal.
- (b) **Theorize about ideals, but beware of *starting* with ideals.** From what I observe, theorizing in actual practice spirals between our articulating of problems and of solutions. Introspectively, it will seem true that before we were reasoning about the one, there was a previous stage of reasoning about the other. (See also Philp 2012.) Inevitably, it will feel right to ask ‘to theorize about *x*, don’t you need some conception of *y*?’ Perhaps observation inevitably is theory-laden. (That very thought is so obviously a theory-laden observation.) However, it is just as true that some theories (including some ideal theories) are *observation* laden, and those are the theories we have reason to take seriously. Those are the theories that began life as responses to something real.
- (c) **Avoid solving idealized problems.** More generally, theorizing about what *would be* ideal if reality were no constraint is a variation on the idealist theme, but not a realistic one. Realistic idealism works in the space of *educated* guesses about how the world works and how the world could work.
- (d) **Set aside details and focus on what you see as a problem’s essence.** Acknowledge that you exercise judgment when you set aside details. Even if you do not beg the question, others will think you did. When you simplify, beware of the impulse to simplify with prejudice by setting aside, as a ‘distraction’, what reveals that your solution is not ideal.
- (e) **Acknowledge that your reasons for seeing the world as you do are not compelling.** Theorize about a world of people who do not see it your way, and who are perfectly aware that there is no reason why they should. Societies thrive not when they minimize disagreement so much as when they minimize the need for agreement.
- (f) **Question the platitude that justice is the first virtue of social institutions.** In practice, what a theorist calls justice will be that theorist’s personal vision. But in a world of people who see things differently, the first virtue of social institutions is that they curb the hunger to impose a vision. To do that, institutions need to manage

traffic in such a way as to minimize conflict and to resolve conflict effectively when it does occur.

Social structures that make it easier to resolve and avoid conflict go a long way towards fostering society as cooperative venture. To the extent that a society is such a venture, it is responding well to the human condition. People are learning to trust each other far enough, and to adjust their expectations far enough, to constitute themselves as a kingdom of ends.

Over-specialized theorists will rush to get to more familiar ground by pointing out ways in which a society can be thriving yet not just. Of course! What suffices to resolve conflict is not guaranteed to be fair. Nevertheless, a resolution that stops the fighting will tend to do so partly by virtue of resonating with what seems fair enough at the time. Some societies have a primary, towering liberal virtue – the virtue of letting people pursue hopes and dreams of their own, in ways that make them appreciate each other as neighbours. Those societies are not guaranteed to be just, yet those are the societies that have a chance to be just.

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