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First steps toward a nonideal theory of justice

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Abstract
Theorists have long debated whether John Rawls' conception of justice as fairness can be extended to nonideal (i.e. unjust) social and political conditions, and if so, what the proper way of extending it is. This paper argues that in order to properly extend justice as fairness to nonideal conditions, Rawls' most famous innovation—the original position—must be reconceived in the form of a 'nonideal original position'. I begin by providing a new analysis of the ideal/nonideal theory distinction within Rawls' theoretical framework. I then systematically construct a nonideal original position, showing that although its parties must have Rawls' principles of ideal justice and priority relations as background aims, the parties should be entirely free to weigh those aims against whatever burdens and benefits they might face under nonideal conditions. Next, I show that the parties ought to aim to secure for themselves a special class of *nonideal primary goods*: all-purpose goods similar to Rawls' original primary goods, but which in this case are all-purpose goods individuals might use to (a) promote Rawlsian ideals under nonideal conditions, (b) weigh Rawls' principles of ideal justice and priority relations against whatever burdens and benefits they might face under nonideal conditions, and (c) effectively pursue their most favored weighting thereof. Finally, I defend a provisional list of nonideal primary goods, and briefly speculate on how the parties to the nonideal original position might deliberate to principles of nonideal justice for distributing them.

Keywords: *justice; fairness; Rawls; ideal; nonideal; political; morality*

In *A Theory of Justice* and *Political Liberalism*, John Rawls famously argued that 'justice is fairness', and used a model of social and political fairness—the 'original position'—to derive two principles of justice to govern a fully just (or ideal) society.[1] However, because Rawls only applied the original position to the question of which principles of justice would govern a fully just society, theorists have long debated whether justice as fairness can be extended to nonideal conditions that fall short of full justice, and if so, what the proper way of extending it is.[2] This paper aims to

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contribute substantially to this debate by beginning a project that Rawls once briefly alluded to but which has never been explored: systematically extending his entire theoretical apparatus, including the original position itself, to nonideal conditions.

This paper's first section clarifies the ideal/nonideal theory distinction in Rawls' theoretical framework. Contrary to Rawls and the existing literature, I argue that Rawlsian nonideal theory should be understood as having three fundamentally different parts, with each part corresponding to conditions in which one or more of Rawls' three idealizing assumptions (strict-compliance, reasonably favorable conditions, and circumstances of justice) fail to be met. The paper's second section then argues that because the original position is a fair procedure for arriving at principles of justice, we must systematically apply the original position to nonideal conditions in the form of a 'nonideal original position' in order to know what justice as fairness requires under those conditions. The remainder of the paper then begins to systematically construct and apply a nonideal original position to one part of nonideal theory: the part that, following Rawls, I will call 'Partial-Compliance Theory' (more on this below). After constructing a nonideal original position for Partial-Compliance Theory, I argue that its parties should pursue 'nonideal primary goods' similar to, but distinct from, the 'social primary goods' Rawls focuses on within ideal theory, and I defend a provisional list of three nonideal primary goods. Finally, the paper concludes by briefly speculating about how the parties to the nonideal original position should deliberate to principles of nonideal justice for distributing nonideal primary goods.

A few preliminary remarks are necessary before proceeding. First, there are ongoing debates about whether ideal theorizing in moral and political philosophy is fundamentally misguided,[3] and about whether this is true at least of Rawls' specific approach to ideal theorizing.[4] This paper will not enter into these debates directly, as it is outside the scope of the paper's project—which, again, is merely to begin extending justice as fairness to nonideal theory. However, although this paper does not enter into these debates, it does have important implications for them. In broad outline, this paper shows that even if standard criticisms of Rawls' ideal theory are correct—even if, in particular, Rawls' ideal theory abstracts away from costs and tradeoffs that arise in any realistic society[5]—these issues can be adequately addressed at the level of nonideal theory. In other words, this paper aims to show that even if Rawls' ideal theory is in some sense overly utopian, it can be extended to nonideal conditions in a way that *corrects* for its utopianism—an important finding.

Second, although I clarify the ideal/nonideal theory distinction within Rawls' theoretical framework, this paper does not enter into current debates over ideal and nonideal more generally.[6] I must leave such questions—such as whether Rawls' framework embodies the distinction correctly—for investigation elsewhere.

Third, this paper only examines ideal and nonideal theory within Rawls' theory of *domestic* justice, leaving discussions of his theory of international justice,[7] as well as questions about whether his theory of domestic justice should extended to the world as a whole as a cosmopolitan theory of justice[8] (and what this might mean for ideal/nonideal theory), for elsewhere.

IDEAL AND NONIDEAL THEORY IN JUSTICE AS FAIRNESS

Rawls explicitly identified ideal theory with 'strict-compliance theory'—that is, as the area of a theory of justice specifying which principles ought to govern the basic structure of society *on the assumption that those principles will be generally complied with*.[9] As A. John Simmons points out,[10] Rawls' identification of ideal theory with 'strict-compliance theory' makes intuitive sense. If justice is fairness, then a fully fair (and just) society will intuitively be one in which individuals and institutions strictly comply with fair principles.

Rawls then defined nonideal theory by negation—as 'less happy conditions', or conditions that depart from strict-compliance with his principles of justice.[11] However, Rawls also suggested that nonideal theory should have two divisions: one division dealing with injustice, and another area to deal with 'historical contingencies' (such as poverty) that make conformity with principles of ideal theory impossible or undesirable.[12] Rawls' thought here seems to be that because injustice and historical contingencies present very different challenges to overcome, nonideal theory will need two substantially different parts.

Recently, however, Simmons has argued, against Rawls, that there are in fact six distinct ways societies can be 'nonideal' in Rawls' theoretical framework—namely[13]:

1. Deliberate noncompliance of society's basic structure with principles of ideal justice (institutional injustice).
2. Unfortunate noncompliance of society's basic structure with principles of ideal justice (e.g. poverty, culture).
3. Deliberate noncompliance with principles of ideal justice *by individuals* (e.g. wrongs, crimes).
4. Unfortunate noncompliance with principles of ideal justice *by individuals* (e.g. insanity, immaturity).
5. Deliberate noncompliance of societies with principles of ideal *international* justice (viz. 'outlaw states').
6. Unfortunate noncompliance of societies with principles of ideal *international* justice (viz. 'burdened societies').

Although I believe Simmons' analysis here is correct as far as it goes, I will now show that it is incomplete. For although Rawls identified ideal theory with 'strict-compliance theory', and although Simmons and many others have broadly followed Rawls in this,[14] Rawls' ideal theory is predicated upon three distinct idealizing assumptions, each of which demarcate unique areas of ideal and nonideal theory.

First, in addition to assuming strict-compliance, Rawls stipulated that the parties to the original position assume 'circumstances of justice', or 'the normal conditions under which human cooperation is both possible and necessary'.[15] Rawls understood these circumstances as including *objective conditions* that make human cooperation both possible and necessary (e.g. many individuals coexisting within a definite geography, etc.), as well as certain *subjective conditions* (e.g. a willingness of people to

cooperate for mutual advantage, though not necessarily for equal advantage or with equal liberties—more on this shortly).[16] Rawls' reason for assuming circumstances of justice in constructing his ideal theory is straightforward. A fully just (or ideal) society cannot exist at all without being a *society*: a territory in which people are generally able and willing to cooperate under common social–political institutions.

However—and this has not been sufficiently appreciated in the literature—there are at least some nonideal, real-world conditions in which Rawlsian circumstances of justice fail to obtain, *and in which considerations of justice still intuitively apply.* Failed states, for example—social–political conditions where no stable, functioning society or government exists—are conditions in which circumstances of justice may fail to obtain. First, in a failed state, the 'subjective' component of circumstances of justice may fail to obtain: there may be little or no willingness of different factions to cooperate with one another. Second, 'objective' circumstances of justice may also fail to obtain: there may not even be a stable set of individuals existing in a well-defined territory (state borders may be in dispute, and there may be a significant number of displaced people or refugees). Similarly, consider Tim Mulgan's recent examination of justice in a 'broken world': a world in which environmental catastrophe has rendered normal circumstances of human cooperation impossible, but in which people can still cooperate to some extent in a harsh environment where there are not enough natural resources for all to survive.[17] Such a situation would also not appear to satisfy Rawls' definition of circumstances of justice, given that Rawls explicitly assumes objective circumstances of justice to include conditions of moderate scarcity of goods, rather than extreme scarcity.[18]

There are a few important things to note here. First, with respect to these types of conditions, Rawls' assumption of circumstances of justice is clearly an *idealization*: it embodies circumstances which may obtain, but which in certain real-world conditions (e.g. failed states, a 'broken world') may not. Second—and this is crucial—considerations of justice still arguably apply to such situations. One can sensibly ask how to respond to *abnormal* conditions of human cooperation in a fair and just manner. For example, one can clearly ask what the most fair and just way would be to respond to conditions in a failed state. Similarly, one can surely ask—as Mulgan does ask—what would be the most fair and just way to respond to a world of environmental catastrophe. Of course, it may well turn out, after further analysis, that there is no fair and just way to respond to such conditions. But this is a question worth investigating, not one to rule out without further argument. Finally, failures of circumstances of justice intuitively raise unique questions of nonideal justice not adequately recognized in the standard identification of ideal theory with 'strict-compliance theory'. When circumstances of justice fail to exist, the fundamental question of nonideal justice will not be as simple as, 'How can we fairly and justly bring about strict-compliance with principles of ideal justice?' Rather, it will be more like the following: 'How can we (1) fairly and justly respond to the absence of circumstances of justice *as they exist*, (2) *if possible*, fairly and justly *bring about*

circumstances of justice, so that (3) *in time*, we can fairly and justly bring about a fully just society?'

Rawls also makes a second idealizing assumption short of strict-compliance in constructing his ideal theory: he assumes 'reasonably favorable conditions', or 'social circumstances which, provided the political will exists, permit the effective establishment and the full exercise of basic liberties'.[19] As with his assumption of circumstances of justice, this assumption makes intuitive sense for the sake of constructing a theory of a just society. Given that, for Rawls, an ideally just society conforms to a principle of equal basic liberties, an ideally just society presupposes conditions under which the full exercise of basic liberties *can* be enjoyed, at least with sufficient social and political will. Note that this assumption idealizes more than Rawls' first assumption of circumstances of justice, in which normal conditions for *mere* social cooperation were assumed. Rawls' assumption of reasonably favorable conditions goes beyond this by stipulating that all can enjoy the full value of basic liberties. Finally, here is the crucial point: there are *distinct* real-world conditions in which Rawlsian circumstances of justice exist but reasonably favorable conditions do not. Consider, for example, slavery in the United States during the 18th and 19th centuries. During this time, the United States was of course a *society* (i.e. circumstances of justice obtained). However, reasonably favorable conditions did not obtain: the effective establishment and full exercise of basic liberties for all in the United States was—at least for a very long time—impossible. The institution of slavery was so deeply entrenched in the American social–political system that it took a massive, bloody civil war to abolish slavery and thereby make reasonably favorable conditions possible. Thus, in unfavorable conditions, the fundamental question of domestic nonideal justice is intuitively, 'What is a fair and just response to conditions in which some do not enjoy the full value of basic liberties, and the enjoyment of the full value of basic liberties for all is at least temporarily *impossible* (but perhaps possible to bring about in time)?'

The lessons here are as follows. It is a mistake to dichotomize the distinction between ideal and nonideal theory in Rawls' theoretical framework.[20] There are, rather, three distinct ways in which Rawls' ideal theory of a fully just society idealizes beyond possible real-world conditions, and consequently, three distinct areas of domestic nonideal theory—namely:

- **Partial-Compliance Theory ('mild-to-moderate injustice')**: what does justice as fairness require when circumstances of justice and reasonably favorable conditions both obtain, but strict-compliance with principles of ideal justice does not? (viz. what is a fair and just way to respond to injustice *in a society in which all can enjoy the full exercise of basic liberties, provided sufficient social-political will exists?*).
- **Unfavorable-Conditions Theory ('severe injustice')**: what does justice as fairness require when Rawlsian circumstances of justice obtain, but neither reasonably favorable conditions nor strict-compliance with principles of ideal justice obtain? (viz. what is a fair and just way to respond to injustice *in a society*

where the establishment and full exercise of basic liberties cannot be enjoyed by all, as in a slave state?).

- **No-Circumstances-of-Justice Theory ('normal conditions of human cooperation do not obtain')**: what does justice as fairness require when none of Rawls' idealizing assumptions obtain, not even circumstances of justice? (viz. what is a fair and just way to respond to *abnormal* conditions of human cooperation, as in a failed state or a world of severe scarcity?).

Finally, I submit that we should then think of Simmons' taxonomy as applying *within* all three fundamental areas of nonideal theory, as there can be deliberate or non-deliberate failures by individuals and/or institutions to realize (a) circumstances of justice, (b) reasonably favorable conditions, and (c) strict-compliance with Rawls' principles of ideal justice.

We are now in position to focus our inquiry. The remainder of this paper will address the first major division of nonideal theory identified above: Partial-Compliance Theory. I will begin to systematically extend justice as fairness to injustices arising in a society *in which the establishment and full exercise of basic liberties is achievable with sufficient social and political will*. I take paradigm examples of such conditions to include [a] the US after the abolition of slavery—when individuals of all races and genders enjoyed basic liberties, but not yet *equal* basic liberties or their *full* value, [b] conditions in the US today where individuals in the LGBTQ community do not enjoy equal basic liberties or their full value [e.g. their right to marry is not federally protected], [c] gender injustice in many contemporary Islamic states, and [d] unjust inequalities of opportunity and economic benefit in most societies today. I will leave further examination of the other two fundamental parts of domestic nonideal theory identified above, the investigation of nonideal theory in the case of Rawls' theory of international justice (and cosmopolitan variations thereof), and finally, the various areas of Simmons' taxonomy, for future investigation elsewhere.

THE CASE FOR A NONIDEAL ORIGINAL POSITION

There are straightforward reasons to believe that, in order to properly extend justice as fairness to nonideal conditions (including Partial-Compliance Theory), we must systematically apply the original position to those conditions in the form of a 'nonideal original position'. First, for Rawls, *justice is fairness*: domestic justice is a matter of the basic structure of society conforming to principles that free and equal citizens could all rationally accept from an original position of fairness. Second, the original position *just is* an original position of fairness: it is a perfectly fair procedure modeling free and equal citizens deliberating to an agreement on principles of justice. Third, Rawls only applied the original position to conditions in which circumstances of justice, reasonably favorable conditions, and strict-compliance *all* obtain. Consequently, we have the following argument for the conclusion that a nonideal original position is necessary for determining what justice as fairness requires under nonideal conditions:

1. Justice is fairness. [assumption]
2. The original position models a perfectly fair procedure for free and equal citizens to deliberate to a rational agreement on principles of justice. [assumption]
3. However, the original position has only been applied to conditions of:
   a. Strict-compliance;
   b. Reasonably favorable conditions; and
   c. Circumstances of justice.
4. Thus (from 1–3), we have, at most, an account of what justice as fairness requires under conditions that satisfy assumptions (a)–(c).
5. If (1)–(3) are true, then a 'nonideal original position'—the original position applied to conditions in which one or more of (a)–(c) fail to obtain—is necessary for determining what justice as fairness requires under conditions in which one or more of (a)–(c) fail to obtain.
6. Thus (from 4&5), a nonideal original position is necessary for determining what justice as fairness requires under nonideal conditions in which one or more of (a)–(c) fail to obtain.

Relative to its starting assumptions (that justice is fairness, and the original position a fair procedure), this argument is sound. If justice is fairness, and the original position is a perfectly fair procedure for arriving at principles of justice, then a *nonideal original position* is necessary for specifying what is fair and just under nonideal conditions.[21]

THE NONIDEAL ORIGINAL POSITION: PARTIAL-COMPLIANCE THEORY

A nonideal original position should model three things. First, because nonideal conditions are less than fully just, and justice is a normative notion (viz. injustices are wrong), *everyone* under nonideal conditions must be modeled as having an equal obligation to prefer a fully just society and the elimination of any and every injustice (note that this fits nicely with Rawls' own idea that everyone in nonideal conditions has 'natural duties of justice').[22] Second, the nonideal original position should model the fact that not everyone lives up to that obligation. The parties should have to deal with the reality that many people in nonideal conditions are (wrongly) ambivalent or even opposed to the realization of a just society. Third, the nonideal original position should model the *fair treatment of all* under nonideal conditions, including those who do not live up to their obligations to prefer a just society (since, even if they are ambivalent to or opposed to realizing such a society, they may have other *legitimate* claims to fairness).

How can we model all three things simultaneously? I will now argue that although the parties to a nonideal original position should assume behind the veil of ignorance that they could be *anyone* living under unjust conditions (including individuals who are ambivalent to or opposed to realizing a just society)—so as to model fairness to all—the parties should also all have a *preference for realizing a just society* behind the

veil of ignorance (thus modeling the equal obligation of all to prefer the realization of a just society). Although this might appear incoherent at first—both ascribing a preference for justice to the parties behind the veil of ignorance and allowing that they may *not* have that very preference once the veil is raised (e.g. insofar as they could 'turn out' to be someone who is ambivalent to or opposed to justice)—I will show that this construction is perfectly coherent, and indeed, intuitive. The parties behind the veil of ignorance should be understood as free and equal citizens looking to treat *all* fairly, while at the same time holding all individuals—including those ambivalent to or opposed to justice—to the obligation that each and every one of them has *to favor a just society.* Let us see precisely how this is by constructing a nonideal original position, one component at a time.

We should begin with the question of who should be included in the nonideal original position. If justice is fairness, the answer is clear: *everyone* under nonideal conditions should be included, as everyone should be treated fairly and justly. Since we are only dealing with Domestic Partial-Compliance Theory in this paper—what justice as fairness requires within a society under conditions of partial-compliance—the parties to our nonideal original position should therefore be every citizen living in a society that partially complies with Rawls' principles of justice under reasonably favorable conditions (as these conditions were described earlier).

Three points are important to clarify here. First, although the parties should assume that they are someone living in a society under conditions of partial compliance, the parties should not know *which* society they live in (e.g. the United States, France, etc.), nor the precise manner in which their society is unjust. The parties should know that their society may be one that fails to strictly-comply in some way with Rawls' first principle of justice (e.g. a society that does not give all citizens equal basic liberties), but also that it may be one that fails to strictly-comply with either or both parts of Rawls' second principle (e.g. a society that does not ensure fair equality of opportunity or conform to the difference principle).[23] The parties should not know any of these things because we are looking to derive *general* principles of nonideal justice for Domestic Partial-Compliance Theory: principles that specify what it is to respond fairly and justly to any injustices in any society under conditions of partial-compliance.

Second, the parties should assume reasonably favorable conditions—that is, they should assume that although their society may not be one in which all citizens presently enjoy the full exercise of basic liberties, they live in a society in which the enjoyment and full exercise of basic liberties could be *feasibly* brought about with sufficient social–political will (as was the case of the United States during the civil rights movement, and indeed, as is the case today with LGBTQ rights).

Finally, because past, present, and future injustices in a society are all relevant from the standpoint of justice, this too must be taken into account. In Partial-Compliance Theory, one must ask what is a fair and just way to respond to the facts that (1) injustices may have occurred in the past (is it fair to take steps to rectify them?), (2) injustices may exist presently, and (3) injustices may continue to exist in the future, while keeping in mind that (4) *the past has already occurred and cannot*

be changed. Because the past has already occurred, and past people no longer exist, the parties to the nonideal original position should know that they could turn out to be any *present or future* individual living in partial-compliance conditions—knowing, however, that many of these individuals will have preferences about how to *rectify past injustices* (in addition to preferences concerning present and future injustices). Thus, we have:

I. The parties to the nonideal original position for Domestic Partial-Compliance Theory should be any and every *present or future* citizen living in any society that partially-complies with Rawls' principles of ideal justice under reasonably favorable conditions (knowing, however, that many such individuals have preferences regarding the rectification of past injustices).

Now let us turn to the formulation of the nonideal original position's 'nonideal veil of ignorance'. First, as we have just seen, the parties to the nonideal original position should not know which society they live in, nor the specific conditions of partial-compliance they face. Second, in all other respects, the nonideal original position's veil of ignorance should be identical to Rawls' specification of it within ideal theory. In order to ensure that everyone is treated fairly, no one should be given any information they might use to arbitrarily advantage or disadvantage anyone, such as knowledge of their own race, gender, social class, religion, talents, etc. Thus, we have:

II. The nonideal original position's 'nonideal veil of ignorance' should be identical in every way to Rawls' original veil of ignorance, the only difference being that the parties are to assume that they live under conditions of partial-compliance.

Let us turn, next, to the parties' motivations behind the veil of ignorance. In developing the original position within ideal theory, Rawls stipulated that the parties to the original position are to be understood as (1) rational in a classical game-theoretic sense (as aiming to effectively pursue their ends under conditions of uncertainty), (2) relative to an assumption of strict-compliance.[24] In short, the parties behind Rawls' veil were to be understood as seeking to satisfy whatever preferences they might have under social–political conditions in which citizens and institutions are assumed to strictly-comply with whichever principles of justice are agreed upon.

The motivations of the parties to a nonideal original position should clearly be quite different. If justice is fairness, and nonideal conditions are (by definition) unjust, then—since justice is a normative notion (injustice is wrong)—*every* individual living under nonideal conditions should be represented as being under an equal obligation to prefer the realization of a fully just society (which, again, fits well with Rawls' own idea that all are under natural duties of justice).[25] We can do this by stipulating that every individual in the nonideal original position is to deliberate from a background preference for realizing a just society—an assumption

modeling, behind the veil, *the equal obligation of all to prefer the realization of a fully just society.* Hence, we have:

III. The parties to the nonideal original position must all be understood as having a preference in favor of realizing a fully just society in conformity with the principles of ideal theory (including those principles' priority relations).

It is at this point that we encounter the possible incoherence mentioned earlier. We assumed, in (I) and (II), that the parties to the nonideal original position should be situated behind a veil of ignorance in which they deliberate as though they could turn out to be *any* citizen in a society under conditions of partial-compliance, including citizens who are ambivalent to or even opposed to the realization of a fully just society. However, this would seem to contradict (III): the proposition that every individual behind the nonideal veil of ignorance has a preference *for* realizing a just society. It looks as though we have simultaneously ascribed a preference to all of the parties to the nonideal original position (a preference for realizing a fully just society), while at the same time allowing that some of them may *not* have that preference once the veil is raised—an apparent contradiction.

The situation here is rendered coherent very simply: by imagining the parties behind the veil seeking to *impose* the preference they have for Rawls' principles and priority relations on every 'ambivalent' or 'unjust' individual they could turn out to be once the veil is raised. Because the parties behind the veil all have preferences for realizing a fully just society, they should want to *make* individuals who are ambivalent or opposed to justice (1) *come to accept* Rawls' principles of ideal theory (and those principles' priority relations), thereby (2) *giving up* whatever preferences they might have that are rooted in any kind of ambivalence or opposition to the realization of a fully just society. This is a sensible and coherent notion. Anyone who accepts a particular conception of justice will surely want all 'ambivalent' or 'unjust' people to *cease* being ambivalent or opposed to justice, and instead adopt just ends (viz. preferring a fully just society). The nonideal original position models just this.

Now that we have established that the parties behind the nonideal veil of ignorance should all have a preference for realizing fully just conditions, and consequently, wish to *change* any ambivalence or opposition to Rawls' principles or priority relations they may turn out to have once the veil is raised, we need to investigate the relationship their preference for Rawlsian ideals and priority relations should have *vis-à-vis* other preferences they might turn out to have under nonideal conditions. In particular, should the parties' preference for realizing a fully just society take priority over other preferences they might turn out to have once the veil is raised?

The answer to this question is simple: given that Rawls entirely abstracted away from nonideal conditions in constructing his ideal theory, there are *no* grounds in his theoretical framework for restricting the manner in which people in nonideal conditions can legitimately weigh preferences for Rawlsian ideals and priority relations against other preferences they might have under nonideal conditions (aside from the aforementioned restriction that preferences rooted in ambivalence or

outright opposition to realizing a fully just society cannot be legitimately so weighed). In other words, the parties should be entirely free to, and have an interest in, rationally weighing preferences for Rawlsian ideals against *any and all* preferences they might have under nonideal conditions consistent with a preference in favor of Rawlsian ideals.

To see precisely why this is, consider an individual under nonideal circumstances who genuinely prefers the realization of a fully just society (living up to their obligation to prefer Rawlsian ideals), but who would prefer not to suffer certain burdens for the sake of realizing those ideals, such as being arrested, beaten or lynched. Similarly, consider the real-life story of a women's rights activist in Iran who prefers social progress to occur in a manner that enables her to maintain a positive relationship with her (chauvinist) father, rather than in a manner that might estrange her from him.[26] These kinds of preferences concerning costs and tradeoffs in nonideal conditions tend to be deeply important to people in real life. And yet, as Colin Farrelly and others have pointed out,[27] by assuming strict-compliance within ideal theory, Rawls' arguments within ideal theory essentially abstract away from *any and all* such preferences. Consequently, Rawls' theoretical framework does not provide any philosophical grounds for imposing some conception of which kinds of such preferences (preferences people have *in response* to nonideal conditions) are fair to weigh against a preference for realizing a fully just society.

Interestingly, there are indications that Rawls (at least tacitly) realized this himself. As he wrote in the following passage, his argument in ideal theory at most establishes that the principles of ideal theory must be *an* aim under nonideal conditions, not a *sole* or *dominant* aim:

> Because the parties are choosing a conception of justice suitable for favorable conditions…the principles [of justice] define then a perfectly just scheme; they belong to ideal theory and set up *an* aim to guide the course of social reform.[28]

To set limits on the manner in which individuals in the nonideal original position may weigh Rawls' principles and priority relations against their nonideal preferences would be to *go beyond anything that Rawls' ideal-theoretic arguments have established*. His arguments at most establish that his principles of justice and priority relations should govern a fully just society, *not* how they can be fairly and justly weighed against nonideal burdens and benefits. That is an issue that we must use the nonideal original position to settle, not one that we can legitimately settle by stipulation beforehand.

Thus, we have:

IV. The parties to the nonideal original position should be entirely free to weigh, and take an interest in rationally weighing, their preference for realizing a fully just society against any and all preferences they might have under nonideal conditions *not caused by ambivalence to or opposition to Rawlsian ideals*.

We should pause here to briefly consider a couple of worries.

A first worry is this: won't *any* preferences that do not support the immediate realization of a fully just society—preferences not to suffer arrest or detention, for example, or preferences to maintain stable relationships with family members—amount to 'ambivalence' to Rawls' principles and priority relations, thus qualifying as illegitimate to pursue (given the parties' preference for a fully just society)?

My reply to this worry is simple. If we understand preferences in the standard philosophical sense—as *dispositions* to act—then as long as a person has *some* disposition in favor of Rawls' ideals and priority relations, they have Rawls' principles and priority relations as an aim in every relevant sense (which is all Rawls' ideal-theoretic arguments have established the parties must have). Provided a person has at least *some* disposition to see Rawls' principles and priority relations realized, there are no grounds for considering any other dispositions they may have under nonideal conditions—such as dispositions to avoid arrest, detention, or estrangement from family, friends, and associates—as involving any kind of objectionable ambivalence or opposition to a just society. The only kinds of dispositions the parties to the nonideal original position should consider illegitimate to advance are dispositions comprising genuine ambivalence to Rawls' principles (viz. the person has no disposition to see Rawls' principles or priority relations realized) or outright opposition to them (viz. preferences for one or more of Rawls' principles or priority relations never to be realized, not even as a long-term goal—in other words, preferences in *favor* of injustice).

This brings us to a second worry, which is that understanding the parties as perfectly free to weigh preferences for Rawlsian ideals against other preferences fails to give nonideal justice 'sufficient direction'.[29] The worry is this: wouldn't it be possible in principle for individuals with a background preference for Rawlsian ideals to prefer *moving away* from a fully just society—or perhaps prefer to *remain under unjust conditions*—if, in their view, the costs of moving toward a fully just society are too high?

My answer to this worry is two-fold. First, at this stage of inquiry (constructing the nonideal original position), I do not think that we should rule out the idea that moving further away from a just society might, in some circumstances, be just. Indeed, Rawls even suggested this himself, stating explicitly that unequal basic liberties (contrary to his first principle of justice) might be temporarily justifiable under certain historical circumstances, such as conditions of slavery, religious intolerance, or severe poverty.[30] Consider for example the US Civil War. Although we cannot evaluate the justice of the Civil War here, it is important to point out that it did involve a temporary but very significant step further away from a just society (civil war undermines 'circumstances of justice' by rendering normal social cooperation in a territory impossible), but for the sake of *ultimately* transitioning toward a more just society, with the abolition of slavery. An important caveat here is the assumption that any movement away from a just society will be transitory and—in line with the parties' preference for realizing a just society—in support of a long-term goal to move closer to a more just society.

This brings me to the second part of my reply, which is that I believe the parties to the nonideal original position will sufficiently address these issues at the level of the *outcome* of their deliberations (i.e. the principles of nonideal justice they agree upon). Although, as we will see later, these issues must be left for future inquiry, I believe there are *prima facie* reasons to believe that the parties should agree to principles of nonideal justice that *empower the most oppressed by injustice who possess the right ideals* to collectively mobilize for social reform. Historically speaking, empowering oppressed individuals with the right ideals does not to lead away from a more just society: it tends to lead *toward* it, and for obvious reasons. Such individuals are usually, though not always, willing to suffer a great deal for the sake of justice (i.e. for the sake of obtaining rights, liberties, opportunities, etc., they have been unjustly denied). Indeed, historical examples of oppressed classes of people *with the right ideals* seeking to exacerbate the very injustices they face are practically nonexistent. Thus, although the parties' *motivations* within the nonideal original position may not appear to lend enough 'direction' to their deliberations, I believe the *outcome* of their deliberations (the principles of nonideal justice they agree to) will lend sufficient direction to social progress.

Now that we have seen why the parties should be wholly free to weigh Rawlsian ideals against nonideal burdens and benefits, it is evident that they have one final interest behind the veil of ignorance: an interest in *effectively pursuing* whatever such weighting they might turn out to favor under nonideal conditions once the veil is raised (and so, for 'unjust' or 'ambivalent' individuals, the most favored weightings such individuals *counterfactually would have* if, contrary to fact, they had a background preference for realizing a just society). Hence, we have:

V. The parties to the nonideal original position should have a goal behind the veil of ignorance of effectively pursuing the most favored weighting of Rawlsian ideals against nonideal burdens and benefits of every individual they could turn out to be once the veil of ignorance is raised.

Here, then, is a complete description of the parties' deliberative situation:

I. The parties should assume that they could turn out to be any individual in a domestic society under nonideal conditions of partial compliance.
II. They should be situated behind a nonideal veil of ignorance that withholds from them any and all information they might use to unfairly bias an agreement on principles of nonideal justice.
III. They should all have a preference for realizing a fully just society (in accordance with Rawls' principles of ideal theory and priority relations).
IV. They should all be entirely free to weigh, and take an interest in rationally weighing, their preference for a fully just society against any and all other preferences they may have under nonideal conditions not rooted in ambivalence or opposition to the realization of a fully just society.
V. They should have a preference for effectively pursuing whatever such weighting they might turn out to have once the veil is raised.

Although this is a complex deliberative situation, I submit that it follows that the parties have *three higher-order interests* behind the veil of ignorance similar to the three higher-order interests that Rawls attributes to the parties to his ideal-theoretic original position[31]—interests which specify what the parties should pursue given the totality of their deliberative situation behind the veil. First, components (I)–(III) of the nonideal original position entail the following higher-order interest:

(A) Every party behind the veil of ignorance should want to bring people in nonideal conditions who are ambivalent or opposed to the *realization of a fully just society to prefer the realization of a fully just society* (in conformity with Rawls' principles and priority relations of ideal theory).

This is, I believe, perfectly intuitive. Whatever else nonideal justice may be, it intuitively must involve promoting the ideals that define a just society. Next, conditions (I)–(IV) jointly entail that:

(B) Every party to the nonideal original position should want to enable all people who prefer Rawlsian ideals under partial-compliance conditions to *rationally weigh those principles and priorities against any other preferences they might have under those conditions*.

Finally, condition (V) entails that:

(C) Every party to the nonideal original position should want to enable every person in partial-compliance conditions who has Rawlsian ideals and has rationally weighed them against their nonideal preferences to *effectively pursue their most favored weighting as such*.

I will now argue that because the parties have interests (A)–(C) behind the veil, they should aim to ensure that every individual they could turn out to be enjoys certain all-purpose, 'nonideal primary goods' for effectively pursuing (A)–(C) under partial-compliance conditions.

NONIDEAL PRIMARY GOODS

Given that the parties do not know who they will turn out to be once the veil is raised, it is rational for the parties to seek *all-purpose goods* that will enable people to effectively pursue interests (A)–(C) under nonideal conditions. Let us call any and all such all-purpose goods 'nonideal primary goods'.

What types of goods might be all-purpose goods of this sort? One tempting answer might be Rawls' own original list of primary goods: basic rights and liberties, opportunities, income and wealth, and social props for self-respect.[32] After all, suppose an oppressed person with Rawlsian ideals comes to have more rights and liberties, opportunities, or wealth than they previously had. Wouldn't this person be

better able to promote Rawlsian ideals (interest A), weigh those ideals against other preferences they might have (interest B), and effectively pursue their most favored weighting (interest C), than before? While it may appear so, there is a problem with considering Rawls' primary goods to be nonideal primary goods: there can be great *burdens* attached to securing them—burdens that may conflict with a person's legitimate preferences *vis-à-vis* the costs they should face for the sake of obtaining them (contrary to interests B and C). Allow me to explain.

Consider several types of actions that might be taken under nonideal conditions for the sake of obtaining Rawlsian primary goods: mob riots, murder, non-violent protests (such as the Montgomery Bus Boycott in the US Civil Rights Movement), or the US Supreme Court's move to integrate southern public schools in the era of racial segregation. People in nonideal conditions typically—indeed, almost always—have *preferences* regarding the burdens and benefits they wish to face for the sake of obtaining Rawlsian primary goods. While one person may be willing to suffer being arrested by the police or face daily intimidation for the sake of obtaining basic rights (a Rawlsian primary good), another person may *not* prefer to endure such costs. Consequently, simply giving people Rawls' original primary goods under nonideal conditions can be contrary to the *very* preferences for weighing Rawls' principles and priority relations against nonideal burdens and benefits that the parties to the nonideal original position are looking to advance. It is therefore irrational for the parties to pursue Rawls' primary goods *per se*. The parties should seek Rawlsian primary goods *only* to the extent that they can weigh their preferences for those goods (following their preference for realizing Rawlsian ideals) against other preferences they may turn out to have under nonideal conditions. I will now argue that specific types of basic liberties and opportunities—types not explicitly focused on in Rawls' ideal theory—are goods of this sort.

Consider grass-roots reform organizations—formal or informal groups of individuals working together for social reform. The liberty and opportunity to participate in a social movement guided by Rawlsian ideals (either wholly or in part[33]) is clearly an all-purpose instrument for individuals with Rawlsian ideals to (A) promote Rawlsian ideals, (B) weigh Rawlsian ideals against nonideal burdens and benefits, and (C) effectively pursue their most favored weightings. First, grass-roots movements are particularly effective ways for promoting ideals. Historically speaking, social reform for justice has nearly always been the result of mass, grassroots mobilization. Indeed, in societies that are otherwise free and democratic, grass-roots social movements are, *as a rule*, the primary engine of social change (see e.g. the history of civil rights movements, women's rights movements, and LGBTQ-rights movements across the globe). There are perfectly intuitive reasons for this: typically, in human history, little progress is made until people stand up, in mass, and lobby together for things they have been unjustly denied. There is, as they say, strength in numbers. The parties to the nonideal original position should therefore treat social movements guided by Rawlsian ideals as an all-purpose means for promoting those ideals.

But grass-roots movements are good for more than just promoting ideals. They are all-purpose mechanisms that can better enable individuals to *rationally weigh* their ideals against nonideal burdens and benefits, and pursue for their most favored weighting thereof. Grass-roots movements for social change challenge their members—and nonmembers—to reflect carefully on, and engage in private and public conversations with others, on how they should weigh their ideals against nonideal burdens and benefits. To use the US civil rights movement as an example, a great deal of debate within the movement occurred as to what sorts of burdens and benefits their members and bystanders should have to endure for the sake of social change. The members of the movement publicly and privately debated, with others and with themselves, what burdens and benefits they (individually and collectively) were willing to endure for the sake of realizing the (Rawlsian) ideal of equal basic rights and liberties. The Montgomery Bus Boycott, for instance, was the result of a great deal of deliberation in church gatherings and other public meetings in which social reformers debated with one another on what kinds of costs they should endure for the sake of pursuing equal rights. Finally, the costs people incurred were not only the result of collective conversation, but also *individual choice* to participate or not participate in the boycott. After the first day of the boycott, community meetings occurred in which leaders asked—and people debated—whether the boycott should continue. As burdens escalated (e.g. black churches were firebombed), members of the movement were able to decide, individually and collectively, whether to continue to risk those burdens. Because enough people were so willing, the Boycott continued and was ultimately successful.

Liberties and opportunities to participate in grass-roots movements motivated by Rawlsian ideals, then, clearly are all-purpose mechanisms enabling people to (A) promote Rawlsian ideals, (B) rationally weigh Rawlsian ideals against nonideal burdens and benefits, and (C) effectively pursue their most favored weightings (those who were willing to endure the costs of taking part in the bus boycott did; those who were not willing to face those costs were free to go home and/or avoid public gatherings that might put them at risk). Therefore, from the perspective of the nonideal original position, these liberties and opportunities are a nonideal primary good:

> **First nonideal primary good (for Partial-Compliance Theory)**: liberties and opportunities to participate effectively in a grassroots social movement guided by Rawlsian ideals.

Two issues are important to address here. First, nonideal conditions can be so bad (i.e. unjust) that the formation of grass-roots groups may be prohibitively costly. Dictators, for example, may slaughter masses of people who stand up for justice. Notice, however, that this is not the case under the kinds of partial-compliance conditions we are concerned with at present. Remember, Partial-Compliance conditions are those in which people *can* enjoy the full value of basic liberties (with sufficient social–political will). A second worry, however, is more pressing for our present purposes: namely, that grass-roots social movements are not exactly

cost-free. Grass-roots movements—whether in the form of public demonstrations, sit-ins, or boycotts—can impose all kinds of costs on people, from mild inconvenience to social unrest. Given these potential costs, and the fact that some individuals in nonideal conditions may not wish to face them, how can it be rational for the parties to treat liberties and opportunities to participate effectively in a Rawlsian grass-roots social movement as a nonideal primary good?

I believe this second worry underscores the very nonideal nature of nonideal justice. The parties to the nonideal original position should surely realize behind the veil that *all* responses to injustice (including 'non-responses' to injustice) impose burdens and benefits on people. If injustice is not dealt with at all, then the costs people face are obvious (i.e. continued injustice). On the other hand, any attempt to overthrow injustices will nearly always be met by resistance (injustices exist precisely because there are people with vested interests in maintaining them). Accordingly, the parties to the nonideal original position cannot reasonably seek a 'cost-free' solution to injustice. No, instead they must pursue (from behind the veil) all-purpose goods that will enable them—no matter who they turn out to be—to weigh Rawlsian ideals against nonideal burdens and benefits, and pursue their most favored such weighting effectively. My claim then is that, generally speaking, grass-roots social movements are just that. No matter what a person's favored weighting of ideals versus nonideal burdens and benefits are—whether the person wants social reform to proceed slowly, imposing fewer burdens and benefits on them in social transition, or more quickly, imposing perhaps greater burdens on them (e.g. social strife)—that person will be *better* able to pursue their favored weighting the more similarly-minded people they have on their side at a grass-roots level (and, of course, they can always advocate for their most favored weighting by staying home and not acting). Indeed, grass-roots social movements are unique in precisely this respect: they enable diverse and vast numbers of people to lobby for, and mobilize in favor of, the kinds of burdens and benefits they are willing to endure for their ideals, whatever those burdens and benefits might be. And this is precisely the definition of a nonideal primary good.

Now that we have found one plausible candidate of a nonideal primary good, we should look for others. Here, I submit, is another: because the parties behind the nonideal veil of ignorance know that they could turn out to be anyone once the veil is raised—for example, a person who is a member of an unjustly disadvantaged class, but also a bystander or member of an unjustly advantaged class—the parties should want Rawlsian grass-roots organization to have a certain kind of structural feature and substantive aim: they should want those groups to be *inclusive* to all those who share the relevant ideals (e.g. equal civil rights). Why? Because, as we saw earlier, from the perspective of the nonideal original position, *all* individuals under nonideal conditions—the unjustly disadvantaged, bystanders, the unjustly advantaged, etc.—can all have legitimate interests (weightings of nonideal preferences against Rawlsian ideals). Although, as we will see later, it may make sense, given injustice, to afford certain advantages in Rawlsian reformist groups to their most unjustly disadvantaged members (viz. principles of nonideal justice), it is still clearly

the case that—given the formulation of the nonideal original position—the parties should want to ensure that *anyone* they could turn out to be has liberties and opportunities to take part in a Rawlsian grassroots movement, no matter what background they might come from (provided they truly share the correct ideals, viz. of equal civil rights, etc.). So, we have:

> **Second nonideal primary good (for Partial-Compliance Theory)**: grassroots movements should have the structural feature, and substantive aim, of being inclusive to people of all backgrounds who share Rawlsian ideals.

Next, a certain class of educational aims should clearly count as nonideal primary goods. Given their motivations behind the nonideal veil of ignorance, the parties should want grassroots groups to educate people inside and outside the group in (a) Rawlsian ideals, (b) skills and information useful for rationally weighing Rawlsian ideals against nonideal burdens and benefits (including information about the feasibility of different types of responses to injustice), and (c) skills and information useful for pursuing such weightings effectively. The case for these educational aims is simple: they conform directly to the goals of the parties behind the veil. The parties to the nonideal original position want, first, to *convince* people of Rawlsian ideals who do not presently have them. Thus, they should want grass-roots movements to educate people in Rawlsian ideals. Second, the parties should want to ensure that every person in nonideal conditions has the skills and knowledge to rationally weigh Rawlsian ideals against nonideal burdens and benefits. Specifically, the parties should want individuals under nonideal conditions to understand which types of individual and collective action are feasible, and what the relevant burdens and benefits of those individual or collective actions are likely to be. The reason why the parties should treat these educational aims as nonideal primary goods is simple: they are all-purpose means for people to effectively pursue the three goals the parties have behind the veil of ignorance. From the standpoint of the nonideal original position, it would be a mistake to 'empower' individuals in nonideal conditions to pursue individual or collective actions that are infeasible (i.e. actions that will not promote individuals' favored weightings of Rawlsian ideals against burdens and benefits). For more on how feasibility should be defined and measured, see Gilabert and Lawford-Smith, as well as Lawford-Smith.[34] Similarly, the parties should want to ensure that all individuals with Rawlsian ideals are educated on the likely burdens and benefits of various actions (so they can weigh Rawlsian ideals against burdens and benefits rationally), as well educated in effective tactics for achieving their desired ends (e.g. education in group mobilization, advertising, etc.). So, we have a third set of nonideal primary goods which I would like to class together as follows:

> **Third class of nonideal primary good (for Partial-Compliance Theory)**: education in (a) Rawlsian ideals, as well as skills and information for (b) rationally weighing Rawlsian ideals against nonideal burdens and benefits (e.g. education about feasibility, likely burdens and benefits), and (c) effectively pursuing one's favored weightings (e.g. education in effective reform tactics such as group mobilization, advertising, etc.).

Are there any other nonideal primary goods the parties should pursue under partial-compliance conditions? Due to space constraints, we must leave this question for another day. For now, let us examine how well the three classes of nonideal primary goods we have discussed fare in the process of 'reflective equilibrium' that Rawls advocated for testing a theory of justice.

Rawls suggested that we should test a theory of justice from two directions. On the one hand, we can justify principles of justice from the original position, providing a rigorous argument that they *should* govern a given set of social-political conditions (viz. conditions of strict-compliance, partial-compliance) using a perfectly fair procedure. However, we can—and, Rawls thought, should—evaluate the principles arrived at from a second perspective: our 'considered judgments' about justice. Rawls' idea here is by now familiar, and indeed common practice, in moral and political philosophy. Although this practice has its critics,[35] contemporary theorists routinely test arguments and theories against 'our intuitions' to evaluate the theory's overall plausibility. It is important to note that, by engaging in this process here, we are not *merely* testing the conclusions we have arrived at (the three classes of nonideal primary goods) against 'our intuitions'—for again, we have already justified them using a rigorous model of procedural fairness (the nonideal original position). Accordingly, if the nonideal primary goods we justified through that procedure turn out to cohere with our considered judgments after the fact, we would seem to have two quite independent grounds—a model of fairness, and our considered judgments—converging on the same conclusions.

Therefore, let us now consider how well our list of nonideal primary goods matches our considered judgments about nonideal justice in partial-compliance conditions. Let us begin with the first nonideal primary good: the liberty and opportunity to participate in a grass-roots movement guided by Rawlsian ideals. Is nonideal justice intuitively a matter of people having such liberty and opportunity? I submit that it clearly is. The most celebrated responses to injustice in history have practically *all* been grass-roots in nature: civil rights movements, movements for equality of opportunity (women's liberation movements), etc. Further, grass-roots movements with Rawlsian ideals have been celebrated for the very reasons identified in the nonideal original position: they enable individuals in nonideal conditions to (a) effectively promote Rawlsian ideals (of fair and equal treatment), (b) weigh burdens and benefits effectively, and (c) pursue the burdens and benefits they prefer, and are willing to endure, for the sake of promoting their ideals.

Now consider the second nonideal primary good: having grass-roots movements be inclusive. This too sits very well with our considered judgments. Consider, for example, two alternative movements in the US civil rights movement for racial equality: the mainstream civil rights movement headed by figures such as Martin Luther King, versus the Black Power movement headed by Malcolm X and the nation of Islam. One worry that many people had about the latter movement is that it didn't possess Rawlsian ideals as an aim (contrary to the first nonideal primary good we have identified). The Black Power movement was not interested in equal rights

for the races within the United States. The movement argued for a separate black state, and advocated black superiority. In addition, another widespread concern was that the Black Power movement was not inclusive. The movement, insofar as it only permitted black participants, was only intended to be sensitive to the burdens and benefits its black members were willing to endure for the sake of social reform. But this, intuitively, is unfair and unjust. Whatever injustices may exist, it does not follow that members of oppressing groups (e.g. all whites) have *no* legitimate interests under nonideal conditions. So, our second nonideal primary good—inclusion—also fares well in reflective equilibrium. If justice is fairness, a fair and just response to injustice should be fair to and inclusive of the legitimate interests of all people in nonideal conditions, not merely one favored group.

Finally, let us examine the third primary good: education in Rawlsian ideals, feasibility, burdens and benefits, and effective reform tactics. This too sits very well with our considered judgments. Whatever else nonideal justice is, it intuitively has to involve (a) promoting the right ideals, but also (b) doing so in a way that is feasible, (c) where people rationally understand their alternatives, including the burdens and benefits attached to different individual and collective actions, as well as (d) through knowledge of effective tactics.

Thus, all of the nonideal primary goods we have arrived at through a perfectly fair procedure—the nonideal original position—fare remarkably well in reflective equilibrium.

FUTURE STEPS TOWARD A NONIDEAL THEORY OF JUSTICE

Our discussion has given rise to a number of important questions that, given space constraints, I must leave for another day. First, are there any additional nonideal primary goods for partial-compliance conditions? Second, are there any priority relations among the nonideal primary goods (should some be considered more important than others)? Third, are there determinate *principles of nonideal justice* that the parties to the nonideal original position would agree upon for distributing nonideal primary goods? Finally, how should the nonideal original position be applied to other kinds of nonideal conditions (e.g. unfavorable conditions, as well as conditions in which circumstances of justice do not obtain)?

These questions are broad and complex, and cannot be addressed in a single article. It is important to take a few correct first steps before proceeding further—and I believe those first steps have been taken here. We have seen why a nonideal original position is necessary for determining what justice as fairness requires under nonideal conditions. We have also carefully constructed a nonideal original position for conditions of partial-compliance, and used it to justify three classes of nonideal primary goods. Finally, we have seen that those nonideal primary goods fare well in reflective equilibrium. All of this indicates that we are on the right track. Our next tasks will be to determine whether there are any additional nonideal primary goods for partial-compliance conditions, whether there are any priority relations among the nonideal primary goods, and whether there are any determinate principles of

nonideal justice for distributing nonideal primary goods that the parties should all rationally agree upon.

I would like to close by noting that there appear to be strong reasons for the parties to the nonideal original position to agree on principles of nonideal justice that distribute nonideal primary goods *in progressive proportion to unjust disadvantage*—in other words, that the more unjustly disadvantaged a given person is under partial-compliance conditions, the more nonideal primary goods they should have relative to others.[36] The reason to think this is simple: since the parties to the nonideal original position all have Rawls' principles of ideal theory as a preference, and the more unjustly deprived someone is under nonideal conditions the more that person's life-prospects depart from what they would be under a situation in which that preference is realized (viz. in a just society), *every* party to the nonideal original position has grounds, in their preference-function, for *progressively compensating* individuals in proportion to the injustices they suffer (by way of nonideal primary goods). But I must leave further investigation of these matters for future research.

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NOTES

1. See John Rawls, *A Theory of Justice*. Rev ed. (Cambridge, MA: The Belknap Press of Harvard University Press, 1999a); and John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
2. See A. John Simmons, 'Ideal and Nonideal Theory', *Philosophy and Public Affairs* 38, no. 1 (2010): 5–36, for an influential overview and account of the distinction(s). Also see Marcus Arvan, 'A Non-Ideal Theory of Justice' (PhD diss., University of Arizona, 2008), chapter 1; Katherine Eddy, 'Against Ideal Rights', *Social Theory and Practice* 34, no. 3 (2008): 463–81; Eva Erman and Niklas Möller, 'Three Failed Charges Against Ideal Theory', *Social Theory and Practice* 39, no. 1 (2013): 19–44; Colin Farrelly, 'Justice in Ideal Theory: A Refutation', *Political Studies* 55, no. 4 (2007): 844–64; Anne Phillips, 'Egalitarians and the Market: Dangerous Ideals', *Social Theory and Practice* 34, no. 3 (2008): 439–62; Michael Phillips, 'Reflections on the Transition from Ideal to Non-Ideal Theory', *Nous* 19, no. 4 (1985):

551–70; Amartya Sen, *The Idea of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 2009); Zofia Stemplowska, 'What's Ideal About Ideal Theory?', *Social Theory and Practice* 34, no. 3 (2008): 319–40; and Robert S. Taylor, 'Rawlsian Affirmative Action', *Ethics* 119 (2009): 476–506, esp. 485–492.

3. See Amartya Sen, 'What Do we Want from a Theory of Justice?' *The Journal of Philosophy* 103, no. 5 (2006): 215–38; and David Wiens, 'Prescribing Institutions without Ideal Theory', *Journal of Political Philosophy* 20, no. 1 (2012): 45–70.
4. See Farrelly, 'Justice in Ideal Theory'. Cf. Burke A. Hendrix, 'Where should we expect social change in non-ideal theory?', *Political Theory* 41, no. 1 (2013): 116–43.
5. Again, see Eddy, 'Against Ideal Rights'; Farrelly, 'Justice in Ideal Theory'; and Sen, 'What Do we Want from a Theory of Justice?'.
6. See e.g. Laura Valentini, 'Ideal vs. Nonideal Theory: A Conceptual Map', *Philosophy Compass* 7, no. 9 (2012): 554–64; Robert Jubb, 'Tragedies of Non-ideal Theory', *European Journal of Political Theory* 11, no. 3 (2012): 229–46; and Stemplowska, 'What's Ideal About Ideal Theory?'
7. Also see John Rawls, *The Law of Peoples, with "The Idea of Public Reason Revisited"* (Cambridge, MA: Harvard University Press, 1999b), 4–5.
8. See e.g. Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979, 1999); Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005); Andrew Kuper, *Democracy Beyond Borders: Justice and Representation in Global Institutions* (Oxford: Oxford University Press, 2004); Darrel Moellendorf, *Cosmopolitan Justice* (Oxford: Oxford University Press, 2002); and Thomas Pogge, 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs* 23 (1994): 195–224.
9. Rawls, *A Theory of Justice*, 8.
10. See Simmons, 'Ideal and Nonideal Theory', 8–9.
11. See Rawls, *A Theory of Justice*, 216; and Rawls, *The Law of Peoples*, 5.
12. See Rawls, *A Theory of Justice*, 216–17; and Rawls, *The Law of Peoples*, Part III.
13. Simmons, 'Ideal and Nonideal Theory', 17.
14. See Simmons (2010); Farrelly (2007); Stemplowska (2008); Phillips (1995); and Taylor (2009).
15. Rawls, *A Theory of Justice*, 109.
16. Ibid., 110.
17. Tim Mulgan, *Ethics for a Broken World: Imagining Philosophy after Catastrophe* (Durham: Acumen Publishing, 2011).
18. Rawls, *A Theory of Justice*, 110.
19. Rawls, *Political Liberalism*, 297.
20. I thank an anonymous reviewer for encouraging me to clarify this.
21. I first defended this idea in Arvan, 'A Non-Ideal Theory of Justice', chapter 1. David Estlund makes a similar point – that we should not simply seek to mirror ideal principles in nonideal conditions – in Chapter 10 of David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2009).
22. Rawls, *A Theory of Justice*, §51.
23. Ibid., 53, 266.
24. Ibid., 12.
25. Ibid., §51.
26. See Fatemeh Nejati (2006), 'A Big Lesson', www.we-change.org/spip.php?article326 (accessed February 14, 2014).
27. See Farrelly, 'Justice in Ideal Theory'; Arvan, 'A Non-Ideal Theory of Justice', ch. 1; and Eddy, 'Against Ideal Rights'; Cf. Erman and Möller, 'Three Failed Charges Against Ideal Theory', §IV.

28. Rawls, *A Theory of Justice*, 215–16; emphasis added.
29. I thank an anonymous reviewer for raising this concern.
30. Rawls, *A Theory of Justice*, 217–18.
31. Rawls, *Political Liberalism*, 74–5, 106.
32. Rawls, *A Theory of Justice*, 79–80, 123.
33. Such a group need not actually know Rawls' theory of justice, or have all of Rawls' principles of ideal justice, as their aim. Rather, what is relevant is that they are guided by *some* Rawlsian ideal (e.g. equal basic liberties), in a way that is consistent with the lexical priority of Rawls' principles (viz. a group would *not* qualify as a Rawlsian group if they put economic justice in front of equal basic liberties, since that would violate the priority of Rawls' ideal principles).
34. Pablo Gilabert and Holly Lawford-Smith, 'Political Feasibility: A Conceptual Exploration', *Political Studies* 60 (2012): 809–25; and Holly Lawford-Smith, 'Non-ideal Accessibility', *Ethical Theory and Moral Practice* 16 (2013): 653–69.
35. See Norman Daniels, 'Reflective Equilibrium', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Spring 2011 Edition), http://plato.stanford.edu/archives/spr2011/entries/reflective-equilibrium/: §4 (accessed May 3, 2014).
36. I thank an anonymous reviewer for encouraging me to address this.