Introduction

Political philosophy seeks to justify principles of social justice. How should it go about that task? One answer, what may be called the practice-based method of justification, is that we are to justify principles, by moral reasoning, both for and from a social practice, which we identify by way of social interpretation. The approach contrasts, on the one hand, with what might be called pure social interpretivism, which takes certain moral ideas to be part of, if perhaps implicit in, a practice purely as a matter of social interpretation (e.g. as codified in legal documents or as routinely avowed in politics). While pure social interpretivism is well-suited for empirical domains such as sociology, “constructivism” in international relations theory, and in some political or legal theory, it cannot justify principles as moral demands of justice. Seeking such a justification, the practice-based method instead offers moral arguments. Yet it does so in a way that contrasts, on the other hand, with pure moral theory, which sees moral principles as fully justified in the abstract, without reference to any social practice, and as merely applied to the various ways we are or might be socially organized. The practice-based method justifies principles for a social practice in the first instance, as basic or fundamental for any practice of its kind. The moral argument is tailored or sensitive to its characteristic aims and organization, with no assumption that the proposed principles can be justified otherwise, in a different area of social life or in abstracting away from the presumed practice.

This approach immediately poses the question: Why would the content of a moral idea of justice depend on the way people simply happen to be socially organized? A partial answer is that not all of morality must be seen as practice-dependent. One can be wrongfully killed or coerced or manipulated in a state of nature, and a wrongful act cannot be justified simply by making a practice of it. The approach can and should admit this. What it does assume is that social practices (suitably defined) present a distinct, essentially social kind of moral issue, over and above rightful and wrongful individual action, and in a way that may shape what actions within a practice are right rather than wrong. This distinct concern – naturally called social justice – is assumed to be of central importance for political philosophy, even if not the whole of “justice” per se.
This is only a partial reply because it remains fair to ask why justice should be sensitive to practice at all. There are various ways of pressing this question that I will not try to address in this discussion (e.g. is justice being conflated with law? Is not justice about what practices to have in the first place? Isn’t practice-sensitivity biased toward the status quo?). My more modest objective is to articulate different possible rationales for linking justice to practice (leaving their full defense for another day). There are, I will suggest, several distinguishable ways that basic concerns of justice bring sensitivity to social practice in their wake. In particular, I want to suggest that different concerns with justice call for quite different forms of sensitivity to practice, in a way I will presently explain.

1. How Realistic? How Constructive?

Let us say that a “social practice” of the relevant sort exists when a group of people organize their behavior in some way for the sake of some ends. Perhaps people play a game of cards, or share rides to work. Or perhaps they maintain large-scale institutions, whether in domestic law or judicial systems, the modern state, an international organization, or the state system. In the relevant class of cases, behavior is regularized among a group of agents, because those involved have formally instituted certain rules of conduct, or informally come to understand and generally (even if not universally) follow certain behavioral expectations, for the sake of some social purpose.

We may assume that the organizing social purpose is endorsed as worthwhile, whether for its own sake or for other reasons, and presumed to be legitimate. We needn’t assume that the purpose is shared or endorsed by everyone, or indeed anyone. If enough participants simply presume that enough other participants endorse a goal as valuable and legitimate, they may stably organize around the end as established expectations require, even when the presumption is mistaken and no one in fact endorses it. Although actual endorsement by the participants will presumably help stabilize the practice against shocks and crises, such mere “ideational” coordination can last for a disturbingly long time (as with a dictator’s long rule, before the days of revolution, or an extended financial market bubble, before a “Minsky moment” and crisis of confidence).

Let us also assume that a given organized group must be capable of governing its organizing structure, whether by centralized rule (as in the modern state) or by decentralized negotiations (e.g. which divide driving time within a ride-sharing scheme, or establish treaties within the state system). Some such capacities of governance are required, because the role of “principles” is to specify collective responsibilities for the ongoing regulation of the practice in question, by the practitioners themselves. When even minimal capacities of collective governance are lacking – as when an angry mob has gotten out of control, or as in Hobbes’s state of nature – regulative principles won’t apply collectively; they at most apply to the different individuals taken one by one.
When we turn to the task of justification, we defend principles as appropriate for this regulative role, in the following three main stages.

**Individuation:** we single out some way people coordinate their behavior, at first in relatively uncontroversial terms, with reference to various interpretive data points or source materials that any further conception of the practice should take into account, criticize, or explain away.

**Characterization:** we work up a general characterization of the practice, in light of its distinctive organizing structure and generally assumed purposes (perhaps using moralized, constructive interpretation).

**Substantive argument:** we engage in substantive moral reasoning (e.g. intuitionist or contractualist reasoning) about what it would take for the practice to take a just (or legitimate or fair) form, in light of its characterized aims and structure, the relevant interests of those affected, and their potential complaints against alternative principles for the regulation of the practice.

Taken together, each of these stages can be adjusted in light of the others in the search for “reflective equilibrium”, that is to say, in a process of finding stable coherence between one’s initial reactions and a set of considered judgments and moral principles. That larger methodology is separable from practice-based reasoning, since it is equally consistent with a posture of indifference to practice, or even vigilant rejection of any trace of its influence. In practice-based reasoning, by contrast, moral reasoning at the substantive argument stage is accountable to the judgments required at the individuation and characterization stages. And yet reflective equilibrium is, as always, a two-way street: one’s moral judgments can shape one’s interpretation of a practice in several different ways, which we return to later. Different versions will mix moral and interpretive elements in different ways. We adjudicate between different proposals, in view of our explanatory aims, according to how they compare overall.

As with any interpretive argument, practice-based methodology will be highly sensitive to context. Still, it would at least ideally provide some general guidance about how to proceed. Here the most developed versions are mainly suggestive. John Rawls’s famous domestic and international theories of justice begin from characterized social practices, though with considerable drift in the way they do so over the course of Rawls’s career. ¹ More recently, Charles Beitz has argued, against natural rights views of human rights, that “Human rights are [...] revisionist appurtenances of a global political order composed of independent states”, whose chief function is to protect individuals from abuse and neglect through different forms of international accountability. ² But Beitz is less concerned to develop the practice-based method than to use it with fruitful results. Likewise, my own account of fairness in the global economy works out

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the approach for international economic relations, leaving many general questions about the methodology for another day.  

The foregoing accounts do have one thing in common: they all begin from existing (if perhaps emergent) social practices and retain considerable sensitivity to their prevailing social understandings. This is not strictly required by the three argument stages outlined above. It may, however, be seen as a way of using the stated method so to answer at least two further questions about how to proceed.

A first question, which might be called the question of realism, is whether the practice in question must be already in existence, or a development of some existing practice. Can the practice under consideration be merely imaginary or purely hypothetical? Or must a practice at least be feasible, in the sense that it could be sustained in the human condition (however described)? If some arrangements are feasible relative to the human condition and yet unavailable to a group of people, we might also ask: Must a practice also be available to us, by some feasible social transformations, from some point in history that actual people once occupied, or perhaps even from where we are now, at roughly the current stage of world history?

The second question, what might be called the question of sociological accuracy, concerns the extent to which any moral or interpretive claims must be already generally accepted, or at least readily acceptable, to the practitioners themselves. Should we accord special weight or authority to the way participants themselves understand and interpret their common practice? Or should we regard their views as just so much initial data for the theorist to explain according to his or her own understanding of the practice, as judged by theorist’s own social and moral lights?

These two questions — “how realistic?” and “how constructive?” — are related. As we will see, the more relaxed we are about realism, the more relaxed we can be about sociological accuracy: if we can simply imagine a possible practice, we can also simply imagine its participants endorsing it. The issues are separable, however, because a requirement of realism does not settle how far we can or should abstract away from given sociological realities. Equally “realistic” arguments can be more or less “constructive”, in the sense of out-running what current practitioners would readily accept upon a moment’s thought (even laying aside rank selfishness, misinformation, and so on).


To elaborate: the individuation stage requires us to pick out a general form of social coordination, in relatively uncontroversial terms, as a proposed object of interpretation and assessment. It plainly won’t do to identify a form of *mere de facto* coordination that no one involved is aware of. The principles are supposed to guide collective conduct, so the practice must be represented in terms that enough of those presumed to be involved would *themselves take to describe* their common institution or practice, albeit perhaps in minimal terms. Beyond this, however, the characterization stage might pay little or no deference to how participants in a practice implicitly or consciously think about what their form of coordination comes to – or at least it is a substantial question how much weight any participant interpretations should have.

In particular, the characterization stage can cite and develop moral elements of the practice (e.g. stated or implicit rights, goals, or principles, described in moral language), as long as this is part of an *interpretation* of its general nature, which comports with familiar interpretive constraints of consistency, coherence, explanatory power, simplicity, and so on. An interpretation will be to some extent beholden to what could be said to be implicit or assumed among participants, lest it be fairly charged with *inventing* a new practice rather than interpreting social relations already there. Yet this leaves considerable room for the theorist to be guided by his or her own moral lights. Ronald Dworkin, for example, takes the “protestant” view (at least in legal interpretation) that each interpreter is beholden only his or her own interpretation of the practice.5 Shared understandings are only so much data to be explained by the theorist’s own best conception of the practice, even if most practitioners would flatly disagree.6 A “catholic” interpreter, by contrast, assigns *special weight*, or even *authority*, to how participants in a social practice themselves interpret what they are doing together, even or especially as regards its basic point.7 The argument can be moralized and constructive, but must remain especially sensitive to evidence about both shared understandings and the spread of disagreement in interpretations among participants.

In these terms, Rawls’s early writings are relatively protestant: he mainly works out his own proposed best understanding of democratic societal practice without great concern for people in the practice who might disagree. The later Rawls is more catholic: he accepts a special burden to take disagreement into account and addresses it on its own terms. He thus offers not simply a constructive interpretation of overall public practice in a democratic society, but a constructive interpretation that is supposed to be available to its (reasonable, informed, educated) participants given understandings they arguably have by virtue of being so involved. (Non-democratic societies, by contrast, aren’t assumed to have the requisite political culture.)

5 - Just as Luther trusted his own sense of what the bible text meant, leaving aside both tradition and prevailing religious authority.
How then should practice-based reasoning proceed? My answer is: it all depends on the theorist’s animating concerns. As I will explain, the requirements of realism and sociological accuracy vary with different explanatory aims. The two requirements are relatively thin given the aim of understanding certain inherently social forms of mistreatment; they become thicker given the aim of addressing principles to the human condition; and they become thicker still given the aim justifying principles as normative for us, in our current world historical situation. As for which aims political philosophy should have, I favor ecumenism: there is room for all of them, and little reason to insist on one set of animating justice concerns to the exclusion of all the others. Normative concerns about what we ought to do rightly take center stage. But what generally matters, from a practice-based perspective, is getting the requirements of realism and accuracy right for the particular justificatory purpose at hand.

2. Purely Intellectual Aims

Suppose for the moment that our theoretical aims are purely intellectual in the following sense: we seek to justify requirements of justice for a stipulated set of social circumstances that are, for some good reason, of interest to us. The circumstances will often be of practical importance, but needn’t necessarily be so, provided that the proposed inquiry advances moral understanding or is otherwise well-motivated – for instance, as clarifying or intrinsically interesting.

In this vein, G. A. Cohen advances a practice-insensitive and luck egalitarian conception of just distribution with the stated aim of clarifying certain moral convictions. The practice theorist can happily concede Cohen’s kind of intellectual inquiry. It must be insisted only that it does not clarify or even address the essentially social concept of justice at issue for the practice theorist (we might call Cohen’s concept “cosmic fairness”, “natural justice”, or some such). The practice theorist needn’t reject Cohen’s ambition to clarify moral ideas per se, and, in particular, needn’t insist that political philosophy must be wholly practically relevant, to the exclusion of helpful moral clarification. Mathematicians aren’t beholden to the confines of applied math. Why should philosophers – even political philosophers – shackle themselves in the chains of practical relevance? There may be much about the morality of practices to understand, just for the sake of understanding. And when we do seek to understand our moral ideas, even as part of a purely intellectual enterprise, sensitivity to practice might have a natural rationale, for a quite simple reason: a social practice may often be presupposed by the moral issues themselves.

So, for example, in stipulating certain hypothetical circumstances, the kind of social practice we identify could be entirely novel and explained for the first time. Here a minimal kind of social “interpretation” is needed if only to clearly indicate how the imagined practice would work, how it could be something

that people could together do, as a practice. If the practice is supposed to be recognizable under some familiar name (e.g. “legal system” or “society”), the interpretive elaborations must also plausibly (even if only roughly) fit our given understanding of the proposed social form. But that interpretive demand is again a modest one: given the present intellectual aims, there may be no further requirements of either realism or sociological accuracy. The proposed social form might be purely hypothetical and unlikely to ever be in any sense a real. We might wonder why principles justified for the hypothesized circumstances are supposed to be worthy of study, but the practice theorist may have much to say by way of reply.

To illustrate, consider familiar examples of how people are treated – arbitrarily, or unfairly, or neglectfully – by or within a social practice, given that its structure can be feasibly arranged in some alternative way. In particular, consider an imagined person, Eve, who has rights of due process against the larger systems of criminal law and judicial practice to which she is subject, in part because, so we assume, such institutions tend do certain things – issue false arrests, imprisonments, or convictions – that expose her to unacceptable risks of mistreatment. Even when those risks are acceptable within a legal system (e.g. in a choice of evidentiary standards, which leave room for error), this will be so because they are either unavoidable given its entirely legitimate social regulatory and judicial purposes, or else fairly imposed given the significant benefits afforded to her and others by the system. We might add, with Rousseau, that because Eve is subject to a legal order that lays claim upon her conduct, coercing her in own name, she has special rights to be ruled only on grounds that are available to and authorizable by her in a certain way. In still further cases, we may ask questions of how fairly she is treated in larger society, not simply because she is a subject of legal authority, but because she is perhaps inadvertently subjected to certain systematic risks, by institutional decisions not to regulate certain sorts of choices, no one of which would be objectionably risk-imposing taken simply by itself (e.g. as regards routine carbon emissions, or risk taking in financial markets). And, finally, however the risks actually fall

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9 - This amounts to a minimal twofold form of “practice-dependence” (suggested in conversation by Andrea Sangiovanni): the putative principle (1) has a social practice as a condition of its application, and (2), if the principle is applied, it must be applied by a social interpretive judgment (that the relevant practice obtains). Many proposals could meet these basic conditions without offering “practice-dependence” that is of any interest, for instance, because the stipulated practice seems to have little or no significance in the argument for the principle, or because it fails to advance one of the aims outlined below.

10 - In Rescuing Justice and Equality, Cohen argues that principles justified under factual assumptions (including specified social practices) cannot be “fundamental” on the grounds that basic principles must be “fact-insensitive”. But any principles justified for a stipulated type of practice are “fact-insensitive” in the following sense. For any hypothesized social reality F, and any principles that apply P, it will be true that “If F, then P”, whatever the actual world facts. For all that says, any such P must be justified for some such social reality or other, and “fact-sensitive” in that different sense. Different social realities simply yield different fact-insensitive conditional propositions (of the form “If F, then P”), whether actual world facts or hypothesized facts are being considered. Thus all principles justified by the practice-based method are both “fact-sensitive”, because sensitive to practice, and “fact-insensitive”, in the sense that such conditional propositions are also true.
out for Eve, it may matter for justice simply that her standing as an equal and status as not-to-be-treated in certain specified ways is “ideationally” recognized. Even when the substance of her rights is wrongfully not provided, they should nevertheless be upheld in public laws, official pronouncements, or general assumptions about what is generally assumed.

Letting such familiar issues speak for themselves, it is natural in each case to find some social practice or institution, or system thereof, as itself raising questions of justification. The treatment in question is treatment by a group of agents so organized, over and above the particular choices of any individual involved. And, taking things at face value, the standards for assessing whether or when the relevant form of social treatment is acceptable seem sensitive to what the social context is like in various ways – in particular, the distinctive structure of the social practice in question, its mode of governance, its presumed organizing aims, and its imagined risks and consequences. A project of explicating such contours seems perfectly worthy, for the sake of clarification and moral understanding, and perhaps for no other reasons.

To be sure, for many philosophers, the issues themselves call for a standard of assessment – whether utilitarian, libertarian, or luck egalitarian – that does not require a social practice for its applicability. Practices may be necessary, but only as a matter of implementation. In reply, the practice theorist will argue that the issues do generate principles that are sensitive to the practices in question, whether or not a practice-independent standard can also be justified. That is, although the practice theorist might pose a further challenge the proposed standard in various ways – perhaps as ignoring morally relevant features, or over-generalizing, or as otherwise too reductive – his or her essential claim is consistent with mere agnosticism about any further principles. The issues themselves, it will be said, do support practice-specific principles, whether or not any further principles apply.11

It is a further question how practice-based moral reasoning would proceed, if not by invoking a practice-independent standard. Here approaches vary. One version favors an “intuitionism”. Another argues within a context-specific moral contractualism. In T. M. Scanlon’s version, for example, principles are by their very nature regulative principles for an independently identified (individual or collective) agent, and so sensitive to that agent’s given capacities of self-regulation, the available information, and available policy options.12 We then justify principles by asking which, among the feasible alternatives, “no

11 - Thus it won’t be a good objection to show that a version of P can in some sense be explained by, derived from, or subsumed under some more general principles [even if the proposed explanation mentions the practice under a different description]. This would only show that content of P is over-determined by independent sufficient justifications, not that P is not fundamental or not based in practice in the proposed way. It wouldn’t challenge the practice theorist’s claim that there is indeed a practice-specific moral argument for P that leaves aside all other such further principles, depending only on norms of reasoning or judgment that aren’t of the same moral kind as P.

12 - Thomas Scanlon, What We Owe to Each Other (Cambridge, Harvard University Press, 1999), chap. 5.
one can reasonably reject”, but in a thoroughly context-specific way. We don’t begin with general ideas about a given claimant’s personal good or welfare, per se, but instead identify his or her relevant interests or claims. We frame these as they might be “generically” grasped given information available to the agent addressed, and in light of the social context in question, which might include the distinctive features of a social practice. They might include general features, such as publicity, that are needed for principles to be eligible as a “social contract”, that is to say, as a basis for jointly governing a civil and mutually beneficial form of association, partly through the resolution of disputes on grounds that most can assume most others take for granted. In substantive arguments, the assumed valuable aim of the practice might justify asking more of participants, by weakening otherwise-reasonable objections to the costs they are asked to accept. The nature of a practice may even shape what interests are relevant to moral argument in the first instance. In a specifically international practice, for instance, certain relevant interests might take a collective rather than individualistic guise.

To be sure, in Scanlon’s framework, we can owe something to someone else even in a state of nature, for instance, in a promise-like act of expectation-creation between two passers-by. For all this says, however, we also have a special moral concept of “justifiability to others” that arises only within a common practice. Rawls suggests just this during his most Kantian phase (when it would seem least likely), when he writes: “conditions for justifying a conception of justice hold only when a basis is established for political reasoning and understanding within a political culture”. Why must there be any such social “basis”? He later explained with reference to the general idea of “justification-to”:

Since justification is addressed to others, it proceeds from what is, or can be, held in common; and so we begin from shared fundamental ideas implicit in the public political culture in the hope of developing from these a political conception that can gain free and reasoned agreement in judgment.

Even in A Theory of Justice, well before his “political turn”, Rawls claims that there is a distinctive kind of justification to others that is “designed to reconcile by reason” and that “proceeds from what all parties to the discussion

13 - For development of the choice between ex ante and ex post readings of contractualism, see Aaron James, “Contractualism’s [Not So] Slippery Slope”, in Legal Theory, ed. Gregory Keating (forthcoming).

14 - In The Idea of Human Rights, Beitz treats collective self-determination as an irreducibly collective value and yet also ultimately a value for individuals [113]. In Fairness in Practice, I similarly treat societal claims to national income augmentation as societal interests of individuals that do not reduce to interests in their personal prospects.

15 - Thomas Scanlon, What We Owe to Each Other, 296—297.


hold in common”, in contrast with a state of nature lacking in shared understandings. He elaborates:

Ideally, to justify a conception of justice is to someone is to give him a proof of its principles from premises that we both accept, these principles in turn having consequences that match our considered judgments. Thus mere proof is not justification. A proof simply displays logical relations between propositions. But proofs become justification once the starting points are mutually recognized, or the conclusions so comprehensive and compelling as to persuade us of the soundness of the conception expressed by their principles. It is perfectly proper, then, that the argument for the principles should proceed from some consensus. This is the nature of justification. 18

Given state of nature cases, this is perhaps not the whole nature of justification or of justifiability. Yet it surely is moral justification of an important kind, which we should try to understand on its own terms. If there are many things I couldn’t justify doing to you in a state of nature were I to try to explain myself when you ask, there is also a further, essentially social moral issue between us when we share a common practice. We then have shared understandings of what we are doing together and what, for each of us, that should mean – something like a set of standing promises, or at least expectations. When you ask for a justification for the way our practice treats you, you and I will have to argue at least in part with reference to our different understandings of what it is we are doing together, and whether and what it would take for our relationship to live up to its promise in a way that is fair. This set of social presumptions, we might add, provides a basis for accountability that is lacking in a state of nature. 19

At this point it is fair to ask how all of this amounts to practice dependence, where a social practice is identified as a matter of social interpretation. My answer is that the present purely intellectual aims require only the modest demands of interpretive individuation noted earlier. The requirements of social interpretation – of realism and of sociological accuracy – are there, but properly thinned-out.

At the individuation stage of the method, although an interpretive specification is required, it needn’t pick out an existing or even a generally feasible social form. The practice need only be recognizable to us and a worthy object of moral understanding. It needn’t even be consistent with general constraints of the human condition (however described). We can simply assume that any general social preconditions are met, along with any needed roles, duties, or other personal or social governance responsibilities. To the extent justifying moral responsibilities depends on what people could know or do and any costs


of compliance, one can simply imagine, and if need be stipulate, that the circumstances are such that any necessary responsibilities hold.

Because there is no claim to realism at the individuation stage, there is also no expectation of sociological accuracy at the characterization stage. The named practice must have some legitimate purpose, but only by our own lights as theorists. The putatively legitimate purpose will have to be fit, by our lights, to justify how practitioners are treated in their different social positions. But one needn’t argue that any actual group actually accepts or otherwise organizes around the proposed end. In effect, any gap between the practice’s legitimate and accepted purpose is closed in the theorist’s imagination: we may simply assume that the imagined participants uphold any associated expectations of cooperation, for whatever reasons we think they should be upheld. Social interpretation is thus trivially protestant. In the theorist’s imaginative frame, there’s no question of how much stock we should put in participant interpretations; they can simply be assumed to agree with us.

3. Addressing Humanity

The situation changes, however, when our aims are not purely intellectual in the above sense. Let us now assume a quite different aim: principles are supposed to have practical relevance, as principles that could supply moral demands for human collective life, and, in particular, normally conclusive demands on its governance in the actual world. In this case, the requirements of realism and sociological accuracy are more significant.

For all we have said so far, even if we have principles justified for hypothesized social practices, no actual person or group has ever been or will ever be subject to any responsibility to see to it that justice is done. Eve, and the various ways she is mistreated, could be some kind of myth.20 In order to claim otherwise, the stipulated circumstances must be said to be actual circumstances, or close enough to actual circumstances, such that the hypothetically applicable demands of justice do actually apply to some set of agents or other. And if the principles in question are to apply as responsibilities for how some real social practice is governed, rather than as merely identifying worthy but unattainable ideals, then what they demand must be within the scope of human social possibility, as circumscribed by any unchangeable limits on human action and social organization.

In particular, it is a basic fact of the human condition that people are distinct persons, that human agents are distinct individuals.21 People do not

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20 - If it seems that we would have moral obligations anyway, suppose instead that each and every human suddenly fell into a permanent state of total sensory deprivation [perhaps because of some bizarre chemical]. No moral obligations would apply to anyone during the ensuing process of extinction.

21 - For a fuller treatment of the ideas in the next paragraphs, including the moral problem of assurance [within ideal theory], see Aaron James, Fairness in Practice, Chapter 2, Section 5, 54—59, and Chapter 4, Sections 1—3, 103—112.
quite spring up like separate mushrooms, as Hobbes suggested. Yet they are
distinct persons in the sense that they lack the sort of direct knowledge of and
control over the judgments, intentions, and conduct of others that they usually
have over themselves. This bare fact means that people face certain risks when
it comes to acting in ways that depend on others, and that they have a corre-
sponding need for assurance about what other people are doing. Each of
Rousseau’s stag hunters needs to be assured that the other will show up for
the hunt if it is to be reasonable to pass up the safer chances of hunting hare
alone. 22 Even the easy coordination of Hume’s rowers assumes each had assur-
ances that the other prefers uneventful passage before he or she got into the
boat. 23

The basic human means of overcoming problems of assurance is to form
“agreements”, if not overt promises, then at least the assurances of regularized
(and perhaps emergent) social practice. A given agent can only be reasonably
expected to act together with others, in an intentionally coordinated way, when
the pattern of coordination becomes established in a public, jointly available
way. Otherwise, the opportunity costs of failed efforts at cooperation will justify
simply doing one’s own thing. That is not to say that adequate assurance
generally requires coercive enforcement, whatever Hobbes says in light of his
rather extreme state of nature. Rousseau’s hunters and Hume’s rowers move
from noncooperation to cooperation given fairly modest assurances about the
other guy will indeed choose the mutually beneficial course. Even so, as Hume
pointed out, such assurances are more difficult to come by as coordination
increases in scale: we may simply lack reliable information about what millions
or billions of other people are doing in the absence of an established social
practice.

The problem, moreover, is not that self-interested agents are unpredictable.
Even among morally motivated and basically competent moral agents, we
cannot assume, without having evidence we might lack, that most will reach
the same or even similar conclusions about what they or any organized groups
ought to do, given their differences in position, complex information, and the
way situations are interpreted and norms or principles applied. Mere reason,
we may say, often does not compel convergence without practice. Though
perhaps inherently “public” in some sense, reason woos rather than coerces:
those who don’t listen won’t hear it. Even among those of good will, talent (as
Kant called it) is needed to hear its recommendations and reliably follow
through. So even if everyone were reliably motivated by moral concern, the
moral opportunity costs of action will not be justified without a public agree-
ment that selects, and is commonly known to select, certain large-scale patterns
of conduct over others. (If I use my resources to aggressively reduce my carbon

22 - Jean-Jacques Rousseau, “Discourse on the Origin and the Foundations of Inequality Among
Men”, in The Discourses and Other Early Political Writings, ed. Victor Gourevitch (Cambridge:

23 - David Hume, A Treatise of Human Nature, ed. Lewis Amherst Selby-Bigge, 2nd ed. revised
footprint, but not enough others do likewise, I may have pointlessly passed up a safer chance of reducing poverty). The basic human problem of assurance must be actually overcome in an established, public way, even among people who are thoroughly morally concerned.

It follows from all this that principles justified with purely intellectual aims, for some imagined kind of social practice, won’t necessarily apply in the human condition. When we say what Eve is owed something under a stipulated set of social circumstances, we are free to imagine justice as we see it being spontaneously provided. We can imagine an effective collective consciousness, a group mind, or distinct minds in easy convergence. Perhaps we imagine that our own personal judgments of what is reasonable have generally caught on, or that Reason itself issues in bright-line, unmistakable commands to jointly pursue certain legitimate and worthy aims, in accord with certain principles, and on the basis of spontaneously shared interpretations of what, for each, this practically means. Yet it is also fair to say that, in our less sunny world, these happy idealizations will not necessarily hold for any actual way people are or could be organized. If our imagined principles are to really apply, then, the associated social practice must represent a feasible solution to the problems of assurance that human beings in the real world face, by specifying an aim that those independently identified agents could in fact organize around, on the basis of expectations of conduct specific enough to more or less effectively coordinate agents as they are, with the powers of reason and limited information that they actually have.

Thus principles that pass muster under sunny idealizations (which are fine given purely intellectual concerns) won’t necessarily qualify. Vaguely specified principles, to the effect that each ought to promote overall welfare or equality or some such general value, even if proposed for a vaguely specified practice of promoting such values, may not be specific enough to count as justified demands of collective governance on any actual group of people, even if all involved are morally motivated. The principles may simply be too vague, too open to different, well-motivated interpretations, to provide any real assurance that any actual form of cooperation is going on, especially in large-scale collective action. (We return to this point below).

At the individuation stage, then, the task is not simply to pick out a practice worthy of our interest, but to identify a practice that real human beings could uphold. The practice needn’t already exist, or even be available from any transition from existing practices. But its existence must at least be feasible as a generally assured form of social cooperation among distinct agents who lack direct knowledge of and control over one another. And to the extent we think justice is something that should be maintained, or at least maintainable, over time, the indicated form of human cooperation must be prone to stably last. (Thus Rawls sought to explain how just social cooperation could reproduce itself from one generation of human beings to the next, because perceived justice generates its own support over time). 24 We therefore require a modicum

24 - John Rawls, A Theory of Justice, section 69.
of “realism”: we are not free to imagine as we like. Even as we never really know what human possibilities are closed, there is a difference between fantasy and speculation, as well as limits of credibility on speculation about what principles could workably regulate human collective life, even in morally motivated human affairs.  

These points also apply at the characterization stage, when we offer an interpretation of what the independently identified practice comes to. A Dworkin-style view that requires substantial realism at the individuation stage might still permit freewheeling protestant interpretation at the characterization stage. But especially if our interpretation is constructive, an adequate interpretation cannot simply be the one the theorist thinks best; it has to be an interpretation that *the people in question could be credibly said to organize themselves around in actual practice*. Social interpretation can remain protestant to a large extent; there might still be considerable room for maneuver in how we weigh participant interpretation as against other elements of the practice. Yet, in contrast with the purely intellectual form of justification above, the expectations of catholic interpretation do now begin to apply: we have to put real stock in participant interpretations, and argue from credible speculation about what sort of practice even morally motivated agents would be able and willing to uphold. We cannot, alas, simply assume that they will more or less agree with the interpretation that is by our lights best.

This is arguably stands behind Rawls’s shift to a more catholic interpretive mode. In *A Theory of Justice*, Rawls was concerned to argue that a “well-ordered society”, founded upon agreement on the same regulative principles, could last. He later became concerned that he had taken for granted an unrealistic degree of agreement, and so became increasingly concerned to *argue*, rather than simply assume, that the resources necessary for stable collective governance really can be found in a democratic society’s public political culture, rather than simply asserted as naked claims about what pure reason (Kantian or otherwise) supports.

### 4. Normative Demands for Social Life as we know it

Nothing we have said so far places political philosophy in a position to say what justice requires of *us*, in our current world historical situation. Principles justified for practices of certain humanly possible types may still have no actual, present addressee. The practices needed for their application might not to be found among actual people in the current stage of world history, and they may in any case be *unavailable* to us, by any feasible set of institutional transformations from our current social situation, and perhaps any social situation human beings have ever previously occupied, even among people of good will.


To the extent we are concerned with principles that are essentially “normative”, or a matter of what we owe to each other, in the sense of giving normally conclusive reasons for action to their addresses, no such principles will be addressed to actual people at the current stage of human history if we lack any available route to the practices required for their very applicability. Nor will natural duties, such as Rawls’s Natural Duty of Justice, invariably take up the slack. They will not require us to do what we (by hypothesis) simply can’t do. The conditions of social life as we know therefore limit what justice demands of us in much the way the more general human condition does.  

Suppose, then, that our aim is now to justify principles as normative for us. We are after principles that address demands of justice to social life as we know it, to the political world as we find it and as it is likely to be for the foreseeable future, given how things look from where we now are, even after we imagine people to be more morally motivated than they are or will be. In that case, we have a natural rationale for beginning from the social practices we already have, or could credibly move to by feasible transformations from the practices there are: our argument then has a firm normative footing, a footing from which to mount moral arguments about what the demands of justice are.

Accordingly, in Beitz’s account of human rights, the state system generates demands of international accountability given distinctive pathologies of a decentralized political system. Similarly, I argue that the global economy is not only embedded within the state system but constituted by an international practice of mutual societal reliance on common markets, a practice which itself generates significant egalitarian limits on how the gains of trade are distributed within and across societies. In such contexts – and there are arguably many others – the practice-based approach can be valuable simply because it helps us to illuminate and understand what the practice-generated obligations of justice are, how they arise, and why they might be especially compelling as grounds for policy change, given the social practices we already have.

Given these aims, our interpretive posture is preferably catholic rather than protestant. A Dworkin-style view that requires realistic concern for existing practice but allows fully protestant interpretation would be too permissive; our interpretation of a relevant practice, even if moralized and constructive, should

27 - My threefold issue typology (“of interest to us”/“addressed to humanity”/“normative for us”) can accept much in Erik Olin Wright’s distinctions between “desirability”, “viability”, and “achievability” in Envisioning Real Utopias (New York: Verso Press, 2010), Chapter 2. Yet “desirability” (at least as a matter of social justice) would still depend on practice, and “achievability” would not be limited to strategic possibility, e.g. within some version of what is often called “non-ideal theory”. As I understand it, “normativity for us” requires a kind of “achievability” within ideal theory, since it comes along with the very preconditions of normative address and not simply as a matter of implementation [in either the short or the long run]. Here I also disagree with the suggestion behind Allan Buchanan’s threefold typology in Justice, Legitimacy, and Self-Determination (New York: Oxford University Press, 2004), 38, which separates ideal theory from both “feasibility” and long- versus short-term possibility. In my view, we may or may not appropriately idealize away from such factors, depending on what the issues in question require.

28 - Aaron James, Fairness in Practice, Chapters 6 and 7.
instead be firmly rooted in the understandings of its aims and organization that practioners already share or can readily recognize. Evidence from widely shared assumptions within the practice, which otherwise comport with its central features, should be assigned special interpretive weight, even as against the theorist’s own best sense of what aims cast in the practice in its most favorable light.

Accordingly, my account of fairness in the global economy not only identifies an organizing social practice that plainly already exists (as a matter of individuation), it also hews closely (as a matter of characterization) to its generally understood and presumed legitimate point—namely, the augmentation of national income, through productivity-enhancing specialization in the division of labor.²⁹ (I also criticize conventional preoccupations with liberty and welfare as misinterpretations of this more basic organizing aim.) My principles then concern how the international practice of trade distributes the benefits and burdens it creates within its understood purview. This gives the principles an especially secure normative footing, as “internal” principles for trade practice, which cannot be rejected as not really addressed to us or as merely recommending a practice that is very different and perhaps incompatible with the practice of trade we have.

It is a further question whether realism or sociological accuracy require staring from existing practice. There is good reason for this: the lack of either one potentially jeopardizes normative credibility. When the argument is clearly keyed to our going practice, it supports the argument that specific things are decisively required given the practice we already have. The less clear it is that we are starting from an established social form, which is being understood in generally recognized terms, the more readily one may doubt whether the argument really is addressed to us as opposed to simply calling out to anyone for something completely different, which may be of less certain value, or less clearly possible in the domain of social life in question.

I argue elsewhere, in this vein, that we lack a sufficiently credible alternative to a (perhaps deeply reformed) version of the state system.¹⁰ I take this to strengthen the case for deep institutional reform of the specifically international market reliance practice we already have. While one might resist this, and perhaps urge a more thoroughgoing “cosmopolitan” perspective, the general point is that credibility of argument is crucial. It is one thing to credibly speculate about what social forms are humanly possible and quite another to make a credible practical case that we are in fact now in a position to move (even gradually) to some very different social arrangements. An argument for fundamental revolution away from existing social practice, especially in matters of very large scale, is invariably an uncertain matter. But mere credible speculation about human possibility won’t be sufficient to justify a conclusive demand of justice for revolution. Credible speculation and local institutional

²⁹ - Ibid., Chapter 6.
³⁰ - Ibid., Chapter 4.
experimentation may be crucial for a process that reveals possibilities of social change. Yet even morally motivated agents need pretty good evidence that fundamental social change has good prospects of success for sufficiently worthy ends before perhaps irreversibly undertaking a risky global transformation that could have massive moral opportunity costs.

Of course, credibility in normative address may not be all-important; numerous interpretive and normative desiderata can inform a practice-based theory. We might, for instance, want a more abstract characterization of the general nature of the practice in order to create greater scope for internal criticism of its going institutional realization. Gains in the dimension of critical depth might justify losses in specificity, comprehensiveness, or other moral or interpretive dimensions. And if we wish to stage the deepest possible challenge to the state system, for instance, we may well want a conception of global market reliance that abstracts away from its international structure so as to place it all at once under critical review.

I would firmly resist this kind of abstraction on both interpretive and moral grounds. The global economy as we know it is just too deeply shaped by the embedding state system. Abstracting away from this basic social reality erodes the normativity of fairness principles at its moorings. As a more general matter, abstraction is but one among many sources of internal critique, and in any case critical depth is arguably not paramount. The practice-based approach is already willing to sacrifice the critical depth needed for a wholesale revolutionary critique in order to underwrite strong criticism of the conduct of particular governments from within that practice broadly conceived. But underwriting strong criticism would seem to require as much specificity as possible. For a normative plateau from which one can advocate revolution or otherwise radical structural change isn’t the clearest basis for advancing arguments about the normally conclusive obligations of agents within ordinary practice. If anything, the more global revolution seems to be what is called for, the harder it is to convincingly argue that any particular course of action, here and now, is definitely required. We will perhaps have a vague responsibility to do something, somehow, at some point, for the cause of revolutionary change. But that won’t be the strong basis for criticism and censure that a practice-based account is after.

Even when revolution isn’t in the cards, the more abstract the framing characterization of a practice, the weaker the public argument for resulting conclusive obligations. The more abstractly a relevant social practice is described in the framing characterization that is supposed to support more specific normative conclusions, the easier it is to slough off as not really in force, or not really applicable in a particular context of decision, especially when real costs are to be borne. That might be because people generally lack sufficient assurance that the abstractly described practice really does enjoy sufficiently widespread support, or because the (perhaps generally assured)
practice leaves wide discretion for how it is to be interpreted and/or followed in specific cases. While there are of course real limits on how specific a philosophical theory can be, in these cases credible specificity within those limits is especially important.

**Conclusion: Let a Thousand Flowers Bloom**

In sum, I have suggested that different theoretical aims naturally lead to different forms and degrees of sensitivity to practice. If one asks, “But what aims should we have?”, my answer is that political philosophy can rightly have more than one task, and that any non-trivial restriction on its scope is bound to amount to arbitrary legislation or implausible dogmatism. And though I cannot argue for this here, I take it we can assign meanings to various contrasts – e.g. between “fundamental” versus “instrumental” principles, or “ideal” versus “non-ideal” theory – as our different aims and contexts require. There is no one way to interpret these notions, but only different versions of fundamentality or ideality for the question of justice at hand.

To be sure, political philosophy would be grossly deficient if normative issues about what we ought to do were not placed at center stage; they are what much of political philosophy should be about. Yet other issues may well be worthy of inquiry, when a case for them can be made. Instead of limiting the scope of political philosophy in ways that may do little to advance human understanding, we do better to simply articulate the different aims of political philosophy and their particular kind of importance for us.

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**ABSTRACT**

Why Practices?

The practice-based method of justification requires sensitivity to social practices. This raises difficult questions: Must the practices in question be established or at least realistic? How “constructive” can we be in our interpretation of their form or aims? This paper suggests that our answers to these questions can vary with our explanatory purposes. Requirements of realism and sociological accuracy are relatively thin given purely intellectual aims of moral understanding, thicker given the aim of addressing humanity, and thicker still given the aim of justifying principles as normative for us, in our current world historical situation. I suggest that we have no reason to insist on one set of animating justice concerns to the exclusion of all the others, even as normative requirements rightly take center stage.
Pourquoi les pratiques?

La méthode de justification fondée sur les pratiques suppose un certain degré de sensitivité aux pratiques sociales. Cela soulève des questions épineuses : les pratiques en question doivent-elles être établies ou au moins réalistes ? Quel degré de « construction » pouvons-nous assumer lorsque nous interprétons leur forme ou leurs buts ? Cet article suggère que les réponses à ces questions peuvent varier en fonction de nos objectifs explicatifs. Les exigences liées au réalisme et à l’exactitude sociologique sont relativement faibles lorsque ces objectifs sont purement intellectuels, plus fortes lorsque l’objectif est de déterminer les conditions générales de la vie humaine en collectivité, plus fortes encore lorsque l’objectif est de justifier les principes comme étant normatif pour nous, étant donnée notre situation actuelle dans l’histoire du monde. Je suggère que nous n’avons pas de raison d’insister sur un type d’objectifs explicatifs à l’exclusion des autres, même si les exigences normatives occupent à juste titre une place centrale.