

Elizabeth Victor
Laura K. Guidry-Grimes *Editors*

Applying Nonideal Theory to Bioethics

Living and Dying in a Nonideal World

Philosophy and Medicine

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Elizabeth Victor • Laura K. Guidry-Grimes
Editors

Applying Nonideal Theory to Bioethics

Living and Dying in a Nonideal World



Springer

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Part I

Nonideal Theory

Chapter 1

Introduction to Nonideal Theory and Its Contribution to Bioethics



Elizabeth Victor and Laura K. Guidry-Grimes

1.1 History and Background: Ideal and Nonideal Theory

Nonideal theory developed as a branch of social and political philosophy and was motivated as a response to John Rawls's idealized theorizing about justice. In his *A theory of Justice* (1999), Rawls makes idealized assumptions in his approach with the aim of perfecting social institutions. At its core, Rawls's theory rests on the optimistic picture of human institutions as *perfectable*, and to the extent that our institutions do not align with this picture of justice, we ought to use the perfect ideal as our aim to guide the way we construct our political and social institutions. Rawls suggests, as part of a long tradition in moral and political philosophy, that we theorize from the position of a detached, impartial observer. The veil of ignorance is meant to put us all on equal footing, without regard to our particular preferences or background or context, in considering what principles of justice ought to determine the proper distribution of justice. An idealized approach thus instructs that we must abstract away from the messy realities, situations of injustice, and histories of oppression and exploitation to establish the ideal theory of justice in the first place. His ideal theory further assumes that institutions and individuals would be willing to comply with the principles of justice and that compliance is set against a backdrop of idealized social conditions. Rawls does not deny that our world is actually far from this ideal, but his view is that an idealized approach is the best way to begin addressing injustices in the actual world.

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As David Schmidtz pithily puts it, “the contrast between ideal and nonideal theory is elusive” (2011, 773). Nonideal theory has grown into a robust heterogenous social and political philosophical literature. One of the earliest developments of nonideal theory was the capabilities approaches, made famous by theorists such as Amartya Sen (1999, 2009) and Martha Nussbaum (2000). Capabilities theorists focus on foundational dimensions of well-being and human flourishing and how institutions and the broader society can succeed or fail at setting up the conditions necessary for that flourishing. On this approach, actual freedom to achieve well-being given diverse human needs is central for a just society. While theorists differ in how they articulate the different dimensions, the general aim is to give us a metric that cuts across cultural differences, allowing for variation in lived experiences and customs, while still capturing the realities of injustice in a way that allows us to prioritize needs. In the simplest of terms, both Sen and Nussbaum have argued, in different ways, that individuals and social institutions should be focused on alleviating inequalities and addressing injustice as they appear in the real world, and we can best identify and respond to social inequalities by measuring and enabling human capabilities in their particular contexts.

Charles Mills approaches the topic of nonideal theory by bringing together insights from critical race theory, Marxism, and feminism. Mills argues that ideal theories share a set of problematic assumptions: idealized social ontology, idealized capacities of agents, silence on oppression, ideal social institutions, idealized cognitive sphere, and strict compliance (2005, 168–9). According to Mills, it is only from one’s indoctrination into a certain way of philosophical thinking that would allow us to buy into the belief that ideal theories are good starting points for moral theory (169). More generally, nonideal theorists argue that theories of perfect justice are not helpful as a starting point for alleviating social inequalities. There are two lines of critique here: (1) that the methodological approach that drives ideal theory is an impossible exercise, and (2) that ideal theories cannot adequately address actual injustices in all of their intertwined, embedded, and embodied realities.¹

First, in order to go behind Rawls’s veil of ignorance successfully to reach the original position, we have to theorize from a neutral position that does not bring in any of our biases or predilections that are based in how we happened to grow up, what our race happens to be, what our sex or gender happen to be, what abilities or disabilities we have, etcetera. Rawls’s theory presumes that we can strip away the “natural lottery” as a cognitive exercise so as to derive principles of justice that anyone in society could (and should) accept. One question is whether any human theorist is capable of stripping away these biases and predilections, whether we can step behind a veil of true ignorance. Critics argue that because of how our faculties for reasoning are built and maintained in a social web, we cannot extricate ourselves from that web to be truly impartial reasoners. Thus, the argument goes, the veil of

¹While Mills’s critique specifically targets the theories of John Rawls and Robert Nozick, it can easily be expanded to apply to Kant’s moral and political philosophy, the utilitarian premises put forward by John Stuart Mill and more contemporarily by Peter Singer.

ignorance is a mythical notion that no one, not even the savviest philosopher, can successfully step behind in a cognitive experiment.

Second, a concern with ideal theorizing is that it will always fall short of adequately addressing the realities of injustices. Part of the concern here goes back to the prior concern – that the methodological approach in ideal theory does not allow for the distinctive moral perspectives of those who actually suffer injustice (because these details have to be stripped away in the original position). If those who experience injustice have unique and critical perspectives on what counts as injustice and how injustices should be addressed, then any approach to justice cannot require that we strip away these perspectives. Additionally, ideal theory's methodology presumes that the *best* position for deriving principles of justice is from the standpoint of an idealized reasoner and agent. However, someone in this position will not be able to identify with or understand what it is to experience many forms of injustice. Eva Feder Kittay further argues that any methodology that revolves around idealizations will inevitably marginalize certain groups from participation in the moral community. She explains:

In their role as placeholders rather than participants, as instruments of an argument rather than subject of discussion, they are invariably misrepresented, and reduced to stereotypes. Thus, while people with 'normal' characteristics and capacities enter the theoretical stage as idealized versions of themselves, usually features selves with all and only desirable characteristics, the others bear the weight of that which in our human existence is 'abjected' (2009, 130–131).

Kittay famously refutes the bioethical arguments by Jeff McMahan and Peter Singer, arguing the idealized theories undervalue the life of persons with profound cognitive impairments.²

There is another aspect to this concern about the fundamental limitations of ideal theory: distributive justice is separated from other forms of injustice, and public injustice is conceptually divorced from private injustice. Rawls's aim was to derive the principles of distributive justice in the public realm, but distributive patterns are not isolated from other forms of injustice that pervade both public and private life. Rather, injustices are intertwined, and any theoretical approach that tries to separate them is doomed to fail in a) how it describes the nature of justice and injustice and b) what it offers as a normative framework for achieving justice.

Some nonideal theorists start with the observation that some persons, as a result of the moral lottery of life and systems of oppression, will never be an ideal reasoner or moral agent (Card 1996). Moreover, nonideal theories foster conceptual space to explore moral emotions and their role in our social and political lives. For instance, Lisa Tessman discusses the concept of moral residue – the feelings of guilt that result when one is making a decision with only bad or morally suboptimal alternatives from which to choose (2010). Tessman's approach, when applied to clinical or other contexts, can help us answer the questions: How do we guide

²See Chap. 5 in this volume by Joel Michael Reynolds "On the problem of ableism and bioethical theory" for an extended analysis of this point.

decision making in real-world contexts that often give the decision-maker no morally good choices? After suboptimal decisions are made, how do we help decision-makers and stakeholders work through the emotional aftermath? While this is but one example of a nonideal approach, it illustrates something in what approaches to nonideal theory have in common: they (1) provide a moral framework for individual actors and institutions given that people are imperfect reasoners and moral agents, (2) provide realistic normative guidance and policy recommendations to address injustices in the world we live in, (3) frame the moral community in broad and inclusive terms, and (4) embrace pluralism in approach and flexibility in response to changing conditions and context; that is, our theories should help us address injustices today and future injustices we cannot yet imagine.

1.2 The Nonideal Approach to Bioethics

As John Arras notes, “[n]otwithstanding its manifest importance for practical ethics, there has been relatively little self-conscious scholarly work on nonideal justice in theory in [...] bioethics” (2016, 11). One noted exception to the lacuna in the bioethics literature is Madison Powers and Ruth Faden’s *Social justice: The moral foundations of public health and health policy*. Powers and Faden develop a theory of justice for application in public health and health policy. They argue that questions of justice must begin with the unjust social realities in which we find ourselves. The foundation of their account follows in the capabilities tradition of Sen and Nussbaum, identifying six dimension of well-being, including: health (physical and mental functioning with minimal pain and loss of control over one’s body), personal security (absence of assault, and threats), reasoning (ability to gain knowledge about the physical and social world for practical decision-making), respect (recognition of each person’s intrinsic moral worth and dignity), attachment (feeling of belonging, like we have a place in the world; emotionally deep bonding with others), and self-determination (ability to make and pursue options for ourselves) (Powers and Faden 2006, 17–28). With the dimensions of well-being, which often overlap and inform one another, we can establish whether and how social institutions within a given society threaten or enable flourishing, and we can then develop health policies to mitigate the effects of barriers to human flourishing.

It is our contention that theorists are answering the call for greater attention to and research on what nonideal theory can bring to bioethics, though this area of scholarship is fertile for more growth. For example, Florencia Luna identifies nonideal theory as a conceptual tool that can help bridge policies permitting lawful abortion access with policies governing conscientious objection in ways that do not harm women already suffering from systemic injustice and violence (2015). In another example, Dónal O’Mathúna turns to nonideal theory as a means to guide practical actions in disaster bioethics and deal with the moral residue agents are left with when choosing from only suboptimal alternatives (2016). In a third example, Candice Delmas and Sean Aas explicitly engage with ideal and nonideal theories in

their analysis of sexual orientation conversion efforts (2018). In addition to the work that specifically identifies their aims as nonideal theory, there are other instances where authors are utilizing nonideal approaches and do not recognize it as such. In a prior work, we build on the work of Powers and Faden to interrogate the concept of vulnerability and the ways in which medical diagnoses can compound vulnerability (Guidry-Grimes and Victor 2012). Even as we do not specifically identify that Powers and Faden are employing nonideal theory, it is clear from the way they frame the issue and their methodology that it is nonideal from the outset.

1.3 The Future of Nonideal Approach to Bioethics

At its core, nonideal theory is an attempt not only to address issues of justice, but it also provides us a lens through which we can articulate our limitations as knowers and reasoners, the ways in which we are relational in our autonomy needs, and the ways in which we are deeply dependent upon institutions and social supports for our agency and identities. Bringing this lens into bioethics means shifting our orientation in our scholarship and our practice. This shift will have implications in how bioethical evaluations are taken up and played out in policies, institutional structures that inform the clinical encounter, and avenues for protection and redress for marginalized and vulnerable populations. It will also allow theorists and researchers to interrogate the status quo, revealing how many standard policies and practices are embedded in social and institutional arrangements that privilege the few or are built on exclusionary norms. In addition, it will allow us to take a much-needed critical look at the distribution of opportunities, goods, access in healthcare and research, and this approach prompts us to take stock of which ethical theories or modes of reasoning and deliberation have dominated analysis and identify their limitations.

As nonideal approaches take as their starting point the messy realities we find ourselves in, they provide us with an historical, cultural, and sociological situating of moral problems and issues. Such a starting point brings with it the ability to trace webs of power, identifying who has had power, who has lost it, and how social power and privilege inform the background conditions behind common moral intuitions and conceptions (e.g., what and who counts as rational, autonomous) that often govern bioethical theories, principles, and policy recommendations. By considering the ways in which imperfect systems have established social power and privilege, we can better identify whose voices are prioritized, privileged, silenced, solicited, neglected in the clinical encounter, at various stages of the research process, and in global bioethics. Such privilege also informs who is (and is not) given a “seat” in deliberative procedures, who counts as an expert, whether we attend to the ways in which knowledge is embodied and embedded in social practices, the degree to which we give first person experience and testimony weight, and whether or how widely we value participatory bioethics. Finally, nonideal approaches can help bioethicists reevaluate priorities in research and public health, including when and what conditions coalesce to make someone or a group in acute

need for healthcare or biomedical intervention. Such priority setting depends upon our collective and expert values, which determine the interventions that are seen as medically indicated, futile, or worth investing in, along with how we negotiate inevitable trade-offs in medicine and public health.

From incorporating postcolonial and decolonial perspectives, to embracing feminist approaches to bioethics, queer bioethics, and narrative methodologies, this volume aims to expand the terrain of what has been called nonideal theory. Even when they have not identified themselves as such, these approaches to bioethics have, in fact, been contributing to the work of nonideal theory. While it is important to recognize these traditions as distinct, arising from different methodological commitments and having different aims, what these traditions have in common is their critical methodologies that provide theorists with different ways to articulate issues of injustice. When applied to a bioethical context, the result is a nonideal approach to tackling distinct histories of oppression, power inequities, and epistemic injustice that continue to be under-addressed within the context of clinical research, healthcare access and quality of care, public health campaigns, and global health.

This important work is often published outside of bioethics, but it has implications for bioethical theory and practice. For example, Jenna Grant recently applied a postcolonial lens to the Cambodian debate about Pre-Exposure Prophylaxis Trial (2016). She argues that “this shift in the object of ethical concern, from the experimental human subject to the relation between subjects and researchers, illustrates how a postcolonial field of articulation reformulates classical bioethics”, and with this shift, “culturally specific relations of vulnerability and responsibility between foreigners and Cambodians and between Cambodian leaders and Cambodian subjects” (2016). From a decolonial perspective, Andrea J. Pitts combines an analysis “...of structural white supremacy and mass incarceration with an analysis of colonial medicine... [focusing] on Fanon’s writings on medicine and health under conditions of structural oppression to clarify a pattern of violence inflicted upon communities of color and poor communities in the United States, i.e., the communities most affected by mass incarceration” (2015). These are but two examples of the kind of scholarship that can elucidate the conditions of oppression and injustice that ideal approaches to bioethics cannot adequately address.

The path forward, and the aim of this volume, is to extend the scholarship of nonideal approaches to bioethics. In doing so, we hope to expand what has been considered nonideal bioethics. As with many emerging fields in philosophy more generally and bioethics in particular, a task of early theorists is to demarcate the boundaries of the discipline. This is a particularly challenging task for nonideal approaches to bioethics, since demarcation is itself a claim to authority that many nonideal theorists will, for good reason, resist. The history of nonideal theory has as its point of reference a turn away from Rawlsian justice, but the future of nonideal theory is ripe with possibilities.

1.4 Nonideal Theory and Bioethics in the Time of COVID-19

Before outlining the chapters of this volume, we want to highlight the importance of nonideal theory for thinking through the various ethical tensions and debates that have arisen during the COVID-19 pandemic.³ Interestingly, there are even debates about whether we are all Rawlsian at heart at this time (see alternate views presented by Authers 2020 and McKeown 2020). This anthology was nearing production phase during the pandemic, so the included chapters do not include reflections on this public health crisis. Nonideal approaches to public health ethics should be further developed, especially given how bioethicists, activists, and the general public have challenged basic assumptions of public health ethics in just the beginning few months of COVID-19 (which will surely continue in subsequent waves and during the recovery period).

A prominent debate concerns *equitable* allocation of scarce critical care resources (particularly ventilators, intensive care unit beds, and trained health care staff). The priority of “saving more lives and more years of life is a consensus value across expert reports” (Emanuel et al. 2020, 2052). Despite the prominence of this principle in public health ethics for decades, it continues to receive repeated criticisms as the public faces the potential repercussions of such a principle during the COVID-19 pandemic. Saving the most lives and life-years may appear fair if considered in a vacuum or in an idealized society where all infected patients are abstracted from their actual sociohistorical circumstances. In reality, patients enter the emergency department on unequal footing; their projected life-years are largely a function of structural inequities related to health care access and affordability, food security, environmental stressors, safe work conditions, and the like. Cleveland Manchanda, Cheri Couillard, and Karthik Sivashanker argue against the “save the most life-years” principle for this reason:

This principle is fundamentally identity-blind, and many states have made that fact explicit, believing that barring consideration of race and social factors will yield a fairer outcome. In reality, it will almost certainly ensure the opposite, with devastating effects on disadvantaged communities. The conditions in which people are born, grow, live, work, and age are responsible for most of the unjust, preventable, and systemic differences in outcomes among groups, including differential rates of chronic and life-shortening conditions (2020, 2).

If there is a myopic focus on saving the most lives, then a patient will be deprioritized for scarce resources when they need more resources than other patients. The patient’s need for more resources, however, may be due to pre-existing conditions that have been exacerbated by structural inequities. Any implication that these additional resources for one person are a “waste” hints at ableist disregard

³The importance of nonideal theory is especially salient in light of the Summer 2020 protests for racial justice in the wake of George Floyd’s death. The contributions by Asha Bhandary (Chap. 10 of this volume) and Keisha Ray (Chap. 11 of this volume) speak to the need for more sustained attention on this topic.

(Stramondo 2020). In response to these concerns, many bioethicists have argued for expanding criteria for scarce resources and focusing on *which groups of people* will receive advantages, rather than simply *how many* lives or life-years are saved (Ballantyne 2020; Biddison et al. 2019). “Fairness weights” have been suggested as a possible corrective for certain patients who would otherwise be deprioritized (Schmidt 2020). Although nonideal theory has not been explicitly invoked in these analyses, these criticisms of the “save the most lives and life-years” principle are in line with nonideal approaches.

Attempts at justice-oriented crisis planning will have to take a number of nonideal considerations into account. Humans bring various biases, explicit or implicit, to the development and implementation of crisis plans. No system can have perfect accountability or perfect criteria. Crisis planning has taken place in time-pressured circumstances with inadequate federal support. Triage teams, hospital administrators, clinicians, and ethics committees and clinical ethicists who are handling the crisis on-the-ground do not have time for all of the training that would help minimize errors and bias during this public health disaster. Information and evidence about the novel coronavirus are constantly evolving, making it even more difficult to know whether crisis plans will succeed or approach a *just* response. There is also the possibility that any given health care professional will not follow the crisis plan due to distress, lack of buy-in, inadequate training, or gaps in process. These conditions pose real-world barriers to achieving anything like real justice.

This pandemic has also revealed *whose knowledge and priorities* rise to the top of a public health crisis in our country (and elsewhere). When the situated knowledge of vulnerable persons is not given a place of central importance, then pandemic responses will tend to prioritize the perspectives, needs, and interests of those who are already advantaged in the community. In allocating emergency funds, for example, government agencies did not prioritize domestic/sexual violence shelters, even though stay-at-home orders foreseeably increased rates of violence in homes. Nursing homes were not prioritized in terms of staff protections, personal protective equipment (PPE) and disinfectant allocations, or COVID-19 testing *until* they were found to be hotspots of infection. Even while imposing lockdowns and physical distancing mandates, government agencies did not take adequate steps to protect those who could not abide by all of these public health measures (such as persons with disabilities who rely on daily caregivers; patients living in psychiatric hospitals; and essential workers without sick leave, a living wage, or access to PPE). As another example, the possibility of personal ventilator reallocation has been a significant source of concern for the disability community, contributing to distrust of health care institutions during the pandemic, yet this concern has been largely neglected by health care systems and agencies. Crisis plans that allow for personal ventilator reallocation are focused on maximizing equipment instead of the phenomenological importance of these devices for those who depend on them for everyday use (Reynolds et al. 2020).

All of the above points (and more) highlight how crucial it is to have proactive engagement from diverse communities before a public health disaster hits. This engagement should bring together different epistemic positions, including those

who are multiply marginalized and have distinctive insights and moral knowledge that can aid justice in a crisis (Guidry-Grimes et al. 2020). We have learned that we cannot trust abstract principles, formulated outside of a crisis and without community input. The principles for structuring society can easily assume idealized conditions where most people can participate in economic and civic life, but those assumptions are forced to shift when most people are susceptible to infection for that same participation. The viewpoints and lived experiences of the most vulnerable or marginalized can illuminate demands of justice that get lost in attempts to make judgments behind a veil of ignorance.

1.5 Contents of the Volume

The volume is divided into two main parts. The first is focused on philosophically unpacking nonideal theory as an approach in bioethics. The second offers applications of nonideal theory in environmental ethics, healthcare ethics, public health ethics, and genetic ethics.

Florencia Luna opens Part I with a balanced view of ideal theory and nonideal theory, arguing that there is no singular theory that can guide real world cases and policies. She offers criteria for choosing an ideal or nonideal approach and then applies them to bioethical problems in reproduction to show how her criteria can be helpful in reasoning among cases within a global context.

In the third chapter, Daniel Beck argues for a feminist naturalized moral epistemology as a promising methodology to avoid idealizing assumptions in moral philosophy and applied ethics. A successful methodology has to account for how moral agents are positioned – that is, how we are constrained by social, cultural, psychological, and historical factors. He analyzes a naturalized common morality that is responsive to on-the-ground realities in bioethics.

The fourth chapter offers a Marx-informed nonideal framework for bioethics. Alex B. Neitzke argues for understanding health care structurally, as a set of productive practices within a larger systematic whole of capitalistic production, to diagnose systemic dysfunctions in health care's material production. He refers to these dysfunctions as social pathologies of health care, which can be an illuminative concept for bioethics.

In the fifth chapter, Joel Michael Reynolds shows how normative theorizing in bioethics is underwritten by conditioning principles, which explicitly or implicitly determine the role of other ethical principles. Ableism is such a conditioning principle, making true justice as fairness unattainable in biomedical practice and bioethical reasoning. He focuses on idealized moral theorizing embedded in Singer's utilitarianism and argues that ideal theory exacerbates the effects of conditioning principles like ableism, resulting in hermeneutical injustice.

Nabina Liebow and Kelso Cratsley discuss the benefits of nonideal theory for medical school education in the final chapter of the first section of the volume. They illustrate their points by suggesting how schools should incorporate units on “race

and medicine” and “stigma and coercion in mental health.” They argue that nonideal theory has the power to inform ethical engagement in clinical training and practice.

Part II begins with a chapter from Madison Powers, who analyzes individual responsibility for environmentally-mediated “group harms.” He details the pressing bioethical problems in climate change and agricultural practices globally, and he argues that standard methods for approaching these problems tend to be idealizing. He offers a nonideal approach that can better guide how to address these pressing collective problems.

In the eighth chapter, Elizabeth Lanphier applies care ethics to an analysis of health care institutions, arguing for a nonideal institutional care ethic. She argues that a nonideal approach brings care and justice into conversation with one another without assuming the transcendence of one over the other. This framework is then used to reason through cases of transplant patients.

Anna Gotlib highlights the intense vulnerability and power differentials of patients in the ninth chapter. She argues that nonideal approaches are necessary to bring proper attention to how illness and hospitalization can harm and alienate patients, particularly in terms of their identity, self-trust, and voice. She recommends an institutional shift toward nonideal, narratively-grounded approaches to the overall well-being of patients.

In the tenth chapter, Asha Bhandary explores the state of “being at home” – feeling safe and at ease in one’s context – in relation to minority health and health disparities. She argues that ideal approaches to social equality fail to identify how bodies are affected by racism and sexism. She brings together multiple theories that are critical of this idealization, and she shows how a nonideal theoretical approach in bioethics is well-suited to evaluate the ramification of bodily damage incurred by stress and microaggressions. Bhandary’s work has clear implications for global bioethics.

The eleventh chapter, written by Keisha Ray, analyzes therapeutic advice to induce sleep that ultimately neglect the social, legal, cultural, and economic causes of racial disparities in sleep. Medical recommendations for sleep hygiene operate under idealized assumptions, or “glittering ideals,” addressing sleeplessness under ideal circumstances under which only a small group of privileged people live. She argues that nonideal theory provides a more useful framework for developing solutions to racial disparities in sleep and health generally.

Alison Reiheld critically investigates approaches to fatness in health care and bioethics in the twelfth chapter. She reveals the insidious effects of healthism, an idealized notion that situates health, disease, and their solutions at the level of the individual. She instead argues for a nonideal approach rooted in intersubjectivity, empiricism, inclusivity, contextual specificity, and reflexivity. Her theoretical framework sheds light on failures in public health campaigns both in the United States and globally related to medicalized obesity.

Nancy Arden McHugh and Corina Cleveland analyze epistemic injustice and failed attempts at health care in prison medical wards in the thirteenth chapter. They provide a nonideal philosophical framework for understanding institutional epistemic injustice. Prison health workers take on the harm mentality of the carceral

system, they argue, which means engaging with their patients as prisoners rather than as patients. They suggest epistemic strategies for addressing this issue for people who are ill, aging, and dying in prison.

In the fourteenth chapter, Andrea J. Pitts focuses on the virtue of veracity in the context of health care services in prisons, jails, and detention facilities. They contend that the bioethics literature largely ignores the structural barriers to health care that impact veracity in the provision of health care, drawing on Assata Shakur's political autobiography in their analysis. They argue that a nonideal lens allows bioethicists and health care workers to attend to the structural barriers within and beyond prison walls.

In the next chapter, Allison B. Wolf inspects deaths in detention facilities as a result of U.S. policies against immigrants in recent years. Building on the work of Shelly Wilcox, she argues that nonideal theory makes it clear the special obligations bioethicists have to condemn these deaths and to promote immigration justice in the United States, which begins by recognizing the role the United States has in creating and perpetuating unjust living conditions of people globally.

Leonard Kahn investigates the ethics of medical deportation in the sixteenth chapter. Medical deportation occurs when an undocumented patient is returned to their country of origin when ill or injured. He argues that nonideal theory is necessary for a proper analysis of this decision, and he offers a contractualist framework to delineate permissible and impermissible forms of medical deportation. He shows that real-world cases of ethically permissible medical deportation are rare at best, and there is little prospect of this situation actually changing.

The seventeenth chapter, written by Amanda Roth, delves into a case study of LGBTQ+ persons making use of reproductive technology to build a family. She offers a pragmatist approach rooted in nonideal theory, which centers the situatedness of LGBTQ+ people in a heteronormative and cisnormative society in the evaluation of this reproductive technology. LGBTQ+ people and families face practical conflicts in their attempts to live out their values in the social world as they find it, which is underscored in Roth's analysis. While Roth's chapter has a U.S. focus, her analysis and conclusions can easily be applied to many countries health policies regarding LGBTQ+ access to reproductive technologies.

In the final chapter, Marisol Xhelili Ciaccio and Drew Dumaine analyze testing for Huntington's Disease. Drawing on Amartya Sen's work, they argue for a nonideal approach to improving genetic counseling and testing for this patient population. They suggest that though practitioners and institutions often create protocols and testing guidelines with the best interests of patients in mind, they nonetheless fail to account for the exclusionary mechanisms and obstacles that result from idealizations in health care and the U.S. health insurance system.

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Chapter 2

Ideal and Nonideal Theories: The Challenges of Decision-Making in an Imperfect World



Florencia Luna

2.1 Introduction

We live in a nonideal world: people fall short of complying with their obligations and respecting basic human rights. Oppression, corruption and prejudice are widespread. Because of this, ideal theories cannot always help with the challenges our life poses. Yet, sometimes, the “second best” option or the morally suboptimal alternative not only leaves moral residues and emotional aftermaths (Tessman 2010) but prevents better options.

Since Rawls’s distinction of what nonideal theories (NITs) are, some political philosophers, bioethicists and theorists have been trying to develop and use NITs to solve our nonideal problems. In addition, sometimes ideal theories (ITs) or more idealized theories¹ seem to be useful, too. If we consider this variety of possibilities seriously, then we should ask several questions: When should we use NITs and when should we opt for ITs? Are there appropriate criteria for making these kinds of decisions? What are valid uses or justifications for NITs? Is there a way to guide decision-making in real world contexts?

This paper will try to answer the above questions. It has two parts. The first is theoretical. I make some distinctions to present the theoretical arena and debate. I will then specify how I think ITs and NITs relate to each other. Finally, I will address a yet to be explored field and will suggest five criteria to help in the decision-making process to select between NITs and ITs.

¹As I will explain in the paper, I will also use the terminology “more or less idealized” theories since I will defend a continuum between ideal and nonideal theories.

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The second part introduces two cases and applies the decision-making process developed in the first part. In one case I argue that we ought to follow NIT, while we should follow IT in the other. I focus on reproductive rights-related problems. The first case examines conscientious objection in the case of legal abortion in Argentina. The second case analyzes research with pregnant women in countries where abortion is illegal. The cases show the practical value of combining NIT and IT to address real world concerns.

2.2 Ideal and NonIdeal Theories

2.2.1 *Conceptual Distinctions*

In recent years, political philosophers have questioned the methodology to develop normative prescriptions (Sen 2006, 2009; Mills 2005). Much current work was found defective because it was of little if any practical help. Such awareness showed the way to a methodological turn (Valentini 2009, 2012): from Rawls as the “paradigmatic model” to the search for other alternatives, among them, NITs.²

Elucidating what ITs and NITs consist of is not straightforward. There are several ways to consider what they are, as well as differentiating between distinct proposals. Some positions tend to blur the possibility of a categorical distinction between ITs and NITs and speak of a “territory of a multidimensional continuum”.³ I will present Valentini’s proposal (2012) as it provides a clear vision of some of the issues at stake. Valentini explains that, in a first sense, IT can be contemplated as a full-compliance theory and NIT can be understood as a partial compliance theory. The debate centers on the question of what duties and obligations apply to us in situations of partial-compliance as opposed to situations of full compliance. IT can also be understood as a utopian or idealistic theory and NIT as a realistic theory. On this second reading, the debate focuses on the question of whether feasibility considerations should constrain normative political theorizing and, if so, what sorts of feasibility constraints should matter.⁴ The third way of understanding IT indicates

²All the debate of ITs and NITs – at least initially – seemed to focus on Rawls and he appeared to be the target of many of these analyses (see Valentini 2012). This paper is not exegetical. I will consider Rawls’s position only when it is relevant to my argument or when it illustrates a point.

³ Hamlin and Stemplowska (2012, 48-49) hold this position, though they distinguish four broad approaches: (1) full compliance and partial compliance; (2) idealization and abstraction; (3) fact sensitivity and fact-insensitivity and (4) perfect justice and local improvement of justice. They make a categorical distinction between the theory of ideals (identification and elucidation of ideals) and the continuum of ITs and NITs that are identified with institutional designs.

⁴ One of the debates examines the degree of “idealism or realism” needed. For the utopian position of G.A. Cohen (2003, 2008) principles of justice are altogether independent of factual constraints versus Rawls’s more realistic analysis (principles of justice are developed in response to human condition, moderate scarcity, and limited altruism (Rawls 1999, 22)). However, other realist’s positions exist, such as Waldron’s (1999), that consider Rawls to be too idealized for failing to consider

that it is an end-state theory and that NIT may be thought of as a transitional theory. The debate centers on whether a normative political theory should aim at identifying an ideal of societal perfection or whether it should focus on transitional improvements without necessarily determining what the optimum is. While IT sets out a long-term goal for institutional reform, NIT asks how this long-term goal might be achieved, or worked toward, usually in gradual steps (Valentini 2012). As can be inferred, each understanding of IT and NIT has different aims and scope; it is important to note that such differences exist because we can understand the distinct ways in which we can interpret and apply an IT or an NIT. Yet, we should also acknowledge that these are not radically different areas and that some of their debates relate to each other. In this paper, I will focus mainly on some of the concerns that correspond to realistic and transitional NITs.

2.2.2 *Ideal Versus NonIdeal*

Why have ITs been criticized? There have been several objections, as was mentioned. One of the “classic” critics is Amartya Sen. Sen speaks of transcendental approaches – mostly represented by Rawls – versus comparative approaches.⁵ Sen criticizes transcendental approaches and targets Rawls’s theory for taking that approach. Sen explains that transcendental approaches are not feasible and that there may be no reasoned agreement on the nature of the “just society”. He criticizes the possibility of a unanimous agreement on principles with a complete ordering. However, Rawls does not appear to go so far. He states: “[f]or until the ideal is identified, *at least in outline*...nonideal theory lacks an objective, an aim, by reference to which its queries can be answered” (Rawls 1999, 90 [my emphasis]). Thus, he does not posit the need for a complete description or identification of this ideal.⁶ He makes a priority claim which entails other commitments.⁷ I do agree, nonetheless, with Sen’s main point: we do not need a full-blown, complete description of the perfect society or a set of fully ordered principles agreed upon by all. Yet, I also agree with Rawls that we need an IT “*at least in outline*” and that it has a relevant role (as I will argue below).⁸ However, I do not endorse the priority claim. The design of principles need not presuppose any controversial claims about the

reasonable disagreement about justice. Other political realists include power structures (Williams 2005; Geuss 2008). Regarding feasibility concerns, Gilabert (2017) provides a systematic approach to the relationship between feasibility and justice.

⁵I will use ideal theory (IT) and transcendental approach (TA) indistinctively, as well as nonideal theory (NIT) and comparative approach (CA). Robeyns (2008) also considers Sen’s terminology to be akin to IT and NIT.

⁶Gilabert explains Rawls never says that he has shown that his three principles are better than all conceivable alternatives (Gilabert 2008. See note 4, page 8).

⁷Whether Sen’s analysis of Rawls is correct or not goes beyond this paper.

⁸This is also the position of Robeyns (2008, 344).