

## Comments on David Weins ‘Toward a Pragmatic Moral Theory of State Sovereignty’

David Weins has provided a stimulating and thoughtful paper. The project he is working on – thinking of ways of framing political institutions to make them less prone to human rights abuses – is evidently an important one. This topic has, moreover, been unduly neglected by political philosophers. Much has been written on how to respond to human rights abuses once they have occurred (most notably the literature on the justifiability, or otherwise, of humanitarian intervention) but it is clearly appropriate to think more pro-actively about how to design institutions so that the likelihood of human rights abuses is minimized or eradicated altogether (so long as doing so does not incur some other overwhelming moral costs).

In what follows, I shall first outline the claims David advances (section I) and then set out some challenges and points for discussion (sections II-V).

### **I: Outline**

David’s paper has five sections. Sections 1 and 2 outline several different kinds of political theory. In these sections David draws attention to two distinctions. First, he distinguishes between ideal and non-ideal theories (following Rawls’s version of that distinction) and second he distinguishes between “aspirational” and “concessive” theories (drawing here on David Estlund’s analysis in Democratic Authority).<sup>1</sup> David seeks to defend and apply what he terms a non-ideal concessive theory – or what he later terms a “pragmatic moral theory”. As he defines these terms, this is a theory that proposes principles that

- (i) should apply in circumstances where there is non-compliance (the non-ideal component), and that
- (ii) are principles that it is *likely* that one can realize (the concessive component).

He is keen to contrast such a theory with a non-ideal theory that proposes reforms which are possible to attain but which are unlikely to be attained (what he terms a non-ideal aspirational theory).

Having made these distinctions the paper then lays out five features of a “pragmatic moral theory” in section 3 of his paper. These five features are as follows:

- (1) “political accessibility”: a political proposal is politically accessible if it is “one that can be successfully undertaken given the incentives of the relevant political actors and the constraints to action presented by the structure of their interactions” (sec 3.1, p.7: my emphasis)
- (2) “robustness” (sec 3.2): a proposal is robust to the extent that it is likely to be achieved even where there is noncompliance. (It seems plausible here to allow for degrees of robustness, rather than assume that a proposal is either robust or not.)
- (3) “effectiveness” (sec 3.3): a proposal is effective if it achieves the moral objective it is intended to achieve.
- (4) “moral progress”: this insists that “reform must move us in the right direction *from a moral standpoint*” (sec 3.4, p.10)
- (5) “provisionality”: a pragmatic moral theory must propose reforms “*that leave open the possibility of continued moral progress in the future*” (sec 3.5, p.11).

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<sup>1</sup> See David Estlund Democratic Authority (Princeton: Princeton University Press, 2008), chapter XIV. For his distinction between “concessive” and “aspirational” approaches see p.263ff and especially p.268.

A non-ideal concessive theory must meet these five conditions.

In the following section, section 4, David then presents and criticises the account of “recognitional legitimacy” that Allen Buchanan develops in his excellent and important work Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.<sup>2</sup> Buchanan argues that whether states should enjoy legitimacy should depend on four conditions: - whether the state respects the human rights of its members, whether it respects the human rights of non-members, whether it was formed through usurpation, and whether it is democratic (p.14). David’s contention is that Buchanan’s account fails the standards of a pragmatic moral theory that he has set out in section 3.

In particular, he objects that Buchanan’s account violates three of his criteria of a pragmatic moral theory. First, he argues that Buchanan’s proposed reform to the international legal system of recognizing states is “inaccessible” (pp.16-19). Here he assumes a broadly realist account of the actions of states, detailing various ways in which state leaders have sought to further the interests of the members of their state. He concludes that “Buchanan’s proposed reform is politically inaccessible. State leaders have little incentive to establish such an institution” (p.19). Second, David argues that Buchanan’s account violates the Robustness Condition (pp.19-20). His argument here is that it is vulnerable to extensive noncompliance and without this it will not serve the goal it is intended to serve. Third, he contends that Buchanan’s account “potentially fails to meet the Provisionality Condition” (pp.20-23). His central point here is that it is sometimes appropriate to confer legitimacy on rights-violating states for by doing so one might further encourage them to pursue morally more acceptable policies. A strategy of denying recognition to human rights violators may close off the prospect of further moral progress and thus violate the provisionality condition. Buchanan’s attempt to reform state sovereignty to make it less prone to human rights abuses is therefore found to be wanting.

This leaves one final substantive section of David’s paper. David’s claims here are much more tentative. He makes two general points. First he contends that any proposal must work within the existing system of states and we should set aside radical proposals for rethinking world order. We should restrict our focus to “reforms that are compatible with and accessible from the institution of sovereignty currently in operation, since the current institution ostensibly serves and protects the survival interests of the actors who shape the constitution of international institutions” (p.25). Second, he contends that any moral progress requires organizing states so that state officials face incentives from their own citizens to honour human rights. He writes “Human rights will be best protected within a system of sovereign states when state leaders are forced to respond positively to citizens’ demand for human rights protection. This will be the case when state leaders depend upon the support of large segments of their domestic populations for their political survival. Citizens’ ability to affect their leaders’ survival prospects are increased when they possess credible exit threats” (pp.26-27).

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I do not have any general challenges or major objections to the project outlined in David’s paper. I do, though, have particular questions about some specific aspects. In what follows I

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<sup>2</sup> See Buchanan Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law (Oxford: Oxford University Press, 2004).

shall therefore go through David's paper step by step, outlining those aspects I did not follow or thought were vulnerable to criticism.

## II: the Typology of Political Theories

First, I found the application of the distinctions invoked in sections 1 and 2 a little confusing. David defines an aspirational theory as a theory which "proposes objectives that are merely possible to achieve" (p.4). This is contrasted with a concessive approach where a concessive theory is one which "proposes objectives that are likely to be achieved" (p.4). The distinction therefore turns on the difference between what is possible and what is probable (pp.2-3).

However, when he illustrates this approach, and seeks to describe an aspirational approach, David in fact describes a situation where it is in fact not possible to realize the principle in question. Consider the example he gives on page 6. He describes a case where one wants to get from Ann Arbor to Chicago. He then writes:

"I find out that the most direct route takes me along the I-94. Now suppose I'm told that the I-94 is currently closed between Kalamazoo, MI and Gary, IN. My actual travel plans must reflect this fact. Although in principle taking the I-94 remains a possible route by which one could get from Ann Arbor to Chicago (after all, I can see on a map that Chicago and Ann Arbor are linked by the I-94), if I actually want to get to Chicago, I'll have to take an alternate, more indirect route. To persist in travelling down the I-94 would be futile. Similarly, while non-ideal aspirational theories of global justice may not instruct us to pursue unreachable moral goals, they are liable to propose paths to reachable destinations that go through stops along a merely possible route from our current reality (i.e., they tell us to take the I-94). But these theories fail to account for the places where their proposed route might be closed off to us given conditions on the ground and, thus, propose potentially futile travel plans. They fail to read the construction reports concerning the chosen route and are thereby likely to encounter insurmountable obstacles." (p.6)

In the course of this passage the distinction between concessive and aspirational approaches changes from its original version. For what began as a distinction between 'what is possible' and 'what is probable' evolves into a distinction between something like 'what is normally possible' (or 'what might be possible in other conditions') and 'what is actually possible in practice'. But this is a fundamentally different distinction. A non-ideal aspirational theory (as that approach is originally defined) cannot be indicted on the grounds that it would prescribe options that "might be closed off to us" for, by definition, it prescribes only options which are in fact actually possible (even if they are ones that people will not actually take). And in the travel example, the I-94 is not a possible route and so would not be prescribed by a non-ideal aspirational account of getting from Ann Arbor to Chicago. Furthermore, the fact that the map says that the two places "are linked by the I-94" is not germane if, as is the case here, the map does not describe what is in fact possible.<sup>3</sup>

I agree that when proposing reforms we have, all other things being equal, a reason to canvass reforms which are likely to be attainable over those which are potentially attainable but in fact will never happen, but I don't think that the example helps to illustrate this point. (Note too that the *ceteris paribus* clause in that last sentence is crucial. Suppose that one has

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<sup>3</sup> As it happens, the street on which I live is not reflected in any map (they're out of date) but (fortunately) it is possible to get here by road and any aspirational (and indeed concessive) theory of possible routes to my house should reflect that fact.

to choose between canvassing two potential reforms and because of limited time and resources cannot jointly pursue both. It might be rational to campaign for Reform-1 which would achieve a very great deal but has a probability of  $p$ , in preference to campaigning for Reform-2 which would achieve much less but has a probability slightly greater than  $p$ . Whether a proposal is closer to the “probable” rather than the “possible” end of the spectrum is, surely not the only (or even deciding) determinant that should guide our answer to the question ‘what is to be done?’)

A second point: it might be useful to distinguish between *deriving and defending theories*, on the one hand, and *campaigning for concrete proposals*, on the other. I cannot see anything wrong with outlining and defending an aspirational theory of justice – one that sets out principles that are possible to achieve but are unlikely to be achieved and may never in fact ever be applied.<sup>4</sup> That it is unlikely to be realized does not undermine its truth value or call into question its moral desirability. Its moral appeal remains undimmed. Consider now the question of campaigning for concrete proposals. Here the question of whether the policy proposals one is considering campaigning for are mere possibilities or whether they are likely to be passed is relevant. When considering which proposal one will throw one’s weight behind it would be odd to be indifferent to its relative likelihood of success. Campaigning takes time, effort, money and may result in setbacks to one’s personal life and career and because of all of these one has reason to devote one’s energies (other things being equal) to campaigns which have a good chance of succeeding over ones which might happen but are exceedingly unlikely. In addition to this, campaigning for X which one’s contemporaries regard as truly bizarre and therefore is extremely unlikely to occur (‘Omigod, you believe in global equality!!!’) will undercut one’s credibility and therefore one’s ability to campaign successfully for Y (‘You believe in subsistence rights’). In this sense one might endorse Voltaire’s statement that (campaigning for) “the best is the enemy of the good”. Given all this, though, one might endorse an *aspirational political theory* and campaign for *concessive political policies* (subject to the qualifications mentioned in the previous paragraph).

### III: The Features of a Pragmatic Moral Theory

Consider now David’s outline of the features of a pragmatic moral theory. I have five thoughts on the arguments of this section. First, the statement of the “political accessibility” condition was a little confusing. As it is worded in the text that I quoted above, it asserts that a political reform is accessible if it “can be successfully undertaken” (p.7: my emphasis). But given the commitment to a “concessive” political theory, should this not make reference to what is “likely to” be successfully undertaken, and not merely what “can” succeed? The existing formulation of the political accessibility condition seems out of line with the preceding discussion of concessive and aspirational political theories.

Second, David writes that a commitment to politically accessible reform entails that any reform “must be in the interests of political leaders to bring about such reforms and within their capability to bring them about given the collective action problems they face” (p.8). I am not sure exactly what this means (in part because I am not sure who counts as political leaders, and in part because sometimes proponents of this type of claim seem to

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<sup>4</sup> I agree here with Estlund’s statement that “There is no defect in a hopeless realistic normative theory” (*Democratic Authority*, p.267).

employ a tautological account of self-interested behaviour). On one natural interpretation, however, it is mistaken. For example, on some occasions reforms can occur even if the political leaders do not seek to bring them about but they also do not seek to prevent them either. They're just neutral. In such a case it is not true that it is in the interests of the political leaders to introduce the reform. In a second (more politically relevant) kind of scenario, changes can occur even when political leaders do not have an interest in bringing them about (and when they actually oppose them) but when they are powerless to prevent them. Consider, for example, laws which a large number of people refuse to comply with because they think them wrong and where their noncompliance and defiance cause the government to abandon these laws. Widespread opposition to the poll tax in Britain in 1990 might be an example.

Both types of scenario are counterexamples to one natural reading of David's claim. Politically accessible reforms are not necessarily reforms which are in line with the political elite's interests and capabilities. If they were we would never have revolutions (including the 1989-style "velvet" revolutions) and yet we have clearly had these. (The answer to this is, perhaps, that in such counterexamples, the reforms go against the interests of *established* political leaders but are in line with the interests of the leaders of protest groups and new social movements. Even, here, though, this seems to me mistaken because there are cases where there is simply mass (largely unorchestrated) non-compliance with a law which leads to its reform or abolition.) Politically accessible reform need not accord with the interests and powers of political leaders.

Third: David's fifth condition seems problematic. A pragmatic moral theory, he writes, must make proposals that "that leave open the possibility of continued moral progress in the future" (sec 3.5, p.11). But suppose that we can implement a reform that will achieve considerable good, that no other reform could do anything like as much good, but that this reform does not leave open the possibility of continued moral progress. The latter fact is insufficient grounds for not implementing the reform. Should we not take the only decent reform available even if it is the case that it does not leave open any moral progress? To insist that it is a *necessary* feature of an acceptable reform that it permits additional moral progress is too strong. It would prevent us from making improvements that are superior to the status quo and all other options.

Maybe then we should say that it is a *desirable* feature of a reform proposal that it should leave open the possibility of further moral progress? But this seems too weak a statement. Should we not want more than this? Why not say that, other things being equal, we should prefer those proposals that do not simply leave open the possibility of continued moral progress but which actively encourage as much as possible the prospect of continued moral progress. We aim too low if we strive only for changes which merely permit the possibility of more progress.

Fourth: a further point about the fifth condition might be made. David writes that "all the Provisionality Condition requires is that pragmatic theorizing prioritize the long-term moral consequences of institutions over their short-term consequences when the two predictably diverge" (p.11: cf also p.12). Two comments are appropriate here. First, one would clearly want to know the magnitude of the outcomes. Obviously, it is not better to prioritise preventing a longterm consequence with a small moral cost attached to it over preventing a short-term consequence with a massive moral cost attached to it, so there must be a "ceteris paribus" clause in our understanding of the Provisionality Condition. Second,

the statement seems to be committed to a negative pure time discount rate. But that strikes me as implausible – I do not see why we should accord greater weight to consequences which happen in the longrun to those which happen in the nearer future.<sup>5</sup> I very much agree with the larger point that when devising proposals we should look to the longterm but the specific formulation here is problematic.

A fifth and final point: David does not say that his five features are the only features of a pragmatic moral theory. He writes, for example, “I think any account of pragmatic theorizing must include at least the following five criteria” (p.8) and this, of course, allows the possibility of additional criteria. Allen Buchanan (whom David mentions in his discussion of “political accessibility”) mentions several criteria which David omits and I think it would strengthen his account further to add these extra features. Buchanan argues that reforms should be (i), “feasible” (they are stable and workable), (ii), “accessible” (we can get from here to there), and, (iii), “morally accessible” (we can get from here to there without incurring any excessive moral costs).<sup>6</sup> David clearly affirms (ii) already. However, he does not appear explicitly to propose (i) and (iii) and both of these are highly plausible and should, therefore, in my view be added. My main point here is that it is important to include something like Buchanan’s concept of “moral accessibility”.

#### **IV: The Critique of Buchanan**

Let us turn now to David’s critique of Buchanan’s moral theory of international law. Here I have three thoughts.

First, David’s ambiguous formulation of the “political accessibility” condition is highly relevant here. If one holds that a reform is accessible if it is “one that can be successfully undertaken” then David’s argument is destined to fail for it is surely possible to implement Buchanan’s reforms. Nothing that has been said shows that it is impossible. Suppose, though that one defines political accessibility in terms of what is likely. Is it likely that states will accede to Buchanan’s proposal? David’s argument against this claim relies heavily on the adoption of a realist theory of international relations. This, needless to say, is highly contentious. My only point here is that this is a source of considerable controversy among IR scholars and is hotly disputed by constructivist and liberal institutionalist approaches among others. This is a clear case where political philosophers should tread carefully and generally defer to the existing empirical and theoretical literature that has emerged from international relations and international political economy (which is not easy given the dissensus that exists among such scholars).<sup>7</sup>

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<sup>5</sup> I have defended a (version of a) zero pure time discount rate elsewhere: Caney ‘Climate Change, Human Rights and Discounting’, *Environmental Politics* vol.17 no.4 July, pp.536-555 and Caney ‘Climate Change and the Future: Time, Wealth and Risk’ (forthcoming).

<sup>6</sup> *Justice, Legitimacy, and Self-Determination*, pp.61-62.

<sup>7</sup> An additional point bears noting. It may be impossible/unlikely to get directly from where we are (A) to the promised land (a fair outcome C). However, as Pablo Gilabert has pointed out, it might be possible/likely to get from A to a state of affairs (B) from which it is then possible/likely to get to the fair outcome (C). One can, that is, initiate reforms which providing a good stepping stone to realize additional reforms. See his instructive discussion of what he terms “dynamic duties” in ‘The Feasibility of Basic Socioeconomic Human Rights. A Conceptual Exploration’, *The Philosophical Quarterly* forthcoming section V.

Second, it is not clear to me whether Buchanan's proposal is vulnerable to noncompliance. It does not, for example, require universal compliance to be effective. What is significant is the recognition of statehood by some – the most powerful states and by affluent and powerful regional organizations (like the EU) – and to the extent that this is true the lack of universal adherence would not be fatal.

Third, like the preceding two claims, David's third claim is essentially an empirical one. Again, therefore, it is essential to draw more fully on the available empirical literature. His suggestion that recognizing human rights violators can sometimes further morally appropriate goals is nonetheless a plausible one. One general process by which this can work is the phenomenon of state socialization. This occurs when states join international institutions and their elites come to internalize the norms of those institutions.<sup>8</sup> This can be a mechanism by which states with illiberal policies begin a process in which they develop a greater commitment to human rights. I am not sure, however, that this refutes Buchanan's claim here. It is true that his scheme cannot employ one mechanism by which repressive states might be induced to become more human-rights-friendly. However, it does not follow from this that by denying such repressive states recognition one is closing off all possibility for further moral progress. For Buchanan's reply (as David acknowledges on p.22) will be (i) that his scheme does offer such grossly unjust states a weighty incentive to improve their human rights record – namely the benefits that come with state recognition. In addition to this he may also say (ii) that there might be other kinds of inducement in addition to recognition-based benefits that one can employ. The door, in other words, is not closed to further moral progress. Finally, (iii), Buchanan is likely to reply that his focus is on the general "rules" of state recognition and not on the merits of each individual case. So while it might be true that in one specific instance another approach may yield a good result this does not undermine the case for his preferred rules.<sup>9</sup>

## **V: David's Outline for a Pragmatic Theory of Sovereignty**

David's fifth section is, as he says (p.23), the least fully developed section of his paper. I have three points to make here. First, I am not sure why we should accede to the claim that any radical change to the system of states is inaccessible. Human history has seen a vast variety of different kinds of political organization. The current structures are not writ in stone. Moreover, political actors can with good reason set up supra-state institutions which turn out later to thwart their own wishes. (For an analogy think of Eisenhower's verdict on his nomination of Earl Warren to the Supreme Court.)

Second, I am also not clear why political reform of states is facilitated by allowing exit. Indeed, one might argue that if people are less able to leave their unjust state then they will more likely campaign for reform within their own country. In Hirschman's terms, one might argue that if one removes or reduces possibility of "exit" then some will instead choose

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<sup>8</sup> For discussion see Simon Caney 'Cosmopolitan Justice and Institutional Design: An Egalitarian Liberal Conception of Global Governance', Social Theory and Practice, vol.32 no.4 (2006), pp.725-756 at p.739. This cites some of the relevant empirical literature in footnotes 36 and 38. This paper was republished at the IPT Beacon issue 3 (june 2007): <http://international-political-theory.net/3/Caney.pdf>.

<sup>9</sup> The emphasis on international rules is an important aspect of Buchanan's approach. See Justice, Legitimacy, and Self-Determination chapter 6, but especially p.284ff.

to exercise “voice” and thereby encourage reform.<sup>10</sup> (I am not arguing that exit should be removed, just observing that its existence may undermine efforts at achieving reform.)

Third, it would be worth considering in more detail the underlying causes of human rights abuses with a view then to reforming institutions so that they minimize the prevalence of such causes. Thomas Pogge’s arguments about how the “international resource privilege” and the “international borrowing privilege” bolster undemocratic states and incentivise coups are highly germane here.<sup>11</sup> Furthermore, the extensive literature on the causes of civil war (one major source of threats to human rights) and specifically on the political economy of conflict is also very pertinent.<sup>12</sup> Any project interested in how political institutions can be designed so as to prevent human rights abuses should investigate the economic causes of threats to human rights and consider what measures, if any, can be instituted to prevent such causes. In making this point I am not, of course, challenging anything David has said. As he rightly says at the end of his paper, those who seek to develop a pragmatic political theory need a much “closer interaction with political science” (p.27) and I am just adding that economics and international relations should be included too.

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In short: as I said earlier, I do not have any major objections to David’s interesting and well-argued paper. My comments are really queries about various aspects of the distinction between concessive and aspirational theories, David’s account of the appropriate features of a concessive political theory, and the extent to which Buchanan’s normative theory of state recognition is vulnerable to his critique.

On the bigger picture: I am in full agreement with his underlying aim – namely to derive an empirically informed analysis of how political institutions may be structured so as to prevent the incidence human rights abuses. This merits much more analysis than it has received thus far and it cannot be left to purely empirical studies because it raises inherently normative issues. David has provided a stimulating and rich contribution to this important set of issues.

Simon Caney

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<sup>10</sup> I am referring, of course, to Albert Hirschman’s Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States (Cambridge, MA: Harvard University Press, 1970) – a text on which David also draws.

<sup>11</sup> Pogge World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms (Cambridge: Polity, 2008) second edition.

<sup>12</sup> I am thinking here of the work of those like Paul Collier et al Breaking the Conflict Trap: Civil War and Development Policy (Washington DC: World Bank, 2003), Mats Berdal and David Malone (editors) Greed and Grievance: Economic Agendas in Civil Wars (Boulder: Lynne Rienner, 2000), and Karen Ballentine and Jake Sherman The Political Economy of Armed Conflict: Beyond Greed and Grievance (Boulder: Lynne Rienner, 2003) as well as many others.