

## JUSTICE AS AN EVOLVING REGULATIVE IDEAL

Eric Thomas Weber

[etweber@olemiss.edu](mailto:etweber@olemiss.edu)

**ABSTRACT:** *In this paper, I argue that justice is best understood as an evolving regulative ideal. This framework avoids cynicism and apathy on the one hand as well as brash extremism on the other. I begin by highlighting the elusive quality of justice as an ideal always on the horizon, yet which is nevertheless meaningful. Next, I explain the ways in which it makes more sense to see justice as evolving, rather than as fixed. Finally, I demonstrate the value of Charles Sanders Peirce's concept of a regulative ideal for framing a pragmatist outlook on justice. Peirce helps us at the same time to appreciate ideals yet to let go of outmoded understandings of their metaphysical status. Ideals are thus tools for regulating behavior. Each of these qualifications demonstrates that justice is best conceived of as an evolving regulative ideal.*

In 1829, David Walker argued that emancipation from slavery would not be enough for justice and the moral uplift of former slaves.<sup>1</sup> More recently, Derrick Bell argued that *Brown v. Board of Education* was no success at all<sup>2</sup> and that racism was and would remain a permanent force in American society.<sup>3</sup> Walker and Bell both give reason to believe that emancipation from slavery and past forms of oppression were incomplete or false victories yielding little more than negative liberty. The moral development of individuality and positive liberty take not only intelligence and goodwill, but also material means to accomplish. The question that arises in both instances is whether we can call such changes progress. In the case of slavery, abolition is thought of as one of the clearest steps towards greater justice. The *Brown* case is generally thought to be a success over some past problems, yet a failure with regard to the underlying problem.<sup>4</sup>

---

<sup>1</sup> David Walker, *Appeal to the Coloured Citizens of the World*. Edited by Peter Hinks (University Park, PA: Pennsylvania State University Press, 1829 / 2000).

<sup>2</sup> Derrick Bell, *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* (New York: Oxford University Press, 2005).

<sup>3</sup> Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1993).

<sup>4</sup> Bell's *Silent Covenants* makes the most extensive case

In my overarching project, I examine the cultural forces which can undermine or enable justice. Cultural influence can be large or small, such as in hyper-incarceration on the one hand, or in subtle uses of language that demeans groups of people on the other. My concern in the larger project centers on democratic justice and its demands for equality of citizenship. Consequently, ways of understanding the pursuit of justice are important, since even grand moments in history can reasonably be found wanting. From the start of such a project, then, two frustrating paradigmatic responses present themselves and raise difficulties for the pursuit of justice.

The first response takes the form of a dismissive cynicism. The question is whether a just culture is in fact possible or realistic. The cynical attitude rejects the idea that an ideal of justice is meaningful, since the world we live in is not ideal. Such an outlook gives up on the goal of pursuing justice and accepts inequality of citizenship as insuperable. The cynic gives up on the goal of making large-scale changes to culture and would find petty those calls for justice that concern people's use of language or the norms referred to as "political correctness."

At the other end of the spectrum, the second problematic response is absolutist. The absolutist response to the challenges for equality of citizenship rejects claims that progress has been made. It says that unless we reach the kind of justice that our ideals require, anything short of revolution is complacency and complicity, a reinforcement of injustice. Such an outlook has two worrisome outlets. The first is to give in to the cynical view, disbelieving in the meaningfulness of justice.<sup>5</sup> The second is to pursue radical action. If only

---

for this. In addition, Elizabeth Anderson has more recently argued in favor of integration as a moral imperative, though recognizing that *Brown*, while well intended in her view, was indeed insufficient to achieve integrated communities. Elizabeth Anderson, *The Imperative of Integration* (Princeton, NJ: Princeton University Press, 2010).

<sup>5</sup> Another version of this outlook gives up on the meaningfulness of justice in worldly affairs. Such a

ideal justice is acceptable, and if civil, political means of pursuing justice can only end in frustration, one can feel that no recourse is left for change except violence. Misguided though they are, racist white secessionists fall into this absolute camp. People with democratic, non-racist outlooks on justice can also be absolutists, of course.

When people in democratic societies fight for equality of citizenship, it is important at the same time to appreciate the critics of partial progress yet to welcome steps towards justice, even if soberly. In this paper, I argue that a just culture is an elusive and evolving ideal, yet one which can nevertheless serve valuably to regulate behavior and policy for the better.

In what follows, I will first address the elusive quality of justice as an ideal always on the horizon, yet which is nevertheless meaningful. Next, I will explain the ways in which it is useful to see justice as evolving, rather than as fixed. When interracial marriage was controversial, the United States was entirely unready or unwilling to consider homosexual marriage. With time and considerable effort to fight outmoded prejudices against homosexuality, a new culture and more inclusive sense of justice came into view. In this sense, justice evolves. Finally, I will look to Charles Sanders Peirce's concept of a regulative ideal to show how a pragmatist outlook can at the same time appreciate ideals yet let go of outmoded understandings of their metaphysical status. Ideals thus are best understood to be tools for regulating behavior.

---

religious response sees justice as something only possible in the afterlife, as divine justice.

### I. Justice as an Ideal

"Though the arc of the moral universe is long, it bends towards justice."

"Justice too long delayed is justice denied."

– Dr. Martin Luther King, Jr.<sup>6,7</sup>

For sailors on long trips, the horizon hides and then reveals their destination. Such is our experience also in pursuing justice. What we conceive of as justice at any given moment may sound idyllic and final, yet is akin to the horizon. Once the merchant sailor arrives at a destination, further destinations and horizons present themselves. The horizontal quality of justice also contributes to the sense in which justice appears to evolve. Past generations thought that shaking hips on television were a moral threat. White Americans at one time resisted the desegregation of restaurants and schools. It is easy to find examples today that suggest that ours is a far more just society than those of past generations, even if in many other ways justice appears far away.

Issues of race in the U.S. offer examples of continuing injustice – of inequality of democratic citizenship – falling short of an ideal. People often tire of talking about race.<sup>8</sup> Nevertheless, the Sentencing Project

---

<sup>6</sup> Martin Luther King, Jr., "Love, Law, and Civil Disobedience," in *The Essential Writings and Speeches of Martin Luther King, Jr.*, Edited by James M. Washington (New York: Harper Collins, 1986), 43-53, 52. The phrase is believed to have originated from abolitionist preacher Theodore Parker, according to John Haynes Holmes, "Salute to Montgomery," *Liberation* 1, Issue 10 (1956): 5. I am indebted for this latter reference to Clayborn Carson, Senior Editor, *The Papers of Martin Luther King, Jr., Volume 3: Birth of a New Age* (Los Angeles, CA: University of California Press, 1997), 486.

<sup>7</sup> Martin Luther King, Jr. "Letter from a Birmingham Jail," in *Why We Can't Wait* (New York: Signet Classics, 1963), 77-100.

<sup>8</sup> See Editors, "The 2014 Race Card: Democratic Appeals to Racial Division Are Worse than Ever," *The Wall Street Journal*, October 26, 2014, URL:

<http://www.wsj.com/articles/the-2014-race-card-1414192776>, and Tanya Young Williams, "I'm Tired of Talking about Racism and a Judge's Bid to Abolish the Grand Jury," *Huffington Post*, December 12, 2014, URL:

revealed in 2013 that if trends continue, 1 in 3 African American men can expect to be imprisoned in his lifetime.<sup>9</sup>

Understanding that there appears always to be more work to do with respect to justice, we can appreciate disagreements between Martin Luther King, Jr. and Malcom X. X's famous and often repeated line was that "If you stick a knife nine inches into my back and pull it out three inches, that is not progress. Even if you pull it all the way out, that is not progress. Progress is healing the wound, and America hasn't even begun to pull out the knife."<sup>10</sup> King was an advocate for moderate, peaceful means to social change, while X asked him how and why he could advocate for non-violence in response to violence inflicted. King was inspired by the work and philosophy of Mahatma Gandhi,<sup>11</sup> but X was right to wonder how King knew that he was not simply bringing sheep to the slaughter when he led protests. There is reason to believe that Gandhi's tactics would have failed utterly against the Nazis in Germany. In the American South, black men and women were lynched. Churches were bombed. Protesters were murdered. X had cause to doubt King's methods. The desegregation of schools and the protection of the right to vote, to figures like X, were partial measures for progress, pulling out the knife only partly. Appreciating Malcom X's worries, consider that even with desegregation as law, some school districts have been described as still today not having

desegregated.<sup>12</sup> In 2012, it was argued that schools had become more segregated than they were in the late 1960's.<sup>13</sup>

Contrast these conditions with the fact that the United States has elected and reelected its first African American President. On the one hand, the U.S. appears to have made some unmistakable progress, racially-speaking, given that years ago President Obama's candidacy would have been thought so unrealistic as to be impossible. Even in what some have called the "age of Obama,"<sup>14</sup> however, conditions for African Americans in the United States have reasonably inspired Michelle Alexander to call today's prison conditions a "New Jim Crow."<sup>15</sup> What are we to say about progress towards justice when it is partial? Have there been victories in the pursuit of justice? One response to partial measures for progress or to progress accompanied by apparent regress is to say that not much has changed. If we see justice as an ideal, however, any changes could only ever be partial progress, at best. Therefore, if change is desired, leaders must recognize that it will never be totally fulfilled.

In the tradition of American Pragmatism, we find in John Dewey's work an approach to progress more sympathetic with King's non-violent philosophy. In "Democracy is Radical," Dewey argues that you cannot achieve democratic ends with undemocratic means.<sup>16</sup> In

---

[http://www.huffingtonpost.com/tanya-young-williams/im-tired-of-talking-about\\_b\\_6304140.html](http://www.huffingtonpost.com/tanya-young-williams/im-tired-of-talking-about_b_6304140.html).

<sup>9</sup> The Sentencing Project, *Report of the Sentencing Project to the United Nations Human Rights Committee: Regarding Racial Disparities in the United States Criminal Justice System* (Washington, D.C.: The Sentencing Project, August 2013), URL:

[http://sentencingproject.org/doc/publications/rd\\_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf](http://sentencingproject.org/doc/publications/rd_ICCPR%20Race%20and%20Justice%20Shadow%20Report.pdf).

<sup>10</sup> As cited in Carlton Waterhouse, "Avoiding Another Step in a Series of Unfortunate Legal Events," *Boston College Third World Law Journal* 26, Issue 2 (2006): 207-265, 208.

<sup>11</sup> Nirupama Rao, "Mahatma Gandhi's 'Light' Guided Martin Luther King, Jr.," *Politico*, March 7, 2013, URL: <http://www.politico.com/story/2013/03/mahatma-gandhis-lightguided-martin-luther-king-jr-88581.html>.

---

<sup>12</sup> Sharon Lerner, "A School District that Was Never Desegregated," *The Atlantic*, February 5, 2015, URL: <http://www.theatlantic.com/education/archive/2015/02/a-school-district-that-was-never-desegregated/385184/>.

<sup>13</sup> Emily Richmond, "Schools Are More Segregated Today than During the Late 1960's," *The Atlantic*, June 11, 2012, URL: <http://www.theatlantic.com/national/archive/2012/06/schools-are-more-segregated-today-than-during-the-late-1960s/258348/>.

<sup>14</sup> David Remnick, "Charleston and the Age of Obama," *The New Yorker*, June 19, 2015, URL: <http://www.newyorker.com/news/daily-comment/charleston-and-the-age-of-obama>.

<sup>15</sup> Michelle Alexander, *The New Jim Crow* (New York: The New Press, 2012).

<sup>16</sup> John Dewey, "Democracy Is Radical," in *The Later*

other words, if we are to pursue democratic aims of equality and social cooperation, violence will frustrate rather than enable our ends. Of course, there is cause to appreciate the rebuttal. When one's people are murdered, hung, and bombed, not welcomed to the same table for discussion or to the same schools or voting booths, there is a foundational threat to overcome that makes the aim of cooperation seem unrealistic.

The three possible responses to the frustrated pursuit of an ideal of justice presented in the introduction represent different outlooks on the disagreements between King and X. On the one hand, seeing justice as an ideal which so thoroughly fails to match up with the real world can inspire cynicism. Justice is not meaningful on this view, as it is imaginary, not realistic. The cynic will not aim to achieve greater justice, as it is a foolish dream anyway, on his or her view. King and X both believed that action was necessary, rejecting the cynic's view. In fact, cynicism reinforces unjust social structures, King argued. He wrote that "He who passively accepts evil is as much involved in it as he who helps to perpetrate it."<sup>17</sup>

The second response sees the ideal of justice as necessary, real, and wholly frustrated in today's world. This view becomes absolutist and possibly violent. To say this is not to deny that people should have the right of self-defense. Such was the reasonable side to X's argument. The worry for King was that even violence in self-defense can be spun in public perception as aggressive violence. In addition, the violent actor undermines his or her own ends, as Dewey suggested, if one is looking to bring about peaceful results. To appreciate King's challenge for X, consider that the American South remained in the union only by force. Even to this day, Southerners continue to express their

pride in the region's resistance to the federal government with defenses of the Confederate Battle flag, as well as occasional outbursts of terrible violence.<sup>18</sup> King believed that if the aim was transformation into a community, violence would frustrate the end, not speed its arrival.

Finally, the third possibility is that an ideal can be an inspiration. It can be the star in whose direction we travel, always elusive, yet helpful for guiding our efforts. This last approach is the outlook inspired by lines like King's, which explain that "Though the arc of the moral universe is long, it bends towards justice."<sup>19</sup> In this sense, an ideal is aspirational. It is imagined in real life, as we recognize a spectrum of better and worse conditions than those which exist presently. Dewey had something like this in mind when he spoke of the divine in *A Common Faith*.<sup>20</sup> It is an idealized moral extension of our experience of the world, which we value as better and worse, envisioned as a matter of degree. The ideal, the perfect, is a vision of the progress of present conditions carried infinitely towards what would be better. The fact that things could be better and are always imperfect fails to motivate the cynic, but can be understood optimistically, for in fact, a true cynic would doubt that things could be better.

<sup>18</sup> See Anna R. Schechter and Jon Schuppe, "Confederate Flag Rally Tests a Diminished Ku Klux Klan," *MSNBC.com*, July 18, 2015, URL: <http://www.msnbc.com/msnbc/confederate-flag-rally-tests-diminished-ku-klux-klan>; Eric Thomas Weber, "What a Flag Has to Do with Justice," *The PrindlePost*, July 8, 2015, URL: <http://www.prindlepost.org/2015/07/what-a-flag-has-to-do-with-justice/>; Therese Apel, "Deryl Dedmon, Two Others Sentenced from 7-50 Years in Hate Crime," *The Clarion Ledger*, February 12, 2015, URL: <http://www.clarionledger.com/story/news/2015/02/10/deryl-dedmon-two-others-to-be-sentenced-in-hate-crime-tuesday/23166397/>; and Simon McCormack, "Dylann Roof Charged with 9 Counts of Murder," *The Huffington Post*, June 19, 2015, URL: [http://www.huffingtonpost.com/2015/06/19/dylan-roof-confesses\\_n\\_7620314.html](http://www.huffingtonpost.com/2015/06/19/dylan-roof-confesses_n_7620314.html).

<sup>19</sup> King, "Love, Law, and Civil Disobedience," 52.

<sup>20</sup> John Dewey, *A Common Faith* (New Haven, CT: Yale University Press, 1933/2013).

*Works of John Dewey, Volume 11* (Carbondale, IL: Southern Illinois University, 1937/1987), 296-299.

<sup>17</sup> Martin Luther King, Jr., *Stride Toward Freedom: The Montgomery Story* (New York: Harper & Row), 61.

There are pragmatic reasons why we must not follow the cynic's course, as well as conceptual ones. Things will only stay the same or get worse without effort, given the cynic's outlook. Beyond that, the fact that a goal is unattainable is in no way evidence of the meaninglessness of its pursuit. This argument can best be understood with reference to the idea that "ought implies can." One's moral obligations cannot reasonably include things impossible for one to do. While David Hume's insight may be true – that one cannot derive an "ought" from an "is" – we might say with Gideon Yaffe that "sometimes the way things ought to be does indeed tell us how they are."<sup>21</sup> We do not blame a person for a condition that he or she could not avoid. When a person is drugged without his consent, for instance, we do not blame him for his intoxicated state. On such grounds, we might say that if a society could never achieve ideal conditions of justice, it cannot be that we ought to achieve them. That interpretation is only half right. If all one can be morally required to do is that which is within one's power, the question is whether or not striving for an ideal could not help one to come closer to it. If an ideal is impossible to achieve in one's lifetime, it may nevertheless be considered a limit towards which infinite effort can progress infinitely over time. Understanding the concepts of the ideal perfect circle may mean that a person could never draw a perfect circle by hand. It is unreasonable to say that he or she ought to draw a perfect circle and is a failure when he or she inevitably falls short of that perfection. Nevertheless, the idea of a perfect circle is meaningful, as it is instructive of the kind of aim one is striving for as well as the sorts of steps one ought to take in working toward that perfection. Thus, the pursuit of perfection, the effort to come as close to justice as a society can in a generation's lifetime is within that generation's power. The ideal can be meaningful in that sense, despite the inevitability of falling short of it as a goal.

---

<sup>21</sup> Gideon Yaffe, "More on 'Ought' Implies 'Can' and the Principle of Alternate Possibilities," *Midwest Studies in Philosophy* 29 (2005): 307-312.

An ideal of justice can only obligate a person to do what is in his or her power to control. This does not mean that one gives up when things cannot be changed *en masse* immediately. When enough people make a small change, great change can occur. A change of this sort appears to be the mechanism by which homosexual marriage laws were changed. First there were activists calling for change. Then scholars and entertainers discussed the issue and combatted unconsidered sensibilities. Next, the general public resisted traditional prejudices against homosexual behavior. Finally, individuals adapted and saw that criticisms of homosexual behavior were discriminatory and unacceptable. Past criticisms came to look like the unfair arguments against interracial marriage. Such changes are slow and they reveal the extent to which all people participate in the transmission, acceptance, and modification of culture. Examples such as these also demonstrate reason for what John Lachs has dubbed "stoic pragmatism," a stoicism spirited by a pragmatic optimism to try, while not despairing when particular individuals cannot alone change all that needs to be changed.<sup>22</sup>

Given these approaches to the nature of an ideal, it is important to tie them to the modern democratic norm of equal citizenship. In Plato's day, it seemed necessary to the great philosopher to divide up people into classes and castes. It is one thing to see and divide the needs for agriculture, civil defense, and political work. We still follow much of Plato's advice when it comes to the benefits of a broad education in general, accompanied by specialized education and focus in one's trade. The further step Plato takes, however, of calling certain social roles or castes bronze, silver, and gold today clashes with the democratic ethos. We have the sobering advantage of having witnessed some of the most grotesque forms of dehumanization and devaluation of people, in the early Twentieth Century.

---

<sup>22</sup> John Lachs, *Stoic Pragmatism* (Bloomington, IN: Indiana University Press, 2013).

The gross atrocities of the last century undermined any assuredness people might have felt in trusting powerful groups to treat those whom they command with their best interests at heart. The modern world has seen the results of classifying people into castes, valuing some far more than others. It has come to signal one of the greatest sources of injustice, even while today many have argued that the United States is an oligarchy, not a democracy.<sup>23</sup> Such claims make the news because nations like the U.S. call themselves democracies, and allegedly aspire to the values of democratic justice. The democratic pursuit of justice fundamentally must reject hierarchies of citizenship, yet they persist.

Plato's optimism about the trustworthiness of unchecked rulers<sup>24</sup> has been thoroughly tested and failed. While no person is perfect, it is worth considering that had General George Washington wanted a monarchy, or to have remained President until his death, he may have been able to do so. He also could have rendered the United States far less democratic than it has become. We reify figures like him because they are so unusual for not clutching to power. Washington made present democratic developments possible in many ways. Of course, he owned many slaves and was known to have sold some to separate them from their families, as a form of punishment.<sup>25</sup> Washington had his troubling flaws as well. Had Washington not acted in such ways, we still would have reason to doubt that

leaders could be trusted to the extent that Plato's Socrates called for. The division of powers and checks and balances of modern democratic states ensure that no individual can single-handedly wield all governmental power. The clumsy government that results from such divisions is necessary because of the long history of abuses on the part of powerful classes.

Today, the democratic era takes the opposite view on Plato's mistake. While we still speak of classes and oligarchy,<sup>26</sup> hierarchies of citizenship are denounced. John Dewey and James Tufts distilled one of the central democratic values of the modern era, explaining that:

[The] worth and dignity of every human being of moral capacity is fundamental in nearly every moral system of modern times. It is implicit in the Christian doctrine of the worth of the soul, in the Kantian doctrine of personality, in the Benthamic dictum, "every man to count as one." It is embedded in our democratic theory and institutions. With the leveling and equalizing of physical and mental power brought about by modern inventions and the spread of intelligence, no State is permanently safe except on a foundation of justice. And justice cannot be fundamentally in contradiction with the essence of democracy.<sup>27</sup>

This democratic ideal, of having each person count as one, rejects hierarchical citizenship. Of course, it does not capture all that justice instructs. Nor does it address every concern for democracy. But, it offers invaluable insight into ways in which today American and other societies can be more just. There is reason why we must not expect a complete and final definition of the full meaning of justice, however, which is that justice grows

<sup>23</sup> See Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12, Issue 3 (2014): 564-581 and Zachary Davies Boren, "The US Is an Oligarchy, Study Concludes," *The Telegraph (UK)*, April 16, 2014, URL:

<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/10769041/The-US-is-an-oligarchy-study-concludes.html>.

<sup>24</sup> He even calls it permissible for them to tell a profound lie, calling themselves to believe it too. That kind of leadership is most clearly unchecked, with the protection of deception and secrecy.

<sup>25</sup> Mount Vernon Ladies' Association, "Ten Facts about Washington and Slavery," URL: <http://www.mountvernon.org/george-washington/slavery/ten-facts-about-washington-slavery/>.

<sup>26</sup> As in Gilens and Page, but see also Nicholas Confessore, "Koch Brothers' Budget of \$889 Million for 2016 Is on Par with Both Parties' Spending," *The New York Times*, January 27, 2015, A1; and Bailey Williams, "Sen. Bernie Sanders Calls U.S. Politics 'Oligarchy'; Considers Run in 2016," *Medill News Service - United Press International*, March 9, 2015, URL:

[http://www.upi.com/Top\\_News/US/2015/03/09/Sen-Bernie-Sanders-calls-US-politics-oligarchy-considers-run-in-2016/8711425927237/](http://www.upi.com/Top_News/US/2015/03/09/Sen-Bernie-Sanders-calls-US-politics-oligarchy-considers-run-in-2016/8711425927237/).

<sup>27</sup> John Dewey and James Tufts, *Ethics (1908)*, in *The Collected Works of John Dewey, The Middle Works, Volume 5*, Edited by Jo Ann Boydston (Carbondale, IL: Southern Illinois University Carbondale, 1978), 466.



and evolves with changing human conditions and potential. The next step for the present paper is to consider the ways in which justice evolves and can nevertheless ultimately serve as a regulative ideal.

## II. Justice as an Evolving Ideal

Perhaps the key figure with whom I disagree on the issue of the evolution of ideals is Plato. While I believe that there is much to learn still today from Plato, there is also much that must be rejected. The Platonic view that there is a realm of unchanging forms, which are perfect in part because they are unchanging, has had many critics. I will be brief in explaining my rejection of his view, which can be associated with a kind of absolutism.

One way of thinking suggests that there is a perfect sense of justice that it is unchanging, and that the world changes, progressing or regressing in reference to it. That perfect form of justice is one that we will never achieve. The ideal of a just person, as unchanging and perfect, is difficult to reconcile with the contingent development of human beings. Plato's Socrates did not hesitate to suggest the appropriateness of infanticide for the children of "inferior parents" or for "deformed" offspring.<sup>28</sup> Such outlooks today sound barbaric and unthinkable, even if a very small set of narrow exceptions have been considered in highly controversial debates about the most extreme and unusual cases.<sup>29</sup> If permanent truths are most important to Plato, it is remarkable just how profoundly at odds his view of the infanticide of many healthy children is today. One way of considering the vast changes from the ancient period to today would be to suggest that we are at a step in the

process towards that greater perfection, which always was. To the pragmatist, the question at this point is about the meaning of ideas. What conceivable practical consequence can there be in the different beliefs – between thinking that there is a perfect ideal of humanity that is unchanging and always has been, versus the belief that human beings evolve?

One conceivable consequence comes from thinking one knows the nature of that human perfection, and can thereby judge others according to that standard. For instance, if one were to believe that human bodies have a purpose, one that relates to procreation, then he or she might think that the homosexual use of reproductive organs is a misuse, and correspondingly a moral failure on grounds of violating one's nature. Michael Levin's argument in "Why Homosexuality is Abnormal" depends on beliefs about the nature of the human body and the purpose of our parts in this way.<sup>30</sup> In contrast with the absolutist or fixed form theorist, the view which sees ideals as evolving with human beings sees variation as a natural part of humanity. Such a view inclines one towards greater toleration of and respect for people's differences. In a democratic society, in which variety and freedom are key, such toleration is the wiser course. Given this understanding, the danger involved comes more from a lack of humility about the nature of ideals than from the belief that they are unchanging versus evolving. At the same time, John Lachs has offered another reason to reject the absolutist picture – namely that it is singular. He has argued that we ought to consider there to be not one, but many human natures.<sup>31</sup> Lachs's view considers the vastness of human variety and also appreciates or is supported by the facts of evolutionary sciences, which see divergences of branches and strains of animals in the genus homo. Animals' conditions influence the success of their

---

<sup>28</sup> Plato, *Republic*, Book V, 460c.

<sup>29</sup> I am thinking of Peter Singer and his outlook on exceptional cases of profound medical problems that produce deep suffering. See Helga Kuhse and Peter Singer, "Debate: Severely Handicapped Newborns," *Law, Medicine, and Healthcare* 14, Issue 3-4 (1986): 149-153. While there are some interesting debates today, note that Plato believed it justifiable to terminate the lives of healthy infants, if they were born to "inferior" parents than those he called "golden" or "silver" citizens of the good city in the *Republic*, Book V, 460c.

---

<sup>30</sup> Michael Levin, "Why Homosexuality Is Abnormal," *The Monist* 67 (1984): 251-283.

<sup>31</sup> John Lachs, "Human Natures," *Proceedings and Addresses of the American Philosophical Association* 63, Issue 7 (1990): 29-39.

offspring, and hence the generations that continue over time change. To pragmatists like Dewey, ideas are some of the most powerful tools we have for managing our environmental challenges. Tools must be modified as conditions change, and their nature adapts with the needs for which we must use them.

As circumstances change, another consequence of absolutism arises. If one believes adamantly in a value, thought to be unchanging, and if one thinks that society is departing ever more from it, the absolutist might be inclined towards drastic action. For example, if one believes in white supremacy, when non-white persons thrive at work or in public life, one might become angry to the point of taking drastic action. Dylann Roof, the mass murderer in Charleston, South Carolina, spoke of the threat of non-white people, for example. He was incapable of accepting the consequences of increasing social equality.<sup>32</sup>

One final point is worth noting. Some historians like to point to the Declaration of Independence as an example of one of the great, enduring moral documents, which remains as true today in the rightness of its aspirations as it was in its own day. President Lincoln was said to have called it a lodestar, a guiding principle for his life and work. Lewis Lehrman sees in the important document evidence of something that captured the unchanging truth about humanity and our values.<sup>33</sup>

While I agree about the moral importance of the U.S. Declaration of Independence, I see it as an important step in the evolution of human ideals, not as something of perfection that is unchanging. Not the least reason for this is the fact that at the time, the founders referred to “men” while not considering non-whites relevant. Even

when people like Lincoln eventually came around on that point, it was *men*, not women, referred to, and the idea that the term “man” captures also women was not in fact accepted. Women had to wait until the twentieth century to get the right to vote in the United States. Therefore, the Declaration of Independence turns out to be an excellent example of my point about the evolution of ideals.

### III. Justice as a Regulative Ideal

Ideals can sound otherworldly, impractical, or unrealistic. In the pragmatist tradition, Charles Peirce has shown why and how ideals can be practical, such as in relation to truth as an ideal or to other ideals that can regulate behavior. An explanation of Peirce’s understanding of truth can by analogy illustrate the way in which we can see justice as an evolving, regulative ideal. I will end this section with some applications of this outlook to democratic ideals of equal citizenship.

Peirce has, with justification, been called an American genius.<sup>34</sup> Robert Neville has explained that Peirce “invented pragmatism, much modern symbolic logic, and semiotics.”<sup>35</sup> While his father Benjamin Peirce, himself a great Harvard mathematician and scientist, reinforced his son’s tendencies toward snobbishness and hubris,<sup>36</sup> C.S. Peirce’s philosophy of inquiry pointed to the importance of community and of varied points of view. In both philosophy and in the sciences, Peirce thought that

Philosophy ought to imitate the successful sciences in its methods, so far as to proceed only from tangible premises [sic.] which can be subjected to careful scrutiny, and to trust rather

<sup>32</sup> Ray Sanchez and Ed Payne, “Charleston Church Shooting: Who Is Dylann Roof?” *CNN.com*, June 19, 2015, URL: <http://www.cnn.com/2015/06/19/us/charleston-church-shooting-suspect/>.

<sup>33</sup> Lewis E. Lehrman, *Lincoln at Peoria, The Turning Point: Getting Right with the Declaration of Independence* (Mechanicsburg, PA: Stackpole Books, 2008).

<sup>34</sup> Robert C. Neville, *The Highroad Around Modernism* (Albany, NY: State University of New York Press, 1992), 25.

<sup>35</sup> *Ibid.*

<sup>36</sup> Peter Manicas’s review of Joseph Brent’s *Charles Sanders Peirce: A Life* sums up the point succinctly. See Peter Manicas, “*Charles Sanders Peirce: A Life* (Review),” *Biography* 17, Issue 1 (1994): 63-66, 64. For more detail, see Joseph Brent, *Charles Sanders Peirce: A Life* (Bloomington, IN: Indiana University Press, 1998), especially chapter 1, 26-81.



to the multitude and variety of its arguments than to the conclusiveness of any one. Its reasoning should not form a chain which is no stronger than its weakest link, but a cable whose fibers may be ever so slender, provided they are sufficiently numerous and intimately connected.<sup>37</sup>

While it takes specialists to interpret data and to conduct studies, Peirce recognized that inquiry needs community, volume, and time. Peirce referred in a number of passages to the work of Pierre Simon Laplace,<sup>38</sup> the French mathematician known for *Théorie Analytique des Probabilités*,<sup>39</sup> a foundational contribution leading up to what we now call the central limit theorem. In simplest terms, that theorem, which is the basis of modern probability theory and statistics, says that when multiple samples of a population are taken over and over and plotted on a graph, they will form a normal curve. That curve's mean value is the true population mean. We can appreciate the lesson here with an analogy. If one inquirer were to check the height of 100 Americans, his or her sample, not being so large, is unlikely to be generalizable to all Americans. When 100 inquirers from different parts of the country check the height of 100 Americans, the central limit theorem says that the means of the various samples will come to form a normal (bell) curve. The more samples are taken, even of a modest number, like 100, the closer and closer the plotted means will fill in the shape of the bell curve, which points to the true mean of the whole distribution.

While some of the mathematical developments relevant for contemporary statistics came after Peirce's death, he is known as "one of the founders of statistics."<sup>40</sup> He was

<sup>37</sup> Charles Sanders Peirce, "Some Consequences of Four Incapacities," in *The Collected Papers of Charles Sanders Peirce*, Edited by Charles Hartshorne and Paul Weiss (Cambridge, MA: Harvard University Press, 1932-1935), Volume 5, standard notation: CP.5.265.3.

<sup>38</sup> For a few, see CP.1.70, CP.2.148, and CP.2.761. It is worth noting that Peirce often said he was correcting Laplace's errors, where the latter's theory is "false and harmful" (CP.2.761).

<sup>39</sup> Pierre Simon Laplace, *Théorie Analytique des Probabilités* (Paris: Imprimerie Royale, 1847).

<sup>40</sup> See also Robert Burch, "Charles Sanders Peirce," *Stanford Encyclopedia of Philosophy*, 2010, URL:

among the key figures who illustrated how mathematical ideals help us to arrive at truth. They teach us how to design studies and how to control maximally for error and to sharpen our conclusions, rendering them more and more likely to be true. In addition, he showed that the community of inquiry, carrying out studies together, generates insights which converge on an ideal limit that we call the truth.

Peirce illustrates the power of the ideal of truth and of the corresponding process of inquiry leading to it. In his famous essay, "The Fixation of Belief," he writes,

The trial of this method of experience in natural science for these three centuries... encourages us to hope that we are approaching nearer and nearer to an opinion which is not destined to be broken down – though we cannot expect ever quite to reach that ideal goal.<sup>41</sup>

As a mathematician and, among other things, a philosopher of science, Peirce famously explained "How to Make Our Ideas Clear." In that essay, he wrote,

[All] the followers of science are animated by a cheerful hope that the processes of investigation, if only pushed far enough, will give one certain solution to each question to which they apply it. One man may investigate the velocity of light by studying the transits of Venus and the aberration of the stars; another by the oppositions of Mars and the eclipses of Jupiter's satellites; a third by the method of Fizeau; a fourth by that of Foucault; a fifth by the motions of the curves of Lissajoux; a sixth, a seventh, an eighth, and a ninth, may follow the different methods of comparing the measures of statical and dynamical electricity. They may at first obtain different results, but, as each perfects his method and his processes, the results are found to move steadily together toward a destined centre. So with all scientific research. Different minds may set out with the most antagonistic views, but the progress of investigation carries

<http://plato.stanford.edu/entries/peirce/>, especially section 7. See also "Charles Sanders Peirce - Biography," [Web site] The European Graduate School, Library, Biography, URL: <http://www.egs.edu/library/charles-sanders-peirce/biography/>. Burch explains Peirce's contributions in some depth and the European Graduate School's library biography of Peirce refers to him as "one of the founders of statistics."

<sup>41</sup> Charles S. Peirce, "The Fixation of Belief," *Popular Science Monthly* 12 (November 1877): 1-15, CP.5.384n.

them by a force outside of themselves to one and the same conclusion. This activity of thought by which we are carried, not where we wish, but to a fore-ordained goal, is like the operation of destiny. No modification of the point of view taken, no selection of other facts for study, no natural bent of mind even, can enable a man to escape the predestinate opinion. This great hope is embodied in the conception of truth and reality. **The opinion which is fated<sup>42</sup> to be ultimately agreed to by all who investigate, is what we mean by the truth,** and the object represented in this opinion is the real. That is the way I would explain reality.<sup>43</sup>

We often think of the realm of ideals in terms of morals. Pragmatists tend not to make hard distinctions between matters of fact and value, but in everyday experience, it is common to think that ideals are reserved for the social realm, not for understanding the way matter functions. Peirce shows that mundane distinction as wrongheaded, revealing that the pursuit of truth is at bottom a process guided by hope and an ideal of inquiry.

Peirce's pragmatism grew out of his reaction to Kant, seeing the power of reason to direct practice, even if ideals are not somehow ever fully known. He wrote,

Truth is a character which attaches to an abstract proposition, such as a person might utter. It essentially depends upon that proposition's not professing to be exactly true. But we hope that in the progress of science its error will indefinitely diminish, just as the error of 3.14159, the value given for  $\pi$ , will indefinitely diminish as the calculation is carried to more and more places of decimals. What we call  $\pi$  is an ideal limit to which no numerical expression can be perfectly true.<sup>44</sup>

<sup>42</sup> Peirce add this footnote: "Fate means merely that which is sure to come true, and can nohow be avoided. It is a superstition to suppose that a certain sort of events are ever fated, and it is another to suppose that the word fate can never be freed from its superstitious taint. We are all fated to die."

<sup>43</sup> Charles S. Peirce, "How to Make Our Ideas Clear," *Popular Science Monthly* 12 (January 1878): 286-302, CP.5.407. Emphasis in the original.

<sup>44</sup> Charles S. Peirce, "Truth," Chapter 5 in *The Collected Papers, Volume 5, Pragmatism and Pragmaticism, Book 3, Unpublished Papers*, edited by Charles Hartshorne and Paul Weiss (Cambridge, MA: Harvard University Press, 1934), CP.5.565.

When we consider  $\pi$  as an example, we see that a mathematical idea, which we realize is not fully known to us, is in fact enormously powerful for directing human behavior. Likewise, we can think of justice as the target of progressive refinement of understanding. It is also an ideal that helps us to carry out social functions.

While Peirce's general focus was on the sciences and mathematics, he recognized that these insights apply to the moral realm. He continued,

In the above we have considered positive scientific truth. But the same definitions equally hold in the normative sciences. If a moralist describes an ideal as the *summum bonum*, in the first place, the perfect truth of his statement requires that it should involve the confession that the perfect doctrine can neither be stated nor conceived. If, with that allowance, the future development of man's moral nature will only lead to a firmer satisfaction with the described ideal, the doctrine is true.<sup>45</sup>

We can appreciate what Peirce has in mind here through an example. The concept of consent, such as what we find in social contract theory or in bioethics, is an ideal notion when considered complete or perfect. Citizens rarely have moments in which they consent explicitly to their participation in a society. Immigrants are an exception, as they choose to enter and live in a country. Most citizens do not have many, if any, such moments. Nevertheless, in the twentieth century, the concept of consent has come to be of paramount importance in bioethics. We understand the value and importance of consent, such as of the human subjects of scientific research. Because of the terrible mistakes that past scientists have made, harming people, like in the Tuskegee syphilis experiments, we now carefully regulate studies involving human subjects.<sup>46</sup> At the same time, we still have much to learn and to decide about the future of consent as moral tool for justice. When doctors offer explanations to patients, they get the patients to sign forms for consent, yet a person without

<sup>45</sup> *Ibid.*, CP.5.566. Emphasis in the original.

<sup>46</sup> James H. Jones, *Bad Blood: The Tuskegee Syphilis Experiment, New and Expanded Edition* (New York: The Free Press, 1993).

a high school degree might reasonably claim that he or she did not understand a doctor's explanation. When consent is needed, new mechanisms and understandings of the ideal can be developed and refined to address limitations in our past practices. How we might in the future ensure that a patient or patient's representative has clearly and fully consented to a risky operation is under debate and development.<sup>47</sup>

Peirce added an important component as a philosopher of science when he thought about inquiry, be it scientific or normative. In his essay, "Some Consequences of Four Incapacities," he wrote that,

We individually cannot reasonably hope to attain the ultimate philosophy which we pursue; we can only seek it, therefore, for the *community* of philosophers. Hence, if disciplined and candid minds carefully examine a theory and refuse to accept it, this ought to create doubts in the mind of the author of the theory.<sup>48</sup>

The community of inquirers, as Peirce explained it, is one which is regulated by ideals. Those ideals concretely instruct us on how to pursue truth together. The lesson here is that early pioneers in the fight for an underrepresented group or for a cause that society has yet to take seriously are likely to move few people in their lifetime. Nevertheless, the larger aim must be to shift the culture over time, something which courageous individuals can motivate, but to which the masses must eventually contribute, even if in small ways. Peirce shows us how to see an ideal as something which evolves, is pursued in community, and is at the same time elusive, always beyond our full understanding. Such regulative ideals are nevertheless powerful in directing behavior to success in more proximal fulfillment of their aims.

---

<sup>47</sup> See Neil C. Manson and Onora O'Neill, *Rethinking Informed Consent in Bioethics* (New York: Cambridge University Press, 2007) and Susanne Uusitalo and Barbara Broers, "Rethinking Informed Consent in Research on Herion-Assisted Treatment," *Bioethics* 29, Issue 7 (2015): 462-469.

<sup>48</sup> Charles S. Peirce, "Some Consequences of Four Incapacities," *The Journal of Speculative Philosophy* 2, Issue 3 (1868): 140-157. CP.5.265.2. Emphasis in original.

In the United States today, many have celebrated the election twice over of an African American President. People have used language like "post-racial" or the "age of Obama." At the same time, record numbers of African Americans drop out of school in places like the impoverished regions of Mississippi. Vast numbers of Americans are incarcerated, including disproportionate numbers of African Americans. While in the country some doors have opened to higher positions of power and opportunity, a small minority of historically disadvantaged people are afforded such widened opportunities. Meanwhile, public officials are found to take money, selling African American young men to private prisons, for profit.<sup>49</sup> As a country, we have a long way to go in the fight against inequalities of citizenship. At the same time, exposure of apparent oligarchy makes the news. Corrupt judges get caught and incarcerated. We are far from having achieved an ideally just society, yet we have more tools today than ever before to record and spread messages and videos, such as in recordings of police brutality and unfairness. Peirce's insights reveal the need to cultivate a community of accountability, a culture of democratic justice that can more closely watch and more severely punish those officials who frustrate the movement to approach greater equity. We can use the ideals of objectivity, fairness, and due process, even if never achieving them perfectly, to better advance the aims of justice. If we avoid the dangers of cynicism and of absolutist overreach, we can do the best we can to achieve a maximally just culture.

### Conclusion

While it is not new to call justice an ideal, there is reason to make the point. When a family loses a child at the hands of someone charged with his or her protection, they call for justice. What they want is the relevant

---

<sup>49</sup> Eyder Peralta, "PA Judge Sentenced to 28 Years in Massive Juvenile Justice Bribery Scandal," *NPR.org*, August 11, 2011, URL: <http://www.npr.org/sections/thetwo-way/2011/08/11/139536686/pa-judge-sentenced-to-28-years-in-massive-juvenile-justice-bribery-scandal>.

person to be punished. In that sense, when a killer does end up in jail, sometimes family members or journalists say that “justice was done.”<sup>50</sup> There is a sense, then, that in certain circumstances, an injustice can be partially redressed. At the cultural level, the focus of my overarching project, injustice is not something quickly or simply addressed in a trial. Even if reparations were granted for past harms done,<sup>51</sup> we would not say that we finally have a just culture. When it comes to culture, we have in mind many layers of historically entrenched power and influence, embedded in our very uses of language, the beliefs people harbor, the practices we engage in, and our consequent institutions, all of which we pass along from one generation to the next. The fact that it took mass murder in Charleston, South Carolina to finally, in 2015, prompt people to take down the Confederate Battle Flag from state buildings illustrates how entrenched power structures can be.<sup>52</sup> The cause of justice is so important, however, that we must neither be cynical nor despair, nor hold unflinchingly to some absolute, unwilling to open our minds to new evidence or problems. Instead, we should see justice as an evolving, regulative ideal towards which we can progress, with an engaged democratic community and true and unrelenting good faith effort.

---

<sup>50</sup> John Feinblatt, “A Bad Week for the NRA,” *The Huffington Post*, October 3, 2014, URL: [http://www.huffingtonpost.com/john-feinblatt/a-bad-week-for-the-nra\\_b\\_5929188.html](http://www.huffingtonpost.com/john-feinblatt/a-bad-week-for-the-nra_b_5929188.html).

<sup>51</sup> Ta-Nehisi Coates, “The Case for Reparations,” *The Atlantic*, June 2014, URL: <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>.

<sup>52</sup> And, Mississippi has yet to remove the emblem of the Confederate Battle Flag from the canton of its state flag.