

### 3 *The role of consequences, comparison and counterfactuals in constructivist ethical thought*

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First let me plead guilty to one of the charges that Price aims at constructivists.<sup>1</sup> Although I believe that some of my work has demonstrated the possibilities of moral change in world politics, I have not explicitly articulated a normative or prescriptive position of particular changes as good. And this is the case despite the fact that my students and my colleagues get irritated when I (not infrequently) bristle with moral indignation. The story of why I and other constructivists have not engaged in normative theory is complicated. I don't claim to fully understand it and I don't want to dwell on it here, but just mention a few possible explanations. When I started working on human rights in the late 1980s, the choice of topic alone was a sufficiently normative signal that I felt obliged to spend the rest of my time demonstrating that I was being rigorous in my theory and method. Perhaps I believed that my normative argument was implicit and the discerning reader would know where I stood. Maybe Frost is correct and even constructivists have concealed our ethical stances under a disguise of (our own kind of) scientific objectivity?<sup>2</sup> After over twenty years of doing serious empirical research to document key trends in world politics, I'm still annoyed at being categorised in a recent article by Jack Snyder and Leslie Vinjamuri among those 'idealists' who don't understand the 'political realities' of world politics.<sup>3</sup> It is not the 'idealist' charge that irritates, but the notion that we don't understand political developments in the world.

<sup>1</sup> I wish to thank Richard Price, Robert Keohane, Michael Barnett, Raymond Duvall, Ann Towns and Henry Shue, as well as participants in the Vancouver workshop and participants in the Political Theory Colloquium at the University of Minnesota for their helpful comments on earlier drafts of this paper.

<sup>2</sup> Mervyn Frost, 'A Turn Not Taken: Ethics in IR at the Millennium', *Review of International Studies* 24 (1998), 119.

<sup>3</sup> Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice', *International Security* 28:3 (2003/04), 5–44.



But I also think that the options for normative theorising that I perceived as open to me failed to capture the essence of my enterprise. In other words, the options for normative theorising often seemed to ask me to leave my empirical hat at the door, and since my empirical research was just as dear to me as my ethics, I refused. As long as the appeals to address ethics essentially said 'stop being a researcher and become a moral philosopher', it wasn't very attractive to me.<sup>4</sup> Some scholars, like Andrew Linklater, Charles Beitz or Henry Shue, can combine the two roles.<sup>5</sup> Personally, I have neither the training nor the inclination to engage in abstract moral philosophy. It is only now, with a different kind of push from Richard Price, and a few years of teaching a course on International Ethics and Global Citizenship under my belt, that I feel able to begin to find an approach to normative theorising that combines my ethical concerns and my empirical commitments. Relatively few scholars of international relations offer any genuine guidance about how to chart this particular path.<sup>6</sup>

Despite the divide in ethical theorising between deontological and consequentialist traditions, I believe that when we begin to combine ethical and empirical inquiry, deontological and consequentialist concerns are intimately linked.<sup>7</sup> One reason why constructivists have focused so clearly on careful empirical research is that I suspect we believe (at least implicitly) that often we need to know something about the empirical consequences of some norms in order to judge their ethical desirability. Here I suggest an interactive approach where

<sup>4</sup> This is essentially what Frost says, when he asks us to start addressing the 'classic questions of political ethics: such as "in what would a just order consist?" "What is freedom, what forms of political authority are just?"'. 'A Turn Not Taken', 129.

<sup>5</sup> Andrew Linklater, *The Transformation of Political Community: Ethical Foundation of the Post-Westphalian Era* (Columbia, SC: University of South Carolina Press, 1998); Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979); Henry Shue, *Basic Rights* (Princeton, NJ: Princeton University Press, second edition 1996).

<sup>6</sup> See however, Matthew Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004); Michael Barnett, *Eyewitness to Genocide: The United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002); Joseph Nye, *Nuclear Ethics* (New York, NY: Free Press, 1986); J. L. Holzgrefe and Robert O. Keohane (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

<sup>7</sup> Similar points have been made by Nye, *Nuclear Ethics*, and J. L. Holzgrefe, 'The Humanitarian Intervention Debate'. In Holzgrefe and Keohane, *Humanitarian Intervention*, 50–51.



we begin with ethical commitments that may guide the choice of a research topic *and* the results of research may in turn shape future ethical judgement. My discussion will look at related questions of consequences, comparison and counterfactuals to try to offer some insights for normative thinking from the realm of empirical constructivism. I will illustrate my arguments with reference to two current human rights debates: the debate over the US use of torture and the debate over the impact of the increasing use of global human rights trials, both of which have been the focus of my current research.<sup>8</sup>

Some of the most important intellectual disagreements I have had with very diverse individuals in my lifetime were so deeply felt exactly because they were simultaneously ethical and empirical. But I was often unable even to identify this and to explain cogently how I combined ethical judgement with the results of my empirical research to arrive at strongly held positions. This essay attempts a clarification. I suggest that disagreements are often not the product of different principles we begin with but of different empirical evaluations of consequences. If this is the case, our ethical debates could be more fruitful if we were clear about the research and reasoning processes through which we arrive at our evaluations of consequences.

## Principles and consequences

One distinctive contribution of any empirically oriented researcher to ethical thought is to realise and emphasise that ethical judgement requires both choices of principles and evaluation of consequences in terms of those principles. In other words, to answer the question 'what to do?' we need to ask not just 'what is right?' but also 'what may work?' to bring about outcomes consistent with my principles.<sup>9</sup> For example, in the case of human rights trials, it is not enough to ask 'is it right or good to hold human rights trials?' I also want to know what impact human rights trials have on actually protecting human rights. The answer to the

<sup>8</sup> Kathryn Sikkink, 'U.S. Compliance with International Human Rights Law'. Paper prepared for the annual conference of the International Studies Association, March 2005, Honolulu, Hawaii; Kathryn Sikkink and Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America', *Journal of Peace Research* 44:4 (2007), 427–445.

<sup>9</sup> I am indebted to Richard Price for this particular formulation.



second question 'what impact do human rights trials have?' could affect the answer to the first question, 'is it right or good to hold human rights trials?' Discerning and evaluating consequences is an inherently comparative and empirical enterprise, and thus empirically grounded scholars can make an important contribution. I heartily agree with Price's argument that normative theorising cannot escape some degree of empirical description. Constructivists and other empirically oriented scholars of world politics can contribute to thinking, researching and writing clearly about consequences and then link this work on consequences to thoughtful normative judgement. This research on consequences doesn't have to be about causality, it could also be a constitutive theorising or about conditions of possibility, but it needs to be explicit and precise in order to be persuasive.

In order to weigh consequences, we must first have specified what principles we intend to use to evaluate which consequences are most valued and beneficial. I propose to start with international human rights principles. Thus, when I consider consequences, my question will be: what are the consequences for human rights, as defined in current human rights law?<sup>10</sup> Amartya Sen provides a model of such an effort to link a rights-based approach with a concern for consequences in his 'goal rights system'. To make a normative evaluation, Sen proposed both to include rights in the goals themselves (deontological criteria) and to evaluate outcomes based on which rights are fulfilled and not fulfilled (consequentialist criteria).<sup>11</sup> His approach is different from a classic utilitarian approach, which is interested in overall welfare and does not privilege the actual protection of rights, as opposed to other welfare goals. Sen thus overcomes one of the main criticisms of utilitarianism – 'that it cannot take rights seriously enough'.<sup>12</sup> He refers to this as a rights-consequence system, because the fulfilment of rights is the major goal of the system. It is not a fully consequentialist system, but one that blends rights goals and concern with rights fulfilment. Sen in turn uses this approach as the basis of his 'capabilities approach to

<sup>10</sup> Here I clearly part paths with utilitarians and most consequentialists who have a welfarist rather than a rights-based approach to evaluating consequences.

<sup>11</sup> Amartya Sen, 'Rights and Agency'. In Samuel Scheffler (ed.), *Consequentialism and Its Critics* (Oxford: Oxford University Press, 1988), 187–223.

<sup>12</sup> William H. Shaw, *Contemporary Ethics: Taking Account of Utilitarianism* (Oxford: Blackwell Publishers, 1999), 185.



development', an approach that has also been articulated, in a slightly different way, by Martha Nussbaum.<sup>13</sup>

I share with Sen and Nussbaum the idea of combining rights-based principles with an evaluation of the fulfilment of rights as a starting point for my normative theorising. But both Sen and Nussbaum begin as if the world were a *tabula rasa* on which they could construct the set of principles of their choice. As much as I generally admire the work of Sen and Nussbaum, I have always been puzzled about why they believe that they must start from scratch in inventing their central list of rights or capabilities. Nussbaum says almost as an aside that 'capabilities as I conceive them have a very close relationship to human rights, as understood in contemporary international discussions'.<sup>14</sup> Sen, in his early discussion of his promising goal rights system, seems to disregard existing human rights law, although he refers to human rights more directly in his later work.<sup>15</sup>

To the empirically oriented researcher, however, it may seem illusory to act as though the modern world wasn't dense with existing norms and laws, and to pretend that we could design the ideal code we could imagine. If our starting point is a 'rights-consequence system', I prefer to start with existing human rights principles embodied in international human rights law, especially the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). When one set of human rights principles come into conflict with another, I prioritise the non-derogable rights of the ICCPR, especially the right to life and freedom from slavery and torture. The non-derogable rights will also be those principles that I hold absolutely without regard to any information about consequences. Thus, in my rights-consequence system, there will be a small handful of rights that will not be subject to any consideration of consequences or effectiveness. I justify the priority on the non-derogable rights in a couple of ways. First, the non-derogable rights clause comes as close as I can find to expressing a genuine international consensus about what rights are most important. The international community, when drafting one of its central human rights documents, decided that

<sup>13</sup> Martha C. Nussbaum, *Woman and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

<sup>14</sup> Ibid. 97.

<sup>15</sup> See, for example, Amartya Sen, 'Freedoms and Needs', *The New Republic* January 10/17, 1994, 31–38.



there were a small handful of rights that could not be put aside under any circumstance. This seems like a good starting place for normative argument. Starting with actually existing international norms drafted through exhaustive debate and consultation among many states has the virtue of being less ethnocentric than having the analyst substitute her own normative criteria.

Other colleagues will say that this starting place is also the crystallisation of power relations from centuries of legal developments. That is without doubt the case. But recent close studies of the drafting processes of the Universal Declaration of Human Rights, the ICCPR and the ICESCR reveal that delegates from countries representing diverse cultural, political and theological positions debated virtually every phrase in these documents in hundreds of consultations and meetings.<sup>16</sup> Secondly, by their ratification of the ICCPR, including its non-derogable rights clause, and the ICESCR, an even wider range of countries has expressed their support for these principles and norms. So, today, over 150 countries have signalled their support for these norms by the voluntary ratification of the ICCPR and the ICESCR, including over forty-five African countries, which were the single largest group not present at the drafting stage, since most were still colonies at that time. Finally, thousands of non-governmental human rights organisations representing citizens from around the world have also debated and embraced these norms.

From a procedural point of view, the deliberative processes that went into the construction of these international human rights norms were more voluntary and more participatory than many other international processes. I do not claim that the drafting of these conventions took place under the conditions of an ideal speech act or that this is a concrete empirical and international analogue to a dialogic ethic. But because of the procedures through which these norms were developed, they provide a more legitimate source of general principles than any I or any

<sup>16</sup> See Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, PA: University of Pennsylvania Press, 1999); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, NY: Random House, 2001); Paul Gordon Lauren, *The Evolution of Human Rights: Visions Seen* (Philadelphia, PA: University of Pittsburgh Press, 1998); Mary Ann Glendon, 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea', *Harvard Human Rights Journal* 16 (2003), 27–39.



other individual or group of researchers could invent. In the current political climate, it would be difficult to organise any equally participatory process of drafting new human rights norms, nor could we be certain that the result would be as strong. Thus there are both procedural and pragmatic grounds for using principles in existing human rights law as a benchmark against which to measure consequences. As Jack Donnelly has argued, there is now an 'overlapping international political consensus' around the norms of the core human rights treaties. He clarifies that this is an 'overlapping (rather than complete) and political (rather than moral or religious) consensus'.<sup>17</sup> Nussbaum uses the same term, overlapping consensus, drawn from Rawls, to characterise her list of central human capabilities.<sup>18</sup>

In the introductory chapter, Price asks us to define and defend our understanding of progress in international relations. Following the discussion above, I define as progress an improvement in the enjoyment of any of the human rights listed in international human rights law as compared to an earlier period if such improvement does not cause a commensurate regress in other rights or in other places. I will be particularly attentive to sustained improvement of the non-derogable rights. This definition is consistent, I believe, with the ethical intent of the authors who drafted human rights law and those states and non-governmental organisations that later embraced it. It is thus my own definition and an attempt to capture the ethical world of the actors involved. This definition requires us to consult empirical research to make ethical judgements, as we must be able to have some measure of the enjoyment of rights, and know what changes have occurred from one period to another.

We could inquire further about the sources of this international consensus around certain human rights. I am always tempted to make more foundational claims for these norms. I believe that nothing does greater and more long-lasting harm to people than when other people intentionally and directly inflict bodily harm on them. The bonds of trust on which human communities are founded are sundered most completely by the direct and intentional inflicting of pain and suffering of one human on another. Research on post-traumatic stress, for

<sup>17</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, second edition, 2003), 40.

<sup>18</sup> Nussbaum, *Woman and Human Development*, 5.



example, shows that human-induced traumas from torture or child abuse are more severe and more difficult to recover from than trauma produced by accidents or natural disasters. I personally believe that this small core of basic rights is intrinsically appealing to many individuals. It is perfectly acceptable for political scientists (including constructivists) to suggest that all humans have an innate drive for power or wealth. But to suggest that many humans intrinsically find certain human rights ideas appealing is somehow more questionable. Yet it does not strike me as particularly odd to suggest that almost everyone would prefer to be alive than dead, free than imprisoned, secure than tortured, fed than hungry. Core human rights norms have resonated so profoundly in the world in part because of this intrinsic appeal. It is surprising to watch how quickly humans, even those embedded in cultural scenarios that tell them otherwise, come to believe that they are entitled to something better.

Nevertheless, my argument does not rest, nor depend, on such foundational claims. It is sufficient for our purposes that many states, groups and individuals, through an extended process of international negotiation, mutually arrived upon a set of international human rights norms and that since that time, virtually all of these states and many more have further endorsed such norms through the voluntary ratification of the relevant treaties. This overlapping international political consensus is then the starting point for my discussion of evaluation of consequences.

The problem with starting with the overlapping political consensus of existing human rights law as a basis for ethical judgement is that it would appear to exclude new human rights norms in the process of emergence. I can take this position comfortably in 2006, writing in an atmosphere dense with international human rights norms, but what would one have written in 1941 before these norms were established?<sup>19</sup> I believe that empirical researchers writing about ethics will want to situate themselves in a particular historical context. If I were writing in 1941, I would have to write something completely different, but likewise, I should not write in 2006 as if I were in 1941. But the deeper point is that in our current period there are many new norms in the process of emergence. How do we appreciate this transformational process of the emergence of new norms? Much of my empirical research has focused

<sup>19</sup> I am indebted to Raymond Duvall for raising this specific question and the broader concern.



on the emergence of new norms, and I believe that this will continue to be an avenue for promising new research. As an analyst, I have argued that the primary way that normative change has happened is through the advocacy of norm entrepreneurs.<sup>20</sup>

The purpose of choosing existing human rights law as a starting point for ethical analysis is not to exclude or denigrate movements proposing new norms. But I would treat new norms as ethically and empirically distinct from existing norms because they do not yet represent any international consensus. Ethically, they represent a proposal for normative change by one group that has not yet been broadly endorsed. The challenge for any norm entrepreneur, as they know all too well, is to seek to persuade other actors to create an international consensus. Empirically, the dynamics of new norms are different from those of well-established norms.<sup>21</sup> To treat an emergent norm as if it were hard law is an empirical mistake. Emergent norms have different properties, provoke different responses, impose different obligations and require different kinds of work on the part of advocates.

The most complicated ethical and political dilemmas in international politics involve cases where some of these basic human rights norms come into conflict with one another or with other core norms and values of the international system. For example, debates over humanitarian intervention are so difficult in part because one has to weigh the possibility of preventing genocide or mass human rights violations against other key norms against war and intervention, as Finnemore analyses in her chapter. Many of these ethical debates cannot be resolved with reference to empirical research. But other debates that appear to be intractable debates over conflicts of principles are actually debates over different predictions about consequences. Such debates can be addressed fruitfully, although rarely resolved, with reference to empirical research about consequences.

The most attractive version of consequentialism for the empirically minded researcher is 'rule consequentialism'. Consequentialism is usually divided between its act and rule variants: act consequentialism holds that the consequentialist criterion is to be applied directly to

<sup>20</sup> Margaret Keck and Kathryn Sikkink, *Activists beyond Borders* (Ithaca, NY: Cornell University Press, 1998).

<sup>21</sup> Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization* 52:4 (1998), 887-917.



particular acts, while rule consequentialism applies to general rules or principles. People should comply with rules if their general observance will produce the best consequences, even if in a particular circumstance such a rule might not lead to the best consequence.<sup>22</sup> So, a rule-consequentialist, when wondering about the morality of some conduct, asks, 'what would the consequences be if everyone felt free to do that?'<sup>23</sup> To illustrate the difference with regard to the case of torture, act-consequentialism would ask about the consequences of torturing a particular individual and base a decision on those. Rule consequentialism would ask instead, what would be the consequences if all countries felt free to torture? In turn, some rule-consequentialists distinguish between primary and secondary rules, which may be related to the distinction I am making here between non-derogable rights and other rights.<sup>24</sup> As we can see, rule-consequentialism narrows the distance between consequentialist and agent-centred approaches, as both focus on the need for codes or principles.

### Evaluating consequences

The huge philosophical debate about consequentialism and the closely related school of utilitarianism has not hinged on what would seem to be the glaring issue for any empirical researcher. How can we know with any confidence about consequences? A large body of (consequentialist) normative thought is based on the notion that morality depends on what we can reasonably expect to happen. But most philosophers aren't in the business of trying to find out what we can reasonably expect to happen.<sup>25</sup> The task is left to empirical researchers to fill the gap. But having filled the gap, we then need to reconnect our conclusions back to their normative implications.

In both cases discussed in this chapter, that of the debate over the use of torture by the US government and the issues of human rights trials,

<sup>22</sup> Shaw, *Contemporary Ethics*.

<sup>23</sup> Brad Hooker, *Ideal Code, Real World: A Rule-consequentialist Theory of Morality* (Oxford: Clarendon Press, 2000).

<sup>24</sup> Shaw, *Contemporary Ethics*.

<sup>25</sup> For example, Shaw argues that 'most expected outcome utilitarians' think about consequences as 'calculated by a reasonable and well informed agent based on the available evidence'; *Contemporary Ethics*, 30. This description sounds like a reference to an empirical researcher.



the empirical question of what we can reasonably expect to happen has important ethical implications. In a recent article on human rights and war crimes trials, Jack Snyder and Leslie Vinjamuri suggest that under certain circumstances such trials can lead to more atrocities, sustain conflict and undermine democracy.<sup>26</sup> If they are correct about what we can reasonably expect from human rights trials, a consequentialist reading would say that countries *should not* carry out such trials. If, to the contrary, as Carrie Booth Walling and I have argued, there is little empirical support for the argument that trials lead to more atrocities, sustain conflict or undermine democracy, the normative equation is different.<sup>27</sup>

This may help clarify why for me careful empirical research using the best tools at our disposal is not just a professional obligation, but also an ethical one. Exactly because the ethical and normative questions are so important, and because, from my point of view at least, most ethical judgements require some knowledge about reasonable expectations about consequences, good research is necessary for ethical judgement.

This then takes us to the question that Price poses in his introductory chapter. What should we do if 'constructivist analyses lead us to identify that what appear *prima facie* to be progressive initiatives are themselves revealed to come at the price of concomitant regress in other areas'? Constructivist analysis that points to ethically progressive change in world politics *and* constructivist analysis that problematises such progress by talking about concomitant regress in other areas is research about consequences. It is mainly historical and comparative research that tries to identify the consequences of key changes and continuities in world politics. As such, this knowledge of consequences should permit both normative judgement about the past and guidance for action in the future. Because such historical research is the best guide we have for what we can reasonably expect in the future, it must go one step further than simply pointing to progress and/or regress. Research about consequences needs to try to evaluate the relative importance and weight of such progress and regress. It is not enough simply to say that there are both costs and benefits of different changes. In order to make an ethical judgement about action in the future, we need to have an idea of the

<sup>26</sup> Snyder and Vinjamuri, 'Trials and Errors'.

<sup>27</sup> Sikkink and Walling, 'The Impact of Human Rights Trials in Latin America'.



relative balance of the different consequences, or the conditions under which certain benefits or costs will be more likely.

## Trials and consequences

Let me illustrate some of these arguments with examples from current research on international, foreign and domestic human rights trials. Ellen Lutz and I have argued that since the 1980s there has been a dramatic new trend: states throughout the world are beginning to hold individuals, including heads of state, accountable for past human rights violations. We have labelled this trend as 'the justice cascade'.<sup>28</sup> The question that concerns us here is: given that such trials are occurring with considerable frequency, what impact or consequences do they have? Snyder and Vinjamuri argue that the consequences can be dangerous because states that pursue justice for past human rights abuses may destabilise their societies and sustain conflict. Therefore, these scholars advise that amnesties are more effective at ending atrocities than trials.<sup>29</sup>

These are empirical claims. To address them, Carrie Booth Walling, Hunjoon Kim and I created a new data set of the main transitional justice mechanisms: truth commissions and domestic, foreign and international trials for past human rights violations. This new data both definitively demonstrates the existence of the justice cascade and allows us to explore empirical questions about the impact of trials.<sup>30</sup> Our initial research indicates that human rights trials do not make the human rights situation worse, and in some situations human rights trials are associated with an improvement in the human rights situation.

A purely deontological approach might say that providing justice for victims of human rights violations and accountability for perpetrators is such an important principle that countries should proceed with trials

<sup>28</sup> Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America', *Chicago Journal of International Law* 2:1 (2001), 1–34.

<sup>29</sup> Snyder and Vinjamuri, 'Trials and Errors'; see also Stephen Krasner, 'After Wartime Atrocities Politics Can Do More Than the Courts', *International Herald Tribune* January 16, 2001.

<sup>30</sup> Sikkink and Walling, 'The Impact of Human Rights Trials in Latin America'; Hunjoon Kim and Kathryn Sikkink, 'Do Human Rights Trials Make A Difference?' Paper presented at the American Political Science Association Annual Meeting, Chicago, August 28 – September 2, 2007.



regardless of the consequences. While I understand and respect that ethical argument, I'm not willing to make it myself. I agree that providing justice and accountability are worthy goals that should be pursued. But accountability for past human rights violations does not form part of the core 'non-derogable rights' of the human rights regimes. At best, there is an emerging norm that states have an obligation or duty to punish individuals who carry out mass atrocities,<sup>31</sup> but this is not yet a clear rule of international human rights law. In this case, I believe that knowledge of expected consequences is important for helping make hard ethical choices.

This is not just a simple question of whether trials are good or bad. Empirical research can also help us understand under what conditions human rights trials could improve human rights and under what conditions they might make them worse. So, for example, Snyder and Vinjamuri look at thirty-four cases of civil wars. They provide evidence that that in some civil war situations an immediate demand for trials could undermine peace negotiations and thus sustain conflict and that amnesties in these situations could lead to conflict resolution. This involves an ethical trade-off: peace vs. justice and accountability.

Because previous quantitative empirical research shows that civil war is closely correlated with human rights violations,<sup>32</sup> it may be an ethically justifiable trade-off to offer amnesties in order to secure peace settlements. But Snyder and Vinjamuri don't limit themselves to generalising about civil war cases but instead make broad and sweeping statements about the impact of human rights trials.

Since Snyder and Vinjamuri derive important moral, theoretical and policy implications from their research, their failure to be more careful about the generalisations they make calls into question their ethical judgements. I believe it is premature to draw ethical implications from this work until there is further empirical verification of their findings. Carrie Booth Walling and I have to date also only focused on a subset of cases with human rights trials – those in Latin America. Thus, we cannot

<sup>31</sup> Juan Mendez, 'In Defense of Transitional Justice'. In A. James McAdams (ed.), *Transitional Justice and Rule of Law in New Democracies* (Notre Dame, IN: University of Notre Dame Press, 1997), 5.

<sup>32</sup> See, for example, Stephen Poe, C. Neal Tate and Linda Camp Keith, 'Repression of Human Rights to Personal Integrity Revisited: A Global Cross-National Study Covering the Years 1976–1993', *International Studies Quarterly* 43:2 (1999), 291–313.



yet make generalisations to the entire universe of cases and must consider the possibility that there is some form of Latin American 'exceptionalism' that makes human rights trials have a more positive effect in Latin America than elsewhere.

This is one way in which principled based arguments and consequentialist arguments might be combined. Particularly in cases where important and valued principles are at stake, the presumption should be in favour of the principle, and only very substantial and well-established evidence against the principle would be sufficient to lead us to call it into question. So, for example, the principle of accountability for past human rights violations is sufficiently well established that in order to suspend it, we would want to see very persuasive research that it is counterproductive. If, however, very persuasive future research actually confirms the Snyder and Vinjamuri hypothesis that trials lead to more atrocities, I would re-evaluate my ethical support for human rights trials.

### **Weighing consequences**

Resolving empirical questions about consequences is important for making normative judgements about desirable policies. It is not only a question of determining which policies are good and bad, but rather specifying the conditions under which different policies can lead to better or worse outcomes. To go back to Price's questions, I believe that constructivists who raise questions of progress and regress in world politics not only need to evaluate the progressive versus the regressive outcomes of policies, but also try to specify more carefully the conditions under which a more progressive or less progressive outcome is likely.

Much important work by critical constructivists has focused exactly on the unanticipated consequences of acts and policies. Ann Towns, in her contribution to this volume, for example, has alerted us that one of the consequences of gender equal discourses and policies in Sweden has been to further stigmatise and marginalise immigrant populations. But rather than rejecting gender equality struggles as a result, she then goes on to incorporate these exclusionary effects 'in the moral calculus guiding action'.<sup>33</sup>

<sup>33</sup> Ann Towns, this volume.



Such a weighing of consequences is neither easy nor straightforward. It often involves counterfactual arguments about the past, and also may imply some kind of prediction about the future, or what some people have called a 'future counterfactual'.<sup>34</sup> Since predictions about the future can be notoriously uncertain, individuals can differ in their claims about consequences, and such differences are difficult to resolve. Good predictions about the future rely on the best research about the past. Even with careful intentions, predictions will be inaccurate because the very nature of the social world makes possible the unanticipated, as humans learn and change their world. It could be that any constructivist would be so distrustful of prediction that they dismiss any effort at consequentialist normative theorising. Indeed, one important contribution of constructivism has been demonstrating exactly how some change that was seen as 'unimaginable' previously could become a new norm in the present.

But I want to argue that we can't avoid some kind of efforts to understand the future. Robert Cox (quoted in Price's introductory essay) discusses normative choice, but would limit 'the range of choice to alternative orders which are feasible transformations of the existing world'. But how do we know what is feasible? I would argue we know what is feasible from the research about how change has occurred in the past. In other words, like the language or not, we know what is feasible by making 'predictions' about the future based on our best research on the past. Call it 'prediction' or a future counterfactual, or call it our best hunches about what could happen, I will argue that we can't eschew completely consequentialist theorising because discussions of consequences are ubiquitous in political life.

I place this emphasis on the importance of consequences fully aware that we are on dangerous ground. Consequentialist ethical arguments are more suspect because they lend themselves, I believe, to more manipulation. Counterfactual arguments are often open to manipulation because people can propose far-fetched or improbable future counterfactuals, and they are difficult to oppose because it is just my counterfactual against yours. I will argue that this is exactly what is

<sup>34</sup> Steve Weber, 'Counterfactuals: Past and Future'. In Philip Tetlock and Aaron Belkin (eds.), *Counterfactual Thought Experiments in World Politics: Logical, Methodological, and Psychological Perspectives* (Princeton, NJ: Princeton University Press, 1996), 268–288.



happening with the US government justification for the use of torture. Bush administration officials posed an improbable but frightening counterfactual – ‘if we don’t torture, we will suffer another terrorist attack’ – and thus gained support for their policy.

Joseph Nye has similarly pointed to the dangers of consequentialism in his discussion of nuclear ethics. ‘Once the ends justify the means, the dangers of slipping into a morality of convenience greatly increase. To calculate all the consequences of one’s actions is impossible, and when the calculation is fuzzy, abuse is possible . . . And given human proclivities to weight choices in our own favor and the difficulties of being sure of consequences of complex activities, impartiality may be easily lost in the absence of rules.’ Despite these misgivings, Nye still concluded that a nuclear ethics had to include consideration of motives, means and consequences.<sup>35</sup>

To cede the ground of discussing consequences hampers one’s ability to participate in political discussions, including normative and ethical ones. So, for example, we could respond to the US government’s consequentialist justification of torture with a purely deontological argument by saying that it is always wrong to torture, regardless of the consequences. But that would grant the plausibility in the argument about the consequences of torture. I would prefer that we both stress principles *and* engage in the most rigorous debate possible about consequences. So, how do we go about weighing consequences? I will argue that there are four particularly prominent forms of reasoning often used to evaluate consequences: (1) mental simulations of counterfactual worlds; (2) pure counterfactuals; (3) comparison to the ideal; and (4) empirical comparisons. I will discuss each of these forms of reasoning below.

### *Four kinds of reasoning commonly used to evaluate consequences*

#### **Mental simulations of counterfactual worlds**

In their discussion of five types of counterfactuals, Tetlock and Belkin highlight one type that is most relevant to normative theorising. They call it the ‘mental simulation of counterfactual worlds’ and point out that ‘asking people to imagine and work through the detailed

<sup>35</sup> Nye, *Nuclear Ethics*, 19.



implications of hypothetical worlds is a powerful educational and rhetorical tool'. In particular, such simulations can 'reveal double standards in moral judgments', and 'unwanted biases such as the certainty of hindsight'.<sup>36</sup> I would suggest that such mental simulations are pervasive in philosophical thought and they are not just important for revealing double standards, but for clarifying normative thought more generally. Rawls used the veil of ignorance as such a mental simulation. Onora O'Neill used the hypothetical of the lifeboat to discuss the responsibility to avoid unjustifiable deaths in famine.<sup>37</sup>

Counterfactual mental simulations are useful tools as long as we accept them for what they are – made up scenarios that don't correspond necessarily to anything in the real world. The danger comes when people turn the counterfactual simulation into a consequentialist causal story about the world. Here is where careful attention to the best possible empirical research is crucial to counteract far-fetched and dangerous counterfactuals.

So, for example, the Bush administration has engaged in this kind of counterfactuals with regard to torture. The entire ticking time bomb scenario is a type of counterfactual morality tale often used by philosophers to help people think through difficult ethical trade-offs and the logic of our reasoning. The tale goes that there is a ticking time bomb somewhere, and the government has arrested a person who knows about it. If we torture him he will tell us where the bomb is, which allows us to save the lives of thousands of people. Given this scenario, most people will choose torture. If we accept the notion of this kind of counterfactual as helping clarify inconsistencies in moral rules, its 'lesson' is that we don't believe in a complete prohibition of torture, because there is a scenario where we would justify it. The problem with the ticking time bomb scenario is that it has been converted from a hypothetical scenario that may be useful to help us clarify our ethical positions and difficult trade-offs, to an actual description of the world and to a justification of policies that have alarming ethical implications. It is proposed as an empirical description of the world. There really is a ticking bomb, and we really have the person who knows about it, and if

<sup>36</sup> Tetlock and Belkin, *Counterfactual Thought Experiments in World Politics*, 13–14.

<sup>37</sup> Onora O'Neill, 'Lifeboat Earth'. In Charles Beitz *et al.* (eds.), *International Ethics* (Princeton, NJ: Princeton University Press, 1985), 265.



we don't torture him thousands of people will die. This is then used to justify the actual use of torture. Once some kind of ethical 'permission' for torture has been given in the abstract and limited case of the ticking time bomb, once we accept that the prohibition of torture is not absolute, this is then taken as a more blanket permission for the use of torture.

As a description of the world, this scenario is deeply misleading. Interrogators will tell you that they rarely if ever encounter an actual ticking time bomb scenario in their work. Instead of the clean hypothetical of the torture of one (guilty) person against the lives of thousands of (innocent) people, you have a much more difficult scenario of the torture of hundreds (?) of innocent (?) people without even being certain that there is a bomb, or if we could discover it and dismantle it and save lives.

Prior to 9/11, the commonplace belief in the United States was that torture was wrong and that the United States would never use or condone torture. After 9/11, a few people began to question this belief, but initially they seemed at the margins, or testing the waters. By 2004/2005 however, there was a very substantial opinion in the United States that although most forms of torture may be wrong, it may be necessary and desirable to use some forms of 'torture lite' or cruel, inhuman or degrading treatment to gather information and to keep America safe in this new situation of a war on terror. These arguments are not being made just by conservative commentators, but by some respected members of the liberal intellectual establishment.<sup>38</sup> Almost all the arguments start with the ticking time bomb scenario and then move quickly to the premise that torture is indeed 'effective'. Rarely do these commentators provide adequate evidence for this premise that torture actually works. Recent cases have shown the risks of relying on information extracted from torture.<sup>39</sup> The most revealing case is that of Ibn al-Shaykh al-Libi, who provided the testimony about ties between Iraq and al-Qa'ida used by the Bush administration as one of its justifications for the Iraq war. Libi later recanted, saying that he had fabricated the information to

<sup>38</sup> See the debate, for example, in Sanford Levinson, *Torture: A Collection* (Oxford: Oxford University Press, 2004).

<sup>39</sup> See, for example, 'The Costs of Outsourcing Interrogation: A Canadian Muslim's Long Ordeal in Syria', *New York Times* May 29, 2005; 'German Held in Afghan Jail Files Lawsuit: Mistaken Identity is Basis of Claim', *New York Times* December 7, 2005, A16.



escape torture in Egypt, where he had been sent by the United States as part of the policy of 'extraordinary rendition' of high-level suspects to other countries for interrogation purposes.<sup>40</sup> Even some US interrogators have come forward to argue that they did not get useful information through harsh interrogation.<sup>41</sup> Yet the entire argument for torture rests on the premise of effectiveness.

The movement from interesting counterfactual mental simulation to actual description of the world that in turn justifies a policy that goes way beyond the antecedent conditions of the mental simulation is a sleight of hand with pernicious human results. I believe it is very dangerous to go from a hypothetical tool of this sort to a policy recommendation for the real world. Instead, we would prefer to base our policy recommendations on careful empirical research about what has actually happened in the world. Nevertheless, counterfactual arguments of some sort may be difficult to avoid.

### **Pure counterfactuals**

A second kind of argument often used both in discussions of torture and in discussions of human rights trials is what we could call the pure counterfactual. Counterfactuals are subjunctive conditions statements (i.e. they take the form, if *x* then *y* would have ...) in which the first part of the statement is not true. The argument about the effectiveness of torture often takes this form of a counterfactual argument. That is, the argument is that the situation with torture is better than it would have been if torture had not been used. The policy makers say, 'believe me, worse things would have happened had we not tortured'. Counterfactual arguments are very common in the policy world, and they are common in social science as well. But they are a particularly tricky kind of argument and they need to be handled with care. Because for every counterfactual that says, we are now safer because we have tortured, we can compose a plausible counterfactual that says we are not safer because of torture. It is one person's view of what might have happened compared to another person's view of what might have happened. Counterfactual arguments can never be proven or established definitively. Nevertheless, this does not mean that all

<sup>40</sup> 'Iraq War Intelligence Linked to Coercion', *International Herald Tribune* December 9, 2005.

<sup>41</sup> Anthony Lagouranis, 'Tortured Logic', *New York Times* February 28, 2006.



counterfactuals are equal, and we need to use the best evidence at our disposal to try to distinguish more plausible from less plausible counterfactuals.

To deal with counterfactual causal statements about torture, for example, we need to look at evidence. If we look for historical evidence of real-world examples of ticking time bombs, we find very few. Joseph Lelyveld, in a *New York Times Magazine* article where he interviewed many Israeli security agents, says that despite the long use of harsh punishment in Israel, he could get only one specific case where torture actually stopped a ticking time bomb.<sup>42</sup> But counterfactuals about torture are often particularly troubling counterfactuals, because policy makers may also say that for national security reasons, they can't produce the evidence to prove their statement because it is classified. When 'evidence' is produced for torture's effectiveness, it is almost always provided by a person who has carried out torture or authorised it. In other words, since torture is a crime, the 'evidence' for the effectiveness of torture is provided by the person who has committed the crime of torture. Such a person has a strong self-interest in convincing themselves and the audience of the necessity of torture. If they wish to live with themselves and justify their behaviour to others, they must convince all of us that torture was effective. So, we have a counterfactual situation, where the evidence we are using to weigh whether or not torture was effective is being provided by someone who has committed a crime and has strong legal and psychological reasons for justifying it. No serious researcher would accept evidence in these circumstances.

In addition to asking for evidence of effectiveness, we expect that a good causal consequentialist argument needs to do a more complete accounting of costs and benefits. This may sound callous, but policy makers are already doing a cost-benefit analysis of torture. If they are going to do it, at a minimum, one should insist that the costs are fully accounted for in both a cosmopolitan and long-range sense. In the case of torture we need to weigh the (possible, yet unknown) benefits of saving lives against the known costs of torture to individuals. There is a very extensive literature on the human costs of torture; we know it extends beyond the victim to the victim's family, and from the first

<sup>42</sup> Joseph Lelyveld, 'Interrogating Ourselves', *New York Times Magazine* June 12, 2005, 36.



generation into future generations. Finally, we need to calculate the legitimacy costs and the propaganda costs of the use of torture. How much harm to the US reputation in the world have the photos of Abu Grahیب done? We can't know these costs precisely, but any more long-term understanding of consequences must take them into account. In other words, it is not enough to chart out benefits, but we also need to try to weigh the costs against the benefits.

Because of the notorious trickiness of this kind of consequentialism, ethical reasoning has preferred the deontological: do not torture. In that particular case, I agree. I believe that there should be some basic deontological principles so that we don't have to reopen the ethical debate about the consequences at every point. Do not torture is one of those basic deontological principles. It is also a basic legal principle in domestic and international law. But I'm also convinced that the justification for torture uses very bad consequentialist reasoning, and it is not wise to grant anyone the empirical claim that torture is actually effective. We should answer both that torture is wrong, and that its effectiveness is unproven, and based on the most flimsy evidence.

In response to Price's question of what to do when faced with instrumental actors relentlessly pursuing their interests, one way is to realise that they are frequently providing implausible consequentialist accounts, and it is important to dispute both the principles, the causal logics and the cost-benefit consequentialist analysis. This approach is all the more important if we accept that some of the instrumental actors (and many of their supporters and followers) actually believe the implausible counterfactuals. The obligation of researchers is to be just as relentless in questioning implausible accounts and proposing more plausible ones, realising that we can never be fully persuasive, not only because the instrumental actors are immune to facts but also because we are always going to be working in the range of one counterfactual vs another.

But aside from these perverse forms of manipulation of consequentialist arguments, there is also what we might call well-intentioned disagreement about plausible consequences. I agree with Price that virtually all normative claims depend in various ways upon empirical assumptions or claims about the world. What I would add to this is that the great bulk of them depend on counterfactual claims about this world.

Differences among well-intentioned people (as opposed to differences with relentlessly instrumental actors) often have to do with not



clarifying the nature of our ethical and empirical reasoning. I suggest that people are engaged in different kinds of reasoning and thus talking past one another. One common disagreement may result from what I would call the unstated but implied counterfactual.

I would argue that 'conditions of possibility' arguments sometimes take the form of an unstated counterfactual. That is, conditions of possibility arguments involve empirical statements about what actually exists and how it became possible. But they also imply or suggest that other outcomes were at one point possible and eventually became less possible. Such arguments serve one purpose of a counterfactual, and that is to 'call attention to what could have happened, thereby locating what did happen in the context of a range of possibilities that might ... have taken place instead'.<sup>43</sup> Tetlock and Belkin argue the alternative to an open counterfactual model is often a concealed counterfactual model.<sup>44</sup> In a concealed model, the reader is aware that the author thinks that other outcomes were both possible and desirable, but must infer the preferred alternatives from the critique of what did happen, rather than read them stated clearly with both their 'possibility' and 'desirability' defended. In this sense, I would find it useful in a critical constructivist account, in addition to critiquing what did happen, if the analysts would spell out clearly the desired alternative.

### Comparison to the ideal

Yet another important difference is between what some scholars call 'ideal theory' and 'non-ideal' theory, that is, the difference between theorising about the ethical ideal vs. theorising about what is possible for governments or individuals to do in a non-ideal world.<sup>45</sup> I prefer to think about this distinction as the difference between 'comparison to the ideal' – a comparison of what actually happened to what should have happened in an ideal world – and empirical comparison. The world of 'ideal theory', following Linklater, might be further divided between that which is 'already immanent' and that which is not already immanent.<sup>46</sup> However, as Price suggests in his introductory chapter,

<sup>43</sup> Tetlock and Belkin, *Counterfactual Thought Experiments in World Politics*, 15.

<sup>44</sup> Ibid. 4. <sup>45</sup> See, for example, Gibney, *The Ethics and Politics of Asylum*.

<sup>46</sup> Linklater, *The Transformation of Political Community*.



clearer guidelines will be needed for how to identify and distinguish what is already immanent from other comparisons to the ideal.

Let me illustrate these with reference to the issue of human rights trials. First, comparison to the ideal can be explicit or implicit. The implicit comparison to the ideal is very common in discussions of human rights trials. So, for example, many people have discussed the flaws in the international trials of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in terms of its failure to actually arrest the most senior suspected war criminals, or for its wrong-headed efforts at even-handedness, or because by giving Milosevic the chance to represent himself, the Tribunal gave him yet another opportunity to traumatise his victims, this time when they testified against him. Because these flaws offend the sensibilities of those committed to justice, they make an argument that it would have been better to have no trials at all than to have the flawed trials of the ICTY.

This is not a counterfactual argument about what would have happened in the former Yugoslavia without the ICTY. They are not saying that the countries of the former Yugoslavia would have held more or better trials on their own. Nor are they saying that Yugoslavia, or Croatia or Kosovo would have been better off in terms of human rights, or democracy or conflict without the ICTY.

Nor is it an empirical comparison to other comparable trials or to other countries. They are usually not saying, for example, that the Nuremberg trials or the Rwanda trials are better than the ICTY trials, and thus should serve as a model. It is a comparison to an ideal of what international trials should be. And if the actually existing trials do not live up to that ideal, the belief is or the implication is that it would be better not to hold them at all.

This kind of reasoning is not only the province of idealists, but I would argue, is actually very present in critical constructivist thought and even in some realist or liberal thought. For example, Gary Bass, in his book on international war crimes tribunals, explains tribunals as something the countries of the West designed to assuage their guilt at not doing anything to intervene and stop human rights violations in countries like the former Yugoslavia or Rwanda. This is an example of comparison to an ideal. The ideal is that wealthy states should intervene to stop human rights violations in other states. When they fail to do so, we hold them up against this ideal and find them wanting. When they do something else (set up war crimes tribunals, in this case) it is again



measured against the ideal (preventing the human rights violations in the first place) and found wanting, and thus dismissed as flawed.<sup>47</sup>

This is an important form of ethical reasoning. We need to keep the ability to hold our actual practices up to our ideals, and constantly measure where they fall short. Such reasoning is a powerful pressure for change in the international system. It is one of the main tools that advocacy groups use in the world. But, it is also very important to be careful how we use this form of the ideal comparison and to distinguish it very clearly from empirical comparison and counterfactual reasoning. First, comparison to the ideal should be explicit rather than implicit. The author should clarify that the practice or institution in question is being compared not to an empirical example in the world, but to a set of ideals of what such a practice or institution should look like.

Many arguments about inconsistency or hypocrisy are also comparisons to an ideal of perfect political consistency. Why do we get trials in the case of the former Yugoslavia but not in the case of war crimes by US officials in Iraq? This is a valuable ideal comparison. In an ideal world, we would have greater consistency and that could include war crimes tribunals of US policy makers. But it does not follow that the ICTY is thus not historical progress just because we don't have full consistency. In other words, some of our differences exist because we do not distinguish when we are engaged in comparison against the ideal, or ideal theory, and when we are engaged in empirical comparison or counterfactual reasoning.

### Empirical comparisons

The comparison of practices or institutions not to the ideal but to other current or historical practices can lead to rather different evaluations.<sup>48</sup> So, for example, an evaluation of the ICTY that uses empirical comparisons to other international tribunals might arrive at different conclusions. For example, I would argue that the ICTY is an example of a 'successful' international war crimes tribunal, in the sense that it

<sup>47</sup> Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2000).

<sup>48</sup> In his work on poverty, Thomas Pogge proposes various kinds of empirical comparisons and empirical baselines as a way to evaluate the impact of the international order on domestic poverty; Thomas W. Pogge, "Assisting" the Global Poor'. In Deen K. Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge: Cambridge University Press, 2004), 273–277.



actually indicted, tried and convicted criminals using due process, something that had not happened since Nuremberg. Instead of holding the ICTY up against an ideal of how international justice might look, I compare it to other cases in the past and the present. How often in the past did powerful states act to punish human rights violations in countries where they were not the victors in war? Never? If they now do it in the case of ICTY and the International Criminal Tribunal for Rwanda (ICTR), that makes something new in the area of accountability for past human rights violations. This looks to me like significant historical change of a progressive kind, given the definition of progress I used earlier in the chapter. I would argue that with the ICTY there is more accountability for past crimes in the former Yugoslavia than there would have been without the ICTY (a counterfactual argument) and that with all its shortcomings, the ICTY is still an improvement in some ways on previous international trials (e.g. less an application of victors' justice than at Nuremberg, fewer immense delays with their attendant violations of the rights of defendants than at the ICTR). Even weighing some of the negative consequences, I still find the overall balance positive, compared to what would have happened without the ICTY. This is not to say that we should forget the problems, or be naive about our expectations for the future. But, neither should we let our ideals interfere with the actual documentation of change in the system.

Let me give another example using domestic human rights trials in Latin America. Carrie Booth Walling and I use various kinds of empirical comparisons to address the issue of the consequences of human rights trials in the region. We compare the human rights situation in individual countries before and after trials to see if we can discern the impact of trials on human rights. We compare countries without trials to countries that had trials to gain further insight into the effects of trials. Finally, we compare those countries that had a greater number of trials to those countries that had fewer trials. Using these empirical comparisons, we find that there is no empirical evidence that human rights trials worsen human rights, democracy or conflict in Latin America, and that in fourteen of our seventeen cases, the human rights situation improved in countries that used trials.<sup>49</sup> Such empirical evidence can then be used to craft ethical arguments in favour of human

<sup>49</sup> Sikkink and Walling, 'The Impact of Human Rights Trials in Latin America'.



rights trials, arguments that are attentive both to principles of justice and to consequences of actual trials.

Ethical arguments of these different types are ubiquitous and necessary. But because they are also slippery, we also need to be very careful and precise about how we go about using them. I would recommend that first we distinguish very carefully between the comparison to ideals and historical empirical comparison. I believe that many critical constructivist accounts rely on the comparison to the ideal or to the conditions of possibility counterfactual argument. In almost every critical constructivist work there is an implicit ideal ethical argument. This argument is implicit because it is rarely clearly stated, but it is found in the nature of the critique. So, for example, in her discussion of US human rights policy, Roxanne Doty critiques a human rights policy carried out by actors who use it for their own self-aggrandisement and to denigrate others.<sup>50</sup> The implicit ideal this presents is a human rights policy that is not used for denigration or surveillance or othering those it criticises or conversely, of elevating those who advocate it. What would be examples of such a policy? The book does not provide examples. We do not know if examples exist in the world. So the implicit comparison is a comparison to an ideal – a never fully stated ideal, but one present in the critique of what is wrong with the policies discussed.

Nicolas Guilhot makes a similar argument; the promotion of democracy and human rights, he claims, are increasingly used in order to extend the power they were meant to limit. He examines how progressive movements for democracy and human rights have become hegemonic because they 'systematically managed to integrate emancipatory and progressive forces in the construction of imperial policies'.<sup>51</sup> But the book does not offer any alternative political scenario. Guilhot admits that the book 'does not provide answers to these dilemmas. At most, its only ambition is to highlight them, in the hope that a proper understanding constitutes a first step toward the invention of new courses of action.'<sup>52</sup> Ethically, Guilhot believes that the democratic critique of democracy is sufficient. But if critique is to open space for new courses of action, as Guilhot wishes, some hint at what those new courses look like would be useful.

<sup>50</sup> Roxanne Doty, *Imperial Encounters: The Politics of Representation in North-South Relations* (Minneapolis, MN: University of Minnesota Press, 1996).

<sup>51</sup> Nicolas Guilhot, *The Democracy Makers: Human Rights and International Order* (New York, NY: Columbia University Press, 2005), 222–224.

<sup>52</sup> *Ibid.* 14.



This kind of critique has a crucial role to play in pointing to hypocrisy (as Price highlights in the introduction to this volume). It could also serve as a catalyst for policy change in the direction of policy that would include less surveillance or less co-optation of human rights discourse. But it is unlikely to serve as a catalyst for new action or policy change unless it ventures something more than pure critique, unless it risks a political or ethical proposal. Without that, it potentially has the impact of delegitimising any human rights policy without suggesting any alternative. Any policy to promote human rights or democracy is shown to be deeply flawed or even pernicious. The ethical effect is to remove normative support from existing policies without producing any alternatives. This is similar to what Price means when he says that 'critical accounts which do not in fact offer constructive alternatives in the aftermath of critique ironically lend themselves to being complicit with the conservative agendas opposing erstwhile progressive change in world politics'.

Neither Doty nor Guilhot, for example, contrast human rights policies or democracy promotion policies to previous policies that I would suggest were more pernicious – such as national security ideology and support for authoritarian regimes in the Third World. By presenting no contrasts, the critique would appear to say that there is no ethical or political difference between a policy that supports coups and funds repressive military regimes and a policy that critiques coups and cuts military aid to repressive regimes. These policies would appear to be ethically indistinguishable. Doty and Guilhot give me no ethical criteria to distinguish among the policies of the Nixon/Kissinger administration, the Carter administration and current Bush administration policy.

Because the comparison is an implicit ideal, never an empirical real-world example, the critique is very telling and can delegitimise the critiqued policy. But nothing is put in its place. It puts the analyst in an ethically comfortable position, but by not proposing any explicit comparison, it demobilises the reader. We learn what to oppose, to critique, but we don't learn explicitly what to support in its stead. The result can be political paralysis.

There is a long tradition in political theory of such critique, but theorists more often propose alternatives.<sup>53</sup> I believe critical constructivists have often unstated ideals for the international system. Because of

<sup>53</sup> See, for example, Peter Singer, 'Famine, Affluence, and Morality'. In Beitz *et al.*, *International Ethics*, 247–261.



the prevalence of the critique of 'othering' it would seem that the main principle defended is that of equality and non-discrimination, both among individuals and among states. Critical constructivists at least implicitly often seem to be especially concerned about advocating the principle of the equality of states when invoking the concept of hierarchy as a key critical focus.

One problem with a tradition that places such emphasis on equality in action and in language is that it renders other judgement problematic. Almost any ethical judgement leads to a conclusion that some actions by some states or individuals are worthy of praise or of condemnation. If you praise or you condemn, critical constructivists seem to suggest, you inevitably rank or other in some form. But I do not know how it is possible to engage in ethical judgement without some kind of praise or condemnation. Equality is certainly a valuable goal, but is state equality the priority goal that trumps all others? And must our commitment to equality make all attempts at ethical judgement suspect?

In the process of research and writing as well, I believe that the scholar must both critique and inspire.<sup>54</sup> This is similar to what Price calls for when he says that we need to put constitutive empirical insights to work for a forward-looking ethic. For critical theorists to remind us of the dark side of many apparently benevolent policies is a necessary antidote against naivety, hubris or self-congratulatory smugness. Likewise, there are historical moments when there is nothing but critique and resistance. Gadflies are always necessary in these smug times. But I believe that we need to make judgements and take action. Judgement implies an ability to evaluate, to weigh, to make a decision in matters affecting action.

Smart students, for example, will read our work, and wonder – what should we do? Should we hold more war crimes tribunals? How can the US government promote democracy and human rights? How do the laws of war need to be reformulated? Those of us doing empirical research will want to draw on our principles and our research to try to provide answers to these questions.

Judgement is a result of a combination of the premises and commitments we begin with and the empirical research results about the consequences of action. I believe that the best ethical judgement requires the best empirical research we can do using all the research tools at our

<sup>54</sup> I thank Susan Bickford for this insight.



disposal. This will ensure that we render judgement keeping in mind the limits and possibilities of the real world of politics. The research will often involve difficult counterfactuals and different kinds of comparisons. Well-intentioned researchers will disagree about results. We can improve our discussions by being more explicit about our processes of ethical reasoning and by relating our research findings more explicitly to their normative implications. This volume is one important step in that direction.