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Title: Toward An Academic Theory of Social Justice Judgment and Decision-Making: Rights, Justice, and Legal Ideology.

Abstract approved:

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Abstract:

This dissertation serves a threefold purpose: 1. identify the principles, practices and assumptions implicated in an academic theory of social justice; 2. continue moving towards articulating a theory of social justice judgment and decision making; and 3. develop a model of social justice judgment and decision making that will assist interested populations engaged in social policies and issues.

Historically and culturally, social justice judgments and decisions are more commonly generated by, framed within, and dependent upon satisfying [pre]dispositions (cf., generative processes) associated with enforcing and normalizing rights and rules through a tumultuous history of morality and ethicality (Lassman, 2000; Nash, 2003; Rydgren, 1949), predicated in part on rights, justice and legal ideology. As it stands, it can be stated that within academia social justice *is* accountability, handed down from politics and economics; albeit, in academic terms, "accountability as moral accountability is a

primary requirement of interpretation, formulated upon coherence theory" (Skrla et al., 2004, p. 10).

Theoretically, proposing that within the scope of justice, academic social justice judgments and decisions reflect structure, domain specific functions, and frames of reference (cf., ontological thought). To these ends, rights, justice, and legal ideology are theorized as necessary for the explication, formulation and application of an academic theory of social justice judgment and decision-making.

Toward An Academic Theory of Social Justice Judgment and Decision Making: Rights, Justice and Legal Ideology

by
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Major Professor, representing Education

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Dean of the Graduate School

I understand that my dissertation will become part of the permanent collection of Oregon State University libraries. My signature below authorizes release of my dissertation to any reader upon request.

Michael W. Werner, Author

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Academic.

Herein the term academic denotes the constraints and boundaries of a professoriate[1], inclusive of practices and multidisciplinary research[2] that informs and advances the development of social judgment and decision-making. From this beginning it is important to recognize that as concepts, constraints and boundaries are used interchangeably with same and/or similar terms and phrases, such as constraint satisfaction, bounded knowledge, limited rationality, bounded rationality, and so forth (Anderson, 1985; Newell & Simon, 1972). As such, they cover a wide conceptual spectrum, often used to compare and contrast restrictions and/or permissions regarding political, economical, social, moral, and personal opportunities. For example, "it has been argued that when two analogies are same in structure and semantic constraints that the analogy with greatest pragmatic (presuppositional) inferential weight will be selected" (Holyoak & Simon, 1999, p. 23).

In general, the functionality of concepts and entities fluctuate and change in accordance with socially stratified institutions, systems, and organizations. Examples here have included the constraint of opportunity approach (Marsden, 1981, as cited in Uzzi, 1996), and the human development and capability approach (Nussbaum, 2003; Sen

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[1] Engaged professoriate is defined as university educators who hold doctorates engaged in course instruction.

[2] Multidisciplinary research involves overlapping concepts that have different meanings. For example, cognitive differentiation and identification are overlapping concepts found in social cognitive theories, such as identity theory (Tajfel, 1969; Tajfel & Turner, 1979, 1986; Taylor & Moghodden, 1994; Stets & Burke, 2000).

2005), captured by the expression, “from each according to his/her ability, to each according to his/her needs,” noting that the latter, the capabilities approach has been “embraced by the United Nations Development Program (UNDP), and the Human Development and Capability Association” (HDCA; Marks, 2014, p. 478).

Furthermore, constraints and boundaries employed metaphorically or analogically (e.g., structural configuration) can be used to describe and/or interpret psychological, social, economical, physical and/or cultural means-ends incursions. For example, within institutional structures, trust and cooperation become precursors to intergroup formations, considered to be a groups adopted survival strategy, manifesting itself in the formation of in-group discrimination (i.e., bonding, cohesiveness, etc; Bohnet & Baytelman, 2007; Cook, 1978; Hewstone et al., 2001). This is than carried over into the formation of in-group homogenizing, grounding and discriminating out-groups, which “imposes means and coherence” (Gardner, 1993, p. 4). In other words, the in-group is learning how to unify, perceive, and subsequently treat out-groups (cf., constraint-satisfaction; Simon et al., 2004) as a result of in-group formation.

Lastly, as implied, various types of constraints and boundaries have been identified as having a direct impact on rationality (cf., reasoning, logic, etc.), these include but are not limited to judgments and decisions, information constraint, organizational and/or institutional constraint, psychological constraint and/or thought constraint (Wendorf et al., 2002). One applicable example, Tetlock (1984) pointed out “constraint on thinking may come from the basic values held, types of problems trying to be solved, where analysis of structure from content may produce misleading results” (p. 824). A final applicable example of bounded rationality from artificial intelligence and cognition, is the

law of qualitative structure “applied to physical symbol systems, because the limits on their computing speeds and power, intelligent systems must use approximate methods to handle most tasks. Their rationality is bounded” (Simon, 1991, p. 6).

Collectives, purposive groups, enclaves.

As implied throughout dissemination and explication, social justice judgment and decision-making is based in part on group, intragroup and intergroup research, restated as the logic of group research that involves decision-making processes (Lorenzi et al., 1990). From this perspective the bias is abundantly clear, as it is intended to be, for there can be no doubt that academic groups constitute an ideal collective (cf., purposive group), reflecting both desirable and undesirable characteristics as recommended and determined through diverse sets of research sources and practices (e.g., multiple disciplines; Larson & Fasto, 1989). In this sense than, academics are a plural group, possessing and displaying a broad “sense of conscious association, in organized form, of people linked together by common interests” (Lowenstein, 1957, p. 360).

Reflecting the institutional sociocultural structure of higher education, collectives (cf., enclaves) have been identified as sharing affiliations with three organizational systems: collegiums, bureaucracies, and political organizations (i.e., legitimate entities; Baldridge, 1971; Meyer & Rowan, 1977). This recognition includes Catell’s (1948) proposal, which states that these organizational systems involve shared variable characteristics (e.g., multiple traits) defined as a “variety of indices expressing heterogeneity in various characteristics (p. 55)”, including structural characteristics. Such as indices of class structure, and institutional patterns that include boundaries and polarization, the latter comparable to the polarized pluralism that occurs from fragmented multiparty systems

(Dahl, 1971).

Nonetheless, the implication here being the existence of overlapping action networks of academic collectives (i.e., synergy; Catell, 1948) who are influential to, and influenced by their shared variables and structural characteristics in a bidirectional and synergistic manner (Baldridge, 1971; Catell, 1948; Larson & Lafasto, 1989). Together their sociocultural organizational systems and structures create social identity networks (cf., network theory & categorization theory; DiMaggio & Powell, 1983; Tajfel, 1969; Tajfel & Turner, 1979, 1986; Turner & Moghodden, 1994). Suggesting that these systems, networks and structures are necessary for the formation of "catnets: a set of individuals comprising both a social category and a network . . . . that is more likely to yield intersubjective beliefs" (Tilley, 1978; White, 1965, 1992, as cited in Rydgren, 2009, p. 322).

Furthermore, the rights, justice and legal evidence for collectives as category networks is readily apparent internationally and nationally, involving universities, institutional legal networks and other nation-state institutions, systems and organizations, both private and public. The grand scale model that reflects intersubjective fundamentalist beliefs regarding rights, justice and legal ideology is the United Nations (e.g., employees ~52,000, budget ~ 13 billion ; UN), and its 6 principle organs (e.g., International Court of Justice, ICJ), 2 subsidiary organs (e.g., human rights council, HRC), functional commissions (e.g., status of women), departments and offices (e.g., Office of the United Nations High Commissioner for Human Rights, OHCHR), and so forth. Without doubt, judgments and decisions of collective networks play a decisive role in those differences that form the social normative constraints inherent in institutions, systems and

organizations (Luhman, 1990, 2004; Marsden, 1981, as cited in Uzzi, 1996), including their symbolic and ideological differences (cf., hierarchical status difference).

The thesis that moves towards these ends is as follows: Frames of reference as a structure of thought are a necessary element of social justice judgment and decision-making. These frames are domain specific, and when contextualized contribute to the entities and structures of theoretical development. Rights, justice and legal ideology are two frames of reference that can be domain specific, if so, they are compatible with a theory of academic social justice judgment and decision-making. In other words, the primary phenomenon that thematically connects rights with justice and legal ideology is that which is embedded within its "text and findings - the variables of shared characteristics of academics" (Larson & Fasto, 1989, p. 4).

Theory.

This dissertation is constructed upon theoretical research (non-hypothecated), compared to research founded upon hypothetical arguments (Berliner, 2002; Steffy & Wolfe, 2002), and holds that the theorist is the "primary advocate for the position, seeking to obtain persuasive evidence that supports this position" (Berliner, 2002; Potter, 1996, p. 151; Steffy & Wolfe, 2002), taken to mean that mean that a "particular expression of the personal will be a function of the historical and cultural context (Hermans et al., 1992; as cited in Nucci, 1996, p. 44)."

Theories are often conceived of as dimensions requiring "entities and structures rather than processes and functions" (i.e., substantialism; Kaplan, 1964, p. 323), the two entities and structures under scrutiny here are rights, justice and legal ideology (Werner, 2006

[questionnaire], unpublished raw data), which can be considered frames of reference inclusive of domain specificity, structuration, and ontology (cf., structure of thought). Theoretically postulating that university educators utilize a minimum of two domains to inform their social justice judgment and decision-making frames, in order to address these domains, input from the dominant paradigm of law, along with input selected from various academic sources, as well as primary and secondary concepts from complementary multiple disciplines.

In theory development observational statements presuppose theory (Garrison, 1986; Hesse, 1980; Phillips, 1985; Suppe, 1977, as cited in Schwandt, 1993, p. 7), implying that aspects of theory construction are considered an a priori activity, which is often confirmed by the following philosophized [post]positivist statements:

1. "There is no one supreme method of theory building, and nor should there be" (Gioia & Pitre, 1990; Kuhn, 1970; Lynham, 2000b; Marsick, 1990b; Swanson, 1997; Swanson et al., 2000; Thomas, 1997, as cited in Lynham, 2002, p. 222).
2. The processes involved in generating, developing and/or evaluating theory are reliant on the properties of the theory-building-method, in other words, "by the nature of the theory building and not by the preferred inquiry methodology" (Lynham, 2002, p. 230).
3. Theory development requires the continual [re]examination of related theories and/or doctrines.
4. Theory construction or generation (i.e., context of discovery, Kukla, 2001, pp. 61-62) is "the form in which [thinking processes] are subjectively performed" (Reichenberg, 1938, as cited in Swedberg, 2014, p. 3); albeit, science has not been unable to address

issues in the context of discovery, "escaping logical analysis" (Reichenbach, 1938, 1951, as cited in Swedberg, 2014, p. 3).

5. Theory evaluation (i.e., context/logic of justification Kukla, 2001, pp. 61-62) is "the form in which thinking processes are communicated to other persons" (Reichenberg, 1938, as cited in Swedberg, 2014, p. 3)[3].

In reference to numbers three and five, a continual reexamination of rights, justice and legal ideology have occurred within domain specifying theories (Murphy, 2000), which include framework theories (Wellman, 1990, as cited in Murphy, 2000, p. 386), human rights theories (Sheshack, 1993), ideal decision theories (Brandt, 1996), multivalent theories (Anfara, 2006), multiple level theories (Homan, 2002), social justice theories (Kolm, 1969), and theory development theories.

Utilizing Watner's proprietary theory as an example of a priori theory activity, Watner (1982) argued that proprietary theory was the "single most important aspect" (p. 289) to emerge within libertarian ideology. To substantiate this a priori claim, Watner (1982) drew from the origins of natural law to establish an evidentiary axiom (cf., universal generalization). Commencing with Porphyr's (232-304 A.D., Grotius, 1925, as cited in Watner, 1982, p. 290) claim that "justice consists in the abstaining from what belongs to others, and in doing no harm to those who do no harm. The Stoic maxim of according everybody his own (suum cuiyue tribuere) expressed the same basic idea" (p. 290). Watner then traces the historical [re]emergence and continual application of the axiom from Porphyr and the Stoics, to Grotius (1925), Pufendorf (1672), Locke (as cited in

[3] "Noting that as originally conceived by Reichenbach (1938) and pursued by Popper (1959), the context of discovery and the context of justification were applied to the natural sciences, and not to the social sciences" (Swedberg, 2014, p. 3).

Olivecrona, 1974, 1975), Leveller's (1642), Molyneux (1725), and Spooner (1882, 1867, 1974), coupled with MacPherson's (1962) and Schlatter's (1951) property possession propositions. Whereby, Watner concludes with a summary statement in support of an a priori theory of a proprietary theory of justice, stated as the "crucial determination of just versus unjust property titles of individuals in their own bodies and in the material objects around them . . . . all property is ultimately private" (p. 289).

Social justice.

Academically, procedural (Greenerg & Folger, 1983; Levanthal, 1980; Thibaut & Walker, 1975), distributive (Adams, 1965; Deustch, 1975; Homans; 1961; Levanthal, 1976; Rawls, 1971) and retributive justice (Hogan & Emler, 1981; Tyler, Boeckman, Smith, & Huo, 1997) have been presented as the primary subsets that comprise social justice (i.e., scope of justice). Albeit, disproportionately subjected to conceptions of [procedural] fairness[4], such as fairness in disputes (Thibaut & Walker, 1959, 1975), fairness in allocations (Levanthal, 1980), fairness and organization (Greenberg & Folger, 1983), fairness in social exchange (Blau, 1964; Homans, 1961), fairness in equity theory (Adams, 1965), fairness in interactions and information (Bies, 2005; Bies & Moag, 1987), fairness in allocation norms (Deutsch, 1975; Levanthal, 1976; Walster et al., 1973, 1978), and so forth[5]. Thereby, covering the research ground traversed from Thibaut and

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[4] "In recent political philosophy, 'justice' is often used to refer only to fair distribution of rights, goods, and obligations; feminists sometimes criticize not merely particular conceptions of justice, but the focus upon justice as the most central political virtue" (Baier, 1987, as cited in Rouse, 2002, p. 155).

[5] As an educational cross-referent, the National Center for Educational Statistics (NCES), based on High School Transcript Studies (HST) Classification of Secondary School Courses (CSSC), codes (Social Justice Issues, SJI, 380151) and describes SJI as the "study of social issues, nursing homes; mentally impaired treatment; pre-schools and child care" (Digest of Education Statistics, DES)." NCES using Gallup poll percentages from their 'giving and volunteering in the United States' data base (1994-1998) shows that the "publics level of confidence in various institutions" rates "public society benefit, e.g., civil rights, social

Walker's (1975) procedural justice criteria, where decision control addressed whether an individual has a say in the final outcome or decision, through Folger's (1977) process control model, as to whether an individual has a say – or voice in the decision making process, to Lind & Tyler's (1988) reactionary relational model involving status, trust, authority, and legitimacy, and nearly everything in-between and following since (Colquitt et al., 2001; Skitka & Crosby, 2003).

For example, a procedural justice explanation includes the idea that power becomes legitimate through socialized norms and comparisons (Lind, 1994; Lind & Tyler, 1988). The gist being that procedural justice directly interconnects a person to the ideologies and corresponding social affiliations associated with their collective (Blader & Tyler, 2003), producing a systematized power or empowerment, legitimizing a socially valid entity as an authoritative or authoritarian collective with institutional affiliations (Bachrach & Baratz, 1970; Dornsbusch & Scott, 1975; Hegtvedt & Johnson, 2000; Weber, 1994). An authoritative or authoritarian role where the collective recognizes and represents the socialized norms and comparisons (e.g., status, trust, neutrality, etc. Calvert, 1994) that establish the power-legitimacy connections (e.g., ideologies) that the collective supports (Tyler, Degoey, & Smith, 1996). Correspondingly, this is reified by the formation of intergroup strategies that ground and bond groups to in-group discrimination practices. It is at these interconnected points that people begin to experience fair treatment in their new found ability to verbalize their opinions and attitudes within the collective (Belenky, et al., 1995; Day & Tappan, 1995; Folger, 1977; Gilligan, 1977; Lind & Tyler, 1988;

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justice, community improvement organizations" as somewhat confident (~6.7), compared to the 'great deal' given to small business (~12.2) and the 'very little' rating to Congress (~2.3). Retrieved from http://nces.ed.gov/programs/surveys.

Thibaut & Walker, 1975; Williams, 1995); ultimately leading to personal assessments of fair interpersonal treatment involving respect, dignity, and appreciation (Jost & Major, 2001; Tyler et al., 1997).

In general, justice theorizing includes conceptions of liberal justice theory, articulated by Goodwin (1984) and others (Brown, 2007; Freeden, 2006; Rawls, 1971; Walzer, 1981), which suggests that the basis of just distribution is an amalgamation of the "guaranteed satisfaction of minimum needs (through the welfare system) plus the allocation of rewards according to merit, in conditions of approximate equality of opportunity and competition" (Goodwin, 1984, p. 192). A liberal theory supported by policies that are intended to produce equality of opportunity in attempt to make everyone equally capable of benefiting via the system of reward. The assumptions underlying these practices and procedures, state that social positions and distributions are essentially not given or fixed, but manmade (Goodwin, 1984, p. 192)[6]. Theoretically, as Young (1981) recognized, all liberal justice theories including Rawl's (1971), *Theory of Justice*, "serves primarily an analytical function as systematizing the principles of a given social order rather than the critical function of determining the rationally appropriate idea of justice" (Young, 1981, p. 280).

Social justice judgment and decision-making.

Social justice judgments and decisions (Barbey & Sloman, 2007; Jenkins, 1963; Sadurski, 1985; Shanahan & Elder, 1997; Smith & Medin, 1981; Tversky & Kahneman,

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[6] Noting that liberalism and radicalism share several social values beliefs, both are sympathetic, accepting, and helpful towards others, believing in and valuing equality among people (Kerlinger, 1984) as well as individual autonomy, as in individualistic societies (Schwartz, 1998; as cited in Pratto & Cathey, 2000).

1983) are contained within hierarchies of injustice and justice (Jost & Kay, 2010; Lind, 1995; Schmidt, 2001; Wilson, 1973, as cited in Pratto & Cathey, 2000), historically and culturally reflected in the moral and ethical relationship norms of social dominance and independence (Del Vecchio, 1952, as cited in Baldwin, 1966; Jost & Kay, 2010; Markus & Kitayama, 1991). Albeit, social justice is a containment hierarchy of legal justice (cf., nested set), and as such must function within the norms and rules of justice and law. The historicism of which has retrospectively placed socially observed justices and injustices into the subcategories of ideological justice or legal ideology (cf., legitimacy theory; Balkin, 1998; Hunt, 1985; Gale, 1994; Jost & Major, 2001).

This scope of justice (cf., structure; Caplan, 1997; Goldman, 2002; Opotow, 2001; Sadurski, 1985) suggests that when collectives engage in social justice judgment and decision making (Shafir, 2007), dimensions of power, and the psychological dynamics of justice assessments (Boyce, 2007; Gouveia-Pereira et al., 2003) become dependent on judicial or juridical type positions[7] (Edelman, 1973; Jenkins, 1963; Kamenka, 1980; Sypnowich, 1990). These positions are representative of personal and collective memories of moral or ethical beliefs (Sadurski, 1985), accompanied by experiential dimensions of right and wrong, fact and fiction, and true and false (cf., social identity, Stets & Burke, 2000; Tajfel & Turner, 1986; Wainryb, 2000). Noting that "statements of social justice always reflect value-judgment principles (cf., criteria), and they are not

[7] Judicial inheres in the idea of review and the administration of justice (e.g., judicial tribunals; Bryant, 1899, as cited in Black's, 1999, p. 42). Juridical, pertains to law or rule of law, but "in any case one schematizes power in a juridical form, and one defines its effects as obedience" (Foucault, 1978, 1998, p. 85).Together, the judicial and the juridical represent the highest form of socially acceptable (i.e., legitimized empowerment, Hegtvedt & Johnson, 2002), power (Arendt, 1970; Rappaport, 1987), bringing to life the rule of ideological justice or legal ideology (Poulantzas, 1978, 1975, 1974). Hence, exercising social justice or injustice requires power, or as generally implied, empowering the powerful (Arendt, 1958, 1970) to reside over dominant ideological justice or legal ideology.

necessarily bound to the internal values of the legal system, meaning that they can be bound and constrained to various frames of reference, such as rights, justice and legal ideology; suggesting that the "instrumentalism of social justice is in the mind of the beholder" (Sadurski, 1985, p. 48). To these ends, formulaic approaches to social justice include a personally held 'standard of criticism of legal justice'.

Rights, justice and legal ideology.

Within a rights context the properties of Western legal and human rights are described as institutionalized socio-political determinants immersed in a discourse of hierarchical custom, symbol, code, and circumscribed tutelary agendas. Constructed from a vast array of judgments and decisions concerning international and nation-state customs, conventions, and their enactments, developed from an authoritative lingua franca (e.g., judges, jurists, & lawyers) consisting of speech acts and legal documents (e.g., treaties, resolutions, constitutions, etc.), as well as opinions, principles, codes, rules and laws, sanction, coercions and enforcements, which can include military defense, monetary and humanitarian aid (i.e., major spheres of influence; Luhman, 2004; Horne, 2010; Stangor & Schaller, 1996).

As such, rights, justice and legal ideology are historicized socio-cultural contextualizations derived from various conventional, pragmatic, legal, moral, and ethical reasoning appraisals, both philosophical and methodological, classified as normative and conformative (cf., coherence of beliefs, Carey, 1985; Gopnik & Wellman, 1994). These include evaluations, legislations and regulations that come with the expectation that the "language of a social group is explicitly bound up in the norms and roles of the individual members of those groups" (Crandall et al., 1995, as cited in Stangor & Schaller, 1996, p.

12). An argument advanced by Rosenberg (2009) who suggests that the "capacity to accept norms depends on language, because language is required to coordinate several norms . . . . indispensable in producing cooperation . . . . towards consensus, consistency and similarity of motives (p. 354). As Bicchieri and Muldoon (2011) found, people learn to differentiate between social norms, conventions, and descriptive norms (cf., class of customary rules) . . . recalling that a norm is common to all social constructs[8], and through repeated socialization, individuals come to learn and internalize the common values embodied in the norms.

Rights, justice and legal ideology developed from socio-historical and socio-cultural interactions, necessitates translating the language, methods, procedures, findings, practices and principles of multiple disciplines. As indicated, this facilitates utilizing the appropriate and/or matching resources necessary for theoretical development description and interpretation, these include, but are not limited to the afore contextualization (Calpaldi & Proctor, 1999), collective configurality and/or nonconfigurality (Kozlowski & Klein, as cited in Hoffman, 2002), critical hermeneutics (Ricouer, 1971, as cited in Mohr & Rawlings, 2010), social system or structure analysis (Maynard & Perakyla, 2006; Mingers, 1995), postcolonial critique, feminist legal analysis, constitutional content analysis, [critical] discourse analysis, text analysis, concept analysis, jurist analytics and so forth.

[8] Social constructs: seen as endogenous products (opposites – as exogenous) of individuals' interactions (Lewis 1969; Ullmann-Margalit 1977; Vandershraaf 1995; Bicchieri 2006, as cited in Bicchieri & Muldon, 2011).

Consequentially, frames of reference, domain specificities and ontological structure[9] of rights, justice and legal ideology are in part derived through concept and text interpretation description (cf., coherence), again, academic "language as a representation of social groups" (Stangor & Schaller, 1996, p. 10). As a [multiple] disciplinary example, jurist analytics practiced internationally and nationally include anthropological jurisprudence, historical jurisprudence, sociological jurisprudence, pragmatism, constitutional law, natural law, positive law, case law, legislative law, ethical law and moral reasoning. As well as the ethnology preserved in corresponding documents (e.g., code books, court cases, etc.) comprised of rules, procedures, and principles that perpetuate and reify international and national institutions, systems and organizations (i.e., normative social rules, Sayre-McCord, 1996). Some of those institutions, systems and organization have served and continue to serve as league archetypes, these include but are not limited to the Hellenic, Delian League (478 BC, Larson 1940), Hanseatic League (1358), and the League of Nations (LN, 1919), the monolithic foundation for international and national institutions, systems and organizations (ISO). the exemplar being the United Nations (UN, Commager, 1950).

Rights, justice and legal ideology as pursued by historians (Commager, 1950; Lauterpacht, 1968), system theorists (Luhman, 2004), jurists (Hart, 1958; Kleinlein, 2012; Marks, 2000), lawyers (Anghie, 2004; Lauterpacht, 1968), legal and political philosophers (Bentham, 1948; Dworkin, 1978), linguists (Chomsky, 1971), ideologists

[9] "Ontological refers to questions or assumptions about the nature of the world or what is out there, whereas epistemological refers to methods of knowing or for acquiring knowledge about the real world; the two should maintain isomorphism or parallel elements in an idealized system "(Faust, 2007, p. 53).

(cf., critical hermeneutics, Thompson, 1990; Vattimo, 1992), and critical discourse analysts (Foucault, 1981; Habermas, 2002; Zizek, 1989), exemplify a tradition of textual analysis (Gadamer, 1976). For example, Habermas (2002), descriptively and interpretively proposed that

> the normative language of law can supposedly reflect nothing else but the factual claims to power of political self-assertion; according to this view, consequently, universal legal claims always conceal the particular will of a specific collectivity to have its own way (p. 204).

Or as described and interpreted by Commager (1950),

> the historians were gratified to find an antecedent so respectable, delighting in precedents, religious observation of forms and customs, the study of black letter law, preserving Latin and French language, preserving anachronistic language, historians abstractions were derived form society, custom, and history, rather than natural laws cosmic processes (p. 368).

These and similar examples suggest that in general, rights, justice and legal ideology are illustrative of an intersubjective validity (cf., hermeneutics, Mohr & Rawlings, 2010; Onuf, 1989, as cited in Horne, 2010), revealing underlying Western norms, principles and procedures that contrast stabilization with destabilization.

CHAPTER 2: INTRODUCTION

In general, rights realization and function adds a much-needed element to theorizing social justice judgments and decisions, contributing to the majority of researchers and academics whose social justice is pluralism, a variant of assimilation and acculturation introduced by Kallen (1915), and reintroduced by Adamic (1945; as cited in Gordon, 1954), consisting of four levels:

1. the tolerance level;
2. good group relations level;
3. community integration level; and
4. pluralistic–integration level.

Deriding the point that at the turn of the 19th and 20th centuries, pluralism succumbed to the legitimacy and power wielded through the institutionalization of international and nation-state politics and policies (e.g., mandate system) that coincided with the advent of international legal institutions frequently associated with the formation of the League of Nations (LN, 1918). The LN represented a Western idealist institution, where pseudo-autonomous behaviors became affiliated with capital gains and losses, forging an economical, political, educational and military alliance that forcefully imposed (cf., mandates) capitalist ideologies and hegemonic domination on systems and organizations (e.g., higher education; Aronowitz, 2000; Aronowitz & Giroux, 1991; Laclau & Mouffe, 1995, 2001; Pratto & Cathey, 2002).

The imposition of capitalist ideologies is suggestive of situation that involve the formation of asymmetrical relationships in order to produce, purchase and sell normative autonomy (cf., self-determination), or the idea of independence and choice in the form of

economic preference (i.e., homo economicus) as commodification (e.g., competitive labor), negatively impacting problems of fairness and equal distribution (Turiel, 2000; Vogelaar & Vermunt, 1991). This in return superseded issues of social justice by supplanting it with economic justice, conceived of as a temporary counterbalance to asymmetrical distributive arguments, demonstrated as economic sustenance attainable through materialism and/or capitalism, resulting in a provisionary decorum of economic independence, a pseudo-autonomous solution that presumably frees the individual to pursue creative endeavors beyond the experience of economic injustice (cf., human flourishing; Wilson, 1993).

Evidence for these similar effects stem partly from steadfast practices that reveal domineering patterns of social influence produced by authoritarian (i.e., paternalistic, patriarchal, etc.) policymaking procedures and practices (i.e., self-serving, masculine, idealistic, and hegemonic), and as such are responsible for generating policies that ignore diverse and provisionary alternatives. These behaviors and outcomes have been founded upon unsubstantiated and/or socially corrupted information (e.g., politically devalued information) such as negative stereotypes, excessive biases and prejudice, racial profiling, and other discriminatory practices (Devine, 1989; Fiske & Taylor, 1985, 1991; Kawakami et al., 1998; Macrae & Bodenhausen, 2001).

Furthermore, it can be said that academic intellectuals and/or collectives who often ascribe, prescribe, and/or describe social justice in terms of equity theory are formulating their advocacies upon the Rawlsian (1971) notion that "a just institution is one that equitably distributes social goods, such as rights, liberties, and access to power among its participants" (e.g., adherence to a principle or obedience to a system, p. 54-60). A

philosophical notion promulgated by Secada (1994a) and other Rawlsian followers who interpret the meaning of equitability as it pertains to education as referring "to the scrutiny of social arrangements that undergird schooling to judge whether or not those arrangements are consistent with standards" (p. 22). Although, in practice few educators and educational institutions actually adhere to these ideals, captured best by Lee's (1999) observation that "equity in terms of justice goes beyond the letter of a law to unwritten and evolving notions of justice, as social, political, and economic climates change in a society" (e.g., power and standards, curricula and authority, texts and ideologies, etc., p. 13).

Traditionally, the latter has been and continues to be an area of international and national social science research pursued as [social] justice judgments regarding "income [in]justice and/or [in]equality (Alves & Rossi, 1978; Kluegal et al., 1995, as cited in Schmidt, 2001, p. 143)", which relates heavily with rationalism and the origins of economic judgment and decision making at the individual level, as proposed by International Social Justice Project (ISJP). This is not an adequate substitute for social justice, nor social judgment and decision-making, but rather the continued usage of the dominant paradigm, methodological individualism, the means to justify the ends. Albeit, this methodological point is often a point of confusion when [moral] motivational[10] standpoints are taken into consideration, contending that social justice can only be realized when one person, an individual (cf., self-determination) is willing to claim social

[10] "Moral motivation: the idea that virtuous behavior and conduct require distinctive motivations to action suggest that morality is a source of internal reason, moral requirements are conditioned by special forms of desire.; distinctive patterns emerge intentions and motivations responsive to moral requirements and values. . . . our access to what is distinctive about moral motivation will be a way of understanding

injustice in pursuant of social justice, exercising human rights, democratic beliefs and constitutional rights in the process (cf., remediational justice, restorative justice, retributive justice, collective self-determination, etc.). Further impacted by positively correlated perceptions that demonstrate that when preferencing one's self-interest, resulting from the experiences of injustices, in other words, "I" experience injustice, "I" prefer self-interest (Montada, 1998, p. 88). The positive correlations were:

1. with the perceived frequency of unjust victimizations;
2. the number of fluently remembered injustices experienced during the last couple of weeks;
3. the feeling that most people are better off than oneself;
4. the perception of being existentially disadvantaged in term's of one's parent family, one's physical attractiveness, one's gender;
5. resentment that others are better off without deserving it; and
6. the perception of lacking self-efficacy to make the world more just (Montada, 1998, p. 88).

Adding to the confusion, the self-interested person is often used as the sacrificial artifact of choice, an effect often employed in game theory and thought experiments, and numerous aggregation of data arguments ranging from consequentialism to act-utilitarianism, to merits and entitlements, to ecological (correlation) fallacy (Robinson, 1950, as cited Briggs, 2001), all of which contain moral and/or ethical premises and conclusions that serve as [materialist] gauges or assessments for development theories, such as human rights and social justice.

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what is distinctive about the values that structure morality as a unified domain of normative considerations

Safe speculation suggests that academic constructivist functions, entailing the concepts and tenets of social justice occur for several reasons; these include, but are not limited to the fact that

1. Academics realize that institutions of higher education do not fully embrace the principles and practices of social justice, hindering the ability to apply those principles and practices to academic judgment and decision-making;

2. Academics either individually or as a collective realize that they are expected to embody the virtues of [social] justice, exemplifying those virtues as professional practitioner virtues (e.g., nondiscrimination in education);

3. Academics realize they are immersed in an institutional environment where the right to [collective] self-determination (cf., autonomy) is the norm, accompanied by varying levels of personal aspirations, which they are professionally obliged to accommodate;

4. Academics realize that entitlement is considered a right, a promoted and enforced international and national right (e.g., covenants, laws., etc.), implying mobility, freedom occupation, monetary and material rewards through education;

5. Academics realize that protecting the rights and safety of humans is an ethical and moral responsibility, one that is highlighted, overseen, supported and enforced by International, Federal, and State institutions, systems and organizations and agencies, such as the Protection of Human Subjects.

6. Academics realize that educational institutional integrity is based in part on academic freedom (i.e., intellectual freedom), and that it is a professional privilege and

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"(Wallace, 2005, p. 96).

obligation to be upheld.

Speculating that these realizations demonstrate among other things, an ability or reluctance to transcend and transpose social justice judgments into the postmodern. It appears an imperative quest for academics to acknowledge, accept, and actualize the postlibertarian and neoliberalist ideals of today with the applicable libertarian ideals of the past, which at the very least requires adopting a rights agenda. The quest begins by acknowledging the longstanding libertarian belief that "social institutions are the "ethical context" for the formation of the internal law and order of the social subject itself" (Hardt & Negri, p. 252)." In this respect, liberalism of the past holds "order as external to the subject", placing institutions in the role of mediating agent between the autonomous growth of the social self and the experience of the external order (Hardt & Negri, p. 253). But as Ross (1998) indicates ". . . . liberal concepts of justice are much broader and deeper than what is ordinarily understood as the rule of law. The pursuit of justice cannot fully be accomplished through the formal work of legal process; it also involves social and cultural transformations that lie beyond the customary reach of legislation" (p. 204).

Commonly, this can be spelled out as those judgments and decisions that are only suitable for resolution at the macro level, that is, at the level of nation-state authority (cf., sovereign), the justice level, but not the institutional or educational level (Schmidt, 2001; Young, 1993). This includes the disciplinary powers (i.e., self-interests) of international and national "quasi-autonomous" professional organizations (cf., NGO) and accompanying private and public funding, An inadvertent by product of educational research and the state of its compartmentalization and/or specialization has been the prototypical division (cf., fragmentation) where moral and ethical judgments and

decisions are held as being separable from social justice judgments and decisions, which follows from universalist and/or relativist reasoning as drummed in by rights regimes (cf., homogenization, DiMaggio & Powell, 1983).

The following sections provide further explication of the perceptions and applications of rights over time, the majority of which were and are conceived of as international or universal. Due in large part to the continual development of institutionalization, systemization and organization, such as in the formation of the United Nations, North Atlantic Treaty Organization (NATO), and the World Bank (WB), accompanied by the rise of Nation-state superpower(s) (i.e., great power), international legal institutions, international and national courts, and the globalization of politics, economics, law, education, healthcare and military power.

Rights

Domain of rights.

The central properties of human rights interpretive frameworks include respect, dignity, freedom, liberty, social values and goals, cultural exchange (cf., social exchange), legal or lawful knowledge, and their accompanying sociostructural variables (e.g., language, power, etc.), all originally conceived of as necessary in protecting human rights from State domination; recognizing that it is "argued that basic substantive rights determining the life, survival, dignity, and worth of individuals and peoples may be considered as core rights" (Van Bovern, 2014, p. 143). These central or qualifying placement properties require interpersonal interactions necessary in the development of prosocial consciousness (cf., altruism, empathy, etc.), compared to the current dominant paradigm that sporadically (Todd, 2007) acknowledges conceptual prototypes or social

exemplars of historical and sociocultural importance. In other words, the current dominant paradigm is void of the collective (i.e., polyphony of universal input) a priori of moral and ethical development and human rights, as well as interpretive lawful procedural justice (e.g., adjectival law) or substantive justice (e.g., collective memory, Paez et al., 1997; Pennebaker & Banasik, 1997; Pine et al., 2004).

Frameworks for human rights, social justice and education are supported by and receive assurance from human development reports, such as the UNDP (2000), which utilizes a data base of indicators that "assess whether states respecting, protecting and fulfilling the rights enumerated in the International Covenant on Economic, Social and Cultural Rights (ICESCR; Chapman, 2007, p. 112)" are being practiced and enforced. The designated indicators in question include human rights indicators (HRI) and human development indicators (HDI) loosely based on their contrasting differences, where HDI's "assess the status of peoples capabilities, contrasted with HRI's assessment of whether people are living with dignity and freedom. With the latter, HRI's focus is on covering the policies and practices of legal and administrative entities and the conduct of public officials, a more inclusive assessment than HDI analysis, requiring the disaggregation of gender, ethnicity, race, religion, nationality, and social origin variables (Chapman, 2007, pp. 112-113). Additionally, HRI's are not exclusive products of statistical indicators, but rather correspond to other correlated human rights indicators (United Nations, 1993, paras 170-171; Chapman, 2007, p. 112).

According to international law as recognized in the UDHR (Article 26), ICESCR (Artilces 13 & 14), and Committee on Economic, Social and Cultural Rights (CESCR, 1999c), education is a human right requiring "four interrelated and essential features to be

present (Coomans, 2007, p. 189):

> 1. availability, functioning educational institutions and programs have to be available in sufficient numbers in a country, through a public education system and allowing private parties to establish non-public schools;
> 2. accessibility, educational institutions and programs have to be accessible to everyone, without discrimination on any ground, also implying physical and economic accessibility;
> 3. acceptability, the form and substance of education, including curricula and teaching methods, have to be relevant, culturally appropriate and of good quality and in accordance with the best interests of the child; this includes a safe and healthy school environment; and
> 4. adaptability, education has to be flexible, so that it can adapt to the needs of changing societies and communities, and respond to the needs of students within their specific social and cultural context, including the evolving capacities of the child (CESCR, 1999c, para. 6).

The right to education is an 'empowerment right' (cf., self-determination), a right that "provides the individual with control over the course of his or her life, in particular, control over [. . .] the state" (Donnelly & Howard, 1988, p. 188). In this sense, educational empowerment leads to experiencing and applying the benefits and burdens of other rights that are protected by an empowered educated citizenry in the form of social actions in defense of rights (i.e., interconnectivity of rights). Unfortunately, empowerment alone does not necessarily lead to the ideal actions and outcomes expressed in these statements. These factors impart an increase in complexity of any past

or current social justice discourse, offering a substantial improvement in commitment to moral consciousness and ethical application towards social justice judgments and decisions involving human rights and education. But, as with all increases in complexity and commitment there is confusion or perplexity (Hatfield & Rabson, 2005; Opotow, 2001), and certainly the nonexistence of an unequivocal authorization that states human rights do not hold the same status as legal rights (Gutman, 2001) qualifies as perhaps the most perplexing or confusing. Further clarified by Raz (1984), the paradigm is to "view legal rights as a basis for the analysis of all rights . . . . this may inevitably be to an account based on the specific institutional features of legal rights and will distort our conception of rights in general (Raz, 1984, p. 2) . . . . law is a system, a system of practical reasoning (PR) just as other institutional normative systems are . . . . legal rules are sometimes hierarchically nested in justificatory structures" (Raz, 1984, p. 6).

Crucially, the administration of rights requires various judicial and legal aspects to be realized as justified and legitimate rooted in customary and/or conventional practices, founded upon natural and positive law, contract law, moral and ethical development, sanctioning and entitlement practices (i.e., enforcement, conformacy, regulation, etc.). Becoming 'part and parcel' of tutelary regimes, national and international human rights documents, binding properties and accountability practices through institutions, systems, and organizations enshrined in various international and national documents, such as: Slavery Convention (1926), Universal Declaration of Human Rights and Geneva Convention (UDHR, 1948), Civil Rights Act (1968), Indian Civil Rights Act (1968), American Convention on Human Rights

(1969), Education Amendments Act (1972), International Bill of Human Rights (1978, 1988), Americans with Disabilities Act (1978), International Declaration of Health Rights (1992), Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples (1994), Violence Against Women Act (1994), and the Conventions on the Rights of the Child (CRC, 1999).

Undoubtedly, expecting entitlement rights is a pervasive social equality belief of civilized societies (e.g., 17th c., Anghie, 2004), thought of as a normative expectation (Singer, 1981, as cited in Blysma et al., 1995, p. 223). In accordance with past and present sovereign doctrines of authority, one should or ought to be entitled to social equalities (i.e., justification rights, Buchanan, 2010), inclusive of those beliefs that have the greatest bearing on rules that apply within a particular environmental context (Chai, 2001, p. 41). This often ignores the fact that it is the "mechanism on which beliefs depend on and not the benefits themselves – that evolve" (Premack & Premack, 1994, p. 158). Furthermore, "only collectively shared normative beliefs, and not personal ones, matter to behavior (Cialdini et al. 1991; Bicchieri and Xiao, 2009). In this sense, the social identity view rightly highlights the importance of shared beliefs" (Bicchieri & Muldoon, 2011, p. 25).

Consequently, these and other external entitlement cues and/or causes impact individual and group judgments (i.e., lawlikeness), such as those echoed by the often repeated orthodox proposition that 'every human is entitled to human rights because they are human' (i.e., birthright; Bates, 2014; Dellavalle, 2011; Pantikarr, 1982).

These and other socio-historical entitlement references are reflective of rights regimes born out of political spheres (i.e., political delegations, Moravcsik, 2000) who have accepted and/or amended an ideological system (Oliver & Johnston, 2000; Westby, 2002; Ferree & Merrill, 2000; Zald, 1996; Goodin & Tilly, 2006), one that interrelates political philosophy, theology and secularity with universal law (e.g., jus gentium & legitimacy). By contrast, social justice judgments and decisions would advance a normative model of justice, arguing "any political society is governed by rules. The most primary of these set out the status and entitlements of the members of the polity" (Shklar, 1989, p. 1136).

> Statements about legal justice inform us about entitlements conferred upon people by valid legal rules or by acts which, on the basis of the rules, have the legal significance of creating entitlements. The general maxim of legal justice then is: "to each according to his legal entitlements"; making legal justice a species of "justice of conformity to rules" (Sadurski, 1985, p. 42).

Issues of entitlement as defined by distributive and/or equity theorists are described in terms of the equality of ratios of inputs to outcomes for both parties (Crosby, 1982). Entitlement and deservingness are often considered synonymous in the research literature. With the general sentiment being that beliefs about entitlement and deservingness effect how social groups, either as a whole or as represented individually respond "effectively, evaluatively, and behaviorally to socially distributed outcomes" (Major, 1994, p. 294), in the long run effecting how people

react to socially constructed dividends. These beliefs often result in a state of disproportionate contention in which those who are socially advantaged come to believe they are entitled to more, and those who are socially disadvantaged come to believe that they are entitled to less (Major, 1994). This situation is often unwittingly perpetuated through various forms of discrimination between and among social groups as they evaluate their own circumstances (cf., relative deprivation, Stouffer et al., 1949; Deutsch, 1987; Major, 1994). Adding to this is research, Major (1994), along with observations by Kohl (1994), make the claim that an important factor in entitlement beliefs and rights is legitimization, "a mode of ideology, whose symbolic construction is rationalization, universalization, and narrativization" (Thompson, 1990, p. 60). Legitimization in this sense is equated with existing entitlements as endorsed and sanctioned from inside and outside the institutional system and/or organization (ISO). In return, this requires distinguishing delegitimization beliefs as those that downgrade another group with extreme negative social categories for the purpose of excluding it from human groups that are considered as acting within the limits of acceptable norms and/or values (Bar-Tal, D., 1989c, as cited in, p. 93). Recognizing that entitlement norms, merits, sanctions and coercions are dominated politically and economically by authoritative and authoritarian international and national policymaking and/or lawmaking groups, projected and/or administered through various governmental and non-governmental regime type authority sanctioning channels, such as economic, educational, judicial, libertarian, military, political, and religious. Albeit, as

Moravcsik (2000) exclaims, socio-culturally ". . . . international human rights institutions are not designed primarily to regulate policy externalities arising from societal interactions across borders, but to hold governments accountable for purely internal activities. In contrast to most international regimes, moreover, human rights are not generally enforced by interstate action" (p. 217), defining international regimes in part as "principles, norms, rules, and decision-making procedures around which expectations converge in a given area of international relations" (Onuf & Petereson, 1987, p. 329). On the other hand as indicated in Knorr (1975), international interdependence "means that life of societies as organized in sovereign states becomes more or less conditioned by the life of other societies, this includes goals, in goal striving societies and their parts, are more or less interdependent . . . ." (Knorr, 1975, p. 208).

Some of the first internationally recognized institutional legal documents addressing human rights and social justice include the Anti-Slavery International (1839), the Russian Declaration of the Rights of the Toiling and Exploited Peoples (1918), the International Labor Organization (ILO) established in the Treaty of Versailles (1919), the Assembly of the League of Nations (1920), replaced by the United Nations (1945, 1946), and the establishment of the non-governmental International Federation for Human Rights (FIDH, 1922). As an example of the social justices addressed therein, the latter, FIDH (1922) has sought to ameliorate "injustice, hardship, and privation that workers suffered and to guarantee fair and humane conditions of labor" (Mapulanga-Hulston, 2002, pp. 33-34). Whereas, in regards to human rights, education and social justice (cf., IESCR), it

was the Council of the League of Albania (1921, 1922), who in an effort to gain acceptance into the Assembly of the League of Nations (1920) introduced what is now identified as a typical human rights clause commonly associated with minority treaties, with notable differences, specifically in this instance, provisos addressing Albania's growing Christian minority that was attempting to coexist alongside a Muslim majority of Greek origin, excerpted as follows.

> In particular, they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

However, not without controversy, the Permanent Court of International Justice of 1935 gave an authoritarian advisory opinion on the matter (Minority schools in Albania, Advisory Opinion, PCIJ Series A/B/64/1935:

> the instruction and education of Albanian subjects are reserved to the State and will be given in State schools. Primary education is compulsory free for all Albanian nationals and will be given free of charge. Private schools of all categories will be closed (Steiner & Alston, 2000, pp. 96-97). This issue, known as Minority Schools in Albania, and the issue of autonomy, where the latter, autonomy has since been identified as being the "most important goal of the liberal state, and hence an education in such a state should be an education for autonomy" (Raz, 1986; White, 1991,

as cited in Piper, 2011, p. 32) was not fully addressed until twenty-five years later by the International Assembly of UNESCO (Art 5(I)/C1960/120):

5. Convention against discrimination in education

1. The States Parties to this Convention agree that:

c. It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, providing however

i. That this right is not exercised in a manner which prevents the members of these minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, or which prejudices national sovereignty;

ii. That the standard of education is not lower than the general standard laid down or approved by the component authorities; and

iii. That attendance at such schools is optional.

These and other initial and recent formulations of rights autonomy connect intra- and extraterritorial collective self-determination and individual self-determination with statehood, minority rights and independent judgment and decision-making as recognized by international [human rights] law and the United Nations (i.e., autonomous entity; Bates, 2014; Cobban, 1989; Kleinlein, 2012; Korpi, 1989). As Wright (1979) duly reported, “Fundamental to the Western conception of human rights is its emphasis on the

liberty of the person: the right of physical security and the protection of basic intellectual benefits" (p. 19).

Judgments and decisions.

All in all, judgments and decisions regarding the effectiveness and realization of liberty, freedom or autonomy, being the purported precepts of an ideological normative state of equality, must be supported through international legal institutions (ILI), Nation-state governments[11] and nongovernment agencies often classified as rights regimes, and their socio-cultural and political belief systems, as well as their enforcement mechanisms. Nevertheless, moderators and mechanisms of rights and equality in the "West are an individualistic conception relying on legal-judicial mechanisms for their efficacy and promotion" (Wright, 1976, p. 21), a reliance that carries over into international legal institutions (ILI). The implementation of this exhibits the longstanding nature of rights judgments and decisions that exemplify and/or model authority, control, regulation and duty (cf., obedience, conformity, etc.) of individuals, groups, collectives, organizations, institutions, and systems (i.e., social infrastructures) through moderators and mechanisms. For example,

> A social minimum is a set of institutional, political, juridical and financial mechanisms that a given society subscribes to and the state implements in order to ensure that all citizens can enjoy a certain level of rights. In particular, social

[11] Nation-state: a system of government that reflects the public interests of all the inhabitants of the country, and of which the entire population ("nation") is considered sovereign (Ritter, 1986, p. 287).

> minimums are thresholds of coverage, welfare and opportunities that will ensure that individuals living in poverty would progressively achieve and become full citizens with all their economic, social, political and cultural rights. (Fundación Nacional Para la Superación de la Pobreza, Introducción Umbrales Sociales 2006, Chile, p. 11).

Similarly, it is also suggested that the moderators and mechanisms of equality (Anthias, 2005), such as the equality rule of distributive justice, which states that everyone's outcome should be identical (Leung & Morris, 2001), lends credence to the belief that humans are free to determine their roles when in actuality they are already chosen —

> our social system is based on fixed positions (with concomitant rewards) and unequal chances, because equality of opportunity does not, and indeed cannot, exist in the way that we envisage . . . . free will and liberty are not synonymous: liberty connotes opportunities for the exercise of the power of choice which we call free will (Goodwin, 1984, pp. 194-195). The essence of this is quite often stated

in dominant or ruling class terms (cf., class instrumentalism) as the "inability of formal legal equality to affect substantive inequality . . . where legal equality on paper is undermined by class power" (Cain, 2001, p. 9292). This clarifies a Marxist perspective where culture and ideology are an outgrowth of class domination (Sallach, 1974), meaning that the formation of classes as social forces involves "ideological and political determinations, which are relatively autonomous, reflecting a real determination" (Hirst, 1979, p. 52). But as clarified by Hamilton (1987),

> an ideology is a system of collectively held normatively and reputedly factual ideas, beliefs and attitudes advocating a particular pattern of social relationships and arrangements, and/or aimed at justifying a particular pattern of conduct, which its proponents seek to promote, realize, pursue or maintain (p. 38).

Furthermore, historical and contemporary rights issues concerning the dignity, freedom, liberty and or autonomy of Nation-state territories, statehood, independence and collective self-determination involving minorities, indigenous peoples, peasants, and displaced and disadvantaged others are continuously subjugated to various political forms of authoritarian and authoritative controls. Again, pervasive examples concerning authoritative or authoritarian control abound, such as, foreign control (e.g., mandate system, Anghie, 2004; Bentwich, 1930)[12], political control of human behavior (e.g., corruption; Althusser, 1971; Dellavalle, 2011), sovereign control over territory (Anghie, 2004; Knop, 2012), secular or ecclesiastical control (Cohen, 2015; Dellavalle, 2011), international legal institution control (ILI; Buchanan, 2010), control over natural resources (Anghie, 2004), geopolitical control (Adams, 2003, as cited in Horne, 2010; Santos, 1995), and control of regulation, including control of autonomy and self-regulation (Teubner, 1986). Given the historical pervasiveness of these examples it can be stated that ruling ideologies and social order are based in part on consistent formulaic judgments and decisions comprised of the afore conceptualizations (e.g, entitlements,

[12] Mandate System: . . . . "mandate project - to transition cultural differences into economic differences, to translate the categories of the advanced and the backward, the developed and the developing and to develop a richly textured and detailed vocabulary by which these differences could be assessed and administered" (Anghie, 2004, p. 204).

distributive justice, etc,) along with situations and roles (i.e., identification criteria, Ogien, 2010, p. 263) entailing culturally relative political practices that strive to maintain legal ideology, through procedures (i.e., process control; fairness; Folger et al., 1977) that reinforce political identity and "obedience and acceptance of authority" (Folger et al., 1977, p. 417).

A legal ideology is based in part on substantive law, that "creates, defines and regulates the rights, duties, and powers of parties" (Black's, 1999, p. 1443), as well as equality protection in law, where social justice judgments and decisions are premised on the belief that "equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations" (Steiner & Alston, 2000; p. 99). By the 19th century equality had succumbed to market inequality, based on power and class (McCracken, 1962). However, concurrently ideology, human rights, legal positivism, meritocracy and [in]equality began to represent a growth rate affixed to nation-states, a sovereign responsibility carried out through the development and enforcement of rights-based norms (Ho & Powell, 1996). In principle, these rights-based norms are based on societal merits or the establishment thereof (cf., differences; Carson, 2007) derived from the normativity of conventional rules (Hart, 1994; Waldron, 2001, 2006). Nonetheless, as reflected on by Sypnowich (2001), these instances of legal ideology concede to legal positivism in the view that

law emerges from the practices of society, though the practices are extra-legal –

political, economic and social -- rather than the practices of institutional facts internal to a legal system. Social forces are ultimately determining the content and form of a legal system. In other words, norms being the interest they serve (cf., ideology), versus norms being the justice they embody, or that law is explicitly normative (cf., natural; Sypnowich, 2001, p.).

Theoretical periods and phases.

In order to follow, enact, reinforce and describe these and other recognizable social justices and injustices, it is helpful to trace and recognize human rights through three theoretical periods or phases (cf., generative, Meron, 1986; Nolan & Branscombe, 2008; Rudolf, 2000; Santos, 1995; Vazek, 1977)), link ingrules and laws, or a lack thereof with procedural, distributive and retributive justice (i.e., trichotimization). The first phase involved the formulation of human rights concerning political and civil rights regarding liberties; examples being the right to vote, right of free expression and thought, right to religious practice, and the right to be free of torture and unjustifiable detainment and alienation. This represents same or similar to decisional control (Thibaut & Walker, 1975), fairness (Folger et al., 1996; Wilson, 1993, as cited in Folger, 1998) and voice (cf., process control, Miller, 2001), recognizing that the content of fairness concepts and theories in this phase are concerned with harm and welfare, serving to structure aspects of freedom, will, ethics and morality (Damasio & Damasio, 2007; Turiel, 2002; Turiel et al., 1987).

The next phase is a focus on socio-economic rights, usually involving equality and

equity, as well as merits and entitlements, sometimes referred to as standards of individual living. Often addressing and revealing global disparities between and within capitalist Welfare states and Third World (Sauvy, 1952, as cited in Rist, 2002, p. 81) countries faced with a myriad of problems perpetuated by capitalist economies (Cramme & Diamond, 2009; Monkman, 2006). These rights included education, health care, employment, and housing. This phase is also referred to as the second transformation (cf., globalization) and/or subsistence rights phase (cf., distributive justice; benefits & burdens, etc.).

A third period focuses on regions, communities and/or groups (i.e., collectivism and solidarity), attempting to undertake rights involving preservation, environmental and economic sustainability, protection from exploitation, reparation and restoration, and so forth (cf., retributive justice).

Overlapping or connecting each phase is the Westernized Anglophone ideological concepts of autonomy, self-determination, contingency, universalism and relativism. As a whole the politically philosophized ideologies of each phase includes legal positivisms assertion that a Nation-state is ultimately responsible for human rights protection and enforcement (Habermas, 2002). Ultimately these are attainable only through the structure of an economically and politically just equilibrium of interests that is a legal and justifiable circumscription (i.e., engendering; LeBoeuf & Shafir, 2005).

As Shestack (1998) points out, these periods are historically and socioculturally traceable to cross-cultural anthropological and sociological findings. These are identified

as fundamental universal features, categorized as absolute human rights, and leading to the highly contentious belief that the "boundaries of nations are not the boundaries of moral concern" (Jones, 1999, p. 50). Paralleling the "cosmopolitan character of human rights" (Jones, 1999, p.50) as psychological boundaries, where "norms, moral rules and concerns" oversee the international interaction of behaviors" (cf., scope of justice; Opotow, 2001, pp. 155-156).

> All human societies show a concern for the value of human life . . . in none is the killing of other human beings permitted without some fairly definite justification . . . . [I]n all societies there is some prohibition of incest, some opposition to boundless promiscuity and to rape, some favour for stability and permanence in sexual relations. All human societies display a concern for truth, [and] all societies display a favour for the values of co-operation, of common over individual good, of obligation between individuals, and of justice within groups. All know friendship. All have some conception of meum and tuum, title or property, and of reciprocity . . . . All display a concern for powers or principles which are to be respected as suprahuman; in one form or another, religion is universal (cf., habitus, Bourdieu, 1980).

Here, in short, is a universality of basic moral requirements manifested in value judgments, and the exemplars of psychological boundaries (Finnis, as cited in Shestack, 1998, p. 25; Opotow, 2001) and the international interaction of human behaviors.

Social policy, human, legal, and moral rights.

Universalized rights theories are retroactive, reactionary, or adaptive (Cahn, 1949; Meron, 1996; Nussbaum, 1999), often initiated after rights violations have occurred (Gutman, 2001), as well as proactive or preventative. Theoretically then cosmopolitanism, sociological jurisprudence, utilitarian theory, moral relativism, cultural relativism, pluralism, neoliberalism, and so forth, have contributed to legal and moral rights policies. Academically, this has included contributions from multiple disciplines, in particular political philosophy, owing to Rawls (1971), Dworkin (1977, 1986), Nozick (1974), Rorty (1979), Nussbaum (1999), and Walzer (1983) among others, the difficulties of which are echoed in Shestack's (1998) astute reflection that "a philosophic understanding of the nature of rights is not just an academic exercise" (p. 234). Moreover, theorizing about human rights is necessary within a universal context that includes international and Nation-state power and the "ever-increasing influence of institutional agents in the private economy (i.e., transnational corporations, TNC) suggest the need for countervailing individual entitlements and protection policies" (Beetham, 1995, as cited in Jones, 1999, p. 51). The impetus for this is based in part on the belief that social facts are conflated with merits and economical advancement (cf., legal positivism; Dench, 2006; Lister, 2006; Saunders, 2006). Since inception, safe supposition suggests that three noteworthy occurrences have consistently influenced human rights and social justice judgment and decision-making at the international, national, and regional levels. Remarking that artificial entities, such as TNC's and other corporations

do not have "human rights under UN treaties[13]. The only collective right recognized in the global treaty system is that of self-determination in ART 1 ICCPR and Art 1 ICESCR" (Joeseph & Fletcher, 2014, p. 122).

First, notably in 1945, individual grievance procedures were conspicuously and intentionally omitted in the initial formulations of the United Nations declaration (UN, UDHR). An exclusionary measure that prevented individuals from filing a grievance petition with the UN, thereby upholding the established idealized initiative that "international law is concerned only with relations among states . . . enabling the UN to refuse even to acknowledge receipt of complaints by persecuted individuals such as Soviet dissidents (Laqueur, 1979, p. 7). A variant of nation-state relativism (i.e., culturally bound) denying "individuals the moral right to make comparisons and to insist on universal standards of right and wrong, are happily adopted by those who control the state"(Howard & Donnelly, 1987, p. 20). Eventually, in 1966 the Optional Protocol to the ICCPR provided the means for individuals to initiate grievances to a human rights committee in combination with nation-state reports. But even these provisions have been subjected to nation-state political and economical discretions that balk at acknowledging individual grievances, especially in light of growing democratization and capitalization (Novitz, 2008).

[13] "Treaties: an agreement between states may be termed a treaty, convention, charter, covenant, or pact. States are bound by the treaties they have given formal consent, generally through ratification or accession. This is done by the constitutionally appropriate state organ depositing an instrument of ratification with the body so designated within the treaty, in the case of UN human rights treaties generally the UN Secretary-General" (Chinkin, 2014, p. 77).

Second, in 1951, United Nations Education, Science, and Cultural Organization (UNESCO) determined that a right to an education at primary, secondary and higher levels should be a "slow progress . . . to the relative magnitude of the problems of each country and the means at its disposal," with implementation plans fully conceived within two years. This relativistic nation-state position omits a specific and enforceable period from which to accomplish the goal of education as it relates to human development. Time factors within this context are considered irrelevant, typically displaced by cultural rituals and/or practices, such as child labor, gender and sex roles, and other disparate and marginalized rights and justice issues (Barreto et al., 2009). Instead, UNESCO deemed that it is indeed the State's obligation to guarantee the right of an education based on balancing and controlling political and economical power, carried out in the clause "with a view to achieving the full realization of this right" (Coomans, 2007, p. 188). These policy statements, not unlike long-term policy statements in general, overlook and disregard the effects of both stability (cf., security) and change (Reisman & Suzuki, 1976) and in the process ignore the advantages and benefits of human development based on social justice judgments and decisions that have the potential to affect human rights policies and practices involving collective reasoning that is of the least detriment to social change. Suggesting, "social change will be kept within certain limits of pace" (Cahn, 1949, p. 140), presumably reflecting nation-state laws, customs, applications and implementations, is the antithesis of Western legal theory. As laws, these policies and practices, whether educational or otherwise, include oversights and limitations, omitting

and/or disregarding knowledge advancements (e.g., cognitive development; Fischer, 2008; White et al., 2008) from policymaking and leadership (Donmoyer, 1999; Nash, 2006; Yettick et al., 2008), social policy formation (Culpitt, 1999), thereby omitting change and continuity (cf., structure and generativity; Cahn, 1949; Musselin, 2005; Walford, 2008), as witnessed through "injustices passed on to each generation anew" (Cohen, 2009; Sher, 2005, as cited in Spinner-Haley, 2012, p. 324).

Lastly, the phrase "human rights are universal, indivisible, interdependent and interrelated" has been carried forth since 1948, often referenced as a necessary guiding foundation when formulating international treaties, declarations, and agendas, their revisions, amendments and/or ratifications, as articulated in the Vienna Declaration and Programme of Action (1993, para. 5):

> All human rights are universal, indivisible, interdependent and interrelated. The international community must treat the human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic, and cultural systems, to promote and protect all human rights and fundamental freedoms.

Further suggestions are provided by Eide (2007) believing that the concept of universality within a human rights context should be taken to mean:

> 1. that the rights are valid and applicable everywhere, in all societies and all cultures and in all parts of the world; and

2. that they should be enjoyed by every human being, without discrimination (by women as well as by men, by persons belonging to all racial and religious groups, by citizens and non-citizens, by rich and poor, and so on; p. 12).

These paraphrases place an emphasis on the wholeness of an international system of human rights, generally conceived of as a universal set of social minimums, believed to be the highest form of attainable morality, comparable to a welfare-State's ability to extract or explicate a strategic "history, culture, religion and tradition" (Eide, 2007, p. 12) as being morally superior to another's. The authoritative ideological dominance of this latter statement possesses an inordinate and unnecessary amount of derivable political and economic superiority (cf., power; Boyce, 2007), often wielded as international force through neoliberalist policies and practices conducted by authoritative and authoritarian state and corporate leadership (cf., Anglophone governance; Kitthananan, 2008) that is culturally constructed and practiced as political hegemony (cf., geopolitics; Blackmore, 2005).

Over centuries, the ideological rhetoric found in hegemonic prescriptive activities sanctioned by authoritative and authoritarian (e.g., jurists, philosophers, theologians, etc.) sources have attained justifiability due to the fact they represent a palpable philosophical and legal necessity, demonstrating the validity of ideological social order, a rule of legal order combined with the rule of recognition (i.e., positivism + naturalism = normativity). As such they are continuously [re]inscribed as desirable standards associated identifiable transitory properties, in other words, rights as transactional artifacts enunciated

throughout the development of international law and international legal institutions. They are exemplified by the following examples: de Vitoria's (1539) 'colonialism as international law' (Anghie, 2004, p. 14), Suarez's (1612) four levels of Catholic/Christian law (Dellavalle, 2011), More's (1516) Utopia, agriculturalist acquisition of hunter-gatherer property, enjoined with Locke's (1689), Two Treaties of Government, natural law as universal appropriations (cf., transnational socialization, logic of appropriation; Moravscik, 2000; Pahuja, 2012) and expropriations, supported by several colonizing voices such as Aquinas' description of man, as imago Dei (summa theological, 1980, as cited in Dellavalle, 2011, p. 4), Bentham's and Austin's conception of the legal system, defined law

> as the expression of a wish plus a threat of a sanction, and
>
> 'sovereign' defined as a powerful person or agency that the bulk of the members of a given society were in the habit of obeying (Waldron, 2005, pp. 182-183).

These early [re]formations of legal positivism (Shestack, 1998) are reflected in natural rights and laws of nations-state institutions, conceived and practiced from the 17th to the 19th century in W. Europe (Pollis & Schwab, 1979), a period that proved that power could be harnessed by law (Habermas, 2002). Recollecting that during these centuries all other rights, including natural rights were subordinate too, or equated with property rights if they were expressive of socially acceptable contractual terms (i.e., party agreement; "the idea that power to govern is to extent derived from the consent of the governed" (i.e., social contract/Leviathan, Hobbes, as cited in Bates, 2014, p. 17). The ideological manifestations of these practices are exhibited through extraterritorial

sanctions, as evidenced in the exploitative and extortive practices of multinational (MNC) and transnational corporations (TNC), non-government organizations (NGO)[14], and nation-states regarding the rights and resources of indigenous, religious, sexual or ethnic groups, their labors and/or resources, natural or otherwise; noting that non-government organizations (NGO's) are granted legitimation and rights by the former League of Nations, and its successor the United Nations, and as such fall under their purview.

However, there is a large and growing body of literature that consistently demonstrates the necessity of identifying colonialism and its foundations (e.g., cosmopolitanism & universalization; European invasion & conquest, etc.) as they currently appear in agreements, arbitrations, contracts, pacts, policies, and treaties (6/26/45, ICJ, Art. 38(1) of transnational law (Anghie, 2004; Dembour, 2014; Pahuja, 2012, Santos, 1995). Without a doubt, theories of post-colonialism (Bhaba, 1994; Said, 1978; Spivak, 1998, as cited in Dembour, 2014, p. 68)[15] play a decisive role in illuminating how and why ignominious colonialism (e.g., civilizing mission) still functions as a means of acquiring natural resources, in part owing to the mandate system

[14] Non-governmental organizations: NGO's are very heterogenous politically and socially (349) . . . . some operate securely in core democratic countries, others operate at great risk in peripheral authoritarian countries; some are deeply embedded in grassroots, others are external missions or services provided by committed experts or intellectuals; some are crisis oriented, focusing on violations and disregarding the underlying causes of repression, others focus on the understanding of structural causes and seek wide ranging institutional transformation; some subscribe to a liberal, individualistic conception of human rights, others promote a socialist conception of human rights..In total, there are profound positional, organizational, and ideological differences among human rights NGO's (Santos, 1995, p. 349-350).

[15] "Post-colonialism: committed to a double task: revealing how the colonial logic imbibes ideas and behaviors, even ones which seemingly have nothing to do with colonialism, and trying to make it possible to hear the experience of the colonized" (Dembour, 2014, p. 68).

(Bentwich, 1930; Smuts, 1917), the "beginning of systematic international intrusion into the workings of colonialism" (Claude, Jr., 1964, as cited in Laing, 1991, p. 203).

Attaining human rights under the conditions of these situations and circumstances are predicated on practices that validate, legitimize and reinforce the sociological and ideological fact that "human rights in the West are an individualistic conception relying on legal-judicial mechanisms for their efficacy and promotion" (Wright, 1979, p. 21). Thereby, bringing into question the validity of nation-state politics and economic interests, and the collective rationale for misusing and/or abusing the power attached to those interests. Also, when put into practice they unduly influence social policies pertaining to international human rights and social [in]justices in the name of attaining nation-state goals through legal arguments (Mertus, 2003; Oppenhiem, 1991; Rodman, 2001), setting "the stage for chronic disputes between the United States and its allies over theoretically irreconcilable principles" (Rodman, 2001, p. 34).

Complicating matters further, these practices and resulting socially unjust and economically lopsided situations are [re]produced by bureaucratic leadership that employs groupthink policymaking (Janis, 1971; Winter, 2006), demonstrated in an array of contradictions effecting foreign policies (Meloen, 2000) and international laws and human rights, such as 'export processing zones (EPZ)' that ease exporting/importing restrictions for TNC's (Ho et al., 1996). These complications are exasperated when social [in]justice judgment and decision-making confuse cultural and moral relativism with absolutism (Cook, 1999; Erikson, 2001; Howard, 2003), as

when moral exclusion (Deustch, 2000) is used to institute political moral or immoral (Dworkin, 1978) solutions to resolve human rights issues when national interests or goals are at stake (Oppenheim, 1991). These judgments and decisions are indicative of groupthink (cf., collective) by those in power who place human rights in an insignificant and subordinate position to the economic and political interests and goals of the Nation-state (Winter, 2006), a legal positivist reasoning, where morality is not always compatible with national interests and goals.

The rationalization for these and other exclusionary, extortive, exploitive and bolstering practices are integral to international Western foreign and domestic policies that permit and sanction harms inflicted on those outside the scope of the justice and meritocracy of Western entitlements (Blysma et al., 1995). Reflecting international law these entitlements were

> created in part through its confrontation with the violent and barbaric non-European other; and the construction of the 'other' and the initiatives to locate, sanction and transform it disrupt existing legal categories and generate new doctrines regarding, very significantly, sovereignty and the use of force (war on terrorism) reproduces the "dynamic of difference" . . . . image of the conqueror is one of the defining aspects of colonialism . . . (Anghie, 2004p. 285).

In these terms, the exclusionary other represents the traditional irresoluble norm difference, “unworthy of fairness, resources, or sacrifice, and seeing them as expendable, undeserving, exploitable, or irrelevant” (Opotow, 2001, p. 157; italics added), amply

demonstrated by human rights policies of welfare-State and liberal, neoliberal regimes that undermine international rights norms and policies (Mertus, 2003). “Poor relief in a liberal regime is a matter of charity, initially a religious duty that has now been assumed by the state” (Rice et al., 2006, p. 197).

For example, historically and socioculturally the enforcement of human rights policies and practices reflect various regime alterations, usually dominated by political and economical sanctions intended to increase power and profit. This is evidenced when favoring special interests and risk-taking (Culpitt, 1999), as outlined, adopted and practiced by the General Agreement on Tariffs and Trade (GATT), and its successor, World Trade Organization (WTO). This example is a further extension of the neoliberalist North American Fair Trade Agreement (NAFTA; FIDH, 2006) demonstrated the US foreign, international and domestic policies of the Bush, Clinton, Reagan (i.e., read Thatcher) and Carter administrations, more commonly known as the Washington Consensus (WC Standing, 2002, as cited in Kitthananan, 2008). This example is the dominant prototype, or perhaps social exemplar for international and domestic policies intended to oversee the emergence of extraterritorial sanctions crucial to hegemonic stability and its continual theoretical development (Rodman, 2001). These parts of hegemonic theory are based on the misconception that as a superpower, the US, must demonstrate control over the diffusion of political and economic superiority. Driven by the need to legitimize “democracy”, capitalism must fulfill an insatiable quest (e.g., consumerism, materialism, etc.) to possess world dominance in the realm of international

laws and institutions, in other words, controlling the rationalizations and narratives of the dialog and discourse, completing the ideology of legitimization (Thompson, 1990). The strategic dominance of neoliberalism includes controlling the choice of form, or how the law is contextualized, a type of social engineering (Kennedy, 1976; Pound, 1923, as cited in Sypnowich, 2001) of human, legal, and moral rights through political and economical social policies and practices, grounded in obedience and the nontransparent nature of power generated by American legal ideology that serves the interests of the powerful (Sypnowich, 2001). When such servitude is enforced and docilely obeyed, legal ideology becomes a function of capitalism, which includes the market mechanisms that guarantee and grant permission to impose social and economic policies, laws and/or rules through coercive and compliant strategies in the form of sanctions, loopholes, risks, and geopolitical zones (cf., DiMaggio & Powell, 1991). These policies and practices provide and distribute capitalist benefits and burdens (e.g., compensations), including several forms of military compensation to nation-states who willingly comply or are coerced to comply (Buchanan, 2010; Kitthananan, 2008). When these fail, social polices (cf., international laws, foreign and domestic policies) and their international legal institutions undergo justificatory revisions. Examples here have included revamping extraterritorial sanctions (ES), whereby the revised laws and/or rules of social policies extend multinational or transnational corporation jurisdiction by unilaterally broadening the "activities on the territory of allies that did not enact parallel restrictions" (Rodman, 2001, p. 24). A justiciable legal and procedural action that adheres to legal positivisms

view that human rights can only exist in the enactments of a system of laws that accompany capitalist endeavors (e.g., sanctioning), otherwise the enforcement mechanism is absent when prescribed by State authorities. Because mechanisms only serve one purpose (e.g., servo) they have a homogenizing effect, but more importantly "it is the mechanism on which beliefs depend on and not the benefits themselves – that evolve" (Premack & Premack, 1994, p. 158). Noting "justiciability refers to the ability of an independent and impartial body to provide a remedy for individuals in case of a violation of a right" (Van Boven, 2014, p. 150).

Furthermore, under [post] welfare-state regimes the conception of methodological individualism[16] is a majoritarian perception, whereby groups typically apply human rights and social justices to themselves or other groups as either cultural majoritarians or minoritarians (Moscovici, 1990). A categorization includes the legal systems they engage in and the support they receive from political institutions and social policies affiliated with their social groups (Young, 1995; Zurn, 2007). "These group institutions will adhere to a principle that social policy should attend to rather than be blind to group difference in rewarding benefits or burdens, in order to remedy group based inequality or meet group specific needs " (Young, 1995, pp. 165-166).

At the national level (i.e., nation-state), social policies are filtered, devised and initiated (Arthur, 1994; Denzau & North, 1994; as cited in Pierson, 2000; Broadbent,

[16] "Methodological individualism: the paradigm of classical normative decision theory, which puts the rational own utility maximizing actor (who can be an individual, a firm, or a state) at the center of attention is not even an adequate foundation of even a normative, let alone a descriptive or predictive decision theory" (Rapport, 1996, p. 72).

1971; Cowan, 1995; Uzzi, 1996), through legal positivisms per view that human rights law is based on state consent (Art 38(1) Statute of ICJ, Chinkin, 2014). Where rights are held as external to the individual, and as such are determined to be instrumental rights by legislative or judicial decision, not internal to or residing within the individual as natural law or moral principles (cf., self-interest, freedom, autonomy, liberty, etc.) are commonly described (Montada, 1998; Bylsma et al., 1995). Whereas, at the international level, instrumental and intrinsic rights are more commonly promoted and interpreted economically and politically as an obligatory social commitment to human development, referred to by the UN and other rights regimes and organizations as a 'rights-based' approach capable of empowering the populace with sustainable rights once put into practice (cf., capabilities approach).

Rights and legal positivism.

Legal positivism requires the international, national, or regional enforcement of human rights to develop the legal mechanisms that are capable of rationalizing whether morality or immorality are present in attempting to resolve an 'is' 'ought' dilemma, particularly when expressed ethically in social policies (e.g., foreign policies, international laws, etc., Oppenheim, 1991). Accordingly, suffice it to state that the human, moral, and legal rights literature converges in suggesting three influential factors that pinpoint ethical development and legal mechanisms:

1. 'ought' has no relevancy legally or cognitively and is negated by legal positivism;

2. human rights are universal rights, moral rights are not universal rights; and

3. natural rights (cf., intrinsic rights) are only invoked when principles might reconcile the 'is' 'ought' in law.

Tautologically speaking then, adopting the norms of individualism as conveyed and enforced by legal positivism serves as the basis for socially just human rights, producing desirable behaviors associated with building a nation-state of equality, equity, freedom of expression, etc. (cf., absolutism; Cook, 1999). In other words, when legal positivism is practiced by individualistic societies it allows their governing bodies (cf., bureaucratic leadership) to dismiss morality in matters of international affairs when necessary in order to achieve nation-state goals through judicial and legal mechanisms (Hart, 1985; Mertus, 2003). In addition, legal positivism often precedes or follows the same trajectory as capitalism as it becomes a global economic system (cf., globalization); paradoxically, it is precisely the rise of capitalism that has served as the single most influential system in the development and implementation of human rights (Woodiwiss, 2005), serving as antagonist and impetus. This dichotomous revelation became apparent in the 'second transformation' period, carrying with it the prediction that social injustices involving human rights issues will ultimately to be resolved through the legal codification of socially just human rights laws aimed at reinforcing capitalist prosperity (cf., development & globalization; Donnelly, 1999; Pound, 1923, as cited in Kennedy, 1976; Winter, 2006). Thus, invoking the understanding that the utilitarian concept, prosperity (i.e., development) is only endorsed after value preferences have been revealed and

circumscribed in accordance with an authoritarian or authoritative organizing body and its institutions, such as when a State or a corporation (cf., bureaucracy) holds influence over the greatest amount of political and economic power (Zarsky, 2002), also known as geopolitical power. Effectively, [re]focusing the general welfare values of the populace through social policy judgment and decision-making that attempts to maximize satisfaction, and minimize the frustration of wants and preferences (cf., rational choice theory), as demonstrated in the promotion of hierarchical risk by Anglophone governments (cf., post-welfarism; Blackmore, 2005; Esping-Anderson, 2000). Additionally, it is more than apparent historically and socioculturally that a State's failure to prosecute fundamental rights violations protected by human rights declarations is by far the most effective nation-state tool in undermining human rights impacted by the following four problems when there is

1. no democratic governance, the only known form of governance that has been able to institute and enforce human rights when transitioning into a capitalist economic system as a means of providing prosperity and/or development;
2. status disparity (cf., hierarchical power), corrupt and/or unregulated democratic governance that ignores full disclosure in terms of accountability and responsibility, historically provoking political challenges (Donnelly, 1999; Shestack, 1998);
3. state and/or corporate ability to legitimize and distribute economic and politic power as influential sociological and/or ideological concepts through universalized, cross-cultural political law (Donnelly, 1999); and

4. Nation-state ability to implore the doctrine of justiciability when human rights laws interfere with large or rich tracts of land and contracts (cf., property rights). Conversely, small insignificant tracts or other natural resources (e.g., waterways) are deemed as having little strategic advantages or natural resources (Woodiwiss, 2005). Even though these resources are downplayed to the point of insignificance, they are often exploited and used in unsustainable environmental practices, especially in geographical zones (i.e., geopolitical mapping, Dodds, 2007) with large minority or third world populations (e.g., toxic waste; Agrawal, 2007; Pastor, 2003).

Rights and covenants.

The rise in popularity of enjoining human rights with conceptions and actions associated with social [in]justice gained momentum during the formation of the United Nations (UN). Whereby, the UN, an international, national and regional judicial constituency, began to assume a more active and supportive role in dispensing capitalism (e.g., National Defense Educational Act, Titles I-X, NDEA, 1958) ushering in an unprecedented international and national juridical connection to human rights and Western economics (i.e., political ideology; Gutman, 2001; Lazreg, 1979), thus, changing the discourse and ideological conceptions of human rights as ratified in the International Covenant on Civil and Political Rights 1945, the Universal Declaration of Human Rights and Geneva Convention 1948 (Gutman, 2001; Mapulanga-Hulston, 2002), and the International Covenant on Economic, Social and Cultural Rights (ICESCR, UN, 1966). The revised and/or subsumed versions of these documents are considered ‘living

testimonials' to the evolution of human rights (cf., well-being), albeit, an incomplete and biased account of evolution and human rights in general (Zinn, 1995). Nevertheless, they do provide a historical and sociocultural account emerging from the trials and tribulations associated with freedom, contractual rights, and moral and legal rights, the relevancy of which informs current human rights and social justice dialog, discourse (Nash, 2001; Woodiwiss, 2005) and judgment and decision making.

These 'living testimonials' are often required by social justice practitioners who use the same overarching 'interpretive framework' associated with human rights agendas in the study and application of social justice (cf., 'rights based approach'; Freedman, 2007; Henkin & Hargrove, 1994; Kallen, 2004; Levy & Sidel, 2006; Nash, 2001; NCHRE, 2003). This includes educators who formalize or are interested in formalizing and promoting rights based curricula (e.g., international baccalaureate), critical theory and feminist theory (Blackmore, 2005). With critical and feminist theories pointing to the fact that most international human rights regimes are based on male centered values and paternalist power (cf., absolutism; Romany, 2001), and as such only benefit the male gender (e.g., gender inequality & inequity; Cikara & Fiske, 2009; Cockburn, 1985; Schmitt et al., 2009).

Moving towards a practitioner base, human rights education received a boost when the UN declared 1995-2004 the decade of human rights education (Stone, 2002; Todd, 2007), encouraging "training, dissemination and information efforts aimed at the building of a universal culture of human rights through imparting of knowledge and skills and molding

of attitudes (OUNHCHR, 1996, p. 2).” Adding to this set of factors, UNESCO in 1993 initiated Education for human rights and democracy, accompanied by a plan of action outlined in UN Doc. E/C.12/1999/4 by the Committee on economic, social and cultural rights, general comment no. 11 (1999).

As indicated historically and socioculturally, during the decades leading up to 1995, particularly from 1976 forward (i.e., ratification of covenants), human rights agendas, treaties, commissions and subsequent social judgments and decisions (e.g., judicial) began to confront the differences between civil and political rights, and social, economical and cultural rights, or in judicially disputable terms, between genuine human rights and aspirational human rights (Lacqueur, 1979; Mapulanga-Hulston, 2002; Romany, 2001; Shestack, 1998). Starting with the International Bill of Human Rights (1950), where traditionally and judicially, civil and political rights known as the first covenant, separated and distinguished from the second covenant (i.e., social, economic and cultural rights). This division rebuked the internationally recognized mandate requiring civil and political rights, and social, economic, and cultural rights to be collaborative, corroborative, and correlative, recognizing that ‘all human rights are universal, indivisible, interdependent and interrelated’. Since 1950 the covenants have grown further apart, with the first covenant being co-opted by State and private interests, in part because a State’s legal positivist approach seeks to constrain each covenant through enforcement; recalling that the first covenant needs protection from the State, whereas the second covenant needs intervention by the State (Woodiwiss, 2005). For

example, one type of constraint-enforcement includes arbitrary and/or unreasonable time frames intended to support dominant economical and political interests (e.g., globalization), as well as gendered-leadership interests that favor hierarchically structured ethnocentric and authoritarian actions and rewards (Cockburn, 1985; Eagley & Sczesny, 2009; Tomasveski, as cited in Blackmore, 2005, p. 244; Siegel, 2005).

Irrespective, this lack of interdependence and indivisibility is somewhat rectified by the Universal Declaration of Human Rights and other UN documents, such as the International Covenant on Civil and Political Rights (ICCPR, 1966; Eide, 2007). The preamble of the latter reads:

> In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are met whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights . . . (Eide, 2007).

The second category, social, economical and cultural rights has proven to be exceedingly controversial, instigating a number of legal and ideological contestations, especially when justiciability is called into question.

> Justiciability implies something about a claim (or petition), about the setting in which it may be resolved and about the consequences of successfully invoking it. The claim (or petition) must be based on the alleged infringement of a subjective right (invoked by an individual or collectivity; Viljoen, 2007, p. 55).

The controversy and contestability of this second category of rights involves several competing situations, sometimes referred to as socio-economic rights, subsistence rights (e.g., food, health, employment, and education) or indigenous and/or aboriginal rights. The least of these is the ideological and technological nature of these rights, and the most being the feasibility of long-term sociostructural support necessary to actualize, enforce and sustain those rights, captured by the disparity and marginality between and within capitalist Welfare-state systems and Third World systems (cf., economic feasibility and/or prosperity; Donnelly, 1999; Gupta, 2001; Laqueur, 1979; Mapulanga-Hulston, 2002).

Under these [post]welfare-state regimes the conception of individualism is a majoritarian perception, whereby groups typically apply human rights and social justices to themselves or other groups as either cultural majoritarians or minoritarians (Moscovici, 1990). This categorization includes the legal systems they engage in and the support they receive from political institutions and social policies affiliated with their social groups (Young, 1995; Zurn, 2007).

> These group institutions will adhere to a principle that social policy should attend to rather than be blind to group difference in rewarding benefits or burdens, in order to remedy group based inequality or meet group specific needs (Young, 1995, pp. 165-166).

Furthermore, academics who call for a universal human rights curriculum, or to frame social [in]justice research and application using a human rights framework, are grounding

their clarion call on these and other liberal and neoliberal beliefs and policies, including the academic theory and concept of procedural justice (Greenberg & Folger, 1983). Procedural justice (Thibaut & Walker, 1975) and the perception of fairness (Blader & Tyler, 2003; Folger et al., 1996) in decision-making is an ethnocentric theory of modernism — it is authoritarianism as political representation that predominates social justice research (Pearce et al., 1998). Constructed upon majoritarian ideological applications of capitalist individualism and gender, (e.g., self-determination; homo economicus; Gintis & Khurana, 2008) originating from legal and/or judicial proceedings (Folger, 1977; Thibaut & Walker, 1959, 1975) of the [ideological] State apparatus[es] (Althusser, 1971).

Supporters of the prescriptive procedural justice model also favor process control, a limitation produced in part by affordable, idealistic and accessible research environments (e.g., institutions and corporations; Gintis & Khurana, 2008). This pays very little attention to the fact that procedural justice research avoids engaging in critical issues concerning social exchange (e.g., groupthink policymaking; Blau, 1963; Homans, 1961; Janis, 1971), the actual origins of procedural justice theory (Thibaut & Kelly, 1959). This avoidance has contributed significantly to producing a social justice paradigm that has restricted itself to perpetuating social rule conditioning (Pogge, 2001).

In its current incarnation, procedural justice is nearly void of understanding human rights laws against a backdrop of social exchanges preoccupied with neoliberalist politics, capitalist economics and risks (Kitthananan, 2008). The policies and procedures of which

are responsible for a disproportionate distribution of political, economical, social and cultural power and control as carried out under the auspices of just procedures as "favors that create diffuse future obligations, not precisely specified ones, and the nature of the return cannot be bargained about but must be left to the discretions of the one who makes it" (Blau, p. 93). The juxtaposition here is that prima facie (e.g., rules, duties, etc., Herman, 1985) as a form of procedural justice is more valuable for collectives (Olsen & Olsen, 1984, as cited in DiMaggio & Powell, 1991) that engage in developing provisionally reasons that may or may not have procedural justice application, but nevertheless retain residual reason-giving force (Hurley, 1989). Suggesting that this residual has a greater chance of being applied as a relational form of procedural justice by collectives, a "relational form that insulates prima facie judgments of probability from beliefs about what's probable absolutely (moral epistemology" (Hurley, 1989, p. 133).

Ideally, human rights declarations are based on socially just judgments and decisions validated and reinforced through public opinions, attitudes, and critical mass. This corroboration is generalized with instrumental and intrinsic rights that interconnect collaborative UN judicial decrees with structured 'rights-based' approaches as humane commitments necessary for human development. Noting that for better or worse, selecting from the largest historical and sociocultural population bases available, subjectively subjective often validates these approaches and commitments. The appeal of this attractor aligns with longstanding attitudes and widespread beliefs that human rights follow a progressive path carved by cultures and societies founded upon socially just

judgment and decision-making (Dworkin, 1977; Habermas, 1990a, 1990b, Rawls, 1971; Tyler et al., 1997). In other words, human rights based on social justice judgment and decision-making has found social and psychological support and advancement through international, national, and regional human rights declarations administered through courts, tribunals, commissions, and other human rights authorities with prosocial agendas. This in return provides an evidentiary base that provides an educational solution to educational indeterminacy by removing and/or polarizing unjust ephemeral applications, biased prejudicial social judgments, and would-be social justice violations (Freedman, 2007). This may thwart the arrogance and ignorance of human rights violations, instances where

> once invalidating labels are imposed, dominant authorities can justify injustice: they can rationalize human rights violations – denial of freedom to decide, equality of opportunity and the right to human dignity – to populations arbitrarily defined as in-valid, less-than-human beings (Kallen, 2004 p. 35).

Lastly, international human rights administered as ideological justice and democratic legitimacy seeks to include an under-utilized ethical dimension in order to address the established policy and polity that often dismisses the role of economic and political justice within their social context (Heuman, 1979). In other words, ideally, universalized human rights would recognize that "political rights such as the freedom of speech, association and expression are not guaranteed equally for all members of society – as long as one class of citizens is able to dominate another by virtue of its economic power

(Kistiakovski, 1905, as cited in Heuman, 1979, p. 50). Human rights declarations acknowledge, propose and seek to guarantee that in order to experience the benefits of economic power, an experience of political power must occur, and in order to experience the benefits of political power, an experience of economic power must occur (cf., interdependence and interrelationship; Eide, 2007).

Conclusion

The tracing of natural rights, individual rights, legal rights, social rights, civil rights, human rights and so on, is a venture into the evolution of human intellectual development, which always involves secular and religious social judgments concerning injustice and justice; overwhelmingly founded upon historical interpretations and descriptions of renowned philosophical and theological origins and practices (e.g., revered metaphysics). Irrespective of the disciplines drawn upon, posthumous interpretation and description wrought with presumptuous and disparate statements concern an array of feared trigger points of universal contention. This array is often explored and elaborated as the differences and similarities of absolutism, colonialism, culturalism, paternalism, and/or relativism, and their interrelated moral and ethical content (Anghie, 2004; Dembour, 2014; Moser, 1968; Howard, 1995). One example is when the origins of human rights presumably provoke negative political repercussions (i.e., colonialism & post-colonialism), as when "privileging a particular world view' of human rights: it might viewed as a way either to defend a specific status quo or value system against possible challenges" (Bates, 2014, p. 16).

Undoubtedly, from this manuscript it can be stated that justification and legitimacy are paramount to normalizing rights at international, national and nations-state levels. Of these two, it can be said that legitimation is a mode of ideology, enacted through rationalization, universalization, and narrativization (Thompson, 1990). This is often described by Weber (1946, 1964) and others (Bensman, 1979; Lassman, 2000), as accepting the validity of an order (e.g., political) of the legality of rules, "a social order is legitimate or valid when individuals believe that they must obey the operating norms or rules associated with that order" (regardless of whether they believe them to be appropriate, Lassman, 2000, pp. 87-88).

Attentively, the content of Lassman's parenthetical statement has garnered several observational qualifiers concerning belief and consequnces (i.e., [non]rationality), such as Bachrach & Baratz's (1970) claim that whether "normative rules, shared or not are sanctioned," or in Halbwach's (1959) persuasive example of the normatve coupling of communitarianism (i.e., moral welfare state, Harft & Negri, 1994) and patriotism, in which "a nation with a sense of order and discipline will hold itself superior to every other nation, as the supreme virtue of obedience" (p. 125). This recognizes that these and similar normative conformity statements and/or behaviors can be read as examples of determinism, as "prescriptions that are mechanically enacted by subservient individuals – norms imposed by a society" (Ogien, 2010, p. 250). Lastly, legitimation and justification have been [de]constructed and [de]contextualized through theories of power, indecision, and authority (Walker & Zelditch, 1993), reflective equilibrium (Goodman, 1965; Rawls,

1971), discourse analysis (e.g., critical legal studies, dialectical materialism, post-colonial theory, etc.), emancipatory analyses, and neo-pragmatist research agendas (Gallagher & Miyahara, 2012).

Lastly, the right to education (Art. 13, E/C.12/1999/10) figures prominently in collective judgments and decisions concerning justification and legitimization. For example, collective learning process mechanisms are conceptualized as manifested in the logic of universalization (viz., 18th c., Eder, 1993, 327-328), often in comparison to the logic of differentiation. Where at a global or macro level, universalist logic has been embedded and embodied within the United Nations (UN) and projected as the educational norms of human rights, rights that are considered to be a subset of universal moral rights (Besson, 2014), considered to be a direct reflection of [humanitarian] welfare (viz., Stoics, 3-2 BC, Crowe et al., 2013).

These lines of Western reasoning and restriction seemingly are premised on the belief that human rights are indisputable when they are founded on judgments and decisions used to develop universal Nation-state polices within a globalized social order (i.e., UN general assembly member state). On the other hand, in this context Western reasoning is perceived as highly controversial and contestable if it gives way to social justice judgment and decision making used to superimpose said global context on individual systems (Hay, 2002), juxtaposing human rights and social justice with the ideology and cultural constructs of Western individualism.

Toward An Academic Theory of Social Justice Judgment and Decision-Making: Justice and Legal Ideology

Chapter 3: Introduction

Justice and legal ideology.

> The basic structure of morality in the US is to protect society, this is because the morality of human rights based on the US ideology grants those rights based on a mutual contract that is equated with respect to governance as a Leviathan. This is a tradeoff with the sovereign, which is than expected to protect the rights of each person, in the US compared to all other governments this is accomplished through constitutional law (i.e., paternalism; Henricksen, 1990; Lessnoff, 1978, p. 71).

Academically it can be postulated that universality is used to validate and legitimate moral domain research and interpretation, an attempt to align the dominant ideology of social scientific paradigms with moral absolutism. As previously revealed and reaffirmed by Shewder et al., 1997, Haidt & Joseph, 2007, and Hauser, 2006, the "moral domain is made up of autonomy, community, and divinity" (as cited Sheskin & Sentes, 2012, p. 436). These ideological stances are embedded as intellectual, political, social, and economical reifications in support of universal normative justice and ethical beliefs based on Western ideals of moral domain development (e.g., Horne, 2004; Kohlberg, 1984; Lapsley, 1992; Rawls, 1971; Shklar, 1989; Turiel, 1983, 1998, 2003). But as Baumrind (2005) points out,

> there is no consensus in our pluralistic society on what constitutes moral premises . . . contradictory paradigms exist side-by-side with each standpoint bringing a particular aspect of reality into clear focus by obscuring other aspects. Therefore, ethical beliefs are not objective in the sense that their validity can be universally established by a defensible theory of justification or by social

consensus (p. 24).

In ideological justice terms, justifiable legal moral discourse and/or dialogue is dispensed and distributed as sincere and appropriate value, guided by the beliefs and actions of appointed legal authorities, such as the U.S. Supreme Court., or the International Court of Justice (ICJ) For instance, in Roe v. Wade, ideological justice excluded regional and local input prior to instituting constitutional law, effectively eliminating variegated dissention, dissemination and possibility, an act of eliminating moral discourse through the ideological justice practices of centralized moral judgment and decision-making (Barry, 2007).

These and other judgments and decisions help define official and/or authoritative moral indoctrination, gaining momentum and strength by applying and dispensing ideological justice through institutional hierarchies that convey and disperse absolutism, relativism, universalism, authoritarianism, paternalism and patriarchy as forms of political, economic, social and military power (cf., social dominance). In practice, enveloping legal positivisms separability thesis, the view that legal judgments are separate from moral judgments (McCormick, 1994; Hart, 1983; Waldron, 2001), having a direct effect on judicial reasoning and/or logic, such as the political and economical value placed on capitalist competition for meritocratic, entitlement, and allocation. To clarify, "an ideology is a system of collectively held normatively and reputedly factual ideas, beliefs and attitudes advocating a particular pattern of social relationships and arrangements, and/or aimed at justifying a particular pattern of conduct, which its proponents seek to promote, realize, pursue or maintain" (Hamilton, 1987, p. 38).

"Our view of justice, as necessarily our view of any social institution, is ideologically

inscribed . . . we should accept the law as it is because it works, and even when it does not work it is not for lack of trying" (Gale, 1994, p. 138). The deterministic and absolute perspective that justice, law, and legality are ideological is considered a radical departure from sociological normalized order, most "noticeable by its absence in major text on the sociology of law" (Hunt, 1985, p. 2). As such this ideology has varying impact on social justice judgments and decisions that affect and are affected by the practice and theory of law, which includes rule acquisition and the practice of moral and ethical behaviors that are socially just. The radical predominance of this perspective is due in part to the multiple sources and usages of the concept of ideology, as applied to and derived from the ideologues of economic and political laws as conceived by Marx and Lenin (Carlsnaes, 1981; Hunt, 1985; Sallach, 1974). Whose undeniable legendary influence has motivated countless others to develop and expand the role of ideology in law, justice and legal theory through interpreting and [re]applying Marx's (1884/1968) work on law, ideology and falsehood, as well as Lenin's work on social democracy, class and history (Carlsnaes, 1981), to the point that the pejorative connotation has been removed. The essence of which is quite often stated in dominant or ruling class terms (cf., class instrumentalism) as the "inability of formal legal equality to affect substantive inequality . . . where legal equality on paper is undermined by class power" (Cain, 2003, p. 9292); clarifying that those from a Marxist perspective perceive culture and ideology as an outgrowth of class domination (Sallach, 1974). Adding the concept of false consciousness, which has been used interchangeably with the production of ideology, political platforms and formulas, ideological hegemony, and alienation (Morrison, 1995; Pines, 1993; Sidanius & Pratto, 1999). Together or separately these phrases and meanings

have been used by Gramsci (1971), Marx and Engels (1846/1970), Pines, (1993), Sidanius & Pratto (1999) and others to explain the social uses and abuses of legitimate and illegitimate power in discourse and ideology. In particular, the "purported righteousness, justice, and fairness of hierarchically organized social relations" (e.g., all men are born with certain inalienable rights, Sidanius & Pratto, p. 103).

Notably, the continuation of ideological interpretations, arguments, analyses and theories as espoused in the work of Althusser (1971), Balibar (1970, as cited in Neocleous, 2012), Bourdieu & Passeron (1977), Gramsci (1971), Lukacs (1971, as cited in Eagleton, 1994), Pashukanis (1924, 1980), Poulantzas (1974, 1978), Mannheim (1936), Therborn (1980) and others, advocating the belief that "law is not merely the stake but the site of class struggle" (Althusser, 1971, as cited in Edelman, 1973, p. 116). In sociological terms, many of the politically philosophized interpretations of ideology support the proposition that class struggle is composed of collective beliefs (e.g., ideologies) embodied in the practices of legal discourse (Gale, 1994; Therborn, 1980, as cited in Abercombie et al., 1994). As Walford (1992) proposed, purposive social groups such as those engaged in legal discourse require ideological functions that contribute to their ideological archetypes, these functions are "expediency, principle, precision, reform, revolution, repudiation and ideology of ideology" (as cited in Keller, 1994, pp. 27-42) for ruling class functions and features; of significant importance to those who wield influential power and authority (e.g., politicians, legislators, jurists, judges, lawyers, corporates, etc., Hirst, 1979, p. 50; Jenkins, 1963). As such they are steadfastly immersed in circumscriptions that represent (Althusser, 1971; Cain, 2003) positivist, naturalist,

[neo]conservative and [neo]liberal ideology within law (Sypnowich, 2001; Thompson, 2003).

These ideological beliefs and values are associated with Nation-state law (e.g., policies & procedures) and the stratification of civilization founded upon [residual] welfare institutions, systems and organizations (cf., social insurance; Esping-Anderson, 1990), which require placing the "State above the law" (Althusser, 1971; Hirst, 1979, p. 50). This superior position includes interest groups and political parties enmeshed in "the idea of a natural law as the absolute justification of the positive legal order personified as the State" (Kelsen, 1961, p. 439). Instituted through class domination and ideological hegemony (Sallach, 1974), under the aegis of ideological justice and/or legal ideology [apportioned] through legal documents in the form of a social contract. The manifestations of which can be described in terms of a psychosocial generalization, where "ideologies dominate the people who use them and not the other way around" (Lamm, 1985, 1986, as cited in Keller, 1995, p. 4).

From the above set of ideological influences (i.e. sites), international legal institutions (ILI), rights regimes, politics and education stand out as exerting the most influence on the practice and transmission of ideological justice and legal ideology. An influential legitimization responsible for [re]producing and promoting ideological and hegemonic relationships (e.g., morale explanation, Geertz, 1964, 1973), particularly through state (Althusser, 1971; Entwhistle, 1978, 2002) and nation-state contractual arrangements.

Institutionally these sites of influential legitimization utilize the social sciences (Jost & Major, 2001) to reproduce ideology empirically, typically perceiving and conveying law and justice as power and authority (Emerson, 1962; Pratto & Cathey, 2002), where deterrence and dissuasion are conceived of as being associated and limited to self-regulation and law enforcement (Sadurski, 1985). Aligning social science with legal justice (i.e., justice of conformity), a deterministic institutional alignment (Finnemore & Sikkink, 1998; Gouveia-Pereira et al., 2003) that sets the "standard of assessment of law enforcement within the structural value of a given system," as compared to social justice (i.e., substantive justice), which is the "ideal standard of assessment of law" (Sadurski, 1985, p. 42). Recognizing that the "essence of justice, and the social contract (in modified form) does provide the model for social justice"(Runciman & Sen, 1965, p. 559), meaning that "the procedure of contract theories, then, is a general analytic method for the comparative study of the conceptions of justice" (Mueller et al., 1974, p. 121).

Within the context of social institutions, Hirst (1979) points out that an ethicist will object to deriving or applying legal ideology or ideological justice, whether reproduced empirically or not (Kennedy, 1982). An argument founded upon the classic [mis]interpretation of ideological justice and legal ideology as being a rather abstract notion of "false consciousness or false beliefs, or as a commodity fetishism (Lukacs, 1923; as cited in Grumley, 1989; Marx, 1973), or simply as "a false recognition of the real" (Hirst, 1979, p. 57). Accordingly, as Zizek (1989, 1994) and others recognize, it is ethical construction that provides people with the ultimate social reality from which they

base their acts and facts, the tradition of which is supported by employing philosophical ‘as if’ ‘then’ logic. Where acting ‘as if’ believing in bureaucratic empowerment will ‘then’ provide the believer with power and authority. Recalling the longstanding belief that “social institutions are the ethical context for the formation of the internal law and order of the social subject itself” (Hardt & Negri, 1994, p, 252), undoubtedly the primary location for ethical construction in the United States is situated within educational institutions.

To these ends, liberalism of the past holds “order as external to the subject”, placing institutions in the role of mediating agent between the autonomous growth of the social self and the experience of the external order (Hardt & Negri, 1994, p. 253). Where institutional, sociostructural and symbolic authority are spelled out (e.g., propagandized) as being separate from the self. Correspondingly, institutions (e.g., media, churches, political parties, Anderson, 2006; Anderson & Anderson, 1988) persistently communicate that ethical and lawful judgments and decisions are only suitable for resolution at a macro level, that is, at the level of State authority and the justice level, not the educational level (Schmidt, 2001; Young, 1993), once again placing the power and authority of the State apparatus above all other factions and interests (Althusser, 1971).

According to Althusser (1971) legal ideology or ideological justice cannot be rejected on the grounds that productivity is in fact a false or illusory relationship? This is because the “law can sanction its own ideology by force, rendering effective the relations of production” (Edelman, 1979, p. 35). As an example, Edelman (1973) argued that “legal

practice reverses direction under the pressure of big business," such as when the "domain of property rights is privately appropriated by the very means which excluded it in the first place" (Hirst, 1973, as cited in Edelman, 1979, p. 2). Irrespective of the overt practices apparent in Edelman's argument, empirical opposition contributes to the dominant belief that ideology is in fact a radical idea and belief, a "betrayal of the moral expectations attached to political philosophy, rather than a different, but equivalently significant, form of political thought" (Freeden, 2003, p. 7177).

Of equal importance is the fact that ideological justice and/or legal ideology are more often than not wrongly relegated to being simplistic explorations of text (Balibar & Machery, 1981). Often considered an "intellectually demeaning and/or belittling occurrence within privileged sites (Edleman, 1973), a rejection of the theoretical as being important to the political and economical in the struggle for democracy. The textual explorations, narratives and/or enunciations in question are often revealed and challenged by examining doctrines in law (Edelman, 1973) and discourse (Foucault, 1981; Zurn, 2007), where the verisimilitude of ideological underpinnings and connections are exposed within various economical, legal, philosophical, educational, political and sociological works (Adamson, 1978, 2002; Balibar & Machery, 1981; Foucault, 1981; Keller, 1994). Again, within this context it is equally as important to understand that social scientists consider the more general concept of ideology and its application whether to law, politics or economics to be empirically objectionable on two accounts:

1. empirical studies show that ideologies "grant a universal validity to proposals

whose validity is only limited; or more simply they mix doubtful or fragile proposals with more solid, quasi-scientific proposals" (Thompson, 2003; p. 7180); and

2. social psychological research that focuses on integration recognizes "ideology as unreflective and semiarticulate as well as reasoned and coherent, including a propensity to methodological individualism and a predilection for cognitive expression" (Freeden, 2003, p. 7175).

Positivist and naturalist.

These and other social scientific objections are generally interpreted as more or less a critique of a particular style of philosophized text, narration, enunciation, discourse and/or analysis that is of less social value in comparison to dominant paradigms that level such criticisms (Althusser, 1971; Apple, 1992; Carlsnaes, 1981; Eagleton, 1994; Hirst, 1979; Van Dijk, 1998; Zizek, 1989). This is compounded by a tradition of ontological[17] admonitions that are prejudicially relegated to different philosophical foundations within their respective naturalist and positivist approaches (Dworkin, 1978; Fuller, 1972; Hamilton, 1987; Rawls, 1971; Shklar, 1966; Wuthnow; 1989). Recalling that positivist traditions place a considerable amount of importance in valuing and searching for truth as a property that will validate social facts (i.e., relativism), the central bequest of its philosophy (Freeden, 2003; Thompson, 2003), often for the sole intention of producing or

[17] Ontological commitment has been identified as a major component of theory development, such commitment requires making and supporting predictive claims, as well as producing counterfactuals, noting that predictive accuracy involves "explanatory depth and force" (cf., rival theories; Gopnik, 1997, p. 37; Gopnik & Wellman, 1994; Kukla, 2001).

using an existing scientific vocabulary to generate true statements about the subject matter in question (Carslnaes, 1981). Whereas the naturalist tradition places a greater amount of importance on the natural tendencies of humans to appropriate nature, hence, the focus on humans as naturalized subjects of law (Carlsnaes, 1981; Edelman, 1973; Horne, 2010). A philosophized predisposition of morality rooted in human nature, which leads naturalists to believe that the causal effectiveness of ideology can only occur within a natural context (i.e., inherent; Anghie, 2004), often arguing that it is precisely the value or belief in truth that is not natural, but rather illusory (e.g. false beliefs; Thompson, 2003). Additionally, formalists' arguments are often included when making distinctions between positivist and naturalist arguments (Verdirame, 2007), noteworthy is the formalist principle that people should be treated by their rights, which does not include the morality of those rights (Sadurski, 1985).

These intellectualized differences and their valuations and devaluations are often addressed indirectly within ideological discourse, for instance, Edelman (1973) points out that the "very function of juridical ideology is the necessity of its fiction, which permits it a practice in abstracto, as Marx puts it so splendidly" (pp. 27-28). Alternatively, Apple (1992) and Barnes (1974, as cited in Thompson, 2003) describe institutional level social science and ideology as involving extra-scientific interests (cf., extra-legal) such as economic and political influences. Prompting the sociological proclaimation that extra-scientific interests is an affirmation for the

ideological character of all sciences and to consequently develop a relativistic

> conception for which the superiority of the scientific approach of reality is compared to other representations of the world is nothing but an occidental truth (Thompson, 2003, p. 7181).

Elaborating further, Cain (2003), Hirst (1979), and Hunt (1985) trace a path of legal ideology and ideological justice that includes the work of Russian legal theorist, E. B. Pashukanis (1924/1980), who proposed that a feature of capitalism was its reliance on a single form of law. Whose end analysis "views capitalism as a simple totality of exchange relations and leads to the identification of a single form of law, the bourgeois legal form" (p. 14). Pashukanis's proposition necessitated a need to identify and analyze more than a single form of law within a sociological framework, believing that this framework allows for identifying the complexities and diversities that contribute to the formation of legal pluralism (Besson, 2003; Hunt, 1985). In addition, Pashukanis also saw legal ideology as presenting reality in a distorted way, a reality that emphasizes legal subjects as the owners of legal rights and as the basic unit of law, which coincides with human rights and naturalists perspectives (Cain, 2003; Hirst, 1979; Hunt, 1985). Furthermore, these and other naturalist conceptualizations of legal ideology are foundational in capitalist law, because in a capitalist system

> goods produced for exchange (commodities), unlike use values, must be exchanged by abstractly equal subjects in order for the surplus value they contain to be realized . . . which in a capitalist economy is retained by the owner (Edelman, 1979, as cited in Cain, 2003, pp. 9292-9293). Moreover, these mechanisms

of abstract exchange are considered an undisclosed aspect of ideology and the domination that facilitates disproportionate structuring (e.g., stratification; Adorno, 1994; Lukacs, 1923; as cited in Grumley, 1989; Marx, as cited in Cahn & O'Brien, 1996). Again, this is solidified by the aforementioned naturalist acknowledgement that people are the owners of legal rights (i.e., moral rights; Besson, 2014) and the basic unit of law, and as such are further divided by the legal ideology of social class. For instance, those who are not socially oppressed or marginalized are more likely to take full advantage of the benefits of their political and economical positions, utilizing professional law for both offensive and defensive purposes (Cain, 1985). Whereas those who are oppressed and marginalized may get the opportunity to use professional law for defensive but not for offensive purposes (Cain, 1985), these and other socially stratified advantages and disadvantages point out that the fundamental "subject of law, the person, is economically determined" (Cain, 2003, pp. 9292-9293).

The prospects of understanding ideological justice, legal ideology, or juridical ideology as being derived from or applied by conservative, liberal, positivist, naturalist and formalist arguments for the sake of imposing and maintaining a dominant ideological imperative becomes critical when disseminating the interpretations of legal judgments and/or laws (cf., juridicality). Again, the proof for this importance is in the instrumental value of social justice judgments and decisions in general, a socially constrained activity that provides an understanding of the power and authority invested in the ideologies deemed necessary to fulfill and maintain corresponding ideals (Jenkins, 1963). As such, it

is a significant aspect of past and present social justice judgment and decision-making. In different words, accordingly, the value-laden social judgments and decisions of conservative, liberal, naturalist and positivist practitioners and their traditions require ideological justice and legal ideology in order to perpetuate political and economical hegemonic domination. Routinely, this includes the formation and implementation of institutional laws resulting from constitutional laws. These institutional laws are than developed and employed as polices and procedures that support the usefulness and permanence of dominant ideals and ideologies, shaping the incentives and resources of participants (Pierson, 2000), this in return supports the legal system of laws (Kelsen, 1945).

The social spheres where social judgments and decisions take place are commonly privileged through asymmetrical power and authority (e.g., legislator, bureaucrat, etc; Hathaway, 2001; Weber, 1958, 1994) within their respective institutions, systems and organizations where they are held as being responsible and accountable for enforcing policies and procedures. An assurance that subordinates will adopt dominant ideologies, making subordinates the ordained (cf., indoctrinated) exponents of their respective institutional systems, the primary location of ideological transference (Adorno, 1994; Althusser, 1971). This includes conforming to the constraints or reifications (Eagleton, 1994; Hunt, 1985; Lukacs, 1923, as cited in Grumley, 1989) through the forms of law and their effective application through well- and ill-defined bureaucratic arrangements (e.g., technocratic, ambiguity & uncertainty), exemplified economically and politically

through formal and informal contracts (Edelman, 1973; Gabel & Feinman, 1982; Hirst, 1979; Pierson, 2000).

In addition, at all institutional levels, ideological justice and legal ideology serve the political majority (Sypnowich, 2001). A powerful self-referencing and reinforcing position of rity comprised of naturalist, positivist, liberalist and conservativist arguments and interpretations (Gale, 1994). Importantly, the prominence and permanence of a any political majority hinges on the selection of an ideological justice and/or legal ideology that serves as a socio-political surrogate, a supplemental comparator capable of assuming a counterforce standpoint position consisting of [con]textualization and narration that can enunciate the discourse that permeates institutions, systems and organizations (Sypnowich, 2001). To wit, the importance of supplemental comparators is most often revealed when another supplemental comparator thwarts an existing ideology, one that is perceived of as overturning prudential politics with ethics. This counterforce strategy attempts to portray ideology as politically inflexible, closed, fluid and non-empirical (Freeden, 2003).

These and other authoritatively implemented interpretations are selectively embedded in the social order of institutionalized effectiveness, producing ‘ideology in practice’ (Freeden, 2003), meaning that when necessary a political majority will place an excessive amount of value on behaving in accordance with bureaucratically distributed ideological justice or legal ideology as either duty or organizational allegiance within their institution. A behavioral activity that succeeds through coercion, constraint, and

obligation, primarily because the behaviors associated with duty and allegiance reflect law enforcements normative order. This norm order requires collective's to conform to traditional hierarchical arrangements of institutionalized two party belief systems, indoctrinating collectives to a system that reflects the hierarchy of law (Kennedy, 1982). As recognized by Dellavalle (2011), the hierarchy of law as a system dates to antiquity, structured on four levels, each derived form the level above, in other words, the content has to be accepted as law, cannot contradict the substance of the higher:

1. lex divina/lex aeterna; the superior level, the ontological context;

2. lex naturalis; is that dimension of the lex aeterna, which is accessible to any rational being;

3. jus gentium (universal law); is that part of lex naturalis which, laid down by humans in customs or treaties, gives order to their general interaction beyond the laws of the single polities; and

4. lex civilis (civil law), is law which, according to the general principles of the jus gentium, organizes social and political life within the specific contexts of single polities (Dellavalle, 2011, p. 5).

A system dominated by an overwhelming concentration of politics, requiring institutional constraints to be ubiquitous . . . placing "extensive, legally binding constraints on behavior" (Pierson, 2000, p. 259). Significantly, this effectiveness can be attributed to collective's who adopt bureaucratic functions through a coercive and constrained norm order (i.e., law-like), empowering bureaucrats who effectively apply institutional policies

and procedures (e.g., administrative rules and regulations, by-laws, etc.) that mirror just and unjust laws, as well as ideological justice and legal and juridical ideology (Zurn, 2007), such as property and business development in Third World countries and minority neighborhoods and/or settlements in developed countries.

A characteristic of legal philosophy, epistemology and sociology of law is the belief that morality and ethicality are the mechanisms that interconnect power and authority throughout hierarchical arrangements involving social judgment and decision domains, with politics being the most accessible example, which includes political ideology, law legislation and amendments, as pursued by legislators and lobbyists. Additionally, political paternalist hierarchies honor and perform positivist and naturalist traditions within the domain of morality, where they employ the philosophical 'is' 'ought' distinction. In other words, what law 'is' and what law 'ought' to be are kept distinct. Compared to the natural law tradition (cf., normative position)[18] that reads "what the law is must be determined, in some sense, by what the law ought to be, arguing that what the law is, depends partly on moral criteria" (Sypnowich, 2001, p. 4)." However, crucially, law does not depend on morality for its legitimacy, but laws require obedience irrespective of moral content (Sypnowich, 1990). Again, these contention and similar

[18] Natural law: "consisted of a set of transcendental principles identifiable through the use of reason" (Anghie, 2004, p. 41). Aquinas' theory of natural law and right: law is "an ordinance of reason for the common good made by him who has care of the community and promulgated; natural and human laws regulated by politics (p. 45); natural law, from which the human law flows, serves as a check on the ruler and a guarantee to the ruled that justice will be observed" (Donnelly, 1985, p. 46) . . . . widely believed that the concept of human rights emerged from the notion of natural law" (Maritain, 1947; Messner, 1965; Cranston, 1973; Palumbo, 1982; Donnelly, 1985, p. 45).

ones, are based on the legal, lawful, and 'just act and fact' argument, where all legal doctrines involve ideological pitfalls, "confounding law with morality and the legal language that entraps us into deluding ourselves or believing otherwise . . . . words of moral significance" (Holmes, 1920, p. 179).

Recognized by both naturalists and positivists these issues always entail fulfilling a legal history with a priority of basic norm order that includes the duplication of formal law or concrete law that comprises the rules which provide the basis for the formation of the legal system (Hart, 1983; Kelsen, 1961). Although, regardless of history or tradition, jurists, legal theorists, epistemologists and philosophers recommend that laws should not be automatically and obediently followed simply because one is expected to conform to the ideas and ideals of a system of higher power and authority, especially when they fall short of socially just ideals of lawful morality and legality (Furrow, 1995; Jenkins, 1963; Raz, 1980).

Noting, the legal, moral and ethical reasoning contained in these latter arguments often includes the ideals and intentionality's associated with complexity and diversity, the properties of legal pluralism (Barry, 1965; Kelsen, 1961; Mitchell, 2007). Although, in practice the suppositions and ideals surrounding legal pluralism are superseded by a belief in truth (cf., positive and natural law), such that truth exists or can be found in laws and/or the customs, norms and facts of society (Hausendorf & Bora, 2006), which leads to the legal belief that the truth of laws can be induced.

As shown, a positive law positions, or the 'is' factual positions are positions derived in

part from societal practices (Dworkin, 1972, as cited in Sadurski, 1985), often labeled as illusory justification within ideological examinations (Pascal, 1966, as cited in Zizek, 1989). Where the predominant ideologies and associated behaviors are identified with the practice of preempting, attempting to superimpose a positivist legal ideology that says either social facts alone and/or the pure pursuit of factual truth contained in those social facts reveals extant values attributable to legal pluralism and/or complexity and diversity. Hence, if a law is to exist, then the positive legal position has confirmed that the factual 'is' also exists, which indicates that legal pluralism and its properties, complexity and diversity also exist, particularly if they concern the ideals of individual liberty (Tsosie, 1994, as cited in Mitchell, 2007).

As suggested, many of the legally and morally sought differences between 'is' and 'ought' represent the common ground upon which all positivist, naturalist, [no]liberal and [neo]conservative legal arguments, judgments and decisions take place. Either where precedence and/or analogical reasoning have been induced or where evidence has been corroborated in order to demonstrate act and fact. Or where legal mediators, lawyers, judges and jurors disconnect and connect identities, prima facie duties[19], values, representations, as well as 'is' and 'ought'. Attempting to justify legal distinctions in order to arrive at a reasonably satisfactory 'utilitarian' judgments and judicial decisions in the 'eyes of ideological law', but because the positivist position places law in the 'is'

[19] "Prima facie rules: the rules of prima facie duties pick out certain aspects of circumstances or action and assign them moral weight, as they conform to one conflict with the relevant duties" (Herman, 1985, p. 419).

factual position (e.g., collusional truth), laws legitimization is in part subjected to moral criteria outside of the institution of law, where again, moral and//or ethical disobedience is often recommended and pursued (Sypnowich, 1990). This includes overt intentions to challenge laws legitimacy and its position as an instrument of Nation-Statehood, and its seemingly a socially irrefutable ideal authoritative position of power (Habermas, 1973, as cited in Zurn, 2007). Historically, some of the outcomes of these challenges are recognizable by social justice and/or injustice interactions that have assisted in creating or raising social consciousness (e.g., feminist ethics, Jaggar, 2000). As when moral and/or ethical dissent or disobedience are pursued through social movements (Parsons, 1959, as cited in Thompson, 2003) that protest injustices (Gramsci, 1971; Spring, 1994; Tyler & Smith, 1999). Thereby, influencing unjust legal ideologies and the moral reasoning applied to either the formation of laws, or the interpretation and enforcement of those laws, where it is the "amount and type of perceived injustice that is linked to levels of political protest, in other words, to the willingness to engage in or support unconventional political activity" (Jenning, 1991; as cited in Berti, 2005, p. 89) that initiates or amends those laws.

Historical and sociocultural shifts.

Historical and sociocultural ideological shifts (cf., periodizations) play an important role in identifying and articulating ideological justice and legal ideology. Occurrences of these shifts at the collective or group level has been expressed in Gramsci's (1971) concept of the organic intellectual. Gramsci proposed that ideologies emerge through the

process of groups generating solutions intended to resolve repetitive social dilemmas. For Gramsci, solutions to repetitive social dilemmas involve the replication and/or reification of class-consciousness, this is due to the fact that socially and/or collectively the dilemma-solvers themselves are related intellectually, that is, they are organic intellectuals, espousing solutions to repetitive social dilemmas in class consciousness terms (e.g., double entry bookkeeping; Gramsci, 1971). Albeit, as Baron (2000) points out, utilitarianism is the normative standard in social dilemmas, a primary motivational factor for resolving the social dilemma in question, which follows the historical path of legal ideology (Mensch, 1982). However, at the same time it is just as important to recognize that groups choose and prioritize which repetitive social dilemmas to solve (cf., filtering; Wuthnow, 1989, as cited in Pierson, 2000). One group may choose to solve an economic dilemma, resulting in increasing profits for their group, while another group may choose to solve a similar economic dilemma that results in sanctions against in-group profiteering, preferring democratic redistribution. Despite these choices, the significance of Gramsci's insight means that shifts in law and ideology can be attributed to the political power and authority of ruling classes and their hegemonic judgment and decision-making processes. Although, as Parson's (1959) indicates, there are various types of ideologies at work, such as revolutionary, counter- or reform ideologies that also produce shifts in law and ideology (Cain, 2003; Thompson, 2003). These types involve other organic intellectuals or "fighting groups" (Kelsen, 1961, p. 438), such as people with disabilities, gays and lesbians, women opposing male violence (Cain, 2003, p.

9293), indigenous peoples, environmental groups, and others. As a caveat, Kelsen (1961) points out that all fighting groups use natural law ideology, never representing "the interests which they seek to realize as mere group interests, but as the "true," the "common," the "general," interest" (Kelsen, 1961, p. 439).

Next, it is necessary to acknowledge that the number of sociocultural and historical shifts in law and ideology is beyond the scope of this expose. In general, major shifts have been documented chronologically (i.e., time-lines, periods, longitudinal, etc.) under specific social justice or injustice categories, such as school desegregation, affirmative action (Pratkanis, Turner, & Malos, 2002), civil rights education, (Spring, 1994) and social justice movements (Tyler & Smith, 1999). Because of the shear number of documented shifts within this context, only those documented in the literature as relevant to ideological justice and legal or juridical ideology will be referenced in the following sections. For example,

> in the 1st half of the 19 C. natural law gave way to historical jurisprudence (Savigny, Germany; Maine & Stephen, England), quantitive rather than qualitative, a shift in point of departure rather than conclusion - the historical school also held that law was discovered, not made (p. 367). Historical jurisprudence was evolution applied to law (367); condemning institutions to the slow inexorable process of natural determinism: it merely substituted history for nature (Commager, 1950, p. 368).

In general, shifts in juridical and legal ideology, or ideological justice signify or

represent periods of increased social conformity and institutional constraint and coercion. And as such are identifiable by social changes that occur institutionally, organizationally, bureaucratically and systematically, always involving one or more of the five major spheres of social influence: defense, politics, economics, education, and healthcare. Furthermore, organic intellectual shifts in law and ideology produce a traceable historical or sociocultural course or pattern, often a pattern that forms a path of law, which is quite often constructed from the "deeds of bad behaviors and the examination of the consequences . . . ." (Holmes, 1920, p. 179). These patterns of social conformity and nonconformity are often structured around the rewards and punishments associated with gains and losses that are natural or relative to one or more of the social spheres in the shift, creating a trail of functional and dysfunctional path dependence (Geertz, 1964, as cited in Freeden, 2003; Hathaway, 2001; Pierson, 2000).

The mapping of ideological shifts that has brought about justice as conformity to law and legal doctrines can be traced from Greek and Roman law origins, shaped by Judeo-Christian theology and the mercantilism of U.S. law and justice (Gale, 1994), a path that changed "from a right which can have the quality of the thing, to a right which is the subject itself" (Edelman, 1973, p. 27). As indicated, legal changes include sociopolitical shifts from processes of law to consumers of law (cf., evolution of efficiency; Cahn, 1966; Hathaway, 2001), including shifts in criminal law, a shift that moved from harm to guilt, connecting "resolution by individual redemption transactions, notably the expansion of human rights laws involving abstract individuation may concede the penal

terrain" (Cain, 2003, p. 9292). This latter shift from harm to guilt, also coincides with international human rights laws that parallel an emerging Third World (Donnelly, 1985), particularly on the African continent (Carlsnaes, 1981; Gutter, 2006; Howard, 1995), reflecting an ideological struggle that emphasizes achieving the principles of self-determination and sovereignty through human rights laws (Roth, 2007; Santos, 1995).

The interpretation and mapping (cf., path dependence) of legal ideologies and ideological justice include a hegemonic shift involving owners who retain surplus value produced by labor in capitalist economies, a further separation between ownership and control of capital and ideology (Berle & Means, 1968). The importance of this ideological hegemonic shift is in the "dominance of finance capital over productive capital, with the implications of this shift having been under-theorized as more pension and insurance holders and private individuals become shareholders" (Carter, 1985, as cited in Cain, 2003, p. 9293).

Other issues of ideological importance include conforming to procedural rules that are indicative of shifts in power and authority that have successfully implemented rule-based authoritative determination (Barry, 1965, 2001). Demonstrating that the absolute and universal properties of corresponding precepts (Jenkins, 1963) have been successfully [con]textualized institutionally (e.g., treaties, statutes, administrative regulations, contracts, pacts, theories, doctrines, curricula, etc.; Cahn, 1966; Keller, 1992, 1994). This includes replicating and reproducing the belief that ideological justice as evidence for conformity to law, as well as the belief that legal ideology provides a means for

increasing the benefits provided by power and authority once critical mass, political or otherwise (e.g., interest theory, Geertz, 1973) has been established, the afore example being rule-based authoritative determination (Barry, 1965; Pierson, 2000). Which is perhaps best summed up as, "obey the authoritative command and you do justice. . . that justice is conformity to law, in this view what ever meets the precepts of law is just and what ever violates them is unjust" (Cahn, 1966, p. 389). Cumulatively, or by critical mass, this fulfills a general maxim of legal justice that is a category of justice of conformity to rules, where in this instance, an increase in benefits associated with power and authority fulfills the maxim that reads: "to each according to his legal entitlements" (Sadurski, 1985, p. 42). Pointing out that within any legal system legal entitlements are a primary location for the struggle of power and authority (cf., legal positivism; Kelsen, 1961), a struggle that represents pervasive prescribed ideologies that are characterized by an unerring depth of conformity, legitimacy and meritocractic paternalism, promoting ideal values while constraining others, a primary role for law.

As indicated previously, social processes that result from increases in benefits and burdens become a unifying feature of the ideals and ideologies of liberal or conservative collectives and their [bi]partisanship shits involving authority and power (Jenkins, 1963), which subsequently expands their ideological belief systems. This in return increases collective participation (i.e., solidarity explanation, Geertz, 1973) that induces collective maturation and the benefits associated with cohesiveness (Aron, 1964, as cited in Thompson, 2003). A circuitous social process indicating that the increases in benefits and

burdens, along with [bi]partisanships and collective cohesiveness has successfully been integrated into the "content of precepts" (Jenkins, 1963, p. 228) and their 'textual acceptance' (e.g., doctrines, policies & procedures, rules & regulations, etc.), which in return cultivates the continuation of dominant ideological replication and reproduction (Althusser, 1971).

Structurally, within a system of beliefs such as the legal system, the ideological dominance of the positive legal position also serves to validate relative and formalized order, which includes the practice of formal laws precedence and legal reasoning by analogy, as well as natural laws normative position (Becker, 1973; Hart, 1983; Holyoak & Thagard, 1995; Kelsen, 1945, 1961; Raz, 1980). This too is exemplified through positivist legal ideology, especially in reference to their claim that law is developed from social facts. For legal positivist, validity in a legal system is the existence of a social rule that is practiced (i.e., social fact), in other words, a valid law is systemically applicable according to jurisdiction (cf., concrete or foundational law; Harris, 1979; Hart, 1983; Hunt, 1985; Kelsen, 1961). Furthermore, Harris's (1979) analysis of positive validity shows that there is a difference between what is meant by legal validity and other types of social scientific validity, including and importantly, analogical validity (Becker, 1973). Utilizing legal philosophies pragmatic 'is' 'ought' reasoning again, Harris (1979) suggests that legal theory perpetuates a belief that once laws are amended they carry with them the 'is' and 'ought' antimony as corroboration for the validity of laws normalizing effect, which can be demonstrated by five rules of 'positive' validity, where a positive

validating rule may be described as:

1. conformity to a rule, ‘is’ not voiis a consistent part of a legal normative field of meaning; ‘is’ a member of a legal system, ‘is’ legally binding, ‘is’ the law;

2. corresponds with social reality; ‘is’ affective, ‘is’ in force;

3. has an inherent claim to fullfillment; ‘is’ good, ‘ought’ to be observed, ‘is’ binding (on moral and political grounds); and

4. ‘is’ part of a transcendent normative reality (Harris, p. 112).

Additionally, once laws are amended through the structure of this positivist system of validation (e.g., legislated and practiced) they carry with them the honorific norms of equity and equality, such as the equality of opportunity and the equity of treating like cases alike (Barry, 1965)[20]. Ideologically this is taken to mean that the shear antiquity of law and its consistent administration (Pascal, 1966, as cited in Zizek, 1989) carries with it a determinant based reasoning of a legal system that produces law. Contained in these assumptions is a social faith that is sufficient enough to instill the belief that laws are equal and equitable, and for the majority this belief includes a dependence on the corrective processes of the legal system, whereby the legal system will rectify inequalities and inequities as they arise, versus the aforementioned activist recommendation.

Reiterating then, from a positivist perspective, the inherent properties of legal systems

[20] “Norms as rules, as Linkey & Sheldon (1998) have indicated, if the situational context makes a recipients needs more salient, then the need norm may become the most important rule used to judge fairness of the distribution, even in a work setting” (p. 152).

and the laws they produce are purportedly mirror images of social facts that are determined or formulated by examining their facticity without assessing their meritoriousness (Harris, 1979). Whereas, the assessment of merit is based on liberal ideology, where according to modern liberal doctrine, the basis of just distribution is an amalgam of the guaranteed satisfaction of minimum needs through the State-welfare system, plus the allocation of rewards according to merit in conditions of approximate equality of opportunity and competition. Liberal ideology rests on the assumption that there are natural inequalities between people, inequalities of endowment, of talent and of energy, inequalities of desert and contribution, and that society is flexible, and structures itself to reflect and take into account these differences (Goodwin, 1984). In other words, major goods must be distributed according to merit, by due process – impartially, and treating like cases alike – merit must rule (Goodwin, 1984).

Taking these claims in stride, it is important to realize that the logic and reasoning utilized to obtain the facts or truths (cf., veridicality) of these arguments are subjected to the ideologies of [bi]partisan interpretations and representations of legal and/or lawful examples of not only positive law (i.e., factual position), but natural law (i.e., normative position) and formal law (i.e., concrete position). In ideological and hegemonic terms, meaning that historically and socioculturally, law and the legal system is rife with power and authority based on the interests being served at that time (e.g., economic, political, etc.), acknowledging that these are normative [belief] systems that promote specific values, while repressing others (cf., constraint, Converse, 1964).

Unfortunately, this situation means that legal pluralism is no guarantee for socially just judgments and decisions. For example, Cohen (1935, 1952), a legal philosopher and major proponent of legal pluralism and human rights issues (e.g., property law and aboriginal title) choose to concede his position on the subject due to an overwhelming American intolerance of legal pluralism during the 1930's. This intolerance produced a major shift that moved "American tolerance for different cultural values, such as community responsibility and tribalism," to one that gave "way to individual liberty (Tsosie, 1994; Mitchell, 2007, p. 188). On the other hand, the practice of democracy provided opportunities for introducing other mechanisms for initiating legal pluralism, such as inducing conflicts concerning State power and the necessary dialog examining the ideological judgments of legal authorities regarding lawful and legal judicial inequities (e.g., cultural relativism) and there subsequent rectification and reversal (Cohen, 1982, 2005).

Arguably, the majority's faithfulness to a blind obedience to law is rooted philosophically, in the epistemic and theological expectation that all humans are dutifully bound to uphold the rule of law and/or have an obligation to uphold the power and authority that enforces said laws, regardless of its coercive and constraining nature. Which within the realm of human expectation proper is translated into a principle of social justice (Honore, 1968), construed as a form of legitimacy (cf., validity; Tyler, 2006)? However, and similarly, the legitimization of this expectation is derived from the concept of prima facie value, a time honored legal tradition that places blind faith in

judicially just values (Barry, 1965). A faith that involves the ideals and ideologies of the State and the quality of its power and authority, meaning that any 'breach of faith' should be a breach in the legitimacy that justifies laws prima facie duty, as well as value and reason exemplified through the legal and lawful practices of the State. Suggesting that a prima facie[21] breach results from an absence of legal pluralism and/or social justice, an opportunistic opening for the abuse and misuse of State power and authority, the latter point clarified by the positivist jurist H. L. A. Hart, in his statement:

> what surely is most needed to make men and women clear-sighted in confronting the official abuse of power, is that they should preserve the sense that the codification of something as legally valid is not conclusive of the question of obedience, and that, however great the aura of majesty or authority which the official system may have, its demands must in the end be submitted to a moral scrutiny (Hart, 1961, as cited in Sadurski, 1985, p. 41).

Law and the legal system.

Law is inseparable from the legal system, where law is intended to be the sole artifact of the facts generated through State institutional systems and organizations, this includes parallel institutional systems that continuously generate lawful and unlawful actions, such as those found in the structures of defense agencies, political, economical, educational,

[21] Prima facie as used here follows from Audi's (2006) epistemic description, "where prima facie with obligation; should like duty does not designate the presence of a final - but rather a morally significant ground for action. Prima facie in this sense is not the strict legal sense of 'merely apparent'. but a moral reason for action which has sufficient normative force to render the action obligatory. When it does so, the agent has what maybe called a final obligation. The obligation is still prima facie; it is simply not merely so" (p. 177).

and healthcare institutions and various corporate systems and organizations. These institutionalized systems are often the site of ‘structural injustices’ (Gordon, 1996; as cited in Sarat, 2001, p. 7522), such as those instituted through the legal ideologies of neoliberalist policies, where contractual ambiguities and resourceful exchanges (e.g., debt bundling, privatization of healthcare, etc.) are often successfully legitimized and reproduced as bureaucratic arrangements (Esping-Anderson, 2000; Frug, 1989). These and other ideologically driven practices reinforce malevolent and disreputable behaviors that serve to legitimize and fulfill corresponding ideals (e.g., subordination; Agarwal, 2007). Such as the success of inequities and inequalities practiced through pay scale differences (e.g., gender biasing; Matsuda, 1993), which in broader capitalist terms amounts to paying lower wages to general workers to realize higher profits, while at the same time paying higher wages to upper echelon workers in order to increase demand (Elster, 1979). These and similar inequitable and unequal ideological practices also promote situations and conditions that contribute to the structural disparities of institutional systems and the corresponding activities of their law-like actions, adversely affecting a variety of social interactions and identities (Elliot & Freeman, 2005; Elster, 1979; Gintis & Khurana, 2008; Jaggar, 2000), in particular social justice issues.

The traditional practices that comprise and connect parallel institutional systems at macro, meso, and micro levels (i.e., the collegiums, the bureaucracies, and the political organizations) demonstrate that legal ideology emerges from a multiplicity of illicit and licit practices generated through extra-legal affairs (Holmes, 1920; Sypnowich, 2001).

Including, but not limited to the ideals and ideologies generated from educational and familial institutions, and the sociological, structural, and symbolic dilemmas that they generate (e.g., Dawes et al., 1997, 1980; DiQuinzio, 2005; Ostrom, 1998; Todd, 2007). Thereby, illustrating the level of engagement in extra-legal affairs and practices, including the rewards of capitalism received from applying dominant ideological hegemony (Ehrenreich & Ehrenreich, 1979; Poulantzas, 1975, as cited in Carter, 1985). Often generalizing and applying these affairs and practices to other judicial, ethical and moral spheres, such as the international policies of the welfare-state intended to structure globalization and human rights issues (Mertus, 2003; Woodiwiss, 2005). As such, this is an extended reward and punishment process that becomes a matter of conforming to dominant ideological structures, and the normalized order they create, as determined cast by the laws that emerge from societal practices (i.e., positivist ideology; Althusser, 1971; Hutchings, 2007; Mittleman, 2000; Sypnowich, 2001; Weber, 1968).

Once these structures become ideologically connected through parallel institutional systems, the collegiums, bureaucracies, political organizations, and their liberal, conservative and utilitarian leadership seek to stabilize the policies and practices that reflect their hierarchical power and authority (Habermas, 1975, 2001; Young, 1981). Once firmly placed, either liberal or conservative rhetoric can be administered through institutional facts that are internal to the legal system (Blackmore, 2005; DiQuinzio, 2005; Ho & Powell, 1996); where over time social pluralism and complexity, as forces external to the system eventually determine the content and form of a legal system (Hart,

1983; Raz, 1980).

Furthermore, ideological justice and legal ideology affect ethical and lawful behaviors when they are dispersed throughout institutional levels. This dispersement carries with it the precedence, the prima facie value and/or duty, the analogical reasoning (e.g., coherence theory, doxastic & propositional, Becker, 1973; Holyoak & Thagard, 1995) and the codification of rules. Together they contribute to a legal system of norm order, and as such, contribute extensively to a systematic compartmentalization and/or specialization of knowledge that increases and strengthens dominant paradigms at each level rather than replacing them (Kuhn, 1996).

At the macro level (i.e., State authority), ethical, lawful and legal judgments and decisions are sanctioned and legitimized and passed on as moral, ethical and legal norms to lower levels in order to be reproduced and reinforced as descriptive texts, such as doctrines, decrees, laws, rules and regulations, and class positions (Ehrenreich & Ehrenreich, 1979, as cited in Carter, 1985). At the meso level, research informs and replicates ideological justice and/or legal ideology, impacting the micro level, where daily extra-legal affairs are conducted and enforced licitly or illicitly (e.g., shared discourse, Wuthnow, 1989, as cited in Pierson, 2000), becoming the inquiry for the meso level and the laws of the macro level.

Structurally, within an institutional ethical-political context the veridical and the self-reinforcing feedback mechanisms of structure are in part founded upon the disciplinary powers and discourse of “quasi-autonomous” professional organizations and societies

(e.g., American Educational Research Association (AERA), etc; Lowenstein, 1962). As well as, founded upon the legitimization of policies that are implemented through political discourse that attempts to implement new policies and practices entailing ideologies concerning cultural rules (e.g., ethnic stereotypes, gender role prescriptions, etc.) and values (Pratto & Cathey, 2000; Poulantzas, 1975). As a result increases lead to the formation of an ethical-political framework that conveys ideological justice and legal ideology based on the bureaucratization of disciplinary powers (e.g., epistemic authority), a cultural rule framework reinforced and supported by private and public funding, research publications, and their respective institutions (Pratto & Cathey, 2000).

What's more, conservative and liberal proponents and adherents of structuralism are reliant upon positivist and naturalist legal theories when constructing social forces capable of implementing co-optation (Selznick, 1959). Such as Nation-states and corporations who co-opt legal pluralism and human rights in an attempt to construct regional (cf., geopolitical constructivism) dominance politically and economically, forging an ‘advocatory explanation’ (Geertz, 1964, 1973) the ideologies of structuralism (i.e., enactment of neorealism). As Greenhouse (2003) insightfully suggests, constructivism is a perfect strategy for liberals and conservatives in their quest for ideological hegemony and dominance, “because for classic liberals, constructivism lends itself to pluralism, and for conservatives, constructivism exposes key social categories and mainstream claims (e.g., race) as empirically falsifiable . . . . but both groups regard identity as originating in antagonisms and displacements within the nation” (Greenhouse,

2003; p. 193).

Under these terms cooptation as a constructivist strategy includes the values and ideals of legal pluralism embedded in the aspirations and expectations of American society (e.g., human rights), often originating from and operating within cultural and moral plurality (Alexander, 2004; Jones, 1999). This also includes the concepts of sociocultural identity and/or self-determination and the laws that assist in determining legal rights, often a lifetime development process based on a history that has been derisive and divisive, antagonistic and indeterminate (Walzer, 1995; Zinn, 1995), as in the removal or displacement of one group of people in order to obtain property rights (Garrison, 2002; Mitchell, 2007; Zinn, 1995). Socioculturally, this often involves political and economic issues (Walzer, 1995) concerning the interests of Nation-states who maintain control of natural resources, versus aboriginal ideals of self-determination and sovereign control over resources (Cohen, 1952; Garrison, 2002; Luna, 2001; Mitchell, 2007). For example, ideological justice and/or the legal ideology for displacing Native Americans (Grinde, 2002; Howard, 2003) is not necessarily law as the product of the "adversarial process of competing rational arguments, but rather the consequence of social, cultural, economic, and political forces" (Garrison, 2002, p. 12).

This conclusion supports the belief that the legal and judicial removal and displacement of Native Americans (i.e., cathartic explanation, Geertz, 1964, 1973) is based on developing a public trust that is formulated upon legal and justice ideologies involving human, social and cultural capital (Lazreg, 1979; Putnam, 1993, 2000). Again,

reflected in the laws that support corresponding culturally bound values (i.e., congruent) while constraining others (e.g., incongruent). Values that are purportedly the representational norms of American policies and practices regarding human rights laws (Ignatieff, 2001), fostering social, economic, cultural and political inequality and injustice (Kallen 2004), nationally and internationally (Donnelly, 1999; Woodiwiss, 2005).

In addition, because these values are considered to be culturally bound they are promoted, constrained and repressed through corresponding laws developed from judgments and decisions that were formulated upon moral relativism or absolutism (Cook, 1999; Erikson, 2001; Howard, 2003). Historically, the legal reasoning and judicial decisions used in resolving such issues follows from legal theory, where the ideals of positivism for instance, may place a higher ideological value on pluralism and complexity (Cohen, 1935). However, regardless of the legal reasoning and decision making processes, no legal theory, law, adjudication, policy or decree can guarantee that the legal and lawful enactments based on pluralism and complexity will be respected and honored (Garrison, 2002). Garrison's conclusion as to why higher ideals of plurality and complexity fail are because

> law is all too often corrupted by irrational prejudice and rhetorical artifice . . . . where law and justice are distinct ideas, and that law is not often what the U.S. Supreme Court declares it to be, but what the public accepts or institutional power deems to enforce (Garrison, 2002, p. 12).

Garrison's resolve is not unusual in the sense that [inter]generational prejudicism and

racism (e.g., institutional racism) are pervasive in ideological justice and legal ideology to the degree that they are habituated as social, human, and cultural capital as homogenized preferences (e.g., hegemonic) with no regard for circumstance (Allport, 1950, 1954; Hollander & Howard, 2000; Pratto & Cathey, 2000). Literally, taken to mean that ideological legitimacy is derived from authoritatively constructed context (i.e., habitus), reflecting an absence of diversity and complexity, promoting some values while constraining others that is replicated collaboratively by reproducing a capitalist system of justice (Althusser, 1971; Lukacs, 1923, as cited in Grumley, 1989). Unless, as suggested previously, said context can be authoritatively deconstructed and redistributed bureaucratically and institutionally, a prime example being the social welfare system (Frug, 1989). To these ends, Anderson (1990, 1992) describes justice systems (e.g., parliamentary) as the "hub of the ideological apparatus of capitalism, to which such institutions as the media, churches, and political parties play a critical role" (as cited in Eagleton, 1994, p.xx). In other words, collaborative replications as social constructs (e.g., homogenization) become commensurate with the ideals of legal and lawful obligations of a capitalist system of justice (Klein & Kozlowski, 2000, as cited in Hofman, 2002). Although, as Bleise (2000) argues, "true structural equivalence will rarely occur even with shared constructs" (as cited in Hofman, 2002, p. 250).

Within ethical-political frameworks, justice and injustice are connected to law and politics, where the self becomes emblematic of the relationship that entails the "perspectives, principles, and procedures for evaluating institutional norms and rules"

(Heller, 1987; as cited in Sarat, 2001, p. 7524). Elaborating further, Heller (1987), utilizing information attained from the propositions of Habermasian communicative action (1990) suggests that

> justice is primarily the virtue of citizenship, of persons deliberating about problems and issues that confront them collectively in their institutions and actions, under conditions without domination or oppression, with reciprocity and mutual tolerance of difference (Young, 1990; as cited in Sarat, 2003, p. 7524).

Heller's encapsulation of ideal communicative action derides the fact that domination, oppression, repression and intolerance are thus preconditions, the precepts of ideological injustice. Although, Heller's usage of Habermas's ideal authentic communication does not fully capture Habermas's (1975) understanding of ideological discourse and legitimation, where power corrupts or distorts discourse in order to dominate communication. This amounts to imposing an ideology (Althusser, 1971; Mannheim, 1936) as a strategy to legitimize the power necessary to reinforce organizational relationships that dominate institutions. Implying that ideological [in]justice,

> . . . . is thus a condition of misdirected psychic energy, in which aggressive and acquisitive impulses expand, while rationality can barely assert itself. A society that reflects these dispositions is not only incapable of educating its members, but, in fact, actively misleads them

(Shklar, 1989, p. 1138).

Conclusion

> To clarify, ideology originally conceived is equated with a psychology of learning (deStute), ideology, a word of opprobrium encompassing all political dreams, whatever their nature. The significance of ideology does not involve this common usage, it is over the philosophical disagreements about the structure and meaning of human history. It is above all, concerned with the place of ideas in the shaping of humankind's social development and, more particularly, the role of political ideas. For whatever else ideology may be, historians now agree that it involves those ideas that seem to form an integral part of political-social-history, or at least ideas that are seen in a social context (Shklar, 1966, p. 1)

Similar to rights concerns regarding the concepts of justification and legitimization as being necessary for normalization (i.e., social order), here the authorization or authority of power is called into question as necessary for the process of creating symbolic meaning, either as ideological justice or legal ideology. Jost & Major (2001) indicate that the "primary function of ideological thought, in general, is to legitimate ideas and actions that might otherwise be objectionable . . . dominant ideologies serve to rationalize," suggesting that the authority of power is internal to the person, and at the same time internal to the state as the sovereign (p.6) — assuming the role of a hegemon?

It would appear that the role of ideological justice and legal ideology are two determining factors that impact social justice and injustice perceptions to the degree that

they are capable of supplanting or temporally suspending competing, corrective or preventative rules, principles, laws and associated behaviors, including norms associated with [collective] self-determination. Meaning that simultaneously ideological justice and legal ideology are also functioning as determinant factors in social justice judgment and decision-making. As such, the ideological properties of these determinants would have to be embedded in socio-political history, becoming a cyclical problem and or solution of [re]interpretation and reification, which includes [re]commemoration.

Undoubtedly, discerning inequalities and inequities of difference based on quality of life (QOL) surveys designed to measure how well others (i.e., read, undeveloped) are adapting to the implementers' dominant ideologies is an effortless confirmatory task, confirming methodological individualism as universalism. Again, deriding the relativistic point that it is certainly materialistically simplistic to maintain status quo by identifying such differences (e.g., gender earnings, role identities, representation, etc.), while it is not as easy to demonstrate exactly how power, or how to hold those accountable who use and/or abuse power by maintaining hegemonic control of ideological justice and legal ideology on such a large scale.

From this content it appears that part of the problem is a philosophical one, and lies in the concept of free will or freedom of choice and the imposition of its practical social application. The difficulty of this argument is highlighted by the fact that people are free to make conscious choices of whether to be a subordinate, dominant, or insubordinate in accordance with cultural and conventional norms (e.g., non-industrialized states; Weber,

1978; Foucault, 1979; Anghie, 2004), not whether they must be in accordance with a regimes dominant ideology. This argument is advanced and or concretized when it is formulated upon social power that is politically and economically based upon ideological principles, practices and values derived from the ideals of a constitutionalized capitalist democracy (Szakolczai, 1998; Weber, 1978), such as the ideological justice and legal ideology underlies the perpetuation of international human rights (cf., supra-positive authority, Carozza, 2008).

> The concept of the rule of law, the centerpiece of a liberal legal order . . . . indeed, the rule of law is often invoked as a paradigmatic example of legal ideology. This is because, however, the rule of law is interpreted as a device that serves the interests of the powerful; moreover, it is a device that dissembles itself Sypnowich, 1990, 2014, p. 6).

Followed by Dembour (2014), quoting Cole's (2001) "EP Thompson observation of 18th c. Whigs and Hunters, "law is an instrument of brute force by which the ruling class consolidates and reinforces its hegemony" (p.62); the rule of law 'a cultural achievement of universal significance' "(Thompson, 1975, as cited in Dembour 2014, p. 62).

Lastly, when encountering justice and legal ideology as the coercive power of authority that produces inequities and inequalities through coercive actions, it is recommended that at the very least ethical reasoning be applied; via Schwandt (1993) this reads as follows.

Ethical reasoning requires deliberation – sizing up a situation and weighing information – and making decisions on a case-by-case basis. Ethical deliberation is guided by the virtue of practical wisdom and knowledge gathered from experience. This ethical/experiential knowledge is always context bound or situated and guided by qualitative analogies rather than abstract principles. It emphasizes interpretation over logical analysis. An ethical deliberator must actively participate in the one being interpreted – the model of ethical reasoning is emerging as a way of characterizing the activity and purpose of the social inquirer (Schwandt, 1993, pp. 11-16).

Chapter 4: Discussion

Dissemination and explication.

Rights, justice and legal ideology.

Rights, justice and legal ideology as pursued by historians (Commager, 1950; Lauterpacht, 1968), system theorists (Luhman, 2004), jurists (Hart, 1958; Kleinlein, 2012; Marks, 2000), lawyers (Anghie, 2004; Lauterpacht, 1968), legal and political philosophers (Bentham, 1948; Dworkin, 1978), linguists (Chomsky, 1971), ideologists (Thompson, 1990; Vattimo, 1992), and critical discourse analysts (Foucault, 1981; Habermas, 2002; Zizek, 1989), exemplify a tradition of numerous forms of inquiry, such as [critical] hermeneutic inquiry (Gadamer, 1976). For example, Habermas (2002), descriptively and interpretively proposed that

> the normative language of law can supposedly reflect nothing else but the factual claims to power of political self-assertion; according to this view, consequently, universal legal claims always conceal the particular will of a specific collectivity to have its own way (p. 204).

Or as described and interpreted by Commager (1950),

> the historians were gratified to find an antecedent so respectable, delighting in precedents, religious observation of forms and customs, the study of black letter law, preserving Latin and French language, preserving anachronistic language, historians abstractions were derived from society, custom, and history, rather than natural laws cosmic processes (p. 368).

These and similar examples suggest that in general, rights, justice and legal ideology can be illustrative of an identifiable intersubjective validity (cf., hermeneutics, Mohr & Rawlings, 2010; Onuf, 1989, as cited in Horne, 2010), revealing underlying Western norms, principles and procedures that contrast various stabilizing with destabilizing practices.

Social justice judgment and decision-making.

Social justice . . . . "going beyond strictly legal justice and differing from charity in that it is collective. It could be called solidarity as it is found within certain social groups: a morality of collaboration and mutual help, taking shape within the framework of modern social life" (Halbwachs, 1958, p. 136). Considered to be a subcategory of justice, which is itself a subcategory of ethics and morals, conceived of as the distribution of valued goods and necessary burdens. Taking place at all levels of societal aggregation: micro, face-to-face interaction, meso, intermediate, institutional and/or organizational level, and macro, society's basic levels (pp. 1438-1441). In other words, social justice is a containment hierarchy of justice (cf., nested set), and as such, social justice actions ultimately function within the norms and rules of justice.

From an academic research perspective it is suggested that a social justice judgment and decision making process needs to be understood as a socially dynamic schema encompassing the varying degrees and elements of social exchange, such as group comparisons regarding human, social, and material capital (Blau, 1964; Hardt & Negri, 1994, Sitka & Crosby, 2003). This suggestion follows from groups as process research,

where process refers to a “view of events and relationships between events as dynamic, on-going, ever changing and continuous”, viewing “events as interrelated, not isolated and discrete” (Berlo, 1960, as cited in Larson & LaFasto, 1989, p. 31).

As reflected by Atran & Medin (2008), researchers have consistently expressed a degree of discontent concerning the study of decision-making and its theory data (Kahneman & Tversky, 1983; Fiske & Tetlock, 1997; Goldstein & Weber, 1995; Medin & Bazerman, 1999). Two forms of discontent:

1. generalizability of results based on bets involving varying probabilities and amounts (the "fruitflies of decision making, Goldstein & Weber, 1995), the nonsense syllables of decision making, allowing precise experimental control but being too artificial to be enlightening;
2. distinct kinds of decisions (Goldstein & Weber, 1995; Tenbrunsel & Messick, 1999; Rettinger & Hastie, 2001), or relation specific in regards to principles and subjects (e.g., stranger, friend, family, supervisor; Fiske & Tetlock, 1997), or specific occupations making decisions when they encounter applying job skills (e.g., firemen deciding how to fight a blaze (Klein, 1999), without any conscious decision making skills (as cited in Atran & Medin, 2008, pp. 157-158).

Academic Theory.

As suggested, towards an academic theory of social justice judgment and decision-making aims to rectify these and other overtones concerning the framing of social [justice] judgments and decisions, positing that rights, justice and legal ideology are two

frames of reference that are domain specific, providing structuration (e.g., bidirectionality) and ontology to the reasoning process (Faust, 2007; Werner, 2006 [questionnaire], unpublished raw data). Suggesting among other things that social [justice] judgments and decisions involve bidirectional and unidirectional reasoning. Specifically, bidirectionality is taken to mean that "decisions follow from evidence, and evaluations of the evidence shift to coherence with the emerging decision" (Simon et al., 2004, p. 814), compared to an algebraic model, which requires reasoning through "unidirectionality, where evidence to conclusion, from independently evaluated pieces of information that remain separate from the conclusion (Simon et al., 2004, p. 814).

"Developing and completing a theory is a highly abstract thought process with ideas being removed in successive stages from the world of immediate experience and sensation" (Anfara, 2006, p. xv).

Frames of reference or a structure of thought are necessary and complimentary to a theory of social justice judgments and decisions. These frames are domain specific, and when delineated contribute to the entities and structures of theoretical development. Rights, justice and legal ideology are frames of reference that are domain specific, and should prove to be compatible with an academic theory of social justice judgment and decision making.

As initially implied, it is the "responsibility of the theoretical researcher to build a solid argument in which the reader serves as the "key arbiter" in determining the effectiveness of the argument" (Potter, p. 151), the phenomenology of academic

experience. But, as Miles & Huberman (1994) noted, the formidable task for analytic researchers "is finding coherent descriptions and explanations that still include all the gaps, inconsistencies, and contradictions inherent in personal and social life. The risk is forcing the logic, the order, and the plausibility that constitute theory making on the uneven, sometimes random, nature of social life. Yet without theory we can be left with banal, unilluminating description" (1994, p. 14).

Academically, fairness, entitlement and deservingness are often considered synonymous in the equity research literature (i.e., social justice concepts). With the general sentiment being that beliefs about entitlement and deservingness effect how a collective, or representatives of said collective, respond "effectively, evaluatively, and behaviorally to socially distributed outcomes" (Major, 1994, p. 294)", effecting how people react to socially constructed dividends. These beliefs and reactions often result in a state of disproportionate contention in which those who are socially advantaged come to believe they are entitled to more, and those who are socially disadvantaged come to believe that they are entitled to less (Major, 1994). This situation is often [un]wittingly perpetuated through various forms of discrimination between and among social groups as they evaluate their own circumstances (Deutsch, 1987; Major, 1994).

More importantly, a collectives perception that system-justifications and power-legitimacy are fair mechanisms, inadvertently and purposely brings psychological and material harm to "disadvantaged individuals and groups" (Jost & Banaji, 1994, p. 10)",

while at the same time creating a greater 'sense of belonging' for the members of said collective (Tyler at al., 1997). It is also believed that this sense of belonging is intensified in societal organizations where higher-status becomes a significant factor, an intensification that is the result of power and ideology of asymmetrical relationships (Codol, 1975, 1984; Tyler et al., 1997). Such that group homogeneity and the belief that their fairness judgments are amicable, suggests that these judgments and decisions are treated very much like other social judgments and decisions, in that the more homogenous the in-group (i.e., social identity) the more heterogeneous the out-group appears to be, increasing social judgments and decisions that are more reflective of in-group homogeneity (e.g., discrimination, exclusion, etc., Clark, 1988; Deutsch, 1987; Major, 1994).

In general, group research overwhelmingly shows homogeneity as facilitating effective group functioning, and heterogeneity as hindering effective group functioning, with racial heterogeneity creating impersonal tensions (Ostrom, 1998), the implication being that homogenous groups are more likely to experience fairness, rights and entitlement as a norm. The proposition is that these judgments are referring to a cognitive state where justice type information is being processed in an attempt to answer the questions, am I, or are we being treated fairly, what are those rights, and whose entitled to those rights. This process includes revising and/or generating fairness judgments involving whether actions should be taken, or whether incorrect actions should involve rectification or retribution, resulting in the formation of social justice attitudes pertaining to relevant and/or immediate social relationships (Lind, 2001).

From an academic research perspective it is suggested that social justice judgment and decision making processes need to be understood as socially dynamic schema, encompassing the varying degrees and elements of social exchange and social norms, such as group comparisons regarding human, social, and material capital (Blau, 1964; Gardner, 1960; Hardt & Negri, 1994, Sitka & Crosby, 2003). This suggestion follows from interdependence, social schema, social epistemology (Schmitt, 1994), ontology and groups as process research, where process refers to a "view of events and relationship between events as dynamic, on-going, ever changing and continuous," viewing "events as interrelated, not isolated and discrete" (Berlo, 1960, as cited in Larson & LaFasto, 1989, p. 31).

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