

# Duties to Promote Just Institutions and the Citizenry as an Unorganized Group



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**Abstract** Many philosophers accept the idea that there are duties to promote or create just institutions. However, are the addressees of such duties supposed to be individuals—the members of the citizenry? What does it mean for an individual to promote or create just institutions? According to the “Simple View,” the citizenry has a *collective* duty to create or promote just institutions, and each individual citizen has an individual duty to do their part in this collective project. The simple view appears to work well with regard to—you guessed it—“simple” scenarios, but it is riddled with further questions and problems. In this chapter, we raise five problems for the Simple View: (a) we suggest that one cannot develop a view concerning the citizenry’s duty to promote just institutions in isolation from a conception of the ontological relationship between the state and its citizens; (b) we argue that it is not obvious that the citizenry is the right entity to be attributed duties in the first place; (c) we show that a plausible account of collective duties to promote just institutions must not remain silent on the complexities and difficulties amorphous, unorganized groups face vis-à-vis collective action; (d) we contend that without allocation principles for contributory duties amongst the citizenry, or—alternatively—a method for practical deliberation that is action-guiding in collective action contexts, the

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claim that the citizens have a collective duty to promote just institutions remains moot; and, finally (e) we demonstrate that the problem of reasonable disagreement is a serious threat to a collective duty to promote or create just institutions—it potentially undermines such a duty altogether and allows for conflicting contributory duties amongst the citizenry. We hope that our discussion will ultimately help improve existing theories and conceptual frameworks to better understanding citizens' obligations to promote justice under non-ideal conditions.

## 1 Introduction

Many philosophers accept the idea that there are duties to promote just institutions. John Rawls (1971, 334) held that such a duty “requires us to support and to comply with just institutions that exist and apply to us.” Besides doing our part in upholding just institutions, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves (1971, 334). Likewise, several scholars in the climate justice literature have suggested that individuals have duties to take positive steps to promote climate justice. These duties go beyond requirements to change individual behavior; rather, they focus on creating just institutions. Kok-Chor Tan (2015, 134), for instance, maintains that “justice’s demands are specified institutionally, but there is the pre-institutional duty to create just arrangements when they don’t exist.” Since we currently lack the institutions of climate justice, we have duties to take steps to help establish them. He goes on to specify that “It is a responsibility of society to bring about justice, and the duties of justice individuals have in this regard are duties they have as members of a collective” (Tan, 2015, 144). Other philosophers who make similar arguments include Elizabeth Cripps (2013, ch. 6), Jessica Fahlquist (2009, 121), Aaron Maltais (2013, 601–3), and Lachlan Umbers and Jeremy Moss (2021, ch. 3).<sup>1</sup>

All this, however, is somewhat vague. Are the addressees of such duties supposed to be individuals—the members of the citizenry? What does it mean for an individual to *assist in* establishing just institutions or to *create* just arrangements, precisely? Very plausibly, there is a duty to *cause* just institutions to exist for some individuals given their position of power and their specific role in society (e.g., the Prime Minister). However, the vast majority of us cannot single-handedly cause institutions to exist. It requires coordinated actions of very large numbers of people. Perhaps some influential individuals (e.g., wealthy lobbyists) have a duty to cause decision-makers to act to bring about just institutions. But again, most ordinary citizens are not in a position to do so. Finally, we might understand the duty to promote just institutions as a duty to take steps, which makes it more likely that decision-makers act so as to cause just institutions to exist. We can attend a rally demanding

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<sup>1</sup> We view the duty to promote just institutions as more specific (but also potentially more problematic) than a general obligation to promote the common good.

that the PM adopt better climate policies, for instance, or we can vote for the right sorts of candidates, etc. Here, the problem is that any given individual's contributions to efforts to pressure decision-makers into making particular decisions are likely to be causally inconsequential; far too small to plausibly be of any moral significance. No individual act itself seems to make a difference to the beneficial outcome, but, at the same time, if enough people fail to act in the same way, then a significant collective benefit will be left unattained (cf. Nefsky, 2019). To give an example, just think about whether any of the Black Lives Matter rallies have been more or less likely to bring about racial justice if a single individual had or had not attended.

Of course, the point is that bringing about political change requires *collective action* on the part of multiple agents, not (ordinary) individual citizens *acting by themselves*. While Rawls does not flesh out the duty to create just institutions, Tan acknowledges the need to do so and offers a collective reading of the natural duty to create just institutions (2020, 479). To him, the pursuit of justice is a collective enterprise (2015, 2020). What does it mean, then, to have a duty (to create or promote just institutions) as members of a collective? Tan does distinguish between the duties of the citizenry as a whole and the duties of the individuals that comprise the citizenry. According to him, "Persons have the duty of justice to do their share as part of a collective effort to bring about just arrangements" (2020, 483). In response to worries of overdemandingness, Tan claims that an agent needs only to concentrate her efforts on the background institutions of her society (2020, 483). In Tan's view, it is the citizenry as a whole that has a collective duty to bring about just institutions with individual citizens having (individual) duties to perform the individual actions that contribute to achieving the collective goal. To provide our own examples here, one might say that Australians had a duty to establish marriage equality (or make it very likely that marriage equality would be established) when the question was put to popular vote in 2017.<sup>2</sup> The same could be said about the duty of the Irish to legalize abortion via a referendum in 2018.<sup>3</sup> Likewise, and to use Tan's own example, any (developed) country is under an obligation "to establish a regulatory framework to restrict and control human CO<sub>2</sub>-producing activities within its borders and to assign the burden of emissions restrictions among its constituents" (2015, 130). Citizens of developed countries can be said to have a duty to help create just domestic climate-related institutions where these are absent (Tan, 2015, 134).

Let us call the following the "Simple View" of the duty to promote just institutions: The citizenry has a collective duty to create or promote just institutions, and each individual citizen has an individual *prima facie* duty to do their part in this

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<sup>2</sup>The 2017 vote on marriage equality in Australia was not a referendum because its results were not binding for parliament. It was, in fact, a nationwide survey. So, technically, Australians could not "establish" marriage equality by voting "yes" to marriage equality in the majority. However, arguably, the exercise was aimed at establishing if there is a strong enough consensus on this issue to legitimize the ensuing act of parliament.

<sup>3</sup>Other contributions to the collective political effort may include voting, lobbying, or generally, participating in public discourse.

collective project—whatever that part may be.<sup>4</sup> The simple view appears to work well with regard to—you guessed it—“simple” scenarios.<sup>5</sup> Voting “yes” in a referendum, for instance, in order to promote marriage equality or to legalize abortion where, arguably, each citizen could be said to have a duty to vote correspondingly. This view is as tempting in its simplicity as it is riddled with further questions and problems.

In what follows, we will raise five problems for the Simple View. We do not claim that these are necessarily the only problems worth considering nor do we mean to say that these problems are insurmountable. Instead, we aim to show that an adequate analysis of a duty to promote just institutions must pay greater heed to debates in social ontology, philosophy of action, and collective responsibility. We hope our discussion serves to enrich and deepen the analysis of the duty to promote just institutions and its limits.

## 2 Five Problems for the Simple View

In our chapter, we set out five—partly interconnected—problems for the claim that the citizenry has a (collective) duty to promote just institutions in general and the Simple View in particular.

### 2.1 *The Ontological Problem*

At the core of any account of a duty to promote just institutions must be a clear understanding of the entities involved: What exactly *is* the ontological relationship between the state and its citizens? Is the citizenry part of the state as a duty-bearer?

Thanks to a fast-growing body of literature in social ontology, we have an increasingly nuanced understanding of *the state as an agent*. Numerous philosophers argue that groups with a certain organizational structure—including states, corporations, and universities—qualify as “corporate” or “group” agents (Björnsson & Hess, 2017; Collins, 2019; Copp, 2006; de Haan, 2023a; Donaldson, 1982; Erskine, 2003; French, 1984; Hess, 2014; Hindriks, 2018; Lawford-Smith, 2015; List & Pettit, 2011). Collective decision-making procedures enable the group to identify and pursue representational and motivational attitudes while satisfying the desiderata of rationality in a robust manner. Such procedures form part of the group’s organizational structure, or constitution, which further includes rules,

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<sup>4</sup>The ‘simple view’ is silent on individual shares or burdens that is on how exactly the collective duty is distributed to the individual. It does not imply equal shares.

<sup>5</sup>For instance, Schwenkenbecher argues for the existence of *massively shared obligations*—a “sub-type of our obligations to address structural injustice, namely, those that are most easily had—obligations to contribute to large-scale distributive action” (Schwenkenbecher, 2021b).

policies, and conventions in virtue of which the group coordinates their decision-making and action-taking. Moreover, the above-mentioned authors claim that organized groups (potentially) qualify as *moral* agents. In a functional sense, akin to individuals, they can understand and process moral reasons and control their actions accordingly, we will refer to these capacities as *moral competence* (de Haan, 2023a; Hindriks, 2018). To the extent that a state has moral competence that state qualifies as a corporate moral agent.<sup>6</sup> Importantly, this does not yet determine the relationship between the state as a corporate entity and its members, that is, its citizens.

The exact ontological relation between the citizenry and the state matters for understanding the nature of the citizenry's duty to promote just institutions. According to Tan (2015), under conditions of ideal justice, citizens have obligations of justice to comply with the law and to support the existing just institutions. However, what happens to citizens' duties under conditions of non-ideal justice, for instance, when the state does not have the right institutions in place to discharge its climate change-related duties, to use Tan's own example? It is against *that* background that Tan claims citizens have a collective duty to bring about just institutions. While he does not specify the underlying ontological relationship between citizens and the state, it could be envisaged as one between parts and the whole, where the normative burden on the state translates into a (complex) distributive pattern of burdens on the state's members. Do citizens hold the duty to promote just institutions *because* they are constitutive parts (i.e., members) of the state or "merely" because they are members of a collective that is (potentially) capable of joint action toward rectifying the state's failure to establish just (climate-related) institutions? It would appear that the scope of the duty to create just institutions, and its content and, ultimately, its justification may well differ depending on how we conceive of the state-citizen relationship.

For instance, if the citizenry's duty to promote just institutions is derivative of the state's obligation to secure justice, this may imply limits to what citizens are permitted to do in discharging their duty because, arguably, they would need to act within the limits of the role of *members of the state*. Consequently, acts of civil disobedience, which involve breaking their state's law, may seem impermissible as a way of discharging their duties *as members* of that jurisdiction. When it comes to the duty to promote a just domestic climate regime, e.g., those climate protesters who vandalize famous artworks as a way of drawing attention to the lack of (sufficient) action on the climate crisis would on this view not be acting on their duty to promote just institutions.

Various philosophers have sought to clarify this relationship with a view to justifying that and explaining when burdens and obligations that are placed on the state may be transferred or distributed to its citizens (Collins & Lawford-Smith, 2017; Lawford-Smith, 2019; Pasternak, 2021; Stilz, 2011). Holly Lawford-Smith (2019), for instance, distinguishes between a *citizen-inclusive* and a *citizen-exclusive* conception of the state. In the former conception, the "state" comprises all the different

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<sup>6</sup>Toni Erskine (2003) discusses in detail when (quasi-)states do not qualify as agents.

agencies and institutions of the state *and* its citizens, while the latter conception excludes the citizens. Only the *citizen-exclusive* state is a moral agent, on her account. The citizen-inclusive state, in contrast, lacks crucial elements of what we have called “moral competence.”<sup>7</sup>

This suggests that one cannot develop a view concerning the citizenry’s duty to promote just institutions in isolation from a conception of the ontological relationship between the state and its citizens. The ontological question left open by the Simple View is closely tied to the question of attribution and allocation of the duty to promote just institutions, which we shall discuss next.

## 2.2 *The Problem of Attribution*

The *problem of attribution* is this: is the citizenry the right entity to hold a duty to promote just institutions? The Simple View suggests a division of (moral) labor between the state and its citizens: the citizenry has a collective duty to promote and create the relevant just institutions in a particular domain when the state fails to secure justice in that domain. However, even if scholars increasingly agree that structured groups can qualify as moral agents, the claim that the so-called unstructured (or unorganized) groups have agency proper, let alone moral agency, is more controversial. And the citizenry in its entirety is precisely an unstructured group. It lacks a decision-making procedure and organizational structure. As Schwenkenbecher argues, “groups should be considered as structured or unstructured with regard to specific purposes. In other words, just because people are part of or members of a group agent does not mean that they are a ‘structured’ collective in the right sense” (2021a, 59). The citizenry cannot employ the existing organizational structures of the state for just any purpose they deem valuable. Whenever the citizenry does use the existing organizational structure, they act in their

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<sup>7</sup> Here is why one might disagree with Lawford-Smith (2019). She argues that the citizen-inclusive state is highly likely to fail to count as autonomous and rational. This, of course, does not disprove that citizen-inclusive states have the *capacity* to be autonomous and rational. Further, there is a worry that the underlying characterization of the organization of the citizen-inclusive state is overly simplistic. Surely, internally recognized authority relations and role responsibilities are an important part of collective agency, as is the case for corporations and incorporated bodies such as universities. Tuomela (2013, 115) points out that a group can perform a joint action via a subset of members, through which a group action can be attributed to the group. Concerning Lawford-Smiths’ claim that the citizen-inclusive state lacks moral understanding, it is worth pointing out that some democratic states provide greater opportunities for direct participation than others. For example, in the Netherlands, citizens have the option to propose items for the government’s agenda and as such bring items of moral importance to be included in the decision-making outside of elections. Thus, even if citizens are not involved in the day-to-day decision-making, this does not mean they cannot provide moral contributions. The same is true for corporations: Not all members are continuously providing input into corporate moral decision-making even though they may have the option. However, this does not mean that they are not a member of the collective moral agent (cf. Collins, 2019).

occupation *as members of the state*, such as when voting in democratic elections but not when protesting government decisions by engaging in civil disobedience.<sup>8</sup>

Because it is an unstructured group, it is far from obvious that the citizenry qualifies as an agent. Importantly, even if the citizenry may qualify as an agent on weaker accounts of group agency (cf. Gilbert, 2014; Hobden, 2021; Schmid, 2014), this does not yet vindicate the claim that the citizenry is a *moral* agent (de Haan, 2023b). If the citizenry is not a moral agent, then, according to the “agency principle,” it does not qualify for holding a moral duty.<sup>9</sup> To qualify as a moral agent, the agent (minimally) needs to have moral competence, that is, the ability to understand and process moral reasons and to control their actions accordingly. The citizenry as a whole lacks such competence due to its lack of organizational structure.

If the citizenry does not meet the (standard) criteria for moral agency, how exactly should we understand the claim that the citizens have a collective duty to promote just institutions? To whom is this duty attributed? According to Schwenkenbecher (2021a), the duties of unorganized groups have been conceptualized in three distinct ways:

1. By rejecting the agency principle and suggesting that **groups that are not (moral) agents** (e.g., the citizenry) **can have obligations**. Some are happy to bite this bullet, arguing that the agency principle is implausible (Aas, 2015; Wringer, 2010, 2014, 2020). In other words, on this view, there is no principled problem of attributing to citizens a duty to promote just institutions.
2. By conceiving of duties of collectives that are not agents as **joint obligations of individual agents**. “Being jointly obligated” is considered a plural moral predicate, attaching to sets of two or more individual agents. This requires a plural reading of the capacity principle where [a and b jointly ought to do x] implies [a and b jointly can do x] (Schwenkenbecher, 2014, 2019, 2021a).<sup>10</sup> On this view, too, we can attribute to citizens a duty to promote just institutions, at least in principle.
3. By accepting that, technically, unorganized groups cannot have duties but rather the **individual agents within such groups hold individual duties the content of which references a collective end**, for example, by requiring them to contribute to collective action or to establishing such action. This is a distributive reading of collective obligations (Collins, 2013, 2019; Goodin, 2012; Lawford-Smith, 2015). A consequence of this interpretation is that no agent or group thereof has ultimately a duty to perform the joint action or to produce the collective outcome; however, some scholars are happy to bite this bullet (e.g., Lawford-Smith, 2015). In other words, on this view, we cannot attribute the duty to promote just institutions to groups such as the citizenry of any particular state.

<sup>8</sup>For a view that considers citizens protesting as essentially acting within their role as “intentional citizens,” see Pasternak (2021).

<sup>9</sup>For a critical discussion of this principle (i.e., the ‘agency principle’), see Wringer (2010) and Schwenkenbecher (2021a, b, chap. 2).

<sup>10</sup>For related views, see Björnsson (2014, 2020) and Pinkert (2014).

It would take up too much space to discuss the above readings and their differences in detail, and this has been done elsewhere (Schwenkenbecher, 2021a, ch. 6). Even though each option involves different conceptual commitments, all of the above will yield the conclusion that individuals in unstructured collectives have *some* duties to contribute to improving large-scale collective action problems such as climate change, for instance. However, without careful analysis, a collective obligation of the citizenry to promote just institutions remains vague and uninformative in relation to individuals' contributory obligations and (partial or complete) failures to meet such duties.

In other words, the attribution problem can be solved, but each solution comes at a cost: the first reading requires discarding the principle that only agents can have duties. It raises further questions as to which unorganized groups qualify as duty bearers and which ones do not. At worst, this view invites the undesirable proliferation of collective obligations. The third reading would discard our intuition that in joint necessity cases there really are duties to address the collective action problem at large, not just duties to contribute one's share. By "joint necessity cases," we mean the "class of actions (and outcomes) that cannot be performed (or produced) by one person on their own. They require at least two people in order to be realised, and no one individual agent can guarantee the success of the collective endeavour" (Schwenkenbecher, 2021a, 8). Creating just institutions is an outcome that cannot be produced by one person—it is a case of "joint necessity." On the third view, and to return to our example, there is no duty to promote just climate institutions, since there is no agent to whom it can be attributed.

Finally, the second, intermediate position, while avoiding the problems of the other two, also comes at a cost. Suggesting that citizens are *jointly obligated* to create a just domestic climate regime, for instance, is not that straightforward. In Schwenkenbecher's view, two or more moral agents jointly hold an all-out obligation to perform an action or produce an outcome corresponding to a collectively available option if each of these agents, provided that she is conscientious:

- (i) Has a reason to believe that the collectively available option (joint necessity) is morally best.
- (ii) Has reason to include that option in her deliberation about her obligations (we-framing the problem).
- (iii) Has reason to infer her individual course of action based on (i) and (ii) (we-reasoning about the problem) and the ability to do so.
- (iv) Is jointly capable with the other(s) of discharging the task at hand (Schwenkenbecher, 2021a, 19).

We-framing is the act of including options for action in one's moral deliberation that are collectively available to a set of agents including the deliberator (but are not available to the deliberator individually). We-reasoning succeeds we-framing and consists of determining individual strategies or action choices based on the collectively available option(s) (Schwenkenbecher, 2021a). The deliberating agent essentially adopts the point of view of the group (see also Bacharach, 2006; Gold & Sugden, 2007; Tuomela, 2013). On the second reading, then, a collective duty of the



citizenry to promote just institutions is conceptualized as a duty held jointly by citizens, whereby individually each (or sufficiently many) ought to do their part in the collective action.

One problem with attributing joint duties to the citizenry is that the set of citizens of any particular state is—usually though not always—a highly amorphous group. This may make group identification or a sense of “we” difficult, which may well prevent agents from “we-framing” a collective action problem. Citizens may struggle to do that where social cohesion is low or where they cannot easily identify with the citizenry as a group (though they might identify with particular sub-groups thereof). Further, the more complex the problem and the more dispersed the group, the more difficult it will be to discern individual courses of action. Where large-scale collective action problems such as climate change are concerned, it looks at least not obvious that the necessary conditions for a joint obligation can easily be met, and, therefore, it is not obvious whether we may attribute such an obligation to the citizenry as a whole. Collective obligations as joint duties are most likely to arise where smaller and more cohesive groups are concerned. However, Schwenkenbecher (2021b) does defend the existence of “massively shared obligations” to address large-scale collective moral action problems provided a plan for action exists, which citizens share knowledge of, spelling out individual-level contributions to the collective goal and the action-generating that goal is distributive in character rather than cooperative (more on this distinction in Sect. 2.3). Because of these qualifications, *massively shared obligations* may be a weaker concept than what Tan had in mind when he defended a collective obligation to create a just climate regime. Opportunities for generating comprehensive social and political change via distributive collective action tend to be fairly limited.

However, the problem of attribution remains complex regardless of how we conceptualize collective duties, that is, regardless of which of the above options we choose. For instance, who shares in the obligation to create just institutions? Pointing to the legal definition of what it means to be a citizen of some country is not enough to answer this question. That this is so becomes clear upon closer inspection of the case of the vote on marriage equality in Australia in 2017: plenty of agents other than “ordinary” individual citizens were instrumental in bringing about marriage equality: the prime minister at the time who called the vote, the parliament, which actually changed the law, the party leaders who permitted their members a vote of conscience (rather than requiring them to vote along party lines) and the members of parliament who voted for a change in legislation, to name just a few. Would a duty to promote just institutions—in this case, the concrete duty to establish marriage equality before the law—cover only “ordinary” citizens and their choice on the ballot in the nationwide vote? Or would it also attach to political officeholders who have sway over the outcome as part of their role in the political process?

This means that even if we agree that unstructured groups such as the citizenry of a state (as in the set of all citizens qua citizens) can be ascribed collective obligations on one of the three readings above, it is unclear what it would mean to ascribe a collective obligation to the set of agents consisting of the citizenry *and* citizens

qua political role holders *and* possibly even the structured or organized agents that form part of the state. This last set contains a variety of vastly dissimilar agents: can agents as unequal as those ever “share” a duty, that is, hold a duty collectively? It is worth pointing out that no account of the moral status of such complex sets of agents exists anywhere in the social ontology literature as yet.

Notably, Tan’s argument focuses in particular on the kind of scenario where the state and its agents fail to (sufficiently) promote just institutions. At first glance, this might suggest that in such cases the duty must fall onto “ordinary” citizens only. However, there are plenty of other non-state (corporate) agents who might share in the duty to promote just institutions, such as unions, universities, non-governmental organizations, or media outlets; if they qualify as moral agents, then it stands to reason that such agents likewise have duties to promote just institutions. Perhaps the duty to create just institutions makes most sense if it is seen as attaching to a cluster of numerous and extremely diverse agents that vary significantly in their ontological, moral, and agentic makeup and status. As we pointed out above, while there are plenty of attempts at conceptualizing collective responsibilities or obligations of sets of agents that are *equal* in the above-mentioned regards, there exists no account in the literature on how a duty could be held by agents that *differ* so substantially. Where collective obligations attach to agents that differ so fundamentally in their make-up and ability, new questions arise as to the distribution of burdens and contributory duties for the distinct (individual or group) agents involved. We will return to the question of fair burden distribution in Sect. 2.4.

### 2.3 *The Problem of Collective Action*

To establish just institutions, citizens must act in concert. As Tan puts it, members must perform their fair share of a *collective effort* to promote or create just institutions (2015, 2020; see also Young, 2011).

The first problem with a requirement for collective action is that collective action of any kind is usually difficult and occasionally impossible to establish for unstructured or unorganized groups such as the citizenry, as was shown not least by Mancur Olson’s groundbreaking work on this topic (1971). Requiring citizens to engage in collective action then can easily turn out to be overly demanding or—conversely—such a duty might become easily muted given the difficulties of starting collective action. This very much depends on the respective group’s collective ability—their ability to either organize themselves into a more structured group (Collins, 2019) or to at least establish what Scott Shapiro has called a shared plan for massively shared action (Shapiro, 2014, see also Schwenkenbecher, 2021b). Either of these, but particularly the former, can be notoriously difficult to achieve for unorganized groups.

Sometimes, large, dispersed, and unorganized groups will be able to engage in large-scale *distributive action*—that is collective action where individual contributions toward a publicly shared collective pattern of action (or a shared plan) can be made in isolation from each other, rather than requiring complex interaction between

agents (Schwenkenbecher, 2021b; Shapiro, 2014). Distributive action “results from the individual actions of two or more agents that are intended as contributions towards a joint endeavour (or shared goal)” (Schwenkenbecher, 2021b, 26).<sup>11</sup> This will require that the specific collective pattern of actions is salient to members of that group or that it can be made salient.<sup>12</sup> Agents can in such cases rally around a particular goal or plan, sometimes with only minimal coordination. However, the process of generating a shared plan is itself fraught with difficulties, especially where large and diverse groups such as the citizenry are concerned (see also Sects. 2.4 and 2.5).

As Larry May (1990) points out, the presence of competent leaders can play an important role in getting collective action off the ground. Other contingent factors, too, can be decisive, including individual group members’ abilities vis-à-vis the problem at hand, their ability to communicate with one another, and the epistemic environment more generally. In summary, our ability to engage in collective action is highly dependent on factors beyond our control. Moreover, seeing that this ability depends on *other people’s* actions, intentions, and attitudes, it is more tenuous than our (individual) ability to engage in individual action—other things being equal. It further suffers from a “first-mover” problem: where there is no (established) collective endeavor, it seems that we have less or possibly no reason to “do our part” as it were.<sup>13</sup>

A second challenge arises from the possibility that even where collective action gets off the ground, it may still fail to succeed in changing unjust institutions. While we might argue that we only have moral obligations to try to perform certain actions rather than obligations to succeed in our attempts, the very real possibility of failing to succeed might sometimes undermine an all-out obligation as such given the opportunity costs of investing in collectively available options. In other words, choosing to contribute to a collective pattern with a high risk of failure may not be our best option overall, compared to individually available options or alternative collective patterns of action. Obviously, there are endless possibilities for collective action to fail but here is one that is perhaps especially pertinent to liberal societies in this day and age. Presumably, the goal of political collective action by the citizenry is (initially) to persuade primary agents of justice to change the institution in question. Plausibly, this means that agents should seek to minimize risk with respect to factors that negatively impact that goal. With the great diversity of political views in liberal societies, including some at the extremist end of the political spectrum,

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<sup>11</sup> In contrast, cooperative joint action is characterized by “highly interdependent collaboration between individuals” and “individual contributory actions cannot be performed in isolation” (Schwenkenbecher, 2021b, 25). The latter would cover the type of actions described, for instance, by Bratman (2014) and Pettit and Schweikard (2006). For example, two people carrying a heavy piano upstairs. Schwenkenbecher (2021b) argues that large, dispersed, and unorganized groups cannot engage in cooperative joint action.

<sup>12</sup> See also Pinkert (2014) on mediated versus immediate joint ability.

<sup>13</sup> We do not necessarily share the view but do not have the space to elaborate. See Woodard (2017) and Schwenkenbecher (2021a) for a more detailed argument.

those engaging in collective action may not always see eye to eye on the details of the issues they are seeking to address. Where collective action such as protests and rallies include extremist groups, this may blur the message activists are trying to convey. For example, during the COVID-19 pandemic, protesters rallying in defense of basic liberties may have found themselves inadvertently mingling with people who pursued very different and possibly incompatible agendas. Protesters who understand themselves to be discharging a duty to promote just institutions may well hesitate to engage in activism if they fear having their cause hijacked by others or of getting their message so compromised in the process that their efforts fall on deaf ears.

We do not believe that the problem of collective action rules out a collective obligation to create a just climate regime, to use Tan's example. However, we do think that a plausible account of collective obligations to promote just institutions must not remain silent on the complex issues and difficulties that come with initiating collective action by an amorphous, unorganized group. The Simple View ignores that different kinds of goals (or different kinds of problems) require different types of collective action for achieving (or solving) them, some of which are significantly more intricate—complex, difficult to establish—than others.

## 2.4 *The Problem of Allocation*

Assuming we accept that a particular group of agents ought to perform a collective action or to collectively generate an outcome, questions of fairness arise: how great a burden should be allocated to each individual agent partaking in that duty? There are a number of considerations that will determine what constitutes a fair or adequate share of the duty to promote just institutions. First, and foremost, the kind of actions required will often be difficult to quantify or to neatly divide into “fair shares.” The complexity of the issue at stake will preclude simple answers to our question of how to allocate contributory duties. Nonetheless, Iris Marion Young's pioneering work on collective political responsibility—which starts from the perspective of the individual deliberating agent—may be of help here. While she draws a line between responsibility and duty which we do not draw here, one might concur with her view that

a theory cannot provide a set of rules or even a method for calculating what to do. It is nevertheless reasonable to expect agents to have some guidance in reasoning about how to take action to try to undermine injustice. Such guidance can be had through what I call parameters of reasoning about individual and organizational action in relation to structural injustice. Such parameters ought to respond to the intuition that different agents properly have different kinds and degrees of forward-looking responsibility for justice. Such differences, I suggest, derive in large measure from the social positions agents occupy in relation to one another within the structural processes they are trying to change in order to make them less unjust. (Young, 2011, 144)

Young identifies four factors that will help agents determine the “kind” and “degree” of their responsibility toward addressing injustice: *power*, *privilege*, *interest*, and *collective ability* (pp. 144ff). These may not be the only parameters of reasoning—others have been identified such as one’s *individual capacity* and one’s *competing obligations* and (*prior*) *commitments* (Schwenkenbecher, 2021a, 103). When it comes to a collective duty to create a just climate regime, these parameters will yield vastly different contributory obligations for citizens, depending on their respective social positions.

In our simplest case, the referendum, citizens qua citizens have limited options for action, and their power is distributed. Citizens’ collective ability is substantial, since the process itself is already institutionally structured, that is, their individual choices form part of an existing collective effort. Voting “yes” on marriage equality or on legalizing abortion does not tend to be a chore that is in serious competition with other moral obligations or prior commitments. Individuals’ contributory obligations will be clear and little contested—their corresponding burdens being negligible.

One might think of Young’s proposal as a type of (or at least a proxy for) a bottom-up allocative principle for collective obligations.<sup>14</sup> Other theorists have approached the question of fair burden allocation for a collective duty from the top down, conceiving individual duties as essential shares in a collective endeavor, where these shares aggregate to a whole. Liam Murphy (2000) defended a version of the Simple View, arguing that people are morally required to contribute their ideal fair share, but not more than that. One’s ideal fair share of a collective duty is one’s fair share under circumstances of ideal compliance and Murphy argues that one’s personal share to promote well-being does not increase when others fail to comply (2000, 76–8).<sup>15</sup> Murphy’s argument focuses on the moral demands of beneficence, rather than the duty to promote just institutions, but it may well seem transferable to the latter context as an exemplar of an allocation principle for collective obligations. Tan claims that a fair assignment of a collective duty among individual agents will depend on what each agent is reasonably expected to do on the ground of mutuality, that is, each has a share that one can reasonably accept (Tan, 2020, 484, cf. Murphy, 2000). This places limits on demandingness because no one will impose unreasonably strong demands on another that she herself, when similarly situated, cannot reasonably accept (Tan, 2020, 484).

Top-down approaches to determining agents’ individual shares of a collective duty appear to construe such a duty as neatly divisible into allocable individual tasks or burdens—a trait few real-world cases of (structural) injustice will display.<sup>16</sup>

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<sup>14</sup>Bottom-up ones are more sensitive to the position and perspective of the moral deliberating agent. At the same time, the normative relationship between individual- and collective-level duties is arguably more transparent for top-down than for bottom-up approaches.

<sup>15</sup>See Garrett Cullity (2004) and Michael Ridge (2010) for criticism.

<sup>16</sup>For a more detailed discussion of the structural and moral differences between simple, distributive action cases and more complex collective action problems, see Schwenkenbecher (2021a, chapter 7).

Having said that, prominent top-down approaches for allocating climate-change-related burdens, for instance, exist: The German Advisory Council for the Environment adopted a top-down allocation principle with regard to individual states' obligations to mitigate climate change—allocating as it did a GHG emissions budget to each country as a share of the total amount of GHG emissions that could be omitted globally if aiming at limiting global warming to maximum 1.5° (German Advisory Council for Climate Change (WBGU), 2009). Pragmatically, interpreting collective obligations in terms of the aggregation of individual contributions—and the simplification that comes with it—may well be conducive to fomenting collective action, but not every joint necessity problem will lend itself to such an analysis. The creation of just climate institutions, to use Tan's original example, is unlikely to fit that mold. The actual reforming of unjust institutions requires action by a number of actors, including organized groups. Changing such institutions usually requires complex, multi-layered collective action or a series of actions that cannot be performed by an unorganized group such as the citizenry.

Tied up with the question of allocating individual contributory duties is that of determining agents' compliance and noncompliance with such duties. Even in relatively simple cases, such as a referendum, it is not intuitively obvious when citizens have discharged their obligation (and the Simple View does not give a clear indication). Voting for the morally best option in a referendum is only part of what it takes to reform unjust institutions. Suppose a referendum does not lead to any actual reform by the state and its agents; after all, it is not unheard of that the outcomes of such processes are being ignored. In that case, has the citizenry discharged their duty to promote just institutions? Or are they required to do more? We cannot answer these questions without an understanding of how a collective duty to promote just institutions (and its exact content) is allocated to citizens in the first place.

To conclude, the problem of allocation is that without an analysis of either (i) the allocation principles for contributory duties among the citizenry (top-down) or (ii)—alternatively—of a method for practical deliberation that is action-guiding in collective action contexts (bottom-up), the claim that the citizenry has a collective duty to promote just institutions remains moot.

## 2.5 *The Problem of Reasonable Disagreement*

Let us return to discussing how the diversity of political views among citizens might jeopardize the success of political collective action. Earlier, we juxtaposed “ordinary” protesters with extremists; however, political disagreement is often more benign, and opposing views may be equally legitimate and plausible. The pervasiveness of *reasonable disagreement* is a core element in Rawls's political liberalism project and in liberal political philosophy more generally. Rawls aims to base the principles of political association upon a core morality that reasonable people can accept despite having divergent conceptions of the good or right (Rawls, 1993, see also Larmore, 1994, 78). We may expect citizens to adhere to various

comprehensive philosophical, moral, and religious doctrines because citizens have basic liberties of freedom of association, thought, and conscience (Rawls, 1993, see also Freeman, 2003, 30).

Reasonable disagreement is disagreement between reasonable persons. On Rawls's view, the reasonable involves, first, "the willingness to propose fair terms of cooperation and to abide by them provided others do" and, second, "the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime" (1993, 54). Reasonable persons can nonetheless disagree. The sources of reasonable disagreement are the many difficulties we face when we employ our capacities of reason in the political domain (*ibid.*, p. 56). Rawls calls these sources "the burdens of judgment":

- (a) The evidence may be conflicting and complex.
- (b) Agreement about the relevant kind of considerations does not guarantee agreement about their weight.
- (c) Our key concepts are vague and subject to hard cases.
- (d) Our total experience shapes how we assess evidence and weigh values.
- (e) There are often different kinds of normative considerations of different forces on both sides of an issue.
- (f) We face great difficulty in setting priorities and making adjustments when forced to select among cherished values (*ibid.*, pp. 55–56).

Because of these "burdens of judgment," reasonable persons recognize and accept that other reasonable persons will adopt different comprehensive doctrines (Freeman, 2003, 23). Moreover, they take this into account when proposing fair terms of cooperation. As Samuel Freeman explains, "they accept a criterion of reciprocity: they want to be able to live with others according to principles other reasonable persons can acknowledge and policies they can endorse, they want to be able to justify laws and political policies to people holding different reasonable doctrines with reasons that reasonable persons recognize and can reasonably accept" (2003, 23).

We contend that citizens may reasonably disagree not only on comprehensive doctrines in general but also on the justice or injustice of (i) existing political institutions, (ii) of the institutions replacing them, or (iii) the process of replacing them.<sup>17</sup> This raises distinctive practical and conceptual problems for any theory proposing a collective obligation to promote or create just institutions. Practically, if members cannot agree on the (in)justice of (i), (ii), or (iii), this will make it difficult for collective action to materialize. Conceptually, reasonable disagreement may—on some accounts and under certain circumstances—void collective obligations. Schwenkenbecher's account, to give an example, suggests that agreement (or at

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<sup>17</sup>One might think that one of our examples, the vote to establish marriage equality constitutes—at least from a moral point of view—an uncontroversial rectification of unjust institutional arrangements. However, on other issues, for instance, immigration and open borders, citizens may well reasonably disagree.

least overlap) among agents on what course of action is morally best<sup>18</sup> is a necessary condition on those agents sharing an obligation (2021a)—provided agents are conscientious deliberators. Since conscientious deliberators can reasonably disagree about what is morally optimal, this voids the collective obligation.

Further, reasonable disagreement at the level of contributory duties—for instance, disagreement regarding *how* to pursue justice in the circumstances—may produce conflicting duties. This could be disagreement concerning just process, for instance, or concerning how to trade off different justice-related concerns, or how to manage conflicts involving incommensurable values. Remember that on the Simple View, the citizenry's collective duty to promote just institutions generates (or consists of) citizens' individual duties to do their part. However, the lack of *specificity* in the general duty to promote just institutions obscures an underlying tension that becomes apparent once we turn to specific tokens of that duty. In a *concrete* real-world case of injustice, the general duty will yield a specific moral requirement on the group to perform a (series of) particular collective-act-token(s). However, what exactly is required of citizens in such cases given that they may reasonably disagree about *how* to pursue justice in the circumstances? Ought citizens to do their part in promoting a *specific* path toward creating a just climate regime? Or should they do their part in what they *reasonably think* is best? The former denies the very existence of reasonable disagreement with respect to that domain. The latter would allow for conflicting contributory duties because it is perfectly possible that one set of citizens reasonably believe that they should promote an institution (such as a just climate regime) in one way, whereas another set of citizens reasonably believe they ought to pursue a different path toward justice and their visions are mutually incompatible. Thus, we seem to arrive at an impasse. Either we allow for mutually incompatible individual obligations, which makes the collective duty incoherent, or we deny the existence of reasonable disagreement in this domain.

Of course, one might retort that the citizenry's duty to promote just institutions only concerns *basic* institutions and that for basic institutions no reasonable disagreement of the kinds described above arises. However, such a response seems unduly limiting. Even if we grant that people cannot reasonably disagree on the justice of institutions such as marriage equality or legal abortion, this seems less plausible for some other contested immigration regimes or that of taxation and wealth redistribution. However, more importantly, the retort does not fully address the problem. Even where the overall (in)justice of an institution is not subject to reasonable disagreement, its concrete design may well be. For example, we may not be able to reasonably disagree about the right to abortion in general, but we certainly can reasonably disagree on what exact set of institutions should be put in place to provide access to legal abortion. Likewise, even if there was agreement on the overall desirability of a just domestic climate regime—for instance, agreement on what it should deliver with regard to mitigation, adaptation, and

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<sup>18</sup>“Morally best” can mean “best from a point of view of justice” in this context.



compensation—questions concerning its exact shape and the most just way of transitioning to such a regime would still need answering.

Perhaps these difficulties should point us toward a different interpretation of the duty to promote just institutions. Just like citizens may have a duty to protest an unjust war (Crawford, 2014), they may have a duty to protest the existence of unjust institutions. If citizens merely ought to protest unjust institutions, rather than being under an obligation to create better ones, the above problems are avoided. However, this interpretation would be a significant departure from Rawls' initial claim and Tan's view on what the duty to promote just institutions entails.

In summary, reasonable disagreement about the (in)justice of existing or future political institutions might undermine the collective obligation to promote or create such institutions. Further, the lack of specificity of such a duty in combination with reasonable disagreement on how to discharge it may allow for conflicting contributory duties among the citizenry. Defenders of the citizenry's duty to promote and create just institutions must find an answer to these problems.

### 3 Where to from Here?

What would a fully fleshed-out theory of the collective obligation to promote just institutions look like? We think that our preceding discussion has shown that such a duty would be sensitive to and vary greatly with the circumstances in which citizens find themselves. Given the problems identified in this chapter, the general, pro-tanto obligation to promote and create just institutions may seldom become an all-out duty—or at least not as frequently as its proponents might envisage.

Further, the duty to promote just institutions does not strike us as an enforceable duty. One reason for that is that it tends to come with substantial latitude. It is in that sense an “imperfect duty” most of the time, which, on occasion will convert into a “perfect” one. Joel Feinberg and Bob Goodin argue that in order to give practical meaning and effective implementation to general pre-institutional duties typically “precisification” through institutional specification is needed to make such moral demands concrete and effective in real life (Feinberg, 1970; Goodin, 2017, 272).<sup>19</sup> In cases like referendums, where options for action and choices are reduced to a minimum and available actions are part of an institutional, regulated process, such “precisification” has in fact taken place and much latitude has been eliminated. However, to the extent that the duty to promote just institutions is about *creating* institutions, that duty *itself* is not usually specific, “precise,” or, if you will, perfect.

However, even where the duty is (near) perfect—as let us say in the case of a referendum—it does not seem right to enforce it, not just for the possibility of reasonable disagreement. There may be another element, namely, that we tend to grant

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<sup>19</sup>See also David Miller (2011), who distinguishes between duties of justice and obligations of humanity, with only the former being enforceable (see also O'Neill, 1996; Tan, 1997). This distinction is not uncontroversial; see Goodin (2017).

people their right to express and enact a variety of political views within certain limits, even views that are generally thought to be morally problematic, such as the curtailing of women's reproductive rights or the rights of same-sex couples. Moral duties, then, do not stand in a straightforward, simple relationship with political duties such as the duty to promote just institutions. It is in that sense that the (political) duty to promote just institutions—unlike, for instance, the duty to rescue someone's life when that comes at little cost to oneself<sup>20</sup>—is not an enforceable duty.

To conclude, we hope our discussion has shown that a more comprehensive analysis is needed to account for the duty to promote just institutions on the part of the citizenry. Any adequate theory of such duties must go well beyond the Simple View and would ideally provide solutions to the problems raised in this chapter.

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<sup>20</sup> See, e.g., Singer (1972) and Øverland (2009).

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