

The Natural Duty of Justice in Non-Ideal Circumstances: On the Moral Demands of Institution-Building and Reform

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Abstract: Principles of distributive justice bind macro-level institutional agents, like the state. But what does justice require in non-ideal circumstances, where institutional agents are unjust or do not exist in the first place? Many answer by invoking Rawls's natural duty "to further just arrangements not yet established," treating it as a "normative bridge" between institutional demands of distributive justice and individual responsibilities in non-ideal circumstances. I argue that this response strategy is unsuccessful. I show that *the more unjust the status quo is due to non-compliance, the less demanding the natural duty of justice becomes*. I conclude that, in non-ideal circumstances, the bulk of the normative work is done by another natural duty: that of beneficence. This conclusion has significant implications for how we conceptualize our political responsibilities in non-ideal circumstances, and cautions us against the tendency—common in contemporary political theory—to answer all high-stakes normative questions under the rubric of justice.

1. Introduction

Consider the following three contexts, ordered from the most ideal to the most non-ideal.¹

- i. *Sweden Plus*: "Sweden Plus" is a distributively just state, one that successfully secures its citizens' socioeconomic rights.
- ii. *United Kingdom*: The United Kingdom is a somewhat unjust state. It is legitimate, but it fails to secure its citizens' socioeconomic rights to the full extent of which it is capable.
- iii. *Global Arena*: In the world at large, institutions capable of securing everyone's socioeconomic rights do not exist.

What ought the individuals inhabiting these contexts do, from the point of view of distributive or socioeconomic justice?² Many political philosophers would answer by falling back on Rawls's (1999, 99) natural duty "to support and to comply with just institutions that exist and apply to us ... [and to] further just arrangements not yet established." Although this duty is often invoked as a "normative bridge" translating the demands of justice applying to complex institutional agents—like the state—into responsibilities falling on individuals, not much work has been devoted to unpacking its content.

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¹ Cf. Rawls's (1999, 8) characterization of ideal and non-ideal theory.

² I shall use these terms interchangeably.

This neglect may seem unsurprising. After all, in the ideal case (*Sweden Plus*) the demands of the natural duty coincide with institutional directives: citizens simply ought to obey the law. Even in non-ideal cases, like *United Kingdom* and *Global Arena*, what the duty requires—one might think—is straightforward: each agent should do their *fair share* in reforming and bringing about just institutions. And when injustices are serious enough—say, people’s lives are at stake—some may be required to do more than their fair share (e.g. Ashford 2003).

Though intuitively appealing, these convictions do not withstand scrutiny. In this paper, I argue that, counter-intuitively, *the more unjust the status quo is due to non-compliance with the demands of justice, the less demanding the natural duty of justice becomes*. Contrary to what is commonly assumed, appeal to this duty rarely succeeds in building a “normative bridge” between (a) the principles of distributive justice that apply to institutions and (b) individuals’ responsibilities in non-ideal circumstances. The news is not all bad, however. Acknowledging the weakness of the natural duty of justice has the positive upshot of drawing attention to another natural duty: that of mutual aid or beneficence (Rawls 1999, 98). Even if, in non-ideal circumstances, distributive justice may demand surprisingly little of individuals, there remains a lot that they are required to do on grounds of beneficence. This conclusion sharpens our understanding of the moral relations between the bearers of institutional-reform duties and their beneficiaries, and counters the current tendency in political theory to over-inflate the concept of justice and thereby devalue its normative currency.

The paper is structured as follows. In Section 2, I advance some preliminary considerations on principles of justice—focusing on *distributive justice* in particular—and duties of beneficence. I then turn to exploring what the natural duty of justice requires in cases of justice deficits; namely, where institutional agents exist, but are in need of reform (Section 3), and where they do not exist in the first place (Section 4). I take *United Kingdom* as paradigmatic of the former case, and *Global Arena* of the latter. Section 5 concludes.

2. Distributive justice, institutional agents, and individuals’ burdens

The natural duty of justice sets out individuals’ obligatory contributions to the creation and maintenance of institutional agents tasked with realizing civil, political and socioeconomic justice. Here, I focus on the latter, distributive or socioeconomic dimension of justice. Appeal to this duty, as I understand it, presupposes a commitment to the following claim:

Principles of distributive justice bind, in the first instance, institutional agents and, derivatively, individuals.

To elucidate this assumption, I consider its three components—“principles of distributive justice,” “institutional agents,” and “individuals”—in turn.

Principles of distributive justice are a class of principles of justice. Justice designates a special kind of moral concern, distinctive in its prescribing respect for agents’ *claim rights* (Hohfeld 1917). When an agent has a claim right to X, she is owed X and has the standing to demand X from others, who bear corresponding duties (Buchanan 1987; Feinberg 1970). Those duties, in turn, may be rightfully enforced either by the right-holder him/herself or by third parties—often, state

agents—acting on the right-holder’s behalf.³ Importantly, not all duties correlate to rights. We may have duties to act in particular ways, without anyone having the standing to demand or enforce their performance. Duties of *beneficence* (also called duties of charity or humanity), which require that we pursue the good of others using our own resources, are a case in point (Barry 1991; see also Valentini 2013, 2015).

To better appreciate the difference between justice and beneficence, consider Jenny’s duty to provide food for a man named Carl. If the duty is a matter of justice—say, Jenny runs a food-delivery company for disabled people whose services Carl has purchased and is entirely dependent on—then Jenny *owes it* to Carl to deliver some food to him. Without Jenny’s services, Carl would be malnourished. Carl, in turn, has the standing to demand Jenny’s performance of this duty. Whatever resources she employs to assist Carl are, morally speaking, his own. This is also why we would think it appropriate if the state or some other suitably positioned agent forced Jenny to discharge her duties, were she reluctant to do so out of her own will.

Things would be different if the duty were one of beneficence. This time, imagine Carl is a poor person in a foreign country Jenny is visiting, and let us *hypothesize*, for the sake of argument, that Jenny is entitled to the resources she possesses.⁴ Jenny realizes that Carl is malnourished and that she would violate the demands of beneficence if she did not assist him. Like the Good Samaritan, she decides to help Carl and provides him with some necessities. In doing so, however, she uses *her own* resources for his sake. Carl could not legitimately *demand* Jenny’s help: at most, he could beg for it. Nor could Jenny’s duty be enforced without this being at least *pro tanto* wrong.⁵ Furthermore, Carl should be grateful for Jenny’s assistance: Jenny doesn’t owe it to Carl to assist him, even if she would act wrongly by ignoring his plight (cf. Herman 1984).

Whether we ought to benefit others as a matter of justice or as a matter of beneficence, therefore, makes a moral difference. Holding stakes constant, duties of justice are more stringent than duties of beneficence (Pogge 2005, 76). Assisting Carl in the first example is a more stringent moral demand than assisting him in the second. Moreover, the ways in which bearers and beneficiaries of the relevant duties relate to each other vary across the two cases. To paraphrase Joel Feinberg, when Carl has a right to be assisted, he may “stand up and look Jenny in the eye,” demanding what he is owed (Feinberg 1970, 252). This is not the case when Jenny’s duty is a matter of beneficence.

The observations advanced in the simple Carl-Jenny scenarios carry over to more complex, large-scale contexts. It makes a significant difference whether the worse off—e.g., the poor and needy—ought to be assisted as a matter of justice or as a matter of beneficence. This is reflected in much political discourse, which insists on the importance of conceptualizing certain responsibilities as demands of justice rather than charity. Nelson Mandela’s (2005) “poverty speech” is one of many examples. “Overcoming poverty,” he said, “is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right [...]” Over the past decades, one finds

³ Of course, which means of enforcement are appropriate will vary depending on the circumstances. For instance, if you promise to help me move into a new apartment, I acquire a right to your help. Assume, however, that the day of the move you show reluctance to keep your promise. In response, I may threaten to be unavailable the next time you need me, or to hold a grudge. These threats would also count as forms of enforcement.

⁴ This is just an illustration, and I am aware that this hypothesis may be contested, e.g., by some cosmopolitan thinkers.

⁵ See note 18 for further discussion.

several news headlines conveying messages like Mandela's: assistance is something the well off *owe to* the world's poor, not a "mere" matter of beneficence.

Based on this characterization, any legitimately enforceable moral demand correlative to rights counts as a demand of justice. Here, though, I am interested in a particular class of such demands, i.e., demands of *distributive* justice. These concern the fulfilment and preservation of individuals' *rights to socioeconomic resources and opportunities* on a large—e.g., societal—scale. Famous examples of demands of distributive justice include John Rawls's fair equality of opportunity and difference principles, luck-egalitarian principles requiring the compensation of the effects of bad brute luck, prioritarian principles, sufficientarian ones, and so forth. While I need not commit myself to any specific substantive account of distributive justice, for ease of exposition, I will assume a sufficientarian view. On this view, justice demands the elimination of absolute socioeconomic deprivation.

A moment's reflection reveals that demands of distributive justice so conceived cannot apply directly to individuals.⁶ Why? Because it is strictly impossible for a single person, or an unorganized set of people, to abide by them (Meckled-Garcia 2008). The ability to secure people's rights to adequate resources and opportunities presupposes "the power not merely to influence but to *determine*, at [one's own] will, what actions many others perform" (James 2005, 35 original emphasis). Yet no individual, or unorganized set of individuals, can be reasonably expected to have this power. And since "ought implies can," individuals cannot be bound by duties of justice to secure socioeconomic rights on a societal scale.

It may be objected that, although unorganized individuals cannot realize perfect distributive justice, they might still be able to make marginal contributions to its implementation.⁷ This is not so obvious, though. Whether one's actions will contribute to the realization of justice very much depends on their knock-on effects, given the actions of others. These knock-on effects, in turn, are something individuals can neither control nor reasonably foresee. This does not imply that principles of distributive justice are normatively inert. Even if individuals do not have the capacity to fulfil their demands, institutional or corporate agents do.

A corporate agent is a multi-person system that can be said to possess beliefs and desires, and to act in accordance with its beliefs so as to satisfy its desires (List and Pettit 2011; French 1984). Agents of this sort include states, corporations, churches, universities, and so forth. In addition to agency simpliciter, these collectives typically exhibit *moral agency*, and can thus be held responsible for their actions. Their decision-making ("legislative") processes are sophisticated enough to allow them to deliberate about moral reasons, and their implementation ("executive") processes are effective enough to enable them to act on those reasons.

Corporate moral agents are in principle fit for bearing duties. But whether they actually bear duties of justice depends on whether they have the capacity to do so. For simplicity's sake, let us focus on states as the collective agents presumptively bound by duties of distributive justice. A state is actually, and not merely presumptively, bound by such duties, if it meets the following "capacity condition": if the state tried to realize socioeconomic justice, it would have a high enough chance of succeeding (Collins 2013, 239).⁸ In turn, a state may be said to try to realise socioeconomic justice when it apportions responsibilities among citizens such that, were they to

⁶ This view is widely accepted, but has not gone unchallenged. See, e.g., Cohen (1997); Murphy (1998).

⁷ Thanks to Anca Gheaus for making this suggestion.

⁸ Like Collins, I do not commit myself to a particular threshold of likelihood.

comply, justice (or a suitable approximation thereof) would be realized (cf. Collins and Lawford-Smith 2016). A state is capable of realizing justice when citizens would be likely to comply with its justice directives, either because they recognize the authority of the state or because they fear its sanctions (for discussion, see Lawford-Smith 2012, sec. 3; List and Pettit 2011, 163). A powerless state, or one without a sufficient degree of *de facto* authority, such as a weak or failed state, would not meet the relevant capacity condition. That said, many existing states have the required justice capacities.⁹ This makes them in principle apt for bearing duties of distributive justice.

A capable state, owes it to its individual members to secure their entitlements to adequate socioeconomic resources and opportunities. Members, in turn, have the standing to demand this protection from the state, and to put pressure on it when it fails to deliver. The state's provision of these benefits is, paradigmatically, not a mere matter of beneficence or charity, but one of *justice*. A state that fails to provide the relevant benefits violates its citizens' rights, and may become a legitimate object of criticism, if not pressure, on the part of the international community (cf. Beitz 2009).

The foregoing discussion has portrayed individuals as *beneficiaries* of the state's duties of distributive justice. But does distributive justice place any duties on them as well? It does, but these are *derivative* of the duties applying to institutional agents, and grounded in the natural duty of justice to (i) comply with just institutions, (ii) reform unjust ones, and (iii) build new ones when they do not exist or are too weak. Setting aside the ideal case, namely (i), whenever there exist justice-deficits, instead of imposing interactional demands on individuals, socioeconomic justice mandates institution building and reform.¹⁰ For example, if a society is unjust because its taxes on the well off are too low, justice does not require the better off to unilaterally transfer some money to the worse off, leaving the legal status quo intact. Rather, it demands that they campaign for, and support, institutional reform.

Since distributive justice requires coordination, and cannot be achieved through one-sided action, it grounds responsibilities that individuals share with one another (May 1992). Unsurprisingly, its realization comes at a certain cost (in terms of resources, time, effort etc.), and each individual should bear his or her *fair share* of the relevant total cost. Moreover, when injustice is serious enough—say, people's lives are at stake—justice may even require some to do more than their fair share (Ashford 2003).

This is how the demands of the natural duty of justice are *intuitively* interpreted. Of course, I have omitted many crucial details, such as how precisely to calculate shares,¹¹ and which types of actions to undertake in fulfilment of one's responsibilities.¹² Although these are important questions, addressing them is unnecessary for present purposes. Instead, I want to focus on the widespread conviction that, suitably specified, the natural duty of justice provides a normative bridge between institutional demands of distributive justice and individual

⁹ This claim needs to be qualified. Strictly speaking, no existing state has the capacity fully to secure the demands of justice because no existing state enjoys enough power and *de facto* authority to make sure that *nobody ever* violates just law. Yet many states seem to have the capacity to secure compliance with the demands of justice to a higher degree than they currently do.

¹⁰ On the distinction between interactional and institutional demands, see Pogge (2008).

¹¹ For example, should shares be calibrated in light of one's capacities, one's having benefited from existing injustices, and one's having contributed to causing them (see Caney 2005; 2014)?

¹² Depending on the case, these may range from voting for, and financing, the "correct" party, offering financial support to activist groups, going on strike when appropriate, engaging in civil disobedience, etc. (cf. Caney 2014, 135ff.; Collins 2013).

responsibilities in non-ideal circumstances (for general discussion, see Murphy 2000; Miller 2011; Ashford 2003; Hooker 1995; Ridge 2011; Kates 2014). This conviction, I argue, is misguided. It overlooks that, when justice-deficits are significant, we may also expect a significant degree of non-compliance with the duties to remedy those deficits.

There is something methodologically suspect in theorizing about a non-ideal situation while assuming that agents are ideally disposed to realize justice. In several cases requiring institution building and reform, we should expect a *moderate* level of non-compliance at best, and a *significant* level of non-compliance at worst. And when doing one's fair share is foreseeably pointless in light of others' expected non-compliance, one is permitted to do nothing. Furthermore, I show that one cannot be under a duty of justice to do more than one's fair share, unless there are *relational* normative structures—such as contracts or role responsibilities—that require it.¹³ But where distributive injustices are serious, the relevant normative structures tend to be absent. In short, I argue that the demands of justice may well be weakest precisely in those circumstances in which we would want them to be strongest.

To defend this thesis, I focus on what the natural duty of justice requires in the following (increasingly) non-ideal cases: *United Kingdom* and *Global Arena*.

3. Institutional reform in non-ideal circumstances

Let us go back to *United Kingdom*. Although fundamental civil and political liberties are reasonably secure, according to recent estimates, about 4.6 million people live in persistent poverty (Office for National Statistics 2017). In other words, despite being a broadly legitimate state—hence worth supporting overall—the United Kingdom is not socioeconomically just. As a collective agent, it falls short of the demands of justice that apply to it, and thus ought to change its course of action—in the form of new laws and policies—to honour its duties. Citizens of the United Kingdom each have a responsibility to do their fair share, whatever this may be, of institutional reform. In the real world, however, not everyone will comply with this moral demand. This has interesting implications for what justice requires of each. I first consider the case of moderate expected non-compliance, and then turn to that of pervasive expected non-compliance.

3.1 Moderate expected non-compliance

Imagine that 30% of the UK's population failed to do its fair share of institutional-reform-related activities. Assume, further, that if the 70% of complying population did a little more than their fair share, socioeconomic justice would be achieved at not too high a cost to them. Faced with this scenario, many might be attracted to the view that the natural duty of justice requires compliers to pick up the slack (but cf. Murphy 2000). On reflection, it emerges that this view can only be vindicated in a narrow range of circumstances, which arguably do not obtain in *United Kingdom*. I illustrate this point intuitively by focusing on a small-scale institution: a legitimate (but not fully just) university. I then draw out its main rationale and apply it to *United Kingdom*.

3.1.1 A not-fully-just university

Imagine a reasonably just, but less than fully just university. This university falls short of full justice due to how academic roles are institutionally defined. Each individual is

¹³ On role responsibilities, see Hardimon (1994).

allocated a rigid set of tasks, and no flexibility is left for individuals to cover for each other in case a colleague is unexpectedly unavailable. Staff absences are rare, but when they occur, the university no longer delivers everything it owes to its students: a few classes get cancelled and marks are returned long after the original deadlines.

Although this is, on the whole, a good university (a “legitimate” one), it could be more just. Achieving better compliance with justice necessitates institutional reform: academic contracts should include greater flexibility and academic ethos should shift towards greater collegiality.¹⁴ In a case like this, all members of the university should do their fair share of institutional reform. Indeed, this is what they owe to the student population, who is wronged (their rights are mildly violated) due to the currently sub-optimal institutional structure. But would justice require complying members to “pick up the slack” in case others shirked their reform responsibilities?

Imagine that 70% of staff is behind the reform, campaigns for it, starts adopting a more collegial attitude and ethos, while 30% is disengaged. With an extra push—i.e., some additional but manageable sacrifice—the 70% could convince the administration to modify everyone’s contracts to ensure the continued availability of teaching and prompt marking. Does *justice* require the 70% to do more than their fair share? Of course, it would be good if some dedicated members of staff went the extra mile to see the relevant reform implemented, but would this be a demand of justice?

The answer rests on whether anyone—and specifically the victims of injustice (students in this hypothetical example)—has an *entitlement* vis-à-vis this 70% that they do more than their fair share. In that case, not picking up the slack would result in a violation of students’ rights: an injustice. Yet, suggesting that the 70% of compliers *in particular* would violate students’ rights by not taking up the slack appears implausible. The students should address their justice-based complaint to the university as a whole, and specifically to the 30% of slackers, not the 70% of compliers.

Furthermore, if the 70% of compliers did, in fact, do more than their fair share, the appropriate moral response would be gratitude and admiration. The institution as well as its “beneficiaries” (students) should be thankful to the committed 70% if they decided to take on a greater share of responsibility. This is not what the 70% owes to either the university or the students, although it may well be the independently right thing to do.

Our judgement would probably be different if we were focusing on a university where the role responsibilities of academics are *already* defined more flexibly, and everyone understands that, if a colleague is unavailable, others ought to cover for him or her. Here, what one *owes* to the university and the student population goes beyond one’s default fair share. If my *role responsibilities*, qua member of a university, involve a demand to pick up the slack, I may be rightly criticized, on justice grounds, for failing to do so: I owe it to my institution and its beneficiaries to cover for my colleagues in their absence (within reasonable limits).

For example, if, in a “solidaristic” university, Tom, a Professor in the Politics Department, all of a sudden is unable or unwilling to attend a meeting concerning a crucial—and potentially justice-enhancing—reform of the marking system, Sam (another Politics professor) ought to make a little extra sacrifice to replace him, even if doing so would make him go beyond his fair share of reform responsibilities.¹⁵

¹⁴ I am here assuming that individuals’ ethos and their institutionally defined duties go hand-in-hand with each other. On the relationship between ethos and institutions, see Cohen (2000).

¹⁵ Of course, if Tom were to default on his reform responsibilities for no good reason he would also be susceptible to justice-based criticism.

Sam's refusal to cover for Tom, against a background of a given ethos and definition of one's role responsibilities, would constitute a failure to discharge one's justice-based duties to reform legitimate but unjust institutions. But when role responsibilities do not include such solidaristic requirements, justice demands that I do my fair share, and no more than that (cf. Pasternak 2011).

The university example illustrates a broader theoretical rationale. What others are entitled to from us is that we do our fair share. Of course, there may be circumstances in which we ought to do more than our fair share. But this, by itself, is not enough to establish that any third party is *entitled* to our picking up the slack. A duty of justice, recall, is owed to others. If I have a duty of justice to do X, some other agent has the standing to claim X from me, and I may be rightfully pressured into providing X. When it comes to doing more than one's fair share, the mere fact that agent A ought to pick up the slack, in view of the bad consequences of not doing so, does not suffice to confer on any other agent (B, C, D) the standing to demand the performance of A's duty. Differently put, the fact that it would be wrong of A not to benefit B does not automatically entail that B has a right to A's benefits, especially if A has already done her fair share of benefiting (cf. Kamm 2002). Some extra, *relational* ingredient must be in place to confer on third parties the standing to demand that others do more than their fair share.

An obvious illustration of this mechanism is the practice of contract-making: if I make a contract with you according to which I should do more than my fair share, you thereby acquire the right that I do so. Taking up a *role* defined such that, under specific circumstances, I ought to do more than my share is another such mechanism. When I accept a role so defined, I confer on others the standing to both demand from me whatever the role involves, and put pressure on me if I do not deliver. Yet when my role does not involve a solidaristic provision to pick up the slack, there is no normative mechanism for conferring the standing on others to claim from me more than my fair share. This broader rationale underpins the difference between the two university scenarios. I now consider its implications for the case of an entire political community.

3.1.2 A not-fully-just state

Universities are institutions to which demands of justice apply. However, they clearly differ from states, most obviously, insofar as membership in a state—unlike membership in a university—is non-voluntary. This is not a relevant difference in the present context. Our entire discussion presupposes that one is bound by the natural duty of justice independently of the voluntariness of one's membership in the state. Indeed, natural duties are “natural” precisely because they are not acquired through voluntary acts (Rawls 1999, 98). One's membership responsibilities *in the state* are thus not conditional on consent.¹⁶ Since states—and/or functionally equivalent institutions—are necessary vehicles for the pursuit of justice, and the pursuit of justice is a morally mandatory goal for individuals, if one is a member of a reasonably just state, one is bound by the role responsibilities of citizenship as these are defined in the state in question (Stilz 2009; Waldron 1993; Renzo 2011). For if the state is reasonably just, the corresponding definition of responsibilities will also be. The reflections advanced in the case of a university may thus be extended to the state,

¹⁶ This view has been challenged, but it is a presupposition of the entire discussion, and this is not the place to defend it.

despite differences between the two when it comes to the (non-)voluntariness of membership.

Do members of states—for simplicity, citizens—have a duty of justice to pick up the slack with respect to institutional reform? Even though the argument offered so far renders it at least in principle *possible* for membership in legitimate states to come with a duty of justice to pick up the slack, it does not necessarily entail it. Just as in the case of a university, whether the duty exists or not depends on how the role responsibilities of citizenship are defined and understood in the particular state we are considering (cf. Pasternak 2011, 201).¹⁷ A state characterized by a “republican”—solidaristic—conception of citizenship, which emphasizes civic virtue and participation, is likely to be one where citizens’ roles involve a duty to pick up the slack. By contrast, a state characterized by a “liberal” conception of citizenship, which emphasizes the sacred nature of the private sphere, and the separateness of individuals, will probably not include a duty to pick up the slack among the role responsibilities of citizens (for the distinction between republican and liberal citizenship, see Miller 2000). I suspect that the United Kingdom exhibits more the latter social ethos than the former. To that extent, the natural duty of justice within the UK includes no requirement to pick up the slack, beyond one’s default fair share—although, of course, it would be a *good thing* if it did, and if people were generally prepared to do more than their fair share.

An objection is likely to be forthcoming. The plausibility of the absence of a duty of justice to pick up the slack in the “non-solidaristic university” case may be dependent on the stakes of institutional reform being quite low. The worst that can happen, if the institution is not reformed, is that a few students will receive their marks late, or be able to attend fewer seminars and lectures than they had originally expected. This is unjust towards them, but not obviously more unjust than considering those academics who have already discharged their institutional-reform responsibilities obligated to pick up the slack. But what if the stakes are much higher, as is often the case when we turn to large-scale political institutions, such as the state? Imagine that institutional reform is necessary to lift a section of the population out of severe poverty, but that successful reform is threatened by those who refuse to do their fair share. Surely, so the objection goes, compliers ought to pick up the slack—when this can be done at reasonable cost to them—*as a matter of justice* (e.g. Kates 2014, 395; cf. Ashford 2003).

However intuitively appealing, I do not think this disanalogy between high-stakes and low-stakes scenarios is defensible. How high or low the stakes are will make a difference to *whether a duty to act exists and how weighty the duty is*. Compliers may well have a weighty duty to pick up the slack in the “poverty” scenario. But whether a duty is a matter of justice is not primarily a function of its weight; it is a function of its structure: of whether it is *owed* to some other agent such that he or she has the standing to demand its performance. And just as in the first university scenario, in *United Kingdom* the relevant relational ingredient is missing. The victims of injustice could rightly complain against the slackers that they have failed to give them what they are owed qua fellow citizens, but not against those who have done their fair share. *Ex hypothesi*, in the society in question, citizenship role

¹⁷ Pasternak (2011) uses a similar argumentative strategy in a different context. She argues that when a democratic society embraces a solidaristic ethos, the costs of the political injustices it commits should be *equally* shared between citizens, as opposed to each bearing their share based on their individual level of involvement. This is due to the nature of the associative obligations that exist in a society characterized by practices of solidarity.

responsibilities do not include a duty to pick up the slack. Consequently, fellow citizens do not owe it to each other to do more than their fair share.

This does not imply that complying fellow citizens are under no obligation to assist the needy, however. They clearly ought to, and this by virtue of being bound by *another* natural duty: the duty of beneficence, which requires individuals to assist others when this is not too costly to them, without others' having a right to assistance. Although the most common image of beneficent acts involves occasional assistance to the needy—as in the parable of the Good Samaritan—demands of beneficence can be discharged in a variety of ways. What distinguishes beneficence from justice is not the mode of performance of the corresponding duties—i.e., individual vs institutionally mediated—but their point: benefiting the needy with *one's own* resources (i.e., resources one is entitled to) vs giving the needy what they are owed (Barry 1991). Duty-bearers are left with some discretion regarding how best to discharge the demands of beneficence: e.g., donating to this or that charity, helping this or that person, and so forth. But when it is manifest that the most effective way of assisting the needy is through contributions to institutional reform, taking the demands of beneficence seriously requires us to do just that.

In these circumstances, an action that might be described as picking up the slack in institutional reform may still be morally required, on grounds *not* of justice but of beneficence (cf. Miller 2011, 243–44). Those on the receiving end of compliers' efforts lack the standing to demand compliers' extra contributions, and should be grateful for receiving their assistance. Compliers have a duty to pick up the slack, but that duty is not owed to its beneficiaries.¹⁸

In sum, what justice demands in cases of institutional reform—beyond the default requirement to do one's fair share—is partly mediated by one's *role responsibilities* as a member of the relevant institution. When institutions are voluntarily joined, those responsibilities are acquired through voluntary action. When institutions are not voluntarily joined, but morally mandatory (e.g., the state), those responsibilities are grounded in the *natural* duty of justice. But contrary to what is commonly assumed, how we should interpret the natural duty of justice is not independent of our associative role responsibilities.¹⁹ By default, the duty requires us

¹⁸ Miller (2011, 241–45) reaches a similar conclusion, but in a different context, and through a different line of argument. He considers cases of fair division of responsibility between individuals *not* united by any special ties (citizenship or otherwise): for example, five people drowning in a lake, and five bystanders each able rescue them. Miller holds that *justice* would require each bystander to save one person, and that any duty to pick up the slack would be grounded in humanitarian assistance rather than justice, since *forcing* compliers to do more than their fair share seems unjustifiable. Miller's perspective is partly compatible with mine, but differs from it in several respects. First, he focuses on “interactional” cases, rather than on duties concerning institutional reform and that arise against the background of certain role responsibilities. Second, he thinks that a duty is a matter of justice rather than humanity (i.e., what I call beneficence) if we intuitively think that it may be justifiably enforced. I find this test suboptimal. This is because, while I agree that duties of beneficence cannot be *rightfully* enforced, I also believe it is sometimes all-things-considered justified—though still *pro tanto* wrong—to coerce others to perform them (Valentini 2011, 52–53). For example, in the type of rescue cases Miller discusses, it seems to me that complying bystanders may be all things considered forced to pick up the slack—given that lives are at stake—but that this enforcement would be *pro tanto* wrong, and in need of compensation. For instance, whoever forced compliers to pick up the slack should apologise to them for infringing on their rights. Furthermore, compensation should ideally be exacted from non-compliers. Cf. the discussion of rights-infringement in Feinberg (1978, 102). For further discussion of these kinds of cases, with different conclusions than Miller's, see Karnein (2014) and Stemplowska (2016).

¹⁹ Thanks to Avia Pasternak for drawing my attention to this. For a different view, see Kates (2014, 402). Kates treats associative duties of fairness and natural duties as completely separate. In his view,

to do our fair share in reforming unjust institutions “that apply to us”—to use Rawls’s expression. Whether it requires more is determined by local rules of association, by the responsibilities attached to one’s role as a citizen in a given community.

3.2 *Pervasive expected non-compliance*

Let us now turn to a different case: one in which the vast majority of the population (say, 70%) may be expected to fail to comply with the demands of the natural duty of justice. Against this backdrop, imagine a lower middle-class UK citizen, John, who had previously supported the Conservatives, now appreciates that his state is socioeconomically unjust, and is minded to do his part in furthering institutional reform. Doing his fair share—let us assume—would require John to set aside a portion of his income to support social-justice initiatives, and consequently delay refurbishment of his shop, although prompt refurbishment would boost his business. John *reasonably foresees* that only very few of his fellow citizens are equally disposed to invest resources in institutional reform. Since institutional reform can only be successful if a critical mass of citizens supports it, John can be virtually certain that his sacrifices would bear no fruits, simply resulting in a waste of personal resources. Considering John obligated, as a matter of justice, to do his share even in these circumstances would be both inefficient and unfair (Miller 2011, 238). When agents can reasonably foresee that doing their fair shares will not get them any closer to justice *due to others’ non-compliance*, it is wrong to insist that they ought to comply nonetheless.²⁰ In those cases, they may do nothing. This conclusion comes with a rather unpalatable implication: the greater the injustice due to widespread non-compliance is, the “lighter” the demands of the natural duty of justice become. Three considerations mitigate this implication.

First, for the natural duty of justice to require nothing, the *non-compliance-related* pointlessness of one’s efforts has to be genuinely foreseeable, from the perspective of a reasonable person, and with a high enough degree of certainty (Lawford-Smith 2012). Being in doubt about the future efficacy of one’s actions in support of political reform does not cancel one’s responsibilities. Indeed, except for cases in which it is manifestly pointless, one should *signal* one’s disposition to do one’s fair share, so as to avoid collective action failures whereby not signalling one’s willingness to cooperate generates reasonable beliefs in widespread non-compliance, and consequently “annuls” the demands of the natural duty of justice.²¹

Second, in some circumstances, institutional-reform efforts that are virtually certain to deliver no tangible results may nonetheless be morally required. This occurs when such efforts have a strong *expressive* dimension, and are performed by those who are partly responsible for causing existing injustice. Even if campaigning for institutional reform might bear no substantive fruits, it may still be demanded when it is the most credible vehicle for expressing regret at one’s involvement in injustice.²²

the content of the latter, unlike that of the former, is not affected by the rules governing existing associations. Moreover, Kates argues that while we lack a fairness-based obligation to pick up the slack in the face of others’ non-compliance, the natural duty of mutual aid may still require us to do more than our fair share when this is necessary to meet people’s urgent needs. Finally, for Kates (but not for me), obligations of fairness, natural duties to support just institutions, and natural duties of mutual aid *all* count as setting out demands of justice. See Kates (2014, 404, fn 26).

²⁰ The qualification “because of non-compliance” is key. A moderate level of free-riding often makes little difference to the overall provision of public goods, but this is clearly not sufficient to justify it.

²¹ Thanks to Keith Hyams for suggesting this point. For a detailed discussion of the duty to signal, in the context of ethical consumption, see Lawford-Smith (2015).

²² Thanks to an anonymous reviewer for making this suggestion.

Third, and finally, when one is exonerated from the demands of the natural duty of justice, one is thereby freed from bearing otherwise morally mandatory costs. This may result in duties other than the natural duty of justice—e.g., duties of beneficence—becoming more onerous. Consider, again, John’s situation. Due to widespread expected non-compliance, he avoids costs that justice would have otherwise imposed on him. He is better off than he would have been and therefore susceptible to greater demands of beneficence. Donating, say, more than two hundred pounds to Oxfam would have been a considerable sacrifice for him, had he already incurred significant justice costs. But as things stand, he can easily afford to donate more, and ought to do precisely that. Saving on the costs of justice may result in greater morally mandatory costs as a matter of beneficence.

Even taking these three mitigating factors into account, the general conclusion still stands: if, due to widespread expected non-compliance, doing one’s fair share is foreseeably pointless—both materially and expressively—the natural duty of justice does not require one to do anything.

This brings my discussion of the natural duty to *reform* capable, but somewhat unjust, institutions to a close. Crucially, across all cases discussed so far, when it comes to placing holistic responsibility for injustice, a target agent exists: *a capable state*. Individual members may, at times, bear less responsibility for justice than we would ideally want them to, but there is always an agent to blame for injustice: no “normative gap” exists (cf. Estlund 2017).²³ This situation is not replicated once we move to contexts in which capable institutional agents of justice are absent, such as the global realm.

4. Institution-building in non-ideal circumstances

Let us assume a broadly cosmopolitan perspective, according to which principles of distributive or socioeconomic justice, much like those traditionally defended within the domestic realm, ought to apply to the world at large. Institutional agents capable of securing distributive justice worldwide do not currently exist. This claim is virtually undisputed in the literature, and confirmed by cosmopolitans’ championing all kinds of institutional overhauls of the current international system (e.g. Pogge 1992; Cabrera 2004).

As suggested by a number of scholars, if ought implies can, the lack of agents capable of realizing global distributive justice means that cosmopolitan principles of justice are not genuinely “normative,” by which I mean “requirement-generating” (see, most explicitly, Meckled-Garcia 2008; Nagel 2005, 115–116). They can help us *evaluate* the global order, and come to the conclusion that it is morally sub-optimal or unjust. But they do not allow us to identify who is responsible for this injustice because there is *no agent capable of acting* on the relevant principles. This gives rise to a normative gap (for related discussion, see Child 2016).

Cosmopolitans might protest that talk of a normative gap makes too big a deal of something rather trivial. Institutional agency is sustained by the coordinated actions of many agents. This immediately suggests a way of bridging the putative normative gap. If human beings can build institutions, and institutions are necessary for the realization of justice, they ought to do precisely that: build just institutions. Following this line of reasoning, the natural duty to “further just arrangements not yet established” seems to provide an easy way of injecting normativity into cosmopolitan

²³ David Estlund (2017, 51) has independently adopted a similar label for a similar phenomenon, which he calls “normativity gap.”

justice. In fact, cosmopolitans may insist that *if every agent did their fair share* in bringing about—and then complying with—just global institutions, global justice could be realized today.

Let us grant that, if all agents (individual and corporate ones, including states) did their fair share of just-institution building, global justice would obtain. Even so, how far the natural duty of justice can help global-justice advocates bridge the gap between their ideal of justice and the status quo remains an open question. Once again, the possibility of realizing global justice conditional on full compliance does not tell us much about whether the duties applying *to existing agents*—i.e., in circumstances of moderate-to-severe non-compliance—actually deliver global socioeconomic justice.

If they do not, it would remain true that claims about global *justice* are only partly normative. There would be a mismatch between the duties of justice applying to existing agents, and the relevant ideal of socioeconomic justice. Some so-called global “injustices” would not carry any moral condemnation of *existing* agents, because existing agents would have no justice-based duties to remedy them. To be sure, there would still be something to be regretted, evaluatively, in the gap between the existing world and the ideal of global justice. But the gap would be normatively mute, at least from a *justice perspective* (cf. the discussion in Gheaus 2013).

So, what does the natural duty demand of the agents bound by it in the non-ideal context of global institution building? As always, I answer by considering cases of moderate non-compliance first, and then of severe non-compliance.

4.1 Moderate expected non-compliance

Responsibility for global justice is shared among a large set of agents, but plausibly, the most significant portion of this responsibility falls on states. Let us assume that, say, Denmark failed to do its fair share—quantified in terms of a certain portion of its GDP—in bringing about just global institutions. Let us imagine, in addition, that the United States (or some other powerful country) could successfully bring about just global institutions—thereby saving many lives—by doing a little more than its fair share. Would the U.S., or some other state in a similar position, have an obligation to pick up the slack grounded in the natural duty of justice?

Our intuitions would again point in the direction of an affirmative answer (cf. Ashford 2003). Yet, if my argument in the previous section is correct, this affirmative answer is unwarranted. The first question we need to ask is whether the United States and Denmark have role responsibilities *qua* members of a global organization tasked with realizing global justice, just as individuals have role responsibilities *qua* members of states. Since, *ex hypothesi*, such a global organization is absent—after all, we are discussing the duty to *create* one—no state can have role responsibilities *qua* member of a non-existing institution. This means that the normative materials for a *justice-based* duty to pick up the slack are missing from the start.

It might be objected that a global, or near-global institution tasked with realizing justice does exist, but is deeply flawed: the United Nations.²⁴ Members of the United Nations—including Denmark and the U.S.—may in turn be said to have role responsibilities, *qua* participants in this institution. Even granting this response, whatever we might say about the nature of the role responsibilities of UN members, these are very far from including the strong solidaristic components typical of republican citizenship. The UN is a loose organization of sovereign states, many of

²⁴ Thanks to an anonymous reviewer for raising this point.

which are in fact hostile to each other. The idea that membership responsibilities may be understood as including a duty to pick up the slack seems far-fetched. If the role responsibilities of UN members were understood in that way, the world would be a rather different place; indeed, the UN itself would have a rather different shape.

When it comes to the global realm, then, we cannot justify a *justice-based duty* to do *more than one's fair share* by way of institution building, because the type of role responsibilities that ground those duties are absent. We must then accept that, in some circumstances, one has a justice-based duty to do *only* one's fair share, even if this prevents the successful achievement of the desired goal, and the goal could be realized at little extra effort on the part of the duty-bearer.

The counter-intuitiveness of this conclusion can again be mitigated by appeal to duties of beneficence. Going back to our Denmark-U.S. example, the U.S. would have no justice-related duty to do more than its fair share, but it may still have a duty of *beneficence* to do so, especially given that the lack of just global institutions is arguably a core cause of much of today's global deprivation. If, as I argued in the previous section, institutional reform is the best means of achieving the goal of helping the needy, then there may be very good beneficence-based reasons for channelling one's resources in that direction. In this case, however, beneficiaries ought to show gratitude towards the U.S. Their right to escape poverty is not held against the U.S.—since, *ex hypothesi*, the U.S. has already “done its part”—but against Denmark. The U.S.'s stepping in may be morally obligatory, but not as a matter of justice.

In sum, since at least a modicum of non-compliance is to be expected in the real world, the lack of a justice-based duty to pick up the slack means that the full realization of cosmopolitan justice will not be morally mandatory for complying agents as a matter of *justice*. In non-ideal circumstances, justice can only do some of the normative work. Beneficence will pick up the slack.

4.2 Pervasive expected non-compliance

Imagine the government of a small country attempting to do its part in bringing about just global arrangements. It sets aside a considerable portion of its budget and delays some plans for domestic infrastructure renovation, all with a view to contributing to the establishment of global authorities capable of realizing justice. As it turns out, those other states that had originally consented to collaborating on this “global justice project” pull out. The resources set aside by our conscientious small country get wasted as a result, when they could have been used to pursue worthwhile domestic reforms. This is both inefficient and unfair. Once again, if doing one's fair share of institution building and/or reform is obviously pointless because of others' non-compliance, one has no duty to act.

Moreover, and more troublingly, when macro-level agents capable of realizing justice are absent, such non-compliance might generate *normative gaps*. To see this, consider the following small-scale scenario; structurally similar ones have been recently discussed by David Estlund.²⁵ A couple is visiting a cave. Suddenly, a boulder rolls down the mountain where the cave is located, blocking the entrance to the cave. Outside, a group of tourists are having a picnic. By working together, the tourists could easily remove the boulder and rescue the trapped couple. For anyone to help without the others' cooperation, however, would be both manifestly futile and

²⁵ This is in the context of what he calls “the puzzle of plural obligation,” from which I have learnt. For a brief discussion of the puzzle, see Estlund (2017, sec. 7).

potentially harmful. In other words, unless the tourists work together, the rescue attempt will be pointless. Unfortunately, none of them is disposed to help, and this fact is common knowledge within the group. Hours go by, and the cave's oxygen supply is gradually depleted. Eventually, the trapped couple is liberated by a local rescue team, but they suffer brain damage due to oxygen deprivation.

In this scenario, two people are seriously injured. If everyone outside the cave had done their fair share of rescue responsibilities—i.e., they had each helped remove the boulder—the couple would have been freed without suffering any injuries. Yet, due to generalized non-compliance, none of the tourists may be accused of having violated a duty to contribute to the rescue. Since helping would have been at best pointless without others' cooperation, counter-intuitively, none had any obligation to try to remove the boulder in the first place.

This conclusion may seem too quick. After all, isn't everyone to blame for not being *disposed* to help the trapped couple?²⁶ To be sure, we may conclude that the tourists are “defective moral agents”: they lack the kind of other-regarding dispositions that a good moral agent should display (Pinkert 2015, 989; cf. Goodin 2012). But this is not tantamount to concluding that they each violated *a duty to contribute to the couple's rescue*. After all, the duty is one to contribute only on condition that others also do, since contributing by oneself would be pointless at best, and harmful at worst. Given others' insensitivity to the couple's needs, none of the tourists is under an obligation to contribute on this occasion. To that extent, none can be held responsible for the couple's injuries.

This conclusion is counter-intuitive, but consistent with ordinary moral reasoning. Consider the following analogy. Imagine someone—call him Jack—so insensitive to moral demands that he would not help a drowning child at small personal cost if he could.²⁷ No doubt, Jack lacks moral virtue. But unless and until Jack finds himself in a situation in which he can help a drowning child, he violates no duty of rescue. Let us assume that, throughout his life, Jack never encounters any drowning children. In that case, we cannot accuse Jack of being *morally responsible for* the death of any drowned child, since he was never under a duty to save one in the first place. The existence conditions of such a duty were never satisfied in his case. The same can be said about our tourists: they are bad moral agents, but they are not individually responsible for the couple's injuries, since the existence conditions of a duty to rescue were not satisfied in their case.

This is an extreme scenario, but it drives home the point that, where no collective agent capable of bringing about the desired outcome exists, individuals' non-compliance may give rise to normative gaps: we would want to say that someone is morally responsible for the injuries suffered by the couple, but none of the tourists is, and there exists no collective agent to whom the relevant responsibility might be ascribed (see Estlund 2017, sec. 7). Structurally similar normative gaps may exist in cases of non-compliance where the desired collective outcome is building just global institutions, instead of rescuing a trapped couple.

It might be objected that, unlike in the present rescue case, a corporate agent at the global level exists: the UN. Perhaps, just like at the domestic level, we can attribute holistic responsibility to *it*. I offer two considerations in response. First, the UN is so loosely integrated that it is not even entirely clear whether it qualifies as a collective agent. Second, even if it does, it is beyond doubt that it lacks the *capacity* to

²⁶ I thank an anonymous reviewer for raising this concern.

²⁷ The scenario is inspired by Singer's (1972) famous case.

realize anything like global justice: this is why new institutions need to be built in the first place. From the perspective of global justice, the UN looks more like a failed state than like a properly functioning one.²⁸ Blaming the United Nations for the world's failure to realize cosmopolitan justice would be like blaming a two-year-old boy for failing to lift a piano: a moral mistake.

To be sure, other duties “beyond borders” might still be operative in circumstances like the ones I have described—most prominently, duties of beneficence—but the duty *of justice to bring about just global agents* would be normatively inert. Sadly, this normative inertia may be present in the real world. Faced with the global-justice insensitivity of many powerful actors, the expectation that one's efforts towards creating institutional agents of global justice would have little consequence may seem warranted—at least if one is not as influential an actor as China or the United States.

Conclusion

I have discussed the demands of the natural duty of justice in non-ideal circumstances. These are circumstances characterized by distributive-justice deficits, in which the duty requires that we (i) reform capable but unjust institutions that apply to us and (ii) bring about just institutions that do not yet exist. This investigation was prompted by the observation that the natural duty of justice is often invoked, somewhat casually, as a “normative bridge” between the duties of distributive justice applying to institutional agents and the responsibilities of individuals. Upon inspection, it has emerged that the duty succeeds in establishing the hoped-for normative bridge in a narrower set of cases than expected. Once we observe that, in circumstances characterized by justice deficits, agents will tend to only partially comply with demands of justice to remedy such deficits, the limits of the natural duty of justice become apparent. Justice—a moral concern so pervasive in contemporary political philosophy—can do less moral work than assumed. Beneficence, I have concluded, will often have to pick up the slack.

This conclusion sharpens our understanding of the relationship between the beneficiaries and the bearers of duties to pick up the slack in non-compliance scenarios. Absent solidaristic role responsibilities, compliers' duties to pick up the slack are a matter of beneficence, not of justice. In such cases, victims should be grateful to compliers, and forcing compliers to pick up the slack is *pro tanto* wrong. These observations caution us against the tendency to automatically treat all high-stakes duties as demands of justice. This tendency is problematic insofar as it robs justice of its distinctiveness: giving right-holders a certain standing vis-à-vis duty-bearers. This is the standing to “look duty-bearers in the eye,” as Joel Feinberg puts it, and demand the performance of certain duties as one's entitlement. *Normatively* speaking, right-holders are “in control” of the duties owed to them; they are not at the mercy of others' beneficence.

As I noted earlier, in a famous speech, Nelson Mandela stated that: “Overcoming poverty is not a gesture of charity. It is an act of justice.” While I broadly agree with Mandela's message here, if my argument is correct, it needs some qualification: in non-ideal circumstances, *compliers'* taking up the slack with the aim of securing the poor's socioeconomic rights will often be a charitable gesture, not a demand of justice.

²⁸ Thanks to Miriam Ronzoni and Tamara Jugov for discussion.

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