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The Role of Institutions in Cosmopolitan Justice

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## **Abstract**

This paper focuses on a distinction between two kinds of theories about the role of institutions in cosmopolitan justice. Some philosophers claim that principles of egalitarian justice apply to institutional schemes only, and do not apply to the actions of individuals. Others think that principles of egalitarian justice apply also to the actions of individuals. I aim to clarify this debate with a view on cosmopolitan justice by examining whether institutions can make a non-instrumental difference to what people ought to do with regard to distributive justice. I begin by outlining two positions concerning the significance of institutions in cosmopolitan justice. The first position argues that institutions enable a more effective discharging of individual preinstitutional duties, however both institutions and individual conduct are to be evaluated with the same fundamental principles. The second position aims to establish the special significance of institutions in global justice by regarding them as possible channels of collective harm. In contrast to these two strategies, I provide an argument for regarding institutions as making a non-instrumental difference to what people ought to do with regard to cosmopolitan justice. The argument purports to establish that some fundamental cosmopolitan principles of justice do not apply to individual conduct directly. It emphasizes the constitutive role of global institutions in distributive justice on the basis of the conditional character of moral duties and of the systematic nature of institutional schemes. The thesis is justified by reference to the capacity of institutions to solve coordination problems and conflicts raised by the fact of disagreement, and their capacity to determine a unique set of just distributive rules, given the essentially underdetermined character of the demands of justice.

## **Keywords**

cosmopolitanism, institutions, distributive justice, disagreement, coordination



*The Role of Institutions in Cosmopolitan Justice*

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**Two variants of cosmopolitan theory**

Cosmopolitan positions about global justice derive our duties of justice from a requirement of equal concern that we owe to all our fellow human beings in virtue of their status of being human. The ground for this cosmopolitan outlook is a general individualist moral universalism, which grew out of Enlightenment ideals. The defining features of this outlook are the following.<sup>1</sup> First, it is *individualistic*, in the sense that it holds that all moral requirements must ultimately be justified by reference to their effects on individual well-being. In the justification of moral requirements only individual well-being plays a foundational role, and the value of other things, e.g. institutions, community, culture, relationships, etc. is always derivative. As Thomas Pogge formulates this feature of cosmopolitanism, the “ultimate units of moral concern” are individuals, not societies or peoples.<sup>2</sup> Second, cosmopolitanism is *universalistic* in the sense that it demands that all moral requirements be derived from fundamental principles that consider the well-being of all humans. The ultimate scope of moral consideration is universal. Implicit in this feature is its *weak egalitarianism*, in the sense that it prescribes an equal consideration of the interests of all individuals. Since all human lives are equally valuable, morality must prescribe an equal consideration of human interests, and, because of its individualistic outlook, it must not allow a division of humankind into states or peoples to have a fundamental role in determining how one individual should treat the interests of another. Finally, the scope of morality is *general*: all moral requirements must be based on fundamental principles that hold for everyone, not only for some subset of individuals, such as compatriots, fellow-religionists etc.<sup>3</sup>

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<sup>1</sup> This characterization follows the description offered by Thomas Pogge in Pogge (2002: 169).

<sup>2</sup> Pogge (1989: 38, 113)

<sup>3</sup> Pogge: (2002: 169)

Cosmopolitan theories of justice rely on this outlook, and therefore they do not regard institutions as having a foundational role in their conceptions of justice. This does not imply, however, that institutions have no role to play whatsoever in cosmopolitan theories of justice. They might have secondary relevance in these theories, in particular they might be necessary for the implementation of justice. In this paper I examine some roles institutions might play in a cosmopolitan theory. In particular, I want to examine how individual duties relate to the principles of justice cosmopolitan egalitarians defend, and what difference institutions make to the duties of individuals. Doing so is important for the following reason. The recent philosophical literature about distributive justice focuses on institutions. Discussions concern what principles a scheme of political and economic institutions must satisfy in order to qualify as just. However, institutions are sustained and reformed by individuals. In order for political philosophy to have any normative significance for individual conduct, it must tell us about the duties of individuals sustaining these institutions.

This holds for theories of global justice too. Most of the proposals concerning global distributive justice focus on the role of global institutions. They emphasize the role of institutions either in the justification of extending the scope of principles of justice to the global domain, or in the implementation of principles with a global scope. In order to clarify the role of institutions in global justice, I propose to frame these theories along the lines of a distinction between two types of such theories with regard to how they relate the justice of institutions to the duties of individuals. Some theories of global justice – which I refer to as ‘institutionalist’ – claim that some fundamental principles of egalitarian justice apply to institutional schemes only, and do not apply to the actions of individuals. At the opposite end we find theories – to which I refer as ‘non-institutionalist’ – that claim that all fundamental principles of egalitarian justice also apply to the actions of individuals.<sup>4</sup> If it is a fundamental principle of justice that “an egalitarian distribution of resources ought to be promoted” then, on the institutionalist position, this principle may not apply to individual conduct, but it does apply to institutions. On the non-institutionalist position, by contrast, this principle should directly guide individual conduct as well as institutional design. Therefore the principle “everyone ought to promote an egalitarian distribution of resources” would be a fundamental principle of individual conduct according to non-institutionalists. The two types of theories employ different strategies in defending principles of justice with global application. Most theorists defending the institutionalist strategy argue that global institutions exist that are subject to assessment in terms of justice, which trigger the demand for distributive equality. The existence of such institutions gives rise to obligations of justice among people living in different countries. Participants in these institutions ought to promote the reform of unjust institutions, and sustain just ones.<sup>5</sup>

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<sup>4</sup> Cosmopolitan or domestic versions of both types of these theories have been defended by several authors recently, most notably by John Rawls, G.A. Cohen, Joshua Cohen and Charles Sabel, A. J. Julius, Thomas Pogge, and Liam Murphy. See Rawls (1999a), Cohen (2000), Cohen (2001), Cohen and Sabel (2006), Julius (2006), Pogge (2000), and Murphy (1999). The debate is usually framed in broader terms than a debate about egalitarian duties. Thus Murphy speaks of a distinction between ‘dualism’ and ‘monism’, where monists hold the position that “all fundamental normative principles that apply to the design of institutions also apply to the conduct of people”, whereas dualists deny it. See Murphy (1999: 252). Pogge in Pogge (2002), on the other hand, does not speak about egalitarian cosmopolitan duties as such, but only about cosmopolitan duties. I shall focus on the requirements of egalitarian justice, but the argument of the paper will be relevant for that broader distinction too.

<sup>5</sup> See Pogge (2002).



Theorists who pursue the non-institutionalist strategy argue, by contrast, that everyone has to promote equality globally, regardless of the existence of global institutions, and the role one plays in them.<sup>6</sup> This paper seeks to clarify this debate by examining whether institutions can make a non-instrumental difference to what people ought to do with regard to distributive justice. That is, to examine whether the role played by institutions is more than merely instrumental in discharging individual egalitarian duties existing prior to and independently of the rules or commands of institutions. Finding an affirmative answer could help illuminate what is at stake in the debate between institutionalists and non-institutionalists, and also provide a plausible defence of a qualified institutionalist position. In order to approach the problem, I present two alternative positions about whether or not all fundamental principles of egalitarian justice apply also to the actions of individuals. One of them answers this question in the affirmative, and regards institutions as enabling a more effective discharge of individual egalitarian duties. The second position holds that there are some fundamental egalitarian duties that do not apply to individuals directly, since it sees institutions as possible channels of collective harm. I conclude the paper by presenting a third alternative which gives the outlines of a case for justifying the claim that institutions make a non-instrumental difference to what we ought to do.

Throughout the paper, I follow Rawls in defining an institution as a “public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like.”<sup>7</sup> An institution exists when a number of people regularly and knowingly follow its rules. In this sense institutions are constituted by the conduct of individuals upholding it. It remains to be seen, however, whether, by following the rules of institutions, individuals are also subject to the same moral requirements as are institutions conceived as systems of rules. On the other hand, this definition of institutions stands in contrast with another way of understanding them, also present in ordinary language, as collective bodies, or organised agencies, such as firms or universities. Rawls’ definition of an institution as a practice is theoretically more helpful, since it does not presuppose collective decision-making capacity, so I will adopt it in this paper.

### **Non-institutional egalitarianism**

The first group of theories I examine holds that all fundamental principles of egalitarian justice apply to the actions of individuals, even when some of them also apply to institutional schemes. I shall refer to this group as ‘non-institutionalism’, and I regard it as a version of monism. The term ‘monism’ was introduced by Liam Murphy to refer to the view that “any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people’s choices.”<sup>8</sup> Non-institutionalism is a special application of monism when applied to egalitarian justice, i.e. when concerned with specifically egalitarian principles. Institutionalism holds, by contrast, that there are some fundamental principles of egalitarian justice that do not directly apply to the actions of individuals.<sup>9</sup> Recently, this

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<sup>6</sup> Murphy (1999: 281)

<sup>7</sup> Rawls (1999a: 55)

<sup>8</sup> Murphy (1999: 254)

<sup>9</sup> Murphy terms the alternative to monism as dualism, viz. the view that “the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle.” Murphy (1999: 255). It has been suggested that dualism is an unhappy name for this view,

view has been famously defended by Rawls, who holds that different principles are appropriate for different types of subjects, depending on their normatively significant features: “the correct regulative principle for a thing depends on the nature of that thing.”<sup>10</sup> As we saw, his principles of justice are designed to regulate neither the personal conduct of individuals, nor the working of private associations, nor the international relations of states, but only the basic structure. It is true, institutions are systems of rules which only exist when individuals regularly and knowingly follow them. They are upheld and reformed by individuals. For this reason, a theory of justice must say something about what duties individuals have with regard to justice. Rawls’s answer to this problem is to postulate a natural duty of justice. He claims that individuals have a natural duty to “support and comply with just institutions that exist and apply to [them]”, and they also have a duty to “further just arrangements not yet established, at least when this can be done without too much cost to [themselves].”<sup>11</sup> An important feature of this duty is that it is natural, hence preinstitutional. For Rawls, this means the conjunction of two things: such duties apply to individuals regardless of their voluntary acts, and they apply to them prior to and independently of the rules of institutions. As Rawls puts it, the content of such duties “is not, in general, defined by the rules of [institutions].” On the other hand, the content of this duty is different from the content of principles of justice which apply, in Rawls’s view, exclusively to the basic structure of the society.

The Rawlsian view contrasts with monistic theories such as utilitarianism, which use the same criterion to evaluate all the moral domains. Non-institutionalism in this respect is similar to utilitarianism: the difference between the two lies in the content of fundamental principles they use for evaluating both personal conduct and institutions. Now, of course even in the non-institutionalist view there might be political principles that do not apply to personal conduct. One such principle, referred to by Murphy, is the principle that “taxation should be levied according to taxpayers’ ability to pay.” Such principles are not fundamental, however. What non-institutionalism rejects is that, in defending such non-basic principles, we can appeal to fundamental egalitarian principles that “do not also apply directly to people’s conduct.”<sup>12</sup> So if we suppose it is a fundamental principle of egalitarian justice that “an egalitarian distribution of resources ought to be promoted” then this principle should directly guide individual conduct, in addition to being a standard for institutional design. In other words, we would then have a principle of morality, applying to individuals, stating that “everyone ought to promote an egalitarian distribution of resources.”

### **The more effective discharge of pre-existing individual duties**

Even though they do not regard institutions as being of foundational importance in egalitarian justice, those advocating the non-institutionalist view do not downplay the importance of institutions. They regard them as having special significance in a theory of justice in that they are very often seen as the most effective means to carry out the

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since individual conduct and institutional design do not jointly exhaust the set of moral domains, hence pluralism would be a better term. See Pogge (2000: 154), Nagel (2005: 122), Cohen and Sabel (2006: 159).

<sup>10</sup> Rawls (1999a: 25)

<sup>11</sup> Rawls (1999a: 99)

<sup>12</sup> Murphy (1999: 254)

preexisting duties individuals have independent of their participation in institutions.<sup>13</sup> We can construct an argument for this position along the following lines.

Suppose individuals have a natural duty to promote an egalitarian distribution of resources. In complex societies it would be immensely difficult for an individual to know exactly how to act in order to best promote overall equality. In order to know what to do, we have to have access to all sorts of relevant information, such as that about the current distribution and the expected effects of all possible courses of action available to us. But this requirement represents an insuperable informational difficulty for individuals. We are not in the position of the imaginary ‘Impartial Observer’ of moral theories: we lack perfect rationality and perfect endowment with all relevant information. We have limited time and other resources available to make sure of what the morally optimal action is. With regard to the demands of egalitarian justice, most often we are not in a position to determine what course of action would best promote equality at any specific moment. Because of these significant limitations, individual actions which aim to promote equality, if based on the judgement of each by her own reason alone, could achieve the goal with significant waste only. The aims of egalitarian justice can be achieved more effectively by creating and maintaining just institutions, i.e. systems of rules following which we are more likely to achieve the egalitarian aims than could our independent individual actions intended to bring about the same effect. We can think of cases like this very easily. For instance, a social division of labour, involving experts with special skills or knowledge, and the assignment of special rights and responsibilities, might make attempts to pursue equality more effective. In cases like this individuals are not to follow a course of action which they personally think would best promote equality. They have a duty to follow the rules of just institutions if they exist, and create new institutions when they are not yet in place, in order to bring about equality in the most effective way.

With an eye to the debate between the institutionalist and non-institutionalist, we have to attend to what this argument is actually capable of establishing. It does not show that institutions do make a non-instrumental difference with regard to individual duties of justice. What it establishes is merely that we have to *conform to* the rules of institutions because doing so will promote equality better than could our individual actions following our independent judgements. That is, we have to perform the same acts as are required by the rules of institutions, but not *because* they are required by the rules of institutions. In principle, the two kinds of reasons – those enjoined by institutions and those required by independent moral duties – may come apart. Were it to be the case that at least on some occasions I know precisely what I have to do in order to promote equality in the overall distribution, I would be obliged to act upon my judgment, regardless of what the institution commands me to do in that case. According to the argument from institutional effectiveness, I have to act on the balance of reasons applying to me when deciding whether or not to follow the institution’s instructions. Since by conforming to the rules of an institution I have a higher chance of being able to promote equality than by acting on my own judgement, my duty to promote equality, together with the empirical thesis about the effectiveness of institutions, prescribe for me conforming to the rules of the institution. However, the fact that we have to decide on the balance of reasons whether or not to do as the institution says means that the same rules apply to the conduct of individuals as to the design of institutions. It just

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<sup>13</sup> This point was made in Murphy (1999: 278-84). See also Shue (1996: 166-73).

happens to be the case that by acting in conformity with the rules or commands of institutions individuals are more likely to meet their individual duties which exist prior to and independently of these rules or commands.<sup>14</sup> That institutions may prescribe a duty does not add anything substantial to our individual duties existing prior to and independently of institutional rules. This argument does not show that we have a duty to *comply with* the rules of institutions. Since this is so, the institutionalist position is not supported by considerations of effectiveness, hence we have to look for other considerations to see if the institutionalist cases can be defended.

### **Institutions as channels of collective harm**

The second position about global justice that I want to examine belongs to the institutionalist camp. It argues for the special significance of institutions on the basis of the recognition that individuals can do wrong to one another collectively, with the mediation of institutions, that they cannot do individually. Thomas Pogge takes such an institutionalist position in Pogge (2002). There, Pogge distinguishes between what he calls interactional and institutional understandings of cosmopolitanism. He claims that on the institutional understanding, “fundamental principles of social justice” apply to institutional schemes, and only indirectly to individual conduct, whereas from the interactional viewpoint, moral principles apply to individual conduct directly.<sup>15</sup> In this section I look at how this might be so by interpreting some statements made by Pogge, although there is no suggestion that in making these statements he is concerned with this particular point discussed here. Nevertheless, putting them into the context of the stated problem helps to illuminate some important points about the debate between the institutionalist and the non-institutionalist.

Pogge argues that “by significantly cooperating in the imposition of social institutions we acquire a shared negative responsibility for at least their foreseeable and avoidable effects”.<sup>16</sup> By creating and maintaining an unjust institutional scheme advantaged participants are causally responsible for the injustice, and acquire moral responsibility by violating the basic duty not to harm others. Institutions have special significance with regard to justice, because – so the argument runs – our negative responsibility for what we bring about is significantly weightier than our responsibility for what we allow to happen, and institutional injustice represents the violation of a negative duty.<sup>17</sup>

Pogge offers two interpretations of the claim that by cooperating in the imposition of an unjust institution people violate their negative duty not to harm others, unless they at least make some effort at compensation. The difference between the two interpretations lies in the way they relate notions of harm and justice. First, we can understand claims of justice in terms of harm, which notion is in turn specified independently of justice. On this view, injustice has been done only if someone has been harmed by others: in this sense, harm is the primary concept, while justice is secondary to it. Now, the concept of harm necessarily makes reference to some baseline to which the actual situation is being compared. Thus, in judging whether harm has been done,

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<sup>14</sup> The distinction between *conforming to* and *obeying* the rules of a political institution is discussed in Raz (1984: 141), and further elaborated with great clarity in Kis (2002). The distinction relies on a prior one between *conforming to* and *complying with* reasons for action. See Raz (1990: 178-9).

<sup>15</sup> Pogge (2002: 170)

<sup>16</sup> Pogge (2000: 166)

<sup>17</sup> Pogge (2002: 65, 133)

what baseline we employ makes a significant difference. Pogge considers two such baselines. One is diachronic, i.e. it involves a comparison of the current state of the relevant person with the position of this person at some earlier time. The second baseline is subjunctive: it compares the current state of the person with the hypothetical situation which would obtain “had some earlier arrangements continued undisturbed.”<sup>18</sup> An example of the latter is a state of nature that would obtain in the absence of any kind of institutional interaction, and where individuals would be entitled to an equal share of the earth’s natural resources.<sup>19</sup>

It would follow from this first interpretation of Pogge’s claim that advantaged participants of an institution have violated their duty not to harm others if they have made other participants worse-off, compared to the relevant baseline.<sup>20</sup> If this is the case, Pogge goes on to argue, they have to stop harming the poor, and have a corresponding duty to compensate for the harm. The ground for this duty would be that everyone has a negative natural duty not to harm others, and by imposing on others an institutional scheme that harms them, some participants have violated this duty.

This interpretation would see the justice of institutions as deriving from the pre-institutional duty of those upholding the institution not to harm others. Institutions would be evaluated on the basis of the harm people cause to one another through them. This interpretation of the harm-based case for the special significance of institutions may run into a number of difficulties if it relies on a commonsense notion of harm. In order to prove that we have individually harmed others in this sense through institutions, ordinary morality suggests a number of necessary conditions. One such condition is that the fact of harm must be correctly attributable to our actions. Our actions must be firmly related causally to the change in the well-being of the victim, that is we must be seen as *causing harm* to her. Related to this is the requirement that the position of the person harmed must be worse-off than some relevant baseline. As we saw, Pogge considers two such historical baselines: diachronic, which looks at actual history, and subjunctive, which relies on a fictional history.

Critics have objected that the application of these conditions to the justice of institutions is problematic. Attributing individual responsibility for harming others may be questionable in the case of participants in large-scale institutions, where the effect of individual actions on the well-being of others is very small or zero, and where the conditions for holding someone responsible for the harm might not hold. Thus it may be problematic to translate the injustice of an institutional scheme into a moral standard of negative individual responsibility.<sup>21</sup> Attributing responsibility for harm to participants in an institutional scheme has been challenged for another reason too. It has been argued that what would follow from the application of a hypothetical non-cooperative baseline is merely that the rich must compensate the poor up to their counterfactual level of well-being, implying that large social inequalities would be permissible if the poorest of society are at least as well-off as they would be in the absence of institutional interaction with others. This claim, in addition to being highly speculative, seems to demand too little from the rich and is not intuitively appealing.<sup>22</sup>

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<sup>18</sup> Pogge (2005a: 4)

<sup>19</sup> Pogge (2005a: 3)

<sup>20</sup> Actually, Pogge argues that the global rich have made the global poor worse-off, compared to both baselines. (Pogge 2002).

<sup>21</sup> Satz (2005: 50-3). For a general description of this problem see Scheffler (2001: 38-47).

<sup>22</sup> Murphy (1999: 273), Patten (2005: 24)

These objections may or may not be persuasive, depending on what one thinks of the validity of the precepts of ordinary morality. Granting for the sake of argument that participants in an unjust institution in fact harm others, let us see what the first interpretation can establish with regard to the institutionalist case, and what it cannot. This interpretation is suggested as one possible justification for the claim that – by being channels of collective harm – institutions make a difference to duties individuals have prior to their participation in institutions. Having laid out the argument, we see that this interpretation is insufficient to show that institutions make a real difference to individual duties in this sense. It takes the individual negative duty not to harm others as basic, and derives our duties concerning unjust institutions from this duty. Institutions are unjust insofar as through them individual participants harm others. With the mediation of institutions we merely violate the negative individual duty we have even in the absence of any institution. Being implicated in unjust institutions we have a correlative duty to compensate those adversely affected by the institution for the harm we have caused to them, but this duty also applies to us directly.

To see that the same principles apply to individual conduct and institutional design, let us consider two cases. The first is the ideal-theory case: suppose we collectively participate in a just institutional scheme under which no one is harmed according to the relevant baseline. In this case, in order to avoid harming others unduly, we would have a duty to do our fair share under the just scheme, whereas institutions would have to make sure that everyone contributes her fair share. From this it follows that the same principles apply to individuals and institutions.

Now let us change the scenario to one in which we participate in an unjust institutional scheme. In this case those unjustly advantaged, on pain of unduly harming those unjustly disadvantaged, have a corresponding duty to contribute their share in compensating for the harm. The required amount of compensation would depend on the baseline we employ in measuring the level of harm. Nevertheless, with both baselines, we would have to make up for our share in the harm by compensating those unjustly disadvantaged. On the other hand, institutions ought to be so reformed that they make sure that everyone contributes and receives the amount of compensation that is due to them in order to bring about a just state of affairs. Again, the same principles apply to individual conduct and institutional design. The general reason for this is that, in both the ideal-theory and nonideal-theory cases, there is an independently specifiable share we are required to contribute in order to avoid harming others, and institutions are to make sure that everyone contributes exactly this share. The claim that requirements of distributive justice apply only to institutions, and do not apply to individual conduct, is not warranted.

The second interpretation Pogge offers of our responsibility for the injustice of institutions employs a nonhistorical baseline. It reverses the way harm and justice are related, as it defines harm partly “in terms of an independently specified conception of social justice.”<sup>23</sup> Participants in an unjust scheme of institutions can be seen as violating their duty not to cooperate in imposing on others unjust institutions, and as having a corresponding duty to promote the reform of the scheme in order to make it more just. On this interpretation, those unjustly advantaged under an unjust scheme are seen as having collectively violated their duty not to harm others insofar as they “collaborate in imposing” on them unjust institutions, that is, institutions that predictably lead to

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<sup>23</sup> Pogge (2005a: 5)

outcomes that are worse from the point of view of justice than those of the best available institutional scheme. From the viewpoint of egalitarian justice, if some alternative scheme were more egalitarian than the current one, by being implicated in the current scheme the wealthy are harming other participants, notably those who fare worse than they would under the more egalitarian scheme.<sup>24</sup>

Let us see if this interpretation succeeds in separating individual duties from the justice of institutions. In order to be just, institutions ought to be so arranged as to yield egalitarian distribution among their participants. Individuals have a duty not to impose unjust institutions on others, at least not without compensating them for the injustice. Correspondingly, those who are implicated in unjust institutions have a duty to promote the reform of those institutions or compensate those unjustly disadvantaged for the share of the collectively caused harm for which they are responsible.<sup>25</sup> Pogge uses this caveat about fair shares of compensation for collectively caused harm in order to avert the criticism that such a duty would end up being as demanding as an unlimited positive duty to assist those unjustly disadvantaged. We do not have a duty to promote an egalitarian distribution endlessly; only up to a point when we have made up for our share in the collective wrongdoing.<sup>26</sup>

This second reading of the harm-based case for the special significance of institutions is still open to the objection, raised against the first interpretation, that it cannot establish that institutions make a real difference to pre-institutional duties. The same fundamental principles apply to the design of institutions and to individual conduct.

In order to see that this is so, consider again an ideal-theory and a nonideal-theory case. Suppose we collectively participate in a just institutional scheme under which everyone gets what is due to her under an egalitarian distribution of resources. In this case participants, on pain of being unjust to others, have a duty to do their fair share in upholding the scheme, whereas institutions have to make sure that everyone contributes and receives her fair share.

In the nonideal case, by being implicated in an unjust scheme, advantaged participants acquire a duty to contribute their fair share in compensating those unjustly disadvantaged, i.e. in working towards an egalitarian distribution of resources. Presumably they do not have a duty to promote an egalitarian distribution in a state of nature: they only have a duty not to collaborate in imposing on others an unequalitarian scheme without making “compensatory protection and reform efforts for its victims.”<sup>27</sup> In this sense, some kinds of institutional interaction generate a new duty which does not exist in the absence of institutional interaction. Once we do participate in an unjust scheme, however, we are required to do our share in compensating the victims. This

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<sup>24</sup> Pogge does not cast the theory of justice relevant for this form of harm in egalitarian terms. The rather minimal conception of justice he employs is concerned only with human rights fulfilment. This difference does not affect my argument, however, so I refer to an egalitarian baseline in the paper.

<sup>25</sup> Pogge (2005b: 60-1)

<sup>26</sup> When specifying the amount of compensation participants in unjust schemes are required to make, Pogge says they would be required to contribute “as much as would be necessary to eradicate the harms if others similarly placed made analogous contributions (regardless of what they actually contribute)”. Pogge (2002: 245, footnote 246). In making this claim he relies on the idea of collective consequentialism, which was first formulated by Derek Parfit in Parfit (1984: 31).

<sup>27</sup> Pogge (2005b: 69)

new requirement clearly applies to individual conduct,<sup>28</sup> as well as guiding the reform of institutions. Again, as in the case of the first interpretation, there is an independently specifiable share individuals are required to contribute and are due to receive in order to make the distribution just. Institutions are to make sure that everyone contributes and receives exactly this share. Thus the non-institutionalist position still holds, since the same principles apply to individual conduct and institutional design. There is no difference in the *content* of individual duties and principles used for evaluating institutions.<sup>29</sup> Pogge's arguments may turn out to be successful in establishing that the current global order is unjust, and that by being implicated in it those more advantaged are harming the worse-off, but they cannot show that principles of justice do not also apply to individual conduct.

The explanation for the failure of this kind of theory to show that institutions make a noninstrumental difference to individual duties might be the following. The duty of individuals implicated in an unjust institution to contribute, if based on their share in a collective wrongdoing, does not depend constitutively on the content of the commands or rules of any institution. It is based on the pre-institutional duty of each individual not to harm others collectively by imposing on them inegalitarian institutions, and, once implicated in an unjust scheme, to do their share in compensating those unjustly disadvantaged by it. The content of duties binding individuals under just or unjust institutional schemes is fully specified independently of and prior to the rules or commands of institutions. If participants in an unjust practice had enough information to determine what their fair share of contribution to the reform in any given situation would be, so as to eliminate the disadvantages of other participants, they would have a duty to contribute exactly this share, regardless of institutional commands. In the terminology Joseph Raz uses in describing the problem of political obligation, the existence of an institution does not replace our reasons for acting in a certain way, it only adds some new consideration that we have to weigh against others in order to decide how to act.<sup>30</sup> So the argument from a collective causal responsibility for harming others does not show that institutions make a non-instrumental difference to individual duties. Hence, in order to make a case for the institutionalist position, I propose to return to the argument from effectiveness, and modify it in a way that is capable of establishing the non-instrumental significance of institutions.

### **Institutions making a difference**

I try to provide an argument for the institutionalist position by focusing on the coordinating role of institutions. In order to proceed, I return to the picture drawn by the effectiveness argument for institutions, and propose to modify it slightly. As we recall, the starting point for that argument was that humans are fallible beings, with a limited

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<sup>28</sup> This reading of Pogge's statements is supported by his following claim: "The word 'compensate' is meant to indicate that how much one should be willing to contribute toward reforming unjust institutions *and* toward mitigating the harms they cause depends on how much one is contributing to, and benefiting from, their maintenance." Pogge (2002: 50, emphasis added).

<sup>29</sup> See Murphy's claim that we can formulate a monist version of Pogge's argument according to which institutional interaction would define the scope of obligations of egalitarian justice, where individuals would have a duty to promote equality among those with whom they are interacting. The present interpretation of Pogge says in effect that this is indeed what Pogge's statements suggest. Murphy (1999: 274-5)

<sup>30</sup> See Raz (1986: 42-6) for a characterisation of political institutions that makes it a necessary condition of political authority that its commands replace the subjects' prior reasons.



capacity to collect and process information, and that they are imperfectly rational and imperfectly motivated to act upon purely impartial considerations. In addition we know that this is so not only with ourselves, but with most other people too: individuals are symmetrically based. We also know that the outcome and moral evaluation of our actions depend not only on what we do, but also on what other people do. Many of our duties are conditional on the actions of others. This is because of the further assumption that in many cases the morally required consequence is brought about only if everyone in a group, or a sufficiently large number of people follow the same course of action.<sup>31</sup> However, in many cases we are uncertain about what other people think is the morally best action, and what action they would follow on the basis of their independent judgement. In such cases coordination is needed among individuals to create the assurance that the others act in certain ways.<sup>32</sup> Now, let us look at instances when it is morally desirable that people follow the same course of action.

Suppose my doing A would result in the morally optimal outcome if others followed suit. However, my doing A may be counterproductive if others follow a different course of action, B. In such a case my action will produce an outcome that is worse than what would result from my doing B. This is so even if I am right that our joint action A would be the morally best action. Even in this case our joint action B may produce a morally superior outcome than the outcome that results from diverging actions. Institutional rules are an effective means of providing individuals with the requisite assurance to secure coordination.<sup>33</sup> With regard to equality, we may be required to comply with the rules of institutions instead of acting in a way that we think would bring about a more equal outcome.

An analogous argument can be produced on the basis of conflict resolution. Suppose morality requires that individuals perform the same action. Suppose further that people disagree over the morally best course of joint action. Disagreement may arise because of self-interest, but not necessarily so. Individuals may disagree in good faith about the impartially best joint action, regardless of how they individually fare under it. In both cases, however, the structure of the conflict is the same since we assume that, due to the importance of the case, parties may find it advantageous to enforce their preference and rule out alternatives by applying force. Being placed symmetrically and without having assurance to the contrary, they can expect others to be similarly motivated to enforce their preferred option and exclude dispreferred ones. This being so, they will find it rational to inflict preventive attack on others.<sup>34</sup> Applying force, however, is morally wrong. This moral wrong is additional to the failure of a joint action to be realized since individuals ought to avoid violence in any case.<sup>35</sup> In order to avoid violating this duty parties have a duty to overcome such conflictual situations.<sup>36</sup> Institutions, by yielding and enforcing authoritative decisions, are capable of supplying assurance to individuals subject to them, and hence make preventive attack unnecessary. Thus, parties are morally required to comply with institutional directives, even if they

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<sup>31</sup> Waldron (2003: 50)

<sup>32</sup> See Waldron (2003: sections IV-V)

<sup>33</sup> Kis (2002)

<sup>34</sup> As has already become familiar, this is the structure of the Hobbesian account of conflict among individuals in the state of nature.

<sup>35</sup> See Kant's "irresistible veto" of practical reason prohibiting violence, proclaiming that "There is to be no war". See Kant (1991: 160, 354)

<sup>36</sup> See Jeremy Waldron's interpretation of Kant's social contract theory along Hobbesian lines in Waldron (1999a: Chapter 3).

judge some alternative course of action morally superior, so that with regard to equality, they think it would bring about a more equal outcome.<sup>37</sup>

These arguments to the effect that institutions do make a difference to what individuals ought to do were based on the need for assurance to coordinate action and solve conflicts due to certain individual characteristics of the parties involved. However, in other cases it can be the characteristics of moral duties that necessitate setting up institutions. The content of moral duties is very often underdetermined. The moral importance of regulating human conduct in such instances often requires prescribing some determinate course of action for agents, because such moral duties are in need of further specification.<sup>38</sup> For example, we have a duty not to kill. However, under certain circumstances we are permitted to kill: self-defence is one such instance. So it is of enormous importance to distinguish properly between unjustified killing and killing in self-defence. However, the term self-defence inevitably makes reference to vague predicates such as that the reaction to the threat must have been “proportional”, and that the agent’s belief about the threat must have been “reasonable” under the circumstances.<sup>39</sup> These predicates are vague, and very often their vagueness cannot be reduced by collecting more information or by performing more careful reasoning by the agent. However, the moral importance of resolving such cases necessitates some sort of settlement even when vagueness in moral concepts is persistent. In cases like these individuals cannot rely on their own interpretation of their moral duties, and act accordingly. This is because diverging interpretations are likely to result in disagreement, which cannot be dissolved with more information and better reasoning. However, individuals have to act in a concerted manner, and need to have grounds for forming reasonable expectations about the actions of others involving high stakes. Furthermore, they need to have assurance that their reasonable expectations about such actions are going to be met. Underdetermined duties must be specified before we may act on them.

Institutions are capable of specifying underdetermined duties, and if there is an institution in place that does just this, individuals are duty-bound to comply with the rules or commands of the institution, because the institutional settlement makes individual moral duties sufficiently determinate.

### **The case of egalitarian justice**

The previous section has indicated that institutions can sometimes make a difference to individual duties either because of the existence of disagreement about duties or because of the indeterminacy of those duties. Since we are interested in egalitarian duties, it remains to be seen whether a duty to promote equality is likely to present the same problems, and thus necessitate institutional settlement. If it were the case, we could show that institutions do make a genuine difference to egalitarian individual duties, since it would be either morally counterproductive for individuals to act according to the demands of justice by following their own judgement, or it would be impossible to tell what individuals ought to do in the absence of the institution.

Now, suppose we accept the principle that “egalitarian justice ought to be promoted”. Furthermore, we know that institutions often provide more efficient means of promoting egalitarian justice than independent individual action does. In these cases

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<sup>37</sup> See the general argument for the value of democracy along these lines in Waldron (1999b).

<sup>38</sup> Kis (2002)

<sup>39</sup> The example comes from Kis (2002).

individuals are required by morality to follow the rules of such institutions. As we have seen above, this fact by itself could not establish that institutions can make a real difference to individual duties. Individuals would have to conform with the rules of institutions because this is a more effective way to discharge their individual duties. However, an important observation with regard to egalitarian justice is that egalitarian distributive principles can be realised by more than one kind of institutional scheme. Several combinations of tax, welfare, and educational schemes can achieve egalitarian justice to the same extent. However, the importance of justice being done makes it necessary that exactly one particular institutional setup be settled on for the whole society, and that, once one such a setup is settled on, every member of the society must follow the rules of its institutions. We cannot independently follow courses of action that we think we would be required to follow under our favoured egalitarian scheme: justice can be done only if we act in concert. Sometimes decisions about various particular setups can be made on the basis of which of these is more likely to approach egalitarian justice, given the specific circumstances and culture of the society. In other cases, however, no such grounds are available on the basis of which a decision could be made. In the remainder of this paper I briefly introduce two problems, under the headings of disagreement and the systematic nature of institutional schemes, that call for institutional settlement.

Suppose first that there is disagreement in a society about which of the various possible institutional schemes is most likely to achieve egalitarian justice, given the specific circumstances of the society. There are two main schemes that are likely to yield an egalitarian distribution in the society. Scheme A would rely more heavily on a progressive income tax and would keep taxes on consumption low, whereas scheme B would operate with higher consumption taxes and would tax incomes less heavily. Some people think it is scheme A that best promotes equality, others think it is scheme B. Suppose further that both schemes are reasonably just. Given that most people comply with A, the need for coordination and conflict resolution makes it necessary for an individual to comply with the rules of A, no matter whether that individual thinks it is the best possible egalitarian scheme, and whether he is right in his judgement. An individual is not permitted to act in a way that she thinks best promotes equality instead of complying with A. Here institutions make a difference to what individuals ought to do with regard to egalitarian justice, because of disagreement and the need for coordination and conflict resolution in a society.

The second case for the difference-making capacity of institutions derives from instances when even taking all contingent facts about the society into account is unlikely to narrow down the number of institutional alternatives to exactly one. There are likely to be several combinations of institutions within schemes that are just as egalitarian.<sup>40</sup> This point is emphasized in Rawlsian theory by its requirement that the institutions of a society must be assessed as a single scheme for the purposes of justice.<sup>41</sup> It makes no sense to say that the tax rate applying to a person is just as long as we do not look at the whole scheme of institutions including property regulations, welfare provisions, and the educational system. In order to settle on one particular combination an arbitrary decision must be made about which particular setup the scheme must meet. Once a decision is made, individuals to whom the scheme applies must comply with its rules in order to secure egalitarian justice to the greatest possible extent. They are not to

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<sup>40</sup> Waldron (1993: 24)

<sup>41</sup> Rawls (1999a: 3-4, 6-7)

follow what they, in their own judgement, think justice requires in part because it is the institutions that impose on them sufficiently determinate duties. Institutions specify the essentially underdetermined demands of egalitarian justice by marking out a unique set of just distributive rules. Without institutional rules it would be impossible to tell what justice requires us to do. Again, institutions make a difference to what individuals ought to do, this time because of the objective characteristics of moral principles in general, and egalitarian principles of justice in particular.

Having looked at two important cases when institutional settlement is necessary for promoting egalitarian justice, it only remains to note that these examples are central to a cosmopolitan theory of egalitarian justice. Both disagreement about the demands of egalitarian justice and the indeterminacy of their content are a permanent characteristic of politics.<sup>42</sup> As for disagreement, John Rawls insists that “a diversity of conflicting and irreconcilable comprehensive doctrines” is “not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy.”<sup>43</sup> Reasonable pluralism, Rawls argues, results from “the work of free practical reason within the framework of free institutions.”<sup>44</sup> Moral concepts, including the concept of justice, involve various “burdens of judgement” which make disagreement a permanent feature of life even under free institutions.<sup>45</sup> Also, the complexities of social life under institutions render the demands of egalitarian justice indeterminate. We need institutions to resolve disagreement and make the demands of justice determinate for us. These observations apply with just as great, if not greater, force in the global domain, as in domestic societies.

## Conclusion

These considerations provide us with what is the most plausible interpretation of what Rawls calls our natural duty of justice. As we saw, he claims that the natural duty of justice “requires us to support and comply with just institutions that exist and apply to us”, and “it also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.”<sup>46</sup> This duty plays a fundamental mediating role between principles applying to institutional design and the responsibility of individuals. The paper argued that in certain cases individuals do not have to aim at promoting a just distribution directly because they simply *cannot* do so. This is either because such an effort would be morally counterproductive due to the subjective characteristics of individuals and the lack of assurance for reaching the morally desirable goal resulting thereof or because it would be impossible to determine, in the absence of institutions, what the just distribution is. We have to comply with existing institutions, and further not yet existing ones in order to achieve a morally required aim we cannot individually achieve.

What is the bearing of the foregoing discussion on the debate between the institutionalist and the non-institutionalist? To recall, the institutionalist holds the position that there are some fundamental principles of egalitarian justice that apply to institutional schemes only that do not apply to individual conduct. By contrast, the non-institutionalist claims that all fundamental principles of egalitarian justice apply also to

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<sup>42</sup> An important argument for authority emphasizing this point is provided in Waldron (1999b)

<sup>43</sup> Rawls (1999b: 474)

<sup>44</sup> Rawls (1993: 37)

<sup>45</sup> For an explanation of why this is so, see Rawls (1993: 54-8).

<sup>46</sup> Rawls (1999a: 99)

the actions of individuals. The conclusion of the argument about the difference-making capacity of institutions with regard to the demands of egalitarian justice shows that – assuming the principle “an egalitarian distribution of resources ought to be promoted” is a fundamental principle of egalitarian justice – the non-institutionalist is wrong, and the institutionalist is right. This principle in itself is not determinate enough to guide individual conduct. It applies only to schemes of institutions capable of issuing and enforcing sufficiently determinate rules and commands.

Next, to clarify further the institutionalist versus non-institutionalist debate, it is important to see what institutions are *not*. First they are not constitutive of the requirement of distributive equality itself. The position I have defended does not support the view that assigns a constitutive role to institutional schemes in the justification of fundamental principles of distributive justice, claiming that the requirement of distributive equality cannot be derived from principles of individual morality. This would be the case if some distinctive features of institutions, not present among the characteristics of individual morality, necessarily figure in the justification of distributive equality.<sup>47</sup> However, the argument in the present paper does not support this conclusion.

Nevertheless institutions do not play a merely instrumental role in the more effective discharging of individual natural duties existing prior to and independently of institutions. The argument presented in the paper does not derive the demands of distributive equality directly from the principles of individual morality. According to the argument, on the one hand institutions make sufficiently determinate the essentially underdetermined demands of egalitarian justice by marking out a unique set of just distributive rules. On the other hand, they coordinate individual conduct and provide assurance in cases of disagreement about justice. This position regarding the role of institutions occupies an intermediate ground between those who claim that institutions play a constitutive role in the emergence of a requirement to promote equality, and those who argue that institutions are mere devices for more effectively carrying out what our pre-institutional duty to promote equality requires us to do anyway.

The implications of this result for cosmopolitan justice and international institutions are limited but important. What the argument establishes is that, given the cosmopolitan requirement that global equality ought to be promoted, individuals are sometimes required to comply with the commands of institutions rather than to try to promote global equality directly. If so, such institutions must be created and sustained that are capable of making individual duties determinate globally. They must specify the duties of each person so that the global distribution can meet the demands of egalitarian justice. What these institutions should look like, and what their scope should be, is an open question. It may be the case that a global egalitarian distribution is achievable with institutions that do not have a global reach. Nevertheless, even if these institutions are limited, the reach of principles they ought to specify and administer is global. The requirement of global equality is not conditional on the existence of global institutions. Regardless of whether such institutions exist, individuals must work towards the establishment of institutions that specify and administer individual duties in a way that achieves global equality, prescribed by our cosmopolitan duty.

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<sup>47</sup> The theories of Ronald Dworkin and Thomas Nagel belong to this family. See Ronald Dworkin (1986: Chapters 5 and 6) and Dworkin (2000: Introduction and Chapters 4 and 5); Nagel (2005).

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