Everyday Life and the Demands of Justice

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Timothy Syme was born in Perth, Scotland on July 3rd 1985. He attended Oakbank Primary School and Perth High School. In 2007 he received a First Class MA (Hons) in Philosophy and Politics from the University of Edinburgh. He completed an MA in Philosophy at Brown University in 2012 before going on to complete his PhD. He has taught a number of classes at Brown, both to undergraduates and as part of the Summer@Brown Program.
Preface and Acknowledgements

I must first thank David Estlund, my advisor, for the wisdom and patience with which he has guided me through this process. This dissertation would be uninteresting or non-existent without his aid. Dave’s combination of rigor and generosity serves as a model of philosophical practice to which I can only, and will always, aspire. I also wish to thank my committee members Charles Larmore and Sharon Krause for helpful discussions and comments over the years, as well as for leading seminars that had a significant influence on my thinking. Thanks also to Sean Aas, Derek Bowman and the participants in Brown’s Graduate Political Philosophy Workshop for helpful discussions of the work as it progressed.

This project has its genesis in my own complex relationship to politics and political action. As an adolescent I combined a strong interest in politics with an instinctive distaste for political participation. This was perhaps instigated by my being compelled as a child to assist my parents in distributing election material for local candidates. My own personal ambivalence was a driving force behind my undergraduate honors thesis, supervised by Dr. Wilfried Swenden, which analyzed and evaluated recent developments in patterns of political participation in the United Kingdom. While I am no longer so personally uncomfortable with political action, this dissertation represents the continuation and elaboration of these longstanding personal and intellectual concerns.

I am immensely grateful for the personal and emotional support I have received from many people over my years at Brown. I especially wish to thank my many co-residents of Lux Haus and my dear friends Micaela Morrisette, Peter Bussigel, Rachel Shipps, Meghan Kallman and Hans Vermy for helping me stay happy and sane over the course of a long and arduous process. I am also fortunate to have enjoyed the sustained encouragement of my parents, Gillian and Andrew, and my sister Rebecca.
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Introduction

How do peoples’ everyday actions render their societies just or unjust? Societies are just and unjust in virtue of the way in which their members collectively distribute the benefits and burdens of social, and indeed human, life. Societies organize distribution by way of a set of shared institutions and practices, which combine together to simultaneously divide social labor, organize production and consumption and regulate the interactions between the occupants of distinct social roles.

Institutions and social practices more generally are sets of rules that specify norms of social performance. Institutions are also purposive human creations, which means that they are a product of purposive human actions; the actions of those who build, maintain and comply with them. This is all clear enough. But what, more precisely, is the relationship between the rules of a collectively imposed institution or practice and the actions of its individual participants? And in what ways, if any, does the nature of this relationship shape each particular person’s responsibility for the overall moral character of their society’s basic practices? These are the guiding questions of this dissertation, to which I propose the following answer:

*The Everyday Practice Account:*

Individuals contribute to justice and injustice by way of everyday actions that conform to, monitor, and enforce the pervasive rules and norms of a bounded community of practice.

In defending this *everyday practice account* of the practical domain of justice, my overriding aim is to redeem justice as an institutional concept while detaching it entirely from the institutions of the state, law, government and politics.
I argue that justice imposes distinctively collective moral requirements; its demands apply to the socially normative practices that regulate interactions and structure distribution within any community. This definition includes, but in no way privileges, political communities, legal institutions, sovereign states or any other kind of governing institution. It also redeems a principled distinction between actions that ‘make’ institutions and actions that merely occur within the framework they establish. While it is true that even merely conforming actions help to constitute a social practice, conforming is relatively trivial. Practices and institutions exist and regulate social life only because and insofar as most of their participants comply with their rules most of the time. More salient to the character of social practices are actions that conform to but also monitor and enforce their rules.

I argue that principles of justice apply to the practices that any community collectively imposes on its members; the shared rules and norms that its members enact in their everyday lives. These often habitual and implicit practices constitute the inescapable medium of peoples’ quotidian existence and the lens through which they see the world. I argue that, while the demands of justice do apply distinctively to institutions and social practices, rather than individual choices made within these institutions, justice nevertheless makes substantial demands on individuals in their everyday lives and can require them to pursue a significant ethical transformation, especially in unjust circumstances.

In this introduction I shall first offer a brief overview of the problem as I understand it before summarizing my proposed solution. I shall then describe my conceptual and sociological approach to this issue before noting that, although I do not assume or defend any substantive moral claims, my thesis nevertheless has a striking normative implication. I shall then elaborate in more detail on the conceptual assumptions underlying my argument.
and on the sociological and social theoretic resources my account draws upon. I conclude
with a brief summary of each of the five chapters that make up this dissertation.

Justice, Ethics and Everyday Life

It is widely assumed, by both normative theorists and political practitioners, that individuals
are primarily responsible for maintaining or altering their basic institutions and practices by
way of political activities like voting, lobbying, deliberating and protesting: collective,
communicative and public activities that seek to use the state’s coercive legal authority to try
to reshape prevailing social practices and thereby distribute the benefits and burdens of
social life more justly. Beyond this, justice is thought to primarily require people to conform
to legitimate laws; they are otherwise permitted to go about their business as they please.

The distinctive feature of this governmental conception of the practical demands of justice
is the implication that justice does not make extensive ethical demands on individuals,
requiring only that they build and support just institutions. Put simplistically, the
governmental approach seems to assume that justice is more concerned with how people
vote than with how they live, with the details of their everyday lives. The worry is that this
implausibly underestimates the significance to justice of everyday practice.

The governmental conception is most closely associated with liberal theories of
justice. It plays an especially central role in liberal pluralist theories, such as those of John
Rawls and Thomas Nagel, who argue that justice can and should be realized wholly by
institutional mechanisms, leaving individuals free to pursue a diverse range of values within a
background framework of just institutions\(^1\). But a comparable assumption of the distinctive

moral salience of government, the state and, more broadly, on institutions and practices of political authority, is common across the political spectrum, being endorsed in some form or other by radical democrats, deliberative-democrats\textsuperscript{2}, state-socialists, civic-republicans\textsuperscript{3}, communitarians\textsuperscript{4}, theocrats and even anarchists, whose rejection of the state does not equate to a general rejection of politics.

These views diverge from liberal theories with respect to how governments should regulate social life and some also include within their normative theory a more or less explicitly ethical, extra-political component. These include the civic republican requirement to participate in civic life, the socialist demand for solidarity, the theocratic focus on spiritual purity and the communitarian contention that justice requires societies to share some thicker ethical values. This is true, too, of perfectionist liberal views that endorse an ethical ideal of autonomy\textsuperscript{5}. These views vary, of course, in the nature and extent of the ethical demands they include within their theory of justice, but all of them seem to accept that the demands of justice are not wholly governmental and, more significantly, not even wholly collective or institutional. This might seem like a relatively anodyne adjustment that modifies the governmental approach and avoids the charge of being insensitive to the moral significance of everyday practice. But it actually has rather more serious implications for our understanding of the moral concepts of justice and ethics.

The inclusion in a theory of justice of individual ethical principles that go beyond the requirement to build and support just institutions threatens not just the governmental conception of justice but also the more basic idea that the demands of justice apply directly

\textsuperscript{2} Cohen and Sabel, 1997.  
\textsuperscript{3} Dagger, 1997.  
\textsuperscript{4} Sandel, 1982.  
\textsuperscript{5} Galston, 1991.
only to societies as such and not to individuals. This, in turn, eliminates any general conceptual and practical distinction between justice and ethics or morality, as well as the intuitive distinction between the just society, whose institutions are fully just, and the morally perfect society, which combines just institutions with ethically flawless individuals. This is as much of a problem for theories of justice that explicitly endorse a ‘comprehensive’ conception of the human good as for ‘political’ theories that seek to embrace a wide range of ethical ideals, although it is undeniably of special importance to these latter, pluralist views.

Such theories differ on the question of what values societies should collectively respect and promote if their basic institutions and practices are to be just. But this still permits of a general distinction between justice and ethics. Perhaps societies should, as a matter of justice, promote a particular way of life; a way of life that individuals are also required, as a matter of personal ethics, to adopt of their own accord. Presumably, anyone who endorsed this kind of collective requirement as the truth about justice, would also endorse the individual one as the truth about ethics. But this way of putting it allows that a society could be fully just in virtue of its members collectively promoting the right ethical ideal in their institutions and practices, even though some of these same members fail to live up to this ideal in their everyday lives. If the individual ethical requirement must be included within the theory of justice, then this is a conceptual impossibility; there would be no conceptual, practical or normative line distinguishing justice from ethics.

Critics of the governmental conception argue that we should embrace this implication and abandon any distinction between justice and ethics. I argue, on the contrary, that we should abandon the governmental conception but retain the distinction. Although the governmental conception of the institutional domain of justice is quite widely endorsed
in both political philosophy and the broader culture, it has long been charged with implausibly underestimating the significance to justice of everyday practice. John Stuart Mill, for example, famously highlighted the importance of extra-political forms of informal social power, while Karl Marx condemned the governmental approach for its essential inattentiveness to the material reality of social relations, and for alienating people from each other and their own deepest concerns. These critiques were taken up by the social movements of the 1960s, as captured by the famous feminist slogan that ‘the personal is political’ and the recent prominence of political correctness, anti-oppression and sustainable consumption. These concerns have subsequently been developed in more detail in recent philosophical debates concerning the merits and coherence of John Rawls’ distinctively institutional conception of justice. My aim in this dissertation is to rebut these objections by developing a sociologically informed account of the institutional domain of justice that focuses on everyday actions rather than government.

Everyday Practices as the Subject of Justice

I argue that justice and injustice are determined by the nature and overall purposes of the pervasive normative structure of any bounded community of practice, such as a country, university, family, linguistic group or vocational community. The pervasive normative structure consists of an interdependent set of normative social practices that combine to regulate all of the interactions of their participants. Normative social practices create and distribute the essentially structural goods of roles, rights, status and esteem. Principles of justice apply to the

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7 Marx, 1845.
8 Hainisch, 1970.
way in which the pervasive structure of a community of practice creates and distributes the roles, rights, statuses and rewards distinctive to its particular practices.

People contribute to justice and injustice in virtue of participating in and so helping to enact their community’s pervasive structure, which they do by conforming to, monitoring and enforcing its rules in their everyday lives. Principles of justice do not apply, however, to the choices people make between socially permissible actions, such as the decision to buy apples rather than pears. Such economic choices occur within and conform to the framework of prevailing economic practices, but they help to enact that framework only in virtue of their general status as purchases rather than their specific content, which is not specified by prevailing norms.

Normative social practices consist of sets of rules specifying the *performative criteria* of social activities. Performative criteria specify how to successfully engage in social activities such as speaking a language, playing a game or passing a law. Such practices exist only if and to the extent that their rules are fully complied with by their participants; a rule that is broken with impunity on enough occasions can no longer said to be ‘in place’ in the relevant community. These rules are socially, rather than morally, normative – they are complying with, in the first instance, for social, and only sometimes for moral reasons too e.g. because they are just. People mostly comply with the pervasive norms of their communities because they desire or have no choice but to participate in the relevant community, because the rules are supported by social sanctions and rewards, and because they expect others to also do so.

A *bounded community of practice* consists of any group of people, however large or small, all of whom are participants in at least one shared normative practice. The practices shared by all members of a community form its pervasive normative structure. The pervasive
structure of any community includes not just the practices distinctive to that particular group of people, such as those that distinguish universities from families and particular instances of these from each other. Rather, the pervasive structure includes all of the practices common to all members of such distinctive communities, including the imported practices of larger communities with whose membership they overlap, such as those of language and gender. The distribution of the distinctive goods of, for example, family life is very likely to be modulated by the prevailing gender norms, due to the implicit and habitual assumptions about gender roles that the family members have acquired from the wider society in which they live.

The everyday practice account offers a non-moral, sociologically focused analysis of the institutional domain of justice. But it does, nevertheless have normative implications for individuals, regardless of what justice substantively requires. I argue that, in unjust circumstances, individuals are morally required to further the implementation of just institutions and practices by engaging in everyday direct action on the pervasive normative structure of their community.

I argue that everyday direct action is a necessary complement to political activism. It involves a person transforming their everyday relationship to prevailing rules and norms. They can do this, for example, by ceasing to comply with or monitor unjust rules, trying to sanction those who continue to do so, and by retraining ingrained habits and social responses that reflect and perpetuate unjust practices, such as sexist gender norms. Everyday direct action also includes building new communities of practice in the hopes of supplanting the prevailing status quo; and reconfiguring roles and relationships in order to disentangle them from unjust practices.
The requirement to engage in everyday direct action can be extremely onerous in contexts where people have been formatively shaped by unjust practices. People who are born and raised in unjust societies are likely to find that their characters, values and commitments, and the roles and relationships they identify with, are predicated upon their continued participation in unjust practices. I argue that, in order to take everyday direct action, such individuals are required to pursue at least a limited, and potentially a very extensive ethical transformation. Such a transformation is unavoidable if people whose identities and characters are formed unjustly are to transform their relationship to their prevailing norms and practices as justice requires. This is controversial both in terms of the extent of the demand and the fact that it applies in the same way, initially at least, to people who are significantly disadvantaged by unjust practices as well to people who enjoy an unjustly large share of structural goods. I argue that we should embrace these implications.

The requirement to pursue an ethical transformation in unjust circumstances is, I argue, an inevitable implication of a sociologically plausible account of the relationship between institutions, individual actions and social distribution. Any such account must recognize that institutions and social practices are not simply abstract sets of rules imposed on societies by an authoritative agent, such as the state, but are, rather, the inescapable medium of peoples’ everyday lives. The demands of justice are not coextensive with those of ethics and morality but, as my account shows, they inevitably have significant implications for how people should live.

The everyday practice account is heavily indebted to the work of John Rawls. Indeed, it aims in large part to redeem some of the spirit, although little of the letter, of his famous
assertion that the ‘basic structure is the primary subject of justice’\textsuperscript{9}. My debt to Rawls, however, is less to his particular account of the basic structure than to his underlying conception of the nature and moral significance of social practices and of the basic structure in particular, which inspires the sociological focus of this dissertation, and to which I turn below. My account is also heavily influenced by a number of other sociologically sophisticated recapitulations of Rawls’ account of the institutional domain of justice, namely those of A.J. Julius, Aaron James, Iris Marion Young and Louis-Phillipe Hodgson, although I differ from each of these accounts in some significant respects.

\textit{Political Communities: The Conventional View}

Rawls’ conception of the institutional domain of justice accords with the prevailing convention in political philosophy. He seems to include only legal institutions in the basic structure\textsuperscript{10}, excluding informal, cultural practices, and asserts that the demands of justice apply primarily within rather than between political communities or their smaller component parts. I reject every aspect of this conventional view.

Political communities are groups of people who share a legal system subject to the coercive authority of a sovereign state. According to the standard specification of the institutional domain of justice, individuals are assumed to contribute to justice and injustice primarily by contributing to political decision-making, such as by voting, lobbying, protesting and other forms of activism, as well as by conforming to legitimate laws. This assumption is shared by many outside of philosophy too, as suggested by the prevalent notion that people who don’t vote should not complain about the way society is organized, because they have

\textsuperscript{9} Rawls, 1999a, p 6.

\textsuperscript{10} Rawls’ text is somewhat ambiguous but this is the most plausible reading. See Scheffler, 2006.
failed to even try to improve it. I do not deny that political action and social activism matter, but I deny that they are of unique moral significance in terms of individual responsibility for justice.

My thesis is entirely neutral with regard to the kinds of institutions, practices and communities of practice that can be evaluated as just or unjust. Justice, I argue, is a context-relative concept that can be applied to any community of practice, with the relevant community on any particular occasion depending on the social outcomes under consideration and the specific moral, causal and strategic considerations involved. I deny, therefore, that legal and political institutions at either the national or the international level are inherently privileged sites of justice and injustice. I allow that political communities and international institutions may turn out to be of distinctive moral significance in virtue of their outsized power and causal influence, but only as a contingent matter and on a case-by-case basis.

I contend that any community can and sometimes should be evaluated as just or unjust in virtue of the overall moral character of its pervasive normative structure. My account applies in the same way to tiny, densely interdependent communities with only handful of participants, such as a couple, family or group of friends as it does to large, spatially dispersed and more loosely connected communities. These include communities united by the practices of a particular language or culture; communities of vocation, such as those of scholarship or architecture; and communities that include virtually every human being, such as those of gender and rational agency, which specify the performative criteria by which we recognize and respond to each other as men, woman, and competent agents.
Two more specific implications illustrate the relationship between the everyday practice account and political philosophy’s conventional focus on the legal institutions of political communities and the conventionally political actions of individuals. Firstly, my account of the quotidian enactment of normative social practices demonstrates that conventional political action is just one way in which individuals contribute to the character of even legal and political institutions. People also help shape these institutions in the course of everyday actions that conform with, monitor, and enforce particular laws and, perhaps most significantly, general norms of legal and political authority. So even if political institutions were uniquely privileged sites of justice and injustice, which I deny, the demands of justice would apply to individuals in everyday life, not just to their political activities.

And secondly, while political communities are defined by a shared set of political institutions, they rarely, if ever, share only these institutions: their interactions are almost always also regulated by some informal, cultural practices, such as those of gender, discourse and economic life. These informal practices shape distribution within a political community alongside and in exactly the same way as legal and political institutions. So even when we do focus on the justice and injustice of political communities specifically, we cannot focus only on their laws and political practices but must instead attend to and evaluate the way in which these practices interact with prevailing informal, cultural norms. Having briefly laid out the key features of my positive account of the institutional domain of justice, I shall now characterize the general approach adopted in this dissertation.

A Non-Moral Approach
I treat the relationship between individuals and justice as, in the first instance, a conceptual and a sociological issue, rather than a moral one, although my account does have significant normative implications.

It is my contention that, in order to understand the relationship between justice and individual action we need an analysis of the concept of justice as it applies to groups of people and its relationship to other moral concepts that apply to individual action, such as those of right action and good living. We also need a sociological analysis of the relationship between individual actions and the overall character of societies: a general account of the way in which the combined actions of their members render societies either just or unjust. I discuss the conceptual issue in this introduction and the sociological one over the course of the following four chapters. These questions are independent of and prior to substantive moral questions about the content of justice, such as whether it requires freedom, equality, sufficiency or something else.

We cannot properly evaluate rival accounts of the substance of justice before we know what it would mean for a society to realize them in practice and so, in turn, what this would require of its individual participants. Similarly, we cannot properly compare and evaluate rival analyses of the injustices of actual societies without a common understanding of the concept of justice and the actions and activities to which it applies.

Justice, as I define it, is concerned with the collective regulation of social life through the enactment of mutually recognized rules and norms. By ‘morality’, I mean principles of right action, and by ‘ethics’ I mean comprehensive ideals of the good life, of individual flourishing and fulfilment. Principles of justice constitute that subset of the principles of morality that apply only to the collective enactment by a group of a set of practices. Other
moral principles apply to individual and group actions within social practices, such as people’s personal obligations to their friends and intimates or a company’s pursuit of profit. I assume here that ethics and morality are not coextensive. It may be that living well requires always acting rightly, but I assume that it also involves more than this, that acting rightly is not sufficient for an individual to flourish.

One of the key functions of any theory of justice is to specify the manner and extent to which societies are collectively required to enforce the dictates of morality and ethics. It is plausible that justice requires societies to enforce peoples’ moral rights to bodily integrity, such as by prohibiting murder. But it is less plausible that justice also requires societies to enforce peoples’ moral rights not to be lied to by their friends, betrayed by their lovers or be the victim of many other individually wrongful acts. It seems unlikely that we collectively owe it to each other to try to ensure that no one is ever wronged. The precise extent to which justice requires the social enforcement of individual morality is an area of substantive controversy. Similar considerations apply to the relationship between justice and ethics. Any plausible theory of justice will at least require societies to attend to the inevitable formative influence that their prevailing institutions and practices have on their individual members. Some theories may also require societies to encourage or enforce a more substantive ethical ideal. But it seems unlikely that justice could require societies to attempt to wholly determine the characters and values of their members, such as by indoctrination or eugenics.

Principles of justice do not apply to individual choices between socially permissible actions, or to the outcomes of aggregated but unrelated individual actions, such as the total amount given to charity in a particular society. Nor do they apply to intersubjective group actions that occur only once or otherwise fail to establish an ongoing normative practice,
such as when a group of people comes together to rescue others from a burning building, but do so neither in response to any norms or to establish an ongoing fire-fighting practice. Individual and collective actions that do not contribute to the enactment of social practices are subject to a full range of moral and ethical requirements, but not to principles of justice because they do not structure distribution within any community. This does not imply that such actions and outcomes are wholly irrelevant to justice. But justice is concerned only with the institutional framework in which they occur and which necessarily either prohibits, permits or requires them. So it might be that justice requires societies to implement norms encouraging or mandating people to donate to charity rather than relying solely on individual good-will, or to establish a professional fire-service rather than relying on ad-hoc teams of volunteers.

My definition of justice is intended to capture the traditional sense in which justice is concerned with the authoritative, binding rules that societies use to adjudicate disagreements between their members, recalling the etymological roots of the term in the Latin *ius*. But it departs from the traditional focus on legal rules and political authority. Social institutions and practices can be authoritative without being backed up by any governing authority or coercive sovereign, in virtue of being known and conformed to by all of the members of the relevant community. The rules of the English language, for example, are authoritative and binding within the community of English speakers because the members of this community have no option but to comply with these rules if they wish to communicate with each other.

Similarly, social practices such as language serve to adjudicate disagreements without the apparatus of a courtroom or the independent decisions of an authoritative third-party, let alone one permitted to enforce its decisions with violent force. The rules of social practices
are interpreted and enforced by all of their participants. Social practices serve this adjudicatory function by establishing a background of shared understandings and expected responses that people can mostly rely on implicitly but can also appeal to in order to justify and explain their own actions and challenge the actions of others, such as, in linguistic practices, by elucidating the meaning of a particular world or contesting the intelligibility of another’s’ utterance. There is, of course, no general guarantee that any such disputes will be successfully resolved, but this is true of the law too, whose authority is not always respected.

Principles of justice apply to collectively imposed normative practices because these are the means by which communities collectively shape the lives of their members. They do this in three distinct ways. Firstly, and most directly, normative practices regulate people’s behavior by establishing a structure of incentives within which people have no choice but to act. Institutions can discourage socially prohibited actions, such as driving on the wrong side of the road, by requiring sanctions to be imposed on people who break the rules. They can also encourage socially desired actions by requiring people to be rewarded for performing them, as when people who train and then work as, say, doctors, are rewarded with relatively high incomes and status. Normative practices also directly create and distribute many of the goods of justice, such as social roles, rights, statuses and standards of esteem.

Secondly, social practices shape the characters of their participants, influencing their characters and desires, by way of their incentive structures and the inevitably habituating impact of regular participation in a particular practice, such as that of gender or private property. And thirdly, social practices can be used to try to regulate the impact that good and bad luck have on peoples’ lives. They do so, for example, by regulating the roles and rewards available to people fortunate enough to have socially useful abilities and by establishing
institutions of emergency rescue, social welfare and medical care to ensure that people do not suffer the full brunt of accidents, misfortune and illness.

*Sociology and Social Theory*

This dissertation seeks to flesh out and defend the idea that justice has a distinctively institutional domain by developing a general, sociologically sophisticated account of the nature of institutions in general and the manner in which they are constituted by individual actions. The key challenges for such a sociological account are to explain why institutions in general are distinctive sites of social distribution, to provide criteria for the identification of the particular institutions and practices relevant to justice in each particular community and to provide a principled distinction between actions that ‘make’ institutions and actions that ‘merely occur within’ them. The everyday practice account depends upon a broadly ‘practice-based’ social theory whose intriguingly heterogeneous roots I briefly trace below.

Sociology and, specifically, social theory are relevant to any enquiry into the relationship between individuals and justice. Social theories seek to describe social phenomena in the most general terms and to specify their underlying ontology. One of the central challenges for any social theory is to specify the causal and explanatory relationship between macro-level social structures like legal systems, cultures and economies and micro-level phenomena like individual choices and attitudes, hence their relevance to my enquiry here. The foundational problem with the governmental specification of the institutional domain of justice and injustice lies in the anachronistic and implausibly social theory it relies on.
The conventional focus on political communities is rarely defended explicitly at all, let alone in specifically sociological terms. It is best understood as relying, however, on an underlying social theory inherited largely without revision from early modern social contract theorists, foremost among them Thomas Hobbes. This broadly Hobbesian social theory has three key features. Firstly, it asserts that social institutions can be created *ex nihilo* by the voluntary acts of previously unassociated individuals. Secondly, it claims that institutions can only effectively regulate social life if they are backed up by the coercive threats of a sovereign state. This implies that, thirdly, institutions primarily function as external constraints imposed on individuals by the state. None of these three claims is remotely plausible.

Firstly, societies are not created out of nothing and individuals do not enter them voluntarily. Rather, social institutions are historically extended, ongoing communities of practice into which individuals are born and raised. Secondly, social life can be and is very effectively regulated by social practices whose rules are not enforced by the state, such as those of language and culture; practices which even the most totalitarian of states would probably struggle to effectively control. And thirdly, social practices are not primarily external constraints imposed on individuals by the state, although the state may be the ultimate source of their authority. Rather, social practices are the medium through which individuals live their lives. People can become so habituated to prevailing practices, such as those of gender and language, and can so internalize their norms, that these practices become wholly transparent and invisible to them, such that they are largely unaware of complying with and enforcing their rules.

The implausibility of Hobbesian social theory carries over to the governmental conception of justice and largely explains its problematic disregard for everyday practices.
Hobbesian social theory implausibly implies that justice is primarily the job of the state, that justice can be achieved solely by legal means and that the institutions it requires primarily serve to constrain and corral the potentially recalcitrant motives of the individuals subject to the state’s legal authority. One need have no attachment to anarchist critiques of the state or Marxist concerns about social alienation to reject this account of the relationship between justice, institutions and everyday life. I propose, therefore, to adopt instead practice-based social theory endorsed by a diverse range of sociologists, social theorists and, significantly, John Rawls himself.

A practice-based theory of society asserts that broad social structures exist, have their effects and are altered only in and by their embodiment in the everyday activities of their participants. The character of macro-level structures such as gender, property and sovereignty is explained by and in terms of the details of the everyday practices which reproduce them. The character of these micro-level practices is itself significantly explained, in turn, by the constraints imposed by the macro-level structures: neither direction of explanation has priority over the other. This approach insists that people collectively author their social system in their everyday activities, rather than having these activities wholly determined by their structural context, while also acknowledging that their agency is significantly shaped and constrained by the social system in which it develops and in whose terms it is enacted.

Social enquiry has focused on the macroscopic implications of everyday practices since, at least, Plato and Aristotle, much of whose work concerned the quotidian details of the just and virtuous life. Plato’s Republic, for example, can be seen to presage modern practice-based social theory in its attention to the ways in which the overall order of the
social system is produced by and depends upon the details of the everyday educational and cultural practices of its leaders. In the modern era, Rousseau analyzed practices of social status, Adam Smith famously used an account of the details of pin production to illustrate and explain the workings of the modern economy, and Marx analyzed the working conditions and practices of industrial laborers to explain the alienating and subjugating effects of capitalist social relations.

In the 20th century, sociologists Erving Goffman and Harold Garfinkel developed an empirical methodology for analyzing the often unnoticed norms of, for example, everyday practices of self-presentation and conversation and the specialized practices of particular professions or social groups\(^\text{11}\). Goffman and Garfinkel were influenced in turn by Ludwig Wittgenstein’s practice-based philosophy, which became central to the subsequent development of this approach to social enquiry\(^\text{12}\). Practice-based sociology was also influenced by J.L. Austin’s theory of performative speech acts and the broader school of ordinary language philosophy of which Austin was a leading figure\(^\text{13}\). The work of Wittgenstein and the ordinary language philosophers provided the immediate intellectual context for, and presumably influenced, Rawls’ own discussion of social practices, which appears in his early paper ‘Two Concepts of Rules’, and which ultimately exerted a little-known influence on Anthony Giddens and others\(^\text{14}\).

A distinct tradition of practice-based social enquiry and analysis is found in a broadly Francophone strand of social theory that also developed in the mid-20th century, but which traces its intellectual origins more to Marx than to Wittgenstein. Concern for the details of

\(^{11}\) Garfinkel and Rawls, 2002 and Goffman, 1959.

\(^{12}\) Tanney, 2009, offers a contemporary defense of a Wittgensteinian conception of rules

\(^{13}\) Austin, 1962.

\(^{14}\) See Warfield-Rawls, 2009a and 2009b.
everyday practices is central to the work of artist-prankster theorists and founders of ‘situationism’, Guy Debord\textsuperscript{15} and Raoul Vaneigem\textsuperscript{16}. The situationists developed practical methods and provocative theoretical frameworks for disrupting and thereby highlighting the dangerously illusory facade that characterizes everyday life in modern societies. Michel Foucault\textsuperscript{17}, Pierre Bourdieu\textsuperscript{18} and Michel DeCerteu\textsuperscript{19} subsequently developed frameworks for investigating the mechanisms by which large-scale structures of power and ideology manifest and reproduce themselves in everyday practices of, for example, sex, medicine, aesthetic taste and urban perambulation. Foucault in particular emphasized the ways in which practices ‘discipline’ and mold the thoughts and physicality of their participants, while DeCerteu was especially concerned with the inevitable ‘gaps’ these practices leave for individual creativity and autonomy.

The most prominent and well developed practice-based theory of society is that of Anthony Giddens. Giddens’ structuration theory is strikingly similar to Rawls’ account of the basic structure:

‘[T]he basic domain of study of the social sciences…is neither the experience of the individual actor nor the existence of any form of societal totality, but social practices ordered across space and time. Human social activities, like some self-reproducing items in nature, are recursive…they are not brought into being by social actors but continually recreated by them via the very means whereby they express themselves as actors. In and through these activities agents reproduce the conditions that make these activities possible’\textsuperscript{20}.

Giddens here captures the central notions of the practice-based approach that I utilize in this

\begin{flushright}
\textsuperscript{15} Debord, 1994.  
\textsuperscript{16} Vaneigem, 1979.  
\textsuperscript{17} Foucault, 1977.  
\textsuperscript{18} Bourdieu, 1990.  
\textsuperscript{19} Certeau, M., & Rendall, S., 1984.  
\textsuperscript{20} Giddens, 1984, p 2.
\end{flushright}
dissertation, most importantly the idea that social structure is constituted only by the everyday activities of its participants. Giddens also notes that practices, such as those of language, property and the family, simultaneously facilitate and constraint individual agency.

Rawls’ unique contribution is to highlight the moral implications of this social theory by insisting on the possibility of people attending to and intentionally altering their most basic practices. Rawls seeks to recapitulate traditional social contract theories without the implausible voluntarist trappings of Hobbesian social theory. Rawls insists that, although participation in social life can never be literally voluntary, and despite social practices formatively shaping the characters and constraining the actions of their individual participants, the ‘social system is not an unchangeable order beyond human control but a pattern of human action’. Rawls thereby avoids the objection that practice-based social theories are inherently conservative or, at least, pessimistic about the possibility of people intentionally altering their own basic practices.

By insisting on peoples’ ability to attend to and alter their own basic practices, Rawls thereby invokes the optimistic, even utopian possibility of entire societies collectively working to restructure their basic practices in accordance with principles of justice. But, as noted above, Rawls retains the problematic Hobbesian focus on the legal and political institutions of the state, and so struggles to offer a plausible account of the demands of justice in everyday life. The challenge, therefore, is to develop an account of the institutional domain of justice that retains Rawls’ sociologically sophisticated focus on basic social practices while avoiding his focus on government, law and the state. This is what I hope to

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21 Rawls, 1999a, p 12.
22 Ibid. p 229.
23 Ibid. p 88.
achieve with the everyday practice account.

Outline

To summarize: Chapters one and two offer a general elaboration and defense of the institutional conception of justice. Chapter three and four specify the institutions that are subject to principles of justice. Chapter five defends an expansive and demanding account of individual responsibility for justice.

1. The Fact of Full Compliance: This chapter defends the institutional conception of justice from the charge that it is hopelessly unrealistic in virtue of assuming ‘full compliance’ with the demands of justice. I argue that this assumption is grounded in a real feature of any basic structure, actual or ideal, namely that most of its participants comply with its rules most of the time. The institutional conception of justice need not be morally utopian but it does entail a minimal, structural utopianism about the possibility for holistic structural change.

2. Rules Made of Actions; Goods Made of Rules: This chapter defends the institutional conception of justice from G.A. Cohen’s charge of sociological incoherence and Liam Murphy’s charge of moral arbitrariness. In response to Cohen, I highlight the difference between actions that merely conform to and actions that monitor and enforce social rules. In response to Murphy, I argue that institutions are morally unique sites of social distribution in virtue of being necessarily constitutive of the goods of justice.

3. The Pervasive Structure of Society: Here I argue that principles of justice apply to informal social practices in exactly the same way as legal and political institutions. I argue that
principles of justice apply to every normative practice that is shared by all members of a community, even those that are ostensibly trivial, due to the essentially holistic nature of a community’s normative structure. I also consider and reject a number of arguments in support of the conventional view that political communities are the unique site of justice and injustice.

4: Communities of Practice: the Many Sites of Social Justice: This chapter argues that principles of justice apply to any community of practice, and not just to political communities or international institutions. I defend a revisionary, context-relative conception of justice that is sensitive to the overlapping and nested nature of human communities. This further redeems the distinctiveness of justice as a normative concept and sheds light on prominent debates about the moral relationships between small communities like families and large ones like nations and languages.

5. Everyday Direct Action: This chapter uses the foregoing account to explore the quotidian mechanisms of social change. I argue that political action is not the only means by which individuals should contribute to making their society more just; they are also required to take everyday direct action to undermine unjust practices and implement just ones. This inevitably requires people who have been formatively shaped by unjust practices to pursue an ethical transformation - to change the way they live. I consider and reject the worry that this is implausibly demanding.
Chapter 1:
The Fact of Full Compliance

Societies should be just. A society is just when its basic institutions and practices combine together into an interdependent social system that distributes the benefits and burdens of social life justly among its members. Theories of justice propose principles that ought to guide the design of those basic institutions and practices, such as some combination of equality, liberty, democracy, and specify the metric by which distributions should be measured, such as rights, resources or status. The merits of different proposed principles of justice can be assessed by imagining a society in which they are implemented - a utopian society whose basic structure is fully just. This imagined implementation involves assuming that the people in the proposed society comply with the demands of justice that apply to their basic structure - they all (or almost all) build, support and comply with fully just institutions.

This full compliance assumption is a foundational feature of so-called ‘ideal’ theories of justice. This is, in broad terms, the approach to political philosophy inaugurated by Plato with the Republic and made explicit in contemporary philosophy by John Rawls. For Plato, full compliance involves, for virtually every individual, total obedience to a Philosopher King who, in turn, ‘fully complies’ with the moral demands of justice and establishes a just set of institutions and practices. For Rawls, by contrast, full compliance involves the mutual public recognition, endorsement and application of a shared conception of justice by all members of a society. Despite this and many other contrasts, Plato and Rawls approach political philosophy in the same way: they theorize justice by describing a fully just society. They assume full compliance.
There has recently been substantial philosophical debate over the merits of this ancient method, a debate that has focused on Rawls’ specific account of his own approach in *A Theory of Justice*. Rawls’ interpretation of ideal theory has been criticized for being too unrealistic in virtue of assuming that everyone in society conforms to the principles of justice and the rules of just institutions. So-called ‘political realist’ critics of ideal theory contend that political philosophers should focus more on the urgent problems of non-ideal theory and less on debating the details of fully just institutions that are certainly no use in the unjust present, and will surely never be needed in light of the likely permanence of deep social conflict and wrong-doing. I shall not attempt here to recapitulate all of the nuances of the recent literature on ideal and non-ideal theory. This debate raises numerous complex questions about the moral significance of human nature and the feasibility of bringing about desirable changes to our most basic institutions and practices.

My aim here is to defend the full-compliance assumption and the method of ideal theorizing that it characterizes, namely the imaginary elucidation of ideally just societies. I shall argue that this method is neither radically fictional nor definitively unrealistic. Rather, it is a formally necessary feature of any normative theory that proposes principles for the holistic, macroscopic organization of an entire, interdependent social system. Ideal theories that assume full compliance assume that societies as a whole are required to abide by normative principles - are required to be just. This is a conceptual assumption. They also rely on the sociological assumption that actual societies are constituted by their basic structures: a set of institutions and practices in which everyone in the society participates, and so complies with, virtually all of the time, such as practices of language, culture, law and

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24 For an overview, see Stemplowska and Swift, 2012.
I shall first introduce my proposed conception of ideal theory. I then go on to argue that it avoids a number of key criticisms directed at ideal theories of justice: that their implementation would be unstable; that they unrealistically obviate the social necessity of practices of enforcement and sanction; that they are motivationally too demanding and that they cannot serve as guide to non-ideal theories of social change or transition. I shall argue that the substantive questions raised by each of these issues is orthogonal to the merits of the conceptual and sociological assumption of full-compliance and, hence, of the theoretical elucidation of imagined utopias.

Moral and Social Compliance

The assumption of full compliance means that ‘[e]veryone is presumed to act justly and to do his part in upholding just institutions’25. Ideal theories of justice assume ‘that almost everyone does almost everything that the normative content of that theory demands of them’26. Full compliance with the demands of justice is a false assumption - it is not the case that people currently do what justice requires and it is vanishingly unlikely that they ever will.

Critics of ideal theory argue that the falsity of this assumption undermines any normative theories which rely on it. William Galston, for example, argues that: ‘Not only will ‘full compliance’ never be achieved, but also it is an assumption that yields misleading accounts of political norms’27. This complaint is echoed by other critics of ideal theory, who argue that the unrealistic assumption of full compliance renders ideal theories too divorced

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26 Hamlin et. al., 2012, p 49.
from the practical problems we actually face to be of any use – such as disagreement, venality and violence – and may even be positively harmful, if idealized institutional proposals are naively implemented in societies whose members will not comply with them.

I shall argue that the assumption of full-compliance is built into the concept of justice itself and has no direct bearing on or relevance to debates over the substantive moral content of justice. I distinguish between two strands of the assumption of full-compliance, one descriptive and the other moral.

**Social Compliance:** All actual societies do enact and (almost) fully comply with the institutions and practices of a basic structure. Actual basic structures necessarily embody some set of underlying values and purposes, although they may not be consistent with each other or explicitly known to all participants.

**Moral Compliance:** Societies could and should enact those institutions and practices required by justice, thereby organizing and orienting their society around the value and purpose of social justice.

Social compliance describes a real activity that all societies necessarily perform - the collective enactment of a basic structure. Actual societies are characterized by (virtually) full compliance with a set of prevailing rules and norms. People do, in fact, mostly comply with and support the institutions and practices into which they are raised and in which they go about their lives. This is just what it means to have a basic structure. (I shall return later to the fact that actual societies only feature *almost full* compliance.)

Moral compliance asserts that this activity is subject to moral requirements. I call these moral requirements ‘principles of justice’, although some might prefer slightly less morally weighty terms such as ‘principles of legitimacy’ or of ‘social peace’. The assumption of moral compliance is unrealistic only in the uncontroversial sense that any normative claim of any kind will often be unrealistic, namely in virtue of requiring people to act other than
they actually do, or can be expected to do given their predictable viciousness\textsuperscript{28}. This is likely to be true of far less morally ambitious theories of justice than Rawls’. Justice is simply the name given to the moral requirements that apply to basic structures. This is a conceptual point that has no bearing on the content of justice.

The conjunction of social and moral compliance leave entirely open whether justice is, as Rawls and other ‘political moralists’ would have it, a fairly demanding distributive ideal, or whether it is, as Galston and other realists would contend, a fairly weak political value concerned primarily with maintaining social peace. Any normative account of basic structures necessarily invokes both of these assumptions regardless of how ‘idealistic’ or ‘utopian’ are the principles any such account proposes. I shall argue below that it is also compatible with a purely comparative theory of justice, such as that defended by Amartya Sen, which might enjoin people to fully comply with a more just basic structure rather than a fully just one.

There remains an important sense, however, in which the assumptions of moral and social compliance are inherently utopian and idealistic. They invoke the possibility of societies collectively altering their most basic institutions and practices to bring their entire social system into line with the demands of justice, whatever these turn out to be. Only normative theories that deem actual societies to be almost just avoid invoking this possibility. This kind of holistic transformation is a very difficult and often lengthy process. It is hard for people to collectively control and direct the transformation of their own basic practices. This effort requires extensive coordination and close attention to the innumerable feedback effects that are inevitable between the different components of a thickly interdependent

social system. Structural change is challenging regardless of the content of the norms with which social institutions are to be brought into line. Even if justice requires only the stable management of social peace, this can be very hard to achieve in a society ridden with violent conflict.

The key point is that any normative theory of social life applies its principles to the basic structure. Any such theory must therefore invoke at least the minimally utopian possibility of an actual society engaging as a whole in an intentional, collective effort to transform its own basic practices. Theories of justice therefore necessarily invoke an idealized vision of a fully compliant society. They do so because one of the best ways to defend and explicate any proposed normative principle is to describe and evaluate what it would be like if people followed it. Theories of justice seek to establish that their proposed principles are the principles that societies ought to live by. Philosophers since Plato have sought to defend such claims by imagining that the proposed principles are in place and then describe and evaluate the society they regulate.

This allows us, as A.J. Simmons suggests,

‘…to imagine the results of getting “up and running” the institutions embodying different conceptions of justice, which requires imagining that those subject to those institutions support and comply with them, at least initially…’

The assumption of full compliance does not assert the obvious falsehood that people actually do comply with the demands of justice nor the comparably implausible claim that they are ever likely to. Rather it simply specifies what is involved in proposing and evaluating principles of justice - namely imagining what society would be like if their basic structures

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embodied particular principles. The goal of ideal theory is, as Ingrid Robeyns suggests to ‘model desirable properties of the ideally just society’. There is no way to construct such models without assuming the full compliance of those whose behavior is being modeled - namely everyone in a society. This minimal utopianism is a feature of any normative theory of social life.

In making this sweeping general claim about normative theories of social life I have ignored an important class of such theories: pluralist views according to which the ultimate values of social life, such as freedom and equality, cannot be realized simultaneously and are ultimately in conflict. Ideal theories, by contrast, purport to describe a coherent social system that reconciles and simultaneously realizes all relevant values in the proper balance. This ambition is reflected, most famously, in Rawls’ lexical ranking of his two principles of justice, which, roughly speaking, provides a general trade principle weighing freedom against equality.

I cannot here explore all of the intricacies of the issues involved, but I shall briefly respond to this worry. I suggest that my proposed analysis of ideal theories is compatible with relatively weak forms of pluralism and poses a challenge to the practical interest of stronger forms. *Weak Pluralism*, let’s say, accepts that many conflicts between core values can be resolved in practice and that only at the limits are they irreconcilable. Such theories are, I suggest, committed to the possibility of describing the society in which their proposed values are maximally realized – of describing the practices and institutions which would resolve as many conflicts as can be resolved: a slightly vague and inevitably flawed utopian vision.

*Strong Pluralism*, on the other hand, asserts that values such as freedom and equality are in conflict ‘all the way down’ and that every decision involves a moral dilemma and the tragic sacrifice of one or the other value. If this is so, however, it seems to me to render
strong pluralist theories normatively inert and practically silent. Rather than telling us what we should do, they explain why there is, in some sense, nothing that we should do, because they insist that there are no principles guiding the choices we have to make between conflicting values. Such theories may illuminate our concerns but they cannot guide our actions. Strong pluralism seems to me at best insufficiently ambitious and, at worst, threatens to slip into a kind of tragic nihilism.

I return now to the assumption of full compliance. In the rest of this paper I shall take up various strands of the debate over the merits of ideal theory and argue that, in each case, they leave the assumption of full compliance untouched, beginning with stability.

Stability

It might be objected that my proposed account of ideal theory misses the force of the critique of full-compliance. The objection is that demanding principles of justice could not work in the desired fashion if implemented in any actual society - they would not enjoy sufficient compliance and so would not be stable. Simmons above notes that full compliance must be assumed ‘at least initially’ while leaving open the possibility that some social arrangements would ultimately be self-undermining. This reflects the general fact that basic structures are reflexive - they can in various ways make it more or less likely that their participants will continue to comply with their rules.

The worry is that ‘ideal theories’ of justice that are simply too divorced from actual societies to be of any practical relevance. We can imagine any kind of society we like - including one that is like actual societies in virtue of having a basic structure but unlike them in virtue of being populated by people motivated to act justly. The worry is that such an
imagined utopia does not tell us anything about what actual societies should do, simply in virtue of sharing with actual societies the common feature of a basic structure. The proposed principles may work well in this imagined scenario but they would be disastrous if implemented in any actual society - because too many people would flout the rules of just institutions or would not be motivated to contribute to shared purposes, such as by working hard at a socially useful task. Implementation of ideal principles of justice would, therefore, be unstable and so ultimately unsuccessful and even damaging. In order to rebut this objection we need to consider more closely what is involved in implementing principles of justice for the basic structure, by attending to the nature of basic structures in general.

Implementing principles of justice - whether in real life or in our theoretical imaginations - is not and could never simply be a case of suddenly changing the prevailing rules of social life. Critics of ideal theory are obviously correct that any such sudden change in the basic structure is fairly unlikely to have the desired effect, and especially if the change is both sudden and dramatic, involving extensive alteration to current practices. Such a change will disturb the plans and expectations that many people had formed under previous arrangements and so likely be resisted. The sudden implementation in any society of different rules and norms will also very likely lead to tensions between the motives, values, characters and desires of the people formed under previous social arrangements and the new rules they are expected to live by. This tension would likely undermine the purpose of the new institutions and foment social instability, rendering their implementation largely counter-productive.

The sudden implementation of, say, Rawls’ difference principle in actual societies would very likely face this kind of problem, because this principle can only achieve the
desired effect in a society whose members endorse the collective goal of maximizing the distributive shares enjoyed by the least well-off person. Actual societies presumably endorse and pursue rather different goals, such as maximizing overall production, or, perhaps, perpetuating the socio-economic dominance of the capitalist class. People in actual societies grow up in and are formatively influenced by these prevailing values such that they would likely be thoroughly unmoored if society suddenly adopted the difference principle and thereby significantly transformed the character of social relations. People who were previously comfortable with navigating market forces in order to maximize their income or profit would likely struggle to orient themselves in a society that repudiated such values. Ideal theories would be rightly condemned as uselessly unrealistic if the thought experiments used to justify their normative conclusions were supposed to involve the sudden implementation of principles of justice in any actual, unjust society. This worry can be rebutted, however, by attending more closely to two features of any basic structure: their ongoing nature and formative influence.30

When we imagine the implementation of proposed principles of justice - and so imagine them being fully complied with - we have to imagine these principles regulating social institutions over an extended period of time, probably many generations, and as exercising a formative influence on their participants. All basic structures inevitably have this formative impact. The basic structure determines the choices and incentives available to its participants throughout their lives. It is natural to assume, therefore, that people will adapt their values and desires in light of the options and rewards available to them. In unjust conditions, this will often take the pernicious form of ‘adaptive preferences’ in which

unjustly disadvantaged people come to accept and even value their own deprived or restricted experiences and options. The basic structure also unavoidably embodies and expresses some norms and values. It does this by way of the explicit content of its rules, which are known to all participants, such as a constitutional principle of civic equality. It also does so by way of the values, purposes and ideals that are implicit or explicit in these practices, such as that ‘greed is good’. And finally, individuals are inevitably ‘trained’ by their constant participation in basic social practices, such as those of language and gender, in exactly the same was as people train their sporting skills by playing the relevant game over and over again. The ongoing nature and formative influence of the basic structure must be taken into account when we imagine the implementation of principles of justice. This serves to rebut the objection that principles of justice would not work as desired if implemented.

When we imagine a fully just society, we do not simply imagine some actual society whose basic structure is suddenly transformed by the implementation of just institutions. Rather we imagine a society whose basic structure has always been organized by the proposed principles - or at least has been just for a very long time. And so we also imagine that the inhabitants of this society have been formatively influenced by the proposed principles justice and the institutions they enjoin us to establish. In this more richly specified imagined utopian scenario, it is hardly surprising that people fully comply with prevailing rules and norms, are motivated by and endorse the guiding values and purposes of their society. After all, they have never known anything else and their own characters have inevitably been deeply influenced by the principles and practices of the society they have grown up in. There is a significant sense, therefore, in which theories of the fully just society get full compliance and some measure of stability ‘for free’. They imagine societies whose participants are
formed by and within institutions that are already just by their lights. Moreover, this point does not apply only to imagined ideally just societies marshaled for the purposes of elucidating and defending a normative theory of justice - it also applies to all actual societies.

A key reason why actual societies feature virtually full compliance is that their inhabitants have been formed by prevailing institutions and practices and so generally find it fairly easy to continue complying with and enforcing their rules. This does not imply, of course, that people in actual societies all explicitly endorse, accept or identify with prevailing values and actual institutions - many people are thoroughly alienated from values and practices they condemn as unjust. But even this kind of reflective criticism of prevailing values unavoidably occurs on the surface of a more fundamental kind of habituated psychological comfort and comprehension that even the most radical social critic or political dissident almost unavoidably feels as they go about their lives – they might condemn their society, but it is still theirs and they know how it works. People inevitably feel at home in the practices with which they are familiar and which they have participated in since infancy, such as those of the nation state, capitalism, language, race, class and gender. We usually navigate, participate in, enforce and conform with these practices instinctively and understand them mostly implicitly, so deeply ingrained are they in our psyches, regardless of whether we come to recognize and condemn them as unjust or make efforts to try and change them.

Ongoing compliance is the default mode for individuals in any basic structure – it is how we were all raised. Indeed this is one important reason why structural change is so hard to achieve. It requires people to first attend to and notice their most deep rooted and habitual social practices, the norms they usually comply with and enforce without even noticing, such as those of language and gender. And then it requires them to evaluate and
potentially seek to alter these practices so as to make their society more just. The empirical fact of full compliance is, therefore, simultaneously the real practical foundation for ideal theories of justice and also the biggest practical obstacle to the realization of their principles.

I now consider two further objections to this account. Firstly, that it amounts to an implicit acceptance or even endorsement of social conditioning, indoctrination or brainwashing - that by emphasizing the formative role of the basic structure I somehow accept or endorse manipulative and undemocratic efforts by states and governments to mold their citizens into a desired form. I respond by noting that basic social practices *inevitably* have this formative impact on their participants, regardless of whether any state or other powerful social actor also attempts to engage in ideological manipulation of its populace. The formative mechanisms of the basic structure pervade everyday life, regardless of which authorities and institutions seek to attempt or succeed in imposing their preferred practices. Basic practices determine the choices and incentives available to their participants, who are also inevitably influenced by the content of their rules and their (often implicit) purposes, as well as being trained and habituated by their nearly constant participation in the same everyday rituals of, for example, language, gender and property. None of these mechanisms require any intentional efforts at social conditioning or indoctrination - they simply require people to be brought up in a society and taught how it works. Because the basic structure inevitably has this formative influence it is vital that our theories of justice are also sensitive to it and that we attend to it, both when we select ideal principles of justice and when we engage in non-ideal efforts at institutional reform.

Another objection is that this account it denies the possibility of instability - it assumes that all actual and ideal basic structures successfully generate their own ongoing
support among their participants and that social compliance is always permanent and unchanging. I respond to this by noting that basic structures influence but do not wholly determine the values, motives and actions of their participants. Ongoing compliance is a default, but defaults can be changed. Deeply unjust basic structures can be stable over long periods of time in virtue of a combination of ideologically induced false-consciousness among all participants, the power and interests of those who benefit from injustice and the recognition by the victims of injustice that they lack reasonable alternatives to continued compliance. But however effective these mechanisms are, they can never wholly guarantee continued stability because of the permanent possibility that some people will penetrate the distortions of ideology, repudiate their own interests or risk the costs of resistance and so destabilize the social system. Some measure of stability is a feature of any basic structure but no society is mechanistically guaranteed to remain permanently stable. And, of course, few, if any actual societies come close to being ‘stable for the right reasons’ – as Rawls describes his ideally self-perpetuating just society.

Enforcement and Non-Compliance
I shall now consider a further objection to the above defense of the full-compliance assumption as being grounded in empirical reality. Firstly, that there is not and never will be full compliance with prevailing rules in actual societies and, secondly, that this is the main or only reason why we need just institutions at all. I respond to this objection by arguing that institutions are not valuable solely as ways of corralling and controlling people who desire to do wrong and by acknowledging that ideal theories of justice need not assume perfectly full compliance. A limited amount of non-compliance is compatible with the ongoing existence
of a fully just basic structure. (This is captured in the above formulations of social and moral compliance, which include the modifier ‘almost’.)

The strongest version of this objection contends that the assumption of full compliance removes any need for justice at all. Justice is concerned specifically with the adjudication of competing claims to the goods of social life and, according to this objection, fully compliant people would be morally perfect and hence able to settle any such competitions or disagreements on their own, without recourse to socially authoritative rules or the threat of sanctions. An initial response to this involves distinguishing between the fully just society is identical and a morally perfect society.

The demands of justice apply to the institutions of the basic structure - they are not coextensive with all of ethics. Further moral requirements apply to individuals when they choose between actions that are equally socially permissible within a framework of just rules. People in the just society can be assumed to know and trust that they all desire to act justly, but there may be limits to this trust such that they require the assurance provided by the threat of sanctions, even if these are rarely or never actually required. Rawls makes a similar point:

‘...even in a well-ordered society the coercive powers of government are to some degree necessary for the stability of social cooperation. For although men know that they share a common sense of justice and that each wants to adhere to the existing arrangements, they may nevertheless lack full confidence in one another. They may suspect that some are not doing their part, and so they may be tempted not to do theirs. The general awareness of these temptations may eventually cause the scheme to break down.’

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31 This is Rawls’ formulation too, see Rawls, 2001, p13.
32 See e.g. Hamlin et. al., 2012, p50, and Galston, 2010, p 405.
33 Rawls, 1999a, p 210.
Rawls does not here specify exactly why people in the just society might not trust each other fully and does not explain why they would need the coercive threat of government enforcement rather than relying only on the threat of informal social sanction, such as stigmatization and ostracism. But we can imagine that, while they know each other to be committed to justice, people in the fully just society will also be aware that moral failings or requirements in other parts of peoples’ lives may be in tension with the demands of justice.

For example, a congenital liar might mostly manage to restrict their lies to personal contexts and so avoid breaking any of the social prohibitions on deception required by justice, such as perjury or fraud. Similarly, we can imagine a person who rightly feels personally obligated to aid and assist someone else to the best of their ability and is tempted to break the rules in order to do so. In light of these possibilities it is plausible that even people in the fully just society would need to at least take the trouble to monitor each other’s behavior so as to be sure it accorded with the demands of justice, and would likely also need at least the threat of sanctions to discourage breaches.

As a stronger response to the objection I propose that even morally perfect people would need social institutions and practices in order to create and distribute the essentially structural goods of justice: rights, roles, recognition and esteem, whose nature I explore in more detail in the following chapter. Gregory Kavka has argued that morally perfect agents would need a governing authority to adjudicate between them because they would, in fact, disagree. We need not here adjudicate the question of whether or not morally perfect people would disagree and so need government specifically, because there are, I think, independent reasons to think that they would need normative social practices – sets of mutually

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34 Kavka, 1995.
recognized rules and norms of social performance, such as those of language, property and
gender.

Social institutions and practices are not valuable only for their ability to corral and
constrain morally wayward individuals by threatening them with sanctions for non-
compliance. Institutions and social practices are also, and perhaps more fundamentally, the
essential medium of social life - they establish the shared terms, meanings and
understandings without which people could not live together at all, regardless of the extent
of their moral virtue – they establish the terms on which agreements can be reached as well
as those on which disagreements can be settled, should there be any.

For example, morally perfect people might not require social protection of their
moral rights to bodily integrity because of the threat posed by people who actively desire to
assault them. But even morally perfect people need some shared understandings about what
does and does not constitute consensual physical contact and in what contexts and in what
ways people are permitted to touch each other with or without explicit consent35. The social
right to bodily integrity consists, minimally, of some shared communicative norms that allow
people to grant and withdraw consent for physical contact - at the very least it requires
linguistic norms specifying the meaning of words like ‘yes’ and ‘no’. Linguistic norms are
themselves enforced by the sanction responses that are imposed on people who are
incomprehensible, uncomprehending or who fail to successfully communicate their intended
meaning.

Morally perfect people may never misspeak or misunderstand each other, let alone
ignore a refusal or withdrawal of consent to physical contact. But they would need to know

35 Non-consensual, non-sexual touching is usually socially and morally permitted in, for example, crowded
public spaces like rock concerts or in medical emergencies where the patient is unconscious.
what the social rules are concerning such things, in order to know how to realize their moral principles in practice. And it is important that they know the relevant social performances are done because they are specified by *social rules* that everyone is aware of, recognizes and can be expected to comply with, rather than, say, fortunately widespread moral virtues. Social practices are necessarily quite specific and require mutual beliefs and shared knowledge. It is no use to be convinced of another person’s virtue if they hear your ‘no’ as a ‘yes’. I have focused here on the single example of normative practices of bodily integrity but, of course, morally perfect people will need many such practices, such as language, property and those dividing social labor into specific roles, regardless of whether they would need coercive sovereigns and legal institutions too. Full compliance with the demands of justice does not obviate the need for social institutions, even for morally perfect people.

While I think that the above arguments are adequate to respond to the objection that full compliance removes the need for just institutions at all, we might still worry that it is simply too unrealistic because there simply never will be absolutely full compliance. Human beings are simply not reliable enough, however good their intentions and motives - there will surely always be crimes of passion, negligence and misadventure. The relatively minimal penal institutions that would be required to provide assurance in a fully compliant society would simply never be appropriate in any actual society. This might diminish the practical relevance of ideal theories of justice by taking them too far away from the ‘realistic’ conditions of social life.

I am happy to accept this and endorse the modified assumption of *almost full compliance*. This modification means that the full-compliance assumption maps exactly onto actual societies, which enjoy a very large amount of compliance with prevailing rules but, of
course, fall short of perfectly full compliance. One reason for not being too concerned by this modification is that a small number of relatively isolated criminal and non-conforming actions are never, by themselves, enough to undermine or alter prevailing rules and practices. There is, presumably, some threshold of compliance below which a rule can no longer be said to apply - this threshold might vary for different rules. But this threshold must fall below the levels of compliance in actual societies, which mostly maintain the same institutions and structures despite permanently featuring some level of non-compliance and non-conformity.

**Motivation**

I now consider another objection to ideal theory and the assumption of full-compliance: that full justice is too motivationally demanding. Because full compliance with the demands of justice asks more of people than they can be expected to give, just institutions will either never occur or, if they did, they would not be stable or permanent - eventually being undermined by the countervailing motivations of their participants. Justice might be desirable but, this objection suggests, it is impossible, suggesting that theories of full justice have little or no practical relevance. My main response to this objection is to repeat that that the ideal of the fully just society does not, by itself, have any implications for what justice substantively demands. Full-compliance is simply a formal, conceptual feature of any account of the norms and rules that people should live by and has no bearing on how demanding those norms and rules ought to be.

Concerns about the motivational feasibility of normative theories can be understood in two ways, neither of which poses a problem to ideal theory. The first interpretation points
out the plausible fact that there is little prospect now or in the distant future of (almost) everybody being motivated to act as justice demands. This is likely true whatever justice requires and not just for strongly egalitarian theories. Some ‘realist’ critics of ideal theory suggest that justice is primarily concerned with managing social conflict and securing something close to a minimal Hobbesian social peace. It seems likely that there will always be some people who fail to comply with even the fairly minimal demand to build and support whatever institutions are necessary to secure a just peace and will instead foment violent conflict within and between states. This shows that concerns with motivational feasibility cannot simply appeal to the predictability of non-compliance with demanding principles. The fact that some people will predictably flout even the least demanding of moral requirements, such as to refrain from unjustified violent conflict, does not in any way diminish the force or practical relevance of those requirements. It simply means that we would be foolish to rely on people always doing as they should\textsuperscript{36}.

The second interpretation of the objection that full justice is motivationally infeasible contends that justice is too demanding for anyone to ever fully comply with. Rather than appealing to the predictability of non-compliance, this interpretation suggests that full-compliance is literally impossible for human beings. The source of this impossibility might lie in human nature, such as brute psychological limits on our ability to care for distant others or make significant personal sacrifices in the name of abstract moral demands. This interpretation poses a problem to some substantive theories about what justice requires but not to the assumption of full-compliance.

It is objected to some moral theories that they are ‘too demanding’ - that they ask

\textsuperscript{36} Estlund, 2011, presses this point.
more of people than they should be expected to give or more than they can give, given their psychological make-up. But this demandingness objection is itself a claim within moral theory - it contends that moral requirements should not be too onerous. To the extent that it has merit, concerns about demandingness establish that the true theory of justice - and so the true account of the fully just society - cannot demand of people more than they should be expected to give. This rebuts the concern that justice is motivationally infeasible in virtue of being too demanding. Justice itself may be internally constrained by moral limits on the motivations that people can be required to manifest and act from. The full-compliance assumption simply assumes that people comply with the demands of justice, whatever these turn out to be. It is a further substantive question, which I do not consider here, how demanding justice actually is.

Transition

A further objection to ideal theories of the fully just society is that they propose a target for social reform that is vanishingly unlikely ever to be approximated, let alone attained, and that it is dangerous to even pursue. I respond to this objection by first pointing out that the transformation of basic social practices is clearly possible because it has actually occurred. And secondly I shall argue that, even if we ultimately abandon the project of theorizing the fully just society we ought to always be attentive to the impact any social reforms will have on the basic structure and so will still need to at least theorize comparatively more and less just basic structures, thereby still invoking the utopian possibility of holistic social change.

The objection suggests that ideals of the fully just society should not guide strategy because there is no prospect of the holistic social transformation required to eliminate all
structural injustice and attain a fully just basic structure. One response is to point out that the prospects for achieving the desired transformation depend upon how far current societies are from justice and on the complexity of the route from here to there. While I personally tend to think that actual societies are quite grievously unjust, this is a substantive matter that depends on the content of justice. We can easily imagine a theory according to which actual societies are already fairly just, such that the transition to full justice is a much less distant prospect. On the other hand, even if the fully just society is not so different from the status quo, it might still require difficult and lengthy efforts to achieve it and could even require drastic changes on an indirect route to a relatively similar set of institutions. It could be, for example, that full justice only requires actual societies to redistribute material resources within an otherwise identical institutional structure, but that the only path to this relatively minor adjustment involves the revolutionary overthrow of current governments and the violent appropriation of private property.

A further response to the objection acknowledges that justice does likely require a significant transformation of current basic structures but denies that such transformations are in general unlikely, let alone inconceivable. On the contrary, structural transformation is a real historical phenomena - it has happened to all actual societies. There is reasonable controversy over the extent of structural transformation in recent centuries. Many would suggest that the 20th century alone witnessed a highly significant (and quite rapid) structural transformation in many society’s basic practices of democracy, gender and race. More radical social critics might contest the extent of this transformation, arguing, for example that apparent advances in representation, civic equality and cultural inclusion have amounted primarily to cosmetic adjustments in discursive practices of culture and legislation. These
changes may have served primarily to prop up and maintain a largely unchanged underlying structure of everyday social and economic relations that remain thoroughly inflected by normative distinctions between classes, genders, races and nations. Even such a critic, however, will acknowledge that there was a genuine structural transformation in the transition from feudalism through mercantilism to capitalism. The fact that societies can transform grants at least prima facie practical relevance to ideal theories of the fully just society.

A proponent of the transition objection can, however, accept the general possibility of structural transformation while continuing to deny that ideal theories ought to guide actual efforts at social change in non-ideal conditions. This worry invokes the classic objection to utopian social theories, motivated by 20th century experiences of fascist and communist attempts to build a ‘perfect society’. The worry is that utopian theories encourage people to implement institutions that are unsuited to their context or, at worst, license violent and authoritarian attempts to impose rapid social change on an unwilling population. This objection sets up utopian theories as something of a straw man. Firstly, it simply invents and imputes to ideal theorists a normative theory of social transition that endorses authoritarian violence. There is no basis for this in ideal theory itself, which does not, by definition, purport to provide immediate answers to the non-ideal condition of what we should do right now, in currently unjust conditions. Critics of ideal theory are probably correct that more philosophical attention should be paid to non-ideal moral principles of social change, but it is no objection to ideal theories in themselves that they do not help much with this task.

A more plausible reading of the objection thoroughly blunts its force as a challenge
to ideal theory. There is no doubt that structural transformation is an extremely complex and challenging goal and that it poses immense epistemic challenges to those who seek to attain it. But this is in no way unique to theories of justice or even to efforts at social change. Not only is it rarely wise to move too quickly to the implementation of ideal institutions, it will sometimes be wise to actually move away from them - to make society less just in the short term in order to best facilitate long term improvements. It is never easy to foresee the long term effects of any particular social change. These epistemic challenges are especially severe in the context of basic structures, which are highly complex, reflexive and temporally extended, making it very difficult to trace the likely feedback effects and unintended consequences of any local adjustment. But this is true of any long term or complex goal pursued by any individual or group – such as a person’s pursuit of a particular kind of lifestyle or an orchestra’s attempt to play a symphony. It is always wise for both individuals and groups to be careful when pursuing any practical goal and to make sure not to undermine their efforts by moving too quickly. A person should probably try to build a fulfilling life by pursuing it one element at a time and in some sensible order; the orchestra should not sit down to sight-read the symphony for the first time on the day of the concert. This is just a general norm of prudence and practical reason and in no way undermines the practical force of ideal theories in particular: they simply set an especially complex, lengthy task to an especially large group – the participants in a common basic structure.

A stronger version of the transition objection comes from Amartya Sen’s argument that we do not need ideal theories of full justice at all. Sen argues that we only need theories

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37 Simmons, 2010, p 23.
of justice to compare between available options for social change and that ideal theory is neither necessary nor sufficient for the task of transitioning to a more just society. I cannot take up Sen’s view in detail here so I shall instead accept it for the sake of argument and suggest that, while it may be fatal to traditional forms of ideal theory, it does not undermine the need for normative theories that assume full compliance.

Even if there is no need to theorize the fully just society, we still need theories that evaluate the basic structure as a whole and, as Sen suggests, provide criteria to compare and evaluate potential changes we could make to the basic structure. Any theory that gives an account of the basic structure will invoke the assumption of full compliance because, to reiterate, this is an empirical feature of all actual and possible societies. Even if we are only concerned with making society more just rather than making it fully just we still need ambitious, holistic theories whose realization would require some kind of structural transformation. Sen’s critique of ideal theories of full justice therefore leaves untouched what we might call ideal theories of better justice: utopian descriptions of a basic structure better than the status quo, although perhaps not best of all.

This raises further questions that may put some pressure on Sen’s position, although I do not claim to here provide anything like a definitive rebuttal. Firstly, how much better could the basic structure be? If we accept that the basic structure could be more just there is some pressure to accept that it could also be fully just - to have no unjust elements - which brings us back to conventional ideal theory. The question can also be put the other way around to pose a slightly sharper response to Sen. If we are not to theorize and strive for a fully just basic structure, we must therefore accept that some structural injustices will never

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Sen, 2006.
be removed and that we should not aim to fix them, even in the very long term. Which injustices should we accept and on what grounds should we choose them? The fact that ideal theories of full justice do not immediately settle comparative judgements between available social changes does not justify resigning ourselves to perpetually, partially unjust social institutions. But the only alternative to such resignation is to theorize and aim for a fully just society.

We might, finally, consider the transitional merits of what Ingrid Robeyns calls ‘partial ideal theory’\(^\text{39}\), which is concerned only with justice in some particular domain of social life, such as gender or political institutions. Perhaps we should simply set aside the daunting task of trying to improve the basic structure as a whole and focus on trying to fix parts of it instead. This piecemeal approach to theorizing transition is unsatisfactory, however, in light of the holistic and interdependent nature of the basic structure. Even if we follow Sen and abjure ideal theories of full justice, we cannot simply ignore the existence and role of the basic structure, the value of making it more just and the danger of making it less just. It is likely inevitable that, in practice, we will have to direct our efforts at social change at particular parts of the basic structure rather than trying to transform it entirely in one fell swoop.

But the wholesale adoption of a piecemeal approach to theorizing social change puts us at grave risk of sacrificing long term gains for short term improvements. As A. J. Simmons points out,

> “There is no reason to suppose in advance that justice in one domain is independent of justice in other domains. So ideal theory cannot set “partial”

\(^{39}\) Robeyns, 2008, p 344.
targets until it first determines that hitting those targets will be consistent with all other aspects of overall societal justice, which implies, of course, the need to first determine at least most of the content of that integrated ideal.\textsuperscript{40}

The basic structure is an essentially holistic set of institutions and practices. Changes to any one part of it will almost inevitably interact with other parts and lead to further changes. It is likely true that, in practice, we should aim to improve the basic structure one piece at a time rather than transforming it entirely in one fell swoop. But such piecemeal efforts must be informed by and sensitive to a normative evaluation of the entire structure as well as sociological analysis of the relationships between its component elements. It may be that, as Sen argues, all that is needed is a theory of a more just and not a fully just basic structure, but there is no way to do without normative theories that assume the possibility of reforming basic institutions and practices, even though this invokes the idealistic goal of getting every single person in a society to change their behavior.

Conclusion

In this chapter I have defended the methodology of ideal theories of justice - specifically their assumption that everyone fully complies with principles of justice that apply to the basic structure of society.

The conceptual assumption of \textit{full moral compliance} with the demands of justice is part of the concept of justice. It is unrealistic only in the uncontroversial sense that people will predictably fail to comply with all of the moral requirements that do, in fact, apply to them. Principles of justice tell societies what values and goals to realize and promote in their most basic shared practices. Societies are required to be just and this requires full compliance.

\textsuperscript{40} Simmons, 2010, p 21.
Ideal theories of justice are not rendered unrealistic simply in virtue of the predictability of their demands being flouted.

The sociological assumption of *full social compliance* on the other hand, is not unrealistic at all. Rather it is implied by a general descriptive definition of a society: a group of people who share a set of basic rules and norms – a basic structure. A basic structure, and hence a society, only exist when most people in a group comply with and enforce the same set of institutions and practices and where this mutually known to all of them, at least implicitly and in general terms. Basic structures are, by definition, made up of institutions and practices with which most people inevitably comply most of the time, because they are the basic practices that people participate in every day.

I defended this conception of ideal theorizing from further objections that it is excessively unrealistic: that it ignores the difficulty of getting people in unjust societies to follow just rules; occludes the importance of enforcement and the fact of criminality; is too motivationally demanding; and, finally, that ideal theories cannot guide transitional strategy.

The two assumptions of *social* and *moral compliance* are shared by any normative theory that proposes principles for the overall regulation of social life, the values and purposes that societies as a whole should collectively realize and promote. Full-compliance is assumed by morally ambitious ideal theories of social justice, such as Plato’s and Rawls’. But it is also assumed by ostensibly more realistic theories that propose only the adoption of principles for the effective management of social conflict, rather than the pursuit of any distributive ideal. All such holistic theories subscribe to a sort of minimal utopianism. They assert that our most basic practices are subject to critique and also potentially subject to our intentional efforts to change and improve them. They assume the possibility of everyone in a society
joining together to alter the fundamental normative structure of their social relations – the rules and norms they live by and in, out of which they build their social world, which form them and from which they construct their identities and pursue their own values and purposes. This minimal utopianism reflects a fundamental and urgent truth: that however deeply embedded are our most basic practices, they can, and probably should, be utterly transformed.
Chapter Two:
Rules Made of Actions; Goods Made of Rules

Justice requires us to build and support just institutions: the socially authoritative rules, practices and social structures that regulate life in a particular community. What does this involve and why does it matter so much? My contention is that justice is a distinctively institutional concept. This *institutional conception* of justice can be broadly characterized as follows:

_institutionalism:_

i) Principles of justice apply directly to social institutions in virtue of their unique role in shaping the distribution of the goods of justice among their participants.

ii) Individuals are required to contribute to collective efforts to build and support just institutions and to conform to just rules and norms in their everyday lives.

Institutionalism has been accused of fundamentally misunderstanding the causal and normative relationships between institutions, individuals and distribution and, as a result, of drastically underestimating the demands that justice makes on individuals in their everyday lives. This critique of the structural approach, developed most forcefully by G.A. Cohen and Liam Murphy, has three distinct components.

_the critique of institutionalism:_

_Conformity:_ In order to redeem a normative distinction between institutions and personal conduct, institutionalism relies on the existence of a clear and principled distinction between individual actions that build and support just institutions and those that merely conform to their rules. The conformity objection charges that there is no such distinction, because institutions are built and supported just as much by everyday acts that conform to their rules as by any specialist class of actions that are explicitly oriented to the creation and maintenance of social institutions, such as those that make, adjudicate and enforce the law.
Mediation: The mediation objection contends that institutions are no more than contingently effective procedural mechanisms for bringing about a just distribution - a distribution that can also be promoted by individuals acting within institutions. While institutions should be used as far as possible for reasons of efficiency, individuals are also required to promote justice directly when choosing between actions that are permitted by prevailing rules, such as by donating money to humanitarian charities rather than spending it on personal consumption. Individual efforts to promote justice need not and should not always be mediated by institutions. The mediation objection is most often leveled against views that specify the basic structure solely in terms of the legal and political institutions of the state, but it applies more generally to any rule-governed practice that establishes broad permissions within which individual choices can affect the ultimate distribution.

Discontinuity: The discontinuity objection argues that institutionalism exaggerates the normative distinction between our moral obligations to those with whom we share a set of institutions and those with whom we do not. If people are unjustly deprived, justice demands that we help them, regardless of the thickness of our interaction or our lack of a shared political community.

Constitutive Institutionalism

In this chapter I respond to these objections by defending a form of institutionalism:

Rules Made of Actions: Normative social practices are interdependent sets of requirements, permissions and prohibitions that exist in virtue of iterated combinations of everyday action that conform with, monitor and enforce the performative criteria of these rules.

Goods Made of Rules: Some of the goods of justice are necessarily created and distributed only by normative social practices that are broadly complied with throughout a community: rights, roles, recognition and esteem. These are essentially structural goods.

Example: The Right to Bodily Integrity

An individual’s moral right to bodily integrity is respected and enjoyed in practice only to the extent that virtually everyone in their community knows and can be expected to conform with, monitor and enforce a cluster of rules and norms specifying the conditions under which it is socially permissible for people to touch each other. Whether or not this right is justly distributed depends on the details of these everyday social practices and not, for example, on the letter of the law. The right to bodily integrity can be unjustly
distributed when no one enjoys enough of it, as when the state regularly tortures its citizens. There can also be unjust inequalities in the distribution of this right, as when prevailing social practices create broader permissions for touching women than touching men, or permit the police more latitude to use violence against black people than white people. Because individuals enjoy this moral right in practice only when everyone participates in practices with the right character, individuals can only seek to alter its distribution by trying to change prevailing social practices.

I shall begin by laying out a general account of institutions and their relationship to individual actions. I use this analysis to respond to conformity objection. I then argue that some of the goods of justice are ‘made of rules’ and argue that this facilitates a response to the mediation and discontinuity objections. I conclude by suggesting that this redeems only a weak form of institutionalism because it does not establish that individuals are not also required to promote justice when they distribute goods, such as material resources, that are not ‘made of rules’ while conforming to prevailing rules and norms.

Rules Made of Actions

I here take up and develop the standard definition of institutions in the literature which is endorsed by, among others, Rawls himself:

‘…a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses, and so on, when violations occur…’

The key points here are, firstly, that institutions consist of a plurality of interdependent rules - their purposes and arrangements cannot be understood or evaluated simply by attending to their rules one-by-one. And secondly, institutional rules are ‘public’, meaning that

41 Rawls, 1999a, p47.
'A person taking part in an institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this, and so on.'

Rawls also makes it clear that the institutions are not ‘abstract objects’ but, rather are realized in a certain pattern of actions:

‘An institution [is]...the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules...An institution exists at a certain time and place when the actions specified by it are regularly carried out in accordance with a public understanding that the system of rules defining the institution is to be followed. Thus...[for example]...a parliamentary institution exists at a certain time and place when certain people perform the appropriate actions, engage in these activities in the required way, with a reciprocal recognition of one another’s understanding that their conduct accords with the rules they are to comply with.'

A third important feature is that this definition does not inherently privilege any particular institution or set of institutions as the site of justice and injustice. It applies not just to formal, legal, coercive or political institutions or to those of sovereign states; rather it applies to any social activity regulated by mutually recognized rules of social performance. It is a further question which practices, if any, are distinctively subject to the demands of justice - an issue I take up in the next two chapters. I shall now elaborate on this initial account by offering a characterization of institutions as ‘normative social practices’. This account will then permit a response to the conformity objection.

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Normative Social Practices: Interdependent sets of iterated normative social actions.44

This definition introduces some technical terms, which I now specify.

Social Actions:

An action is anything an agent does intentionally. An action is ‘social’ when it is done intentionally in part for a ‘social reason’. This means that the agent acts because of mutual beliefs they share with another person about what they each will do in particular circumstances. Social justice, I shall assume, is a source of distinctively social reasons for people to live together justly. There are a number of rival analyses of social reasons and intentions, with the main divergence being between those which regard them as a special kind of individual reason and those which regard them as essentially ‘collective’ or ‘shared’ reasons. The details of this dispute do not concern me here. I am concerned only with the general distinction between social and non-social actions. A non-social action can be explained without reference to anything that anyone else does or believes whereas social actions make sense only in light of some mutual expectations and beliefs about what others believe and will do.

Social actions are essentially ‘joint’ - things that people can only do together, like speaking a language or playing a game. They are more than simply ‘collective’ actions, which can simply be an aggregation of isolated individual actions, as when a group of people all put their umbrellas up simultaneously as it starts to rain. The group collectively ‘puts their umbrellas’ up but the individual members do so because of their own personal reasons to

44 This account is drawn primarily from Tuomela, 2002.
avoid getting wet, not because the group has some common end advanced by the coordinated raising of their umbrellas.

Social reasons can be highly abstract and general in their content. This is especially so with large, geographically dispersed groups, such as societies. The members of a society do not have specific beliefs about what each other particular member can be expected to do. Rather they have very general beliefs about any person who meets certain criteria. In America, for example, people drive on the right in large part because of a social reason that they share with everyone else - namely the mutual belief that everyone will also do so. But these are beliefs about ‘anyone who drives around here’ rather than about each individual person.

_Iterated Actions_

An action is iterated when it is done repeatedly in relevantly similar circumstances. An iterated action is a ‘practice’. An iterated social action is a ‘social practice’. While each instance or token of an action necessarily occurs only once, the same kinds or types of action can occur many times, such as saying ‘hello’ or trying ones shoelaces. Practices are defined in terms of types of action, not token actions.

Many iterated actions are not social - such as a person regularly making themselves the same thing for breakfast. And many social actions are not iterated, as when a group of people cooperate to push a car that is stuck in the mud. Some social actions, however, are done repeatedly, such as when individuals regularly buy things simply because they are

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45 There is inevitably some vagueness here about how many times an actual must actually occur in order to count as a practice. Perhaps people are disposed to act in a certain way when particular circumstances arise but these circumstances never or only very rarely actually come to pass. It is vague whether such people have the practice in question, are merely disposed to have it, or neither.
fashionable i.e. because they expect other people to buy them too.

Normative Actions

Normative social actions enact and enforce the ‘performative criteria’ of social interaction. Performative criteria specify ‘how things are to be done’ or ‘what counts as doing’ things like talking, voting, buying something or playing a game. Actions can be normative and social without being iterated - the individuals pushing the car out of the mud may well monitor each other’s contributions and chastise those who do not contribute properly. And actions can be iterated and social without being normative - regularly buying fashionable clothes need not, by itself, comply with or enforce any norms.

The joint enactment of an ongoing social practice involves a number of distinct kinds of iterated normative actions:

Conforming: Performing an action as specified by a social norm e.g. handing over cash in a store, using correct grammar, passing a legitimate law. This can occur without there being anyone else present to monitor conformity - it requires only that the person be responding to the relevant social reason.

Monitoring: Assessing the performances of others with respect to criteria they are expected to meet e.g. making sure the customer hands over real money, interpreting others’ words as meaningful or not.

46 Tanney, 2009.
Sanctioning and Rewarding: Responding appropriately to others’ performances e.g. handing over goods for cash, responding with incomprehension to meaningless utterances47.

Interdependent Sets:
Normative social practices consist of interdependent sets of rules that work together to facilitate activities that individuals could not pursue (at all or so easily) in the absence of those rules, such as speaking a language, playing a sport or signing a contract48. Social norms specifying performative criteria create ‘socially normative expectations’ among the participants in the practice. Socially normative expectations are beliefs about other peoples’ likely actions. They involve the belief that that other people understand themselves as participants in a shared practice and so will either act as its rules require or expect sanctions if they fail to do so. Normative social expectations are importantly different from empirical predictions about how people will behave e.g. that they will look for food when they are

47 The same piece of behavior can fall under more than one type of action. Normative actions of compliance, monitoring, sanction and reward can usually be correctly described in other non-normative terms. The same piece of behavior can be correctly described in terms of its constituent physical motions, such as the movements involved in buying a book in a store or, in normative terms, as an act that complies with laws and norms of property and exchange.

48 The foregoing constitutive account should be distinguished from two similar sociological views: social constructionism and constitutive rules. ‘Social constructionism’ highlights a very general sense in which many aspects of the social world are ‘constructed’ or constituted by human activity – including, perhaps, things like concepts, illnesses and scientific knowledge. My claim that some of the goods of justice are constituted by social rules is narrower and less fundamental. It applies only to a particular subset of all social phenomena, institutions - institutions are just one among many socially constructed features of our world. And it applies only to the relationship between institutions and justice - their impact on ultimate distributive outcomes - not to the fundamental ontology of institutions or the details of their metaphysical dependence on human intentionality. Another view contends that there is a special class of ‘constitutive rules’ that ‘make possible’ new forms of activity. Constitutive rules contrast with regulative rules. Regulative rules apply to an activity that pre-existed the rule and which can be undertaken without the rule being in place. Driving a car, for example, is possible even if there are no rules about which side of the road to drive on - such rules regulate but do not constitute the activity of car driving. Constitutive rules, on the other hand, are said to make possible new forms of activity that were not possible in the absence of the rule. The rules of chess and other sports are paradigms of constitutive rules, but some basic linguistic rules as well as the rules of other specialized institutions and practices, such as marriage, might also be constitutive in a similar sense. My account of the constitution of goods by rules does not, however, depend on any putative distinction between regulative and constitutive rules. From my perspective, both constitutive and regulative rules fall into the broader category of institutional rules - they are rules of conduct that depend on mutual beliefs and normative expectations.
hungry. Empirical predictions are not normative in the relevant sense because they are not accompanied by a further belief that people who fail to act as predicted should expect to face sanctions from those around them - choosing to stay hungry might be surprising but it is not usually punished. Socially normative expectations also differ importantly from moral beliefs about how people really should act, which may well require people to flout the rules of prevailing social practices.

The difference between social practices in general and normative social practices specifically can be illustrated by the example of coffee-drinking in New England. An individual in New England who drinks coffee most mornings may do so in part because this is customary there. Insofar as this is true, they act for a social reason - drinking coffee is a social practice - an action done repeatedly for a social reason⁴⁹. Drinking coffee is not, however, a social norm or institutional rule in New England – or so I assume here – this practice is social but not ‘normative’. This means that people in New England do not drink coffee in order to avoid sanctions and nor do they monitor each other’s soft drink habits with the intention of imposing informal sanctions on anyone caught drinking anything other than coffee. We may able to predict that people in New England will drink coffee but we do not have any normative expectation that they will do so for the particular reason that failure to drink it brings the risk of social sanctions.

To sum up: institutions and all other norm-governed social activities are normative social practices. Each practice consists of an interdependent set of performative criteria. A normative social practice exists when people repeatedly comply with, monitor and enforce these criteria for the same social reason, both the particular reason for performing a specific

⁴⁹ But of course they also act on their individual desire for coffee - this will very often be the most salient description and explanation of their action.
action within a practice and the more general reason for having the practice in the first place. I shall now argue that some of the goods of justice are necessarily created and distributed by normative social practices. I shall now argue that this account of institutions facilitates a response to the conformity objection.

The Conformity Objection

The conformity objection is due primarily to G.A. Cohen, who argues that there is no coherent way to distinguish between actions that build and support institutional rules and actions that merely occur within the framework of those rules. Cohen initially formulates this objection as a problem only for informal, largely conventional practices whose rules and character is determined less by statute than by the customs and habits of everyday life. He suggests that it does not arise for legal institutions:

“The coercive structure, let us provisionally accept, arises independently of people’s quotidian choices: it is formed by those specialized choices that legislate the law of the land.”

He offers separate arguments that the basic structure cannot be coherently specified solely in terms of law, and argues that,

“…once the line is crossed, from coercive ordering to the noncoercive ordering of society by the rules and conventions of accepted practice, then the ambit of justice can no longer exclude chosen behavior, since, at least in certain cases, the prescriptions that constitute the informal structure (think, again, of the family) are bound up with the choices that people customarily make.”

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51 Ibid. p 134.
The worry is that, with respect to informal practices, there is no way to pick out the specialized actions that make them as contrasted with conforming actions that do not:

‘…that distinction, though conceptually intelligible, is compromised extensionally… [because] the very usages themselves do not exist, in the absence of conformity to them.’\textsuperscript{52}

Cohen goes on, however, to pose a stronger, general form of the conformity objection according to which it applies to any institutions, whether legal or informal. Cohen highlights two apparent truths about legally coercive structure:

‘Firstly, although the legally coercive structure of society is indeed discernible in the ordinances of society’s political constitution and law, those ordinances count as delineating it only on condition that they enjoy a broad measure of compliance. And, second, legally coercive structure achieves its intended social effects only in and through the actions that constitute compliance with its rules.’\textsuperscript{53}

Cohen argues that this strengthens his general case against institutionalism because it shows that

‘…everyday behavior is too germane to the very existence of (even) coercive structure to be immune to the principles of justice that apply to the coercive structure’. The above account of normative social practices has the resources to rebut Cohen, in virtue of its taxonomy of different kinds of conforming action.

Cohen is right that institutions are constituted by all actions that conform to their rules - a law that is on the books but neither complied with nor enforced cannot be said to regulate social life, and the same goes for an informal norm that has faded out of use, even if people remember that it used to apply. But there are many different kinds of conforming

\textsuperscript{52} Ibid. p 135.
\textsuperscript{53} Ibid. p 145.
action. Some actions conform to rules that specify how other rules are to be monitored and enforced. So, for example, practices of bodily integrity and personal space are monitored by each person attending to their own bodies, making sure no one invades their bodies or personal space without their consent. We also sometimes monitor other peoples’ personal space, to make sure that they are not touched without their consent, for example when we are sensitive to people being violently coerced. These monitoring norms are significantly adjusted in contexts where physical proximity is unavoidable or desired, such as on a crowded dance floor or at a rock concert. The key to rebutting the conformity objection lies in recognizing that these kinds of conforming action differ importantly from actions that ‘merely conform’ to the rules of bodily integrity and personal space without also monitoring or enforcing them. These different kinds of actions are salient in a different way to the existence and character of the practice.

People comply with the norms of personal space virtually all the time - whenever they are not invading someone’s body or personal space in breach of these rules. People are conforming to these rules literally whenever they are awake and not assaulting someone. This is true of virtually all institutional rules, many of which specify a narrow class of prohibited actions and so can be complied with simply by doing anything that is not socially forbidden. Mere conformity is one respect trivial and in the other vital. It is vital because it is only in virtue of these rules being conformed to most of the time that people can actually

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54 To see that these really are norms in their own right, note that monitoring norms are themselves enforced - people are likely to be subject to informal sanctions if they try, for example, to enforce norms of personal space appropriate to a wide open space in the middle of a heaving crowd at a concert. People also comply with institutional rules when they enforce them - there are rules specifying appropriate responses to different breaches of norms of personal space and bodily integrity. These norms prescribe different sanctions, for example, for someone who drunkenly stumbles into you at a bar compared with someone who punches you in the face.
enjoy a personal space and bodily integrity - widespread conformity is in this very important sense constitutive of the practices that secure these goods. But it is trivial in the sense that it is not by itself even close to sufficient to ensure that these norms exist and are in place, which is determined more saliently by actions of monitoring and enforcement.

To illustrate this point, I distinguish between three different ways in which people might end up respecting each other’s’ bodily integrity

*Natural Inclination.* Most people are disgusted by physical contact and so hardly ever invade each other’s’ bodies or space.

*Personal Principle or Non-Normative Tradition.* Most people believe that it is bad or wrong to assault people - they refrain from doing so either as a matter of personal principle, because they think it is beneficial for them or because it is a non-normative cultural tradition in their community.

*Social Norm.* People respect each other’s personal space and bodily integrity because there is a norm requiring them to do so and they know they are being monitored by others to ensure their compliance with this norm and will likely face sanctions if they do not do so.

Each of these scenarios features the same pattern of behavior: most people refrain from assaulting each other most of the time. But in the first scenario, this pattern arises only because of the fortunate fact that people are generally disgusted by touching others. In the second it arises because each has personal reason to refrain from doing so or because it is a cultural practice in their community rather like drinking coffee in New England. In this latter case, people refrain from assaulting each other partly for the reason that it is ‘how things are done here’, despite not being a full-fledged social norm. People in these two kinds of scenario can only rely on enjoying physical security in virtue of the statistical prevalence of the relevant disgust reaction, personal inclination and cultural identification. People who
happen to be exceptions to these generalizations will face no sanctions for acting on their
desire to assault others because there is no norm prohibiting this.

It is only in the third scenario that people can enjoy physical security without
worrying that the next person they meet will be an exception to these statistical
generalizations. As it happens, many people in the third scenario may also be motivated by
disgust, personal principle or cultural affiliation, so their compliance may be overdetermined.
But in this scenario it does not matter if you encounter the unusual person who is neither
disgusted by nor personally opposed to violence - or at least it matters far less - because
normative practices of bodily integrity includes rules requiring others to monitor and enforce
the prohibition on physical assault. This reflects the general fact that actions of monitoring
and enforcement are more salient to the existence of a particular social norm than actions
that conform to the substantive content of that norm. There may not be many actual acts of
enforcement - some rules are rarely broken - but even the most widely complied with norm
must be intentionally monitored. Mere conformity is necessary for a norm to exist, but it is
not sufficient. In order for a community to collectively impose a rule or set of rules upon
itself, there must also be regular acts of monitoring and enforcement. If people stop
monitoring or enforcing a norm then it is very likely that people will stop conforming to it or
will continue to do so only because of some reason other than the threat of social sanctions -
and the norm will not exist as such.

Insofar as the demands of justice apply to institutions, they apply with greater force
and more directly to actions that determine the character of those institutions. This means, I
argue, that a principled distinction can be drawn between actions that build and support
social institutions and actions that merely occur within them, thereby rebutting the
conformity objection. All conforming actions help to constitute social practices, but there is
a continuum of salience ranging from actions that merely conform to a norm to actions that
monitor and actions that enforce that norm. Non-conformity does not by itself bring about
a change in prevailing rules - it may simply mean that there is also more active enforcement
going on and more sanctions imposed. But when people stop enforcing a rule in the face of
sustained or widespread non-conformity and eventually even stop monitoring it, then that
rule changes or ceases to exist. I now turn to the mediation objection and to my account of
the unique distributive role played by normative social practices: the creation and
distribution of some of the goods of justice.

Goods Made of Rules
What are the goods of justice? In very general terms, the goods of justice consist of those
things whose pattern of distribution determines whether or not the distributive outcomes of
a particular group are just or unjust. There are many competing accounts of how
distributions should ultimately be evaluated. Candidates include primary social goods,
welfare, utility, rights, resources, opportunities, status, capacities and democratic deliberation.
Things like welfare and utility are not directly distributed in human interactions but are,
rather, produced or realized in the consumption of enjoyment of the things that people do
create and distribute, such as resources and rights. So in order to apply any account of the
goods of justice to actual groups of people, we need to further specify how these goods are
realized or contributed to by social practices i.e. in terms of the actual things that people
produce, distribute, use and consume.

It is these actual practices of distribution that are my concern here because of their
centrality to the critique of institutionalism. I take no stand on the criteria by which these practices should ultimately be evaluated. But I do assume that the ultimate goods of justice, whatever they are, must be realized by social practices that distribute the following goods: resources, rights, roles, status and esteem. I shall assume that these are among the goods of justice, even if only derivatively as ways of realizing more fundamental goods like welfare or utility.

It is widely recognized that goods such as rights can only be secured by certain institutional forms, such as the rule of law and legally protected individual entitlements. Constitutive institutionalism builds on this relatively uncontroversial idea by specifying the sense in which rights, roles, status and esteem are ‘made of rules’ and, as I explore below, by highlighting the role of everyday actions in creating and distributing these goods. I begin by briefly defining these goods and drawing an important distinction between moral, legal, and social versions of these goods.

**Rights:** Entitlements to claim the performance or non-performance by others of particular actions, such as right to be educated or to refuse unwanted sexual advances.

**Roles:** Specific functions and tasks that are assigned to individuals, such as doctor or parent.

**Status:** Being a certain kind of agent, such as adult or infant.

**Esteem:** Being worthy of praise or other reward or of censure or other sanction.

People can have moral rights when others are morally required to respond to their claims - such as a moral right to bodily integrity. They can have moral roles when they are morally

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55 See, for example, Rawls, 1999a, p177.
required to perform particular tasks or functions, such as caring for their children or cultivating the land. People have a moral status when others are morally required to interpret and evaluate their actions in a certain way, such as the moral status of person. People have (more awkwardly) moral esteem when others ought to praise or censure them, such as praise for raising children and censure for starting a war.

People possess the legal versions of these goods when their rights, roles and statuses and standards of esteem are specified in law - legal rights to bodily integrity, the legal role of guardian, the legal status of citizen and the legal standards of esteem specified by a country’s official honors system. The possession of moral or legal versions of these goods is not sufficient for people to actually be able to enjoy or suffer them. In order for people to get the benefit of moral and legal rights they must also possess the social versions of these goods - it must be a social fact that they have them. It is these social goods that are essentially structural - are made up of the rules of normative social practices.

Justice requires, I assume, that many moral rights, status and roles etc. be specified in law. But in order for the law to be effective, there must be a further social practice of respect for and deference to the law; otherwise individuals’ will not actually enjoy the rights and other goods specified in statute because the law will not be obeyed or enforced. Justice may also require some of these moral goods be secured informally but not by law. The key point is that the successful distribution of these goods, whether just or not, requires that the relevant social practices be conformed to by virtually everyone at all times throughout the relevant community. A person cannot be said to possess a right to bodily integrity if the norms that make up this right are respected only by some of those with whom she shared a community or at certain places and certain times. I shall now elaborate on the different ways
in which structural goods are made of rules.

**Social Rights.**

Individuals have rights when they reasonably expect others in their community to endorse and help to enforce their claims and to sanction those who fail to heed them. Rights consist of a cluster of performative criteria specifying the contexts in which rights apply, how people can claim their rights and what counts as respecting the rights. The right to vote, for example, applies in the context of elections, can be claimed by appealing to legal authorities when other people try to prevent a person from voting and are respected when the state and others permit people to cast their ballots.

It is essential that rights be constituted by normative practices because it is not enough for people to rely on empirical predictions about how others will respond to their claims. With respect to the right to bodily integrity, for example, it is not enough that individuals simply predict that those they encounter will not assault or otherwise physically coerce them. Rather, in order to enjoy this right, individuals must believe that others know that such actions are socially prohibited and will refrain from them at least in part because of this knowledge. Individuals must also believe that bystanders will come to their aid if their rights are threatened or breached, or at least assist state authorities in so doing, and also that the state will pursue and sanction any offenders. The same applies to rights that are only held against the state, such as rights to due process, and positive entitlements that require people to do something for the right-holder, rather than to simply refrain from impinging upon them. In these other cases it is again vital that the rights-holder can expect some support from third parties when their rights are threatened or breached – such as when the state
denies them due process or withholds material benefits to which they are entitled.

_Social Status:_

Social status, often also called ‘recognition’, involves being seen by others as a certain kind of agent such that all of one’s actions are interpreted and responded to through a distinct normative filter. Statuses include rational agent, woman, black person, citizen and celebrity. Statuses are ‘made of rules’ because an individual only enjoys a certain status, such as citizen or woman, if she shares mutual beliefs and normative expectations about who qualifies as such an agent and how the actions of such agents are to be interpreted. In order to possess a particular status, individuals must be able to assume that they will be properly recognized by others as having this status and be in a position to sanction those who fail or refuse to recognize them. They must also expect to be able to enlist the endorsement and support of third parties to back up and help impose these sanctions. Take the example of citizenship. Citizens assume that if they meet the relevant legal criteria their actions will be evaluated in light of the various rights, permissions and requirements that citizens enjoy, such as being permitted to work freely in their home country. The actions of individuals who lack the social status of citizen will be evaluated by a different set of criteria, such as the legal restrictions placed on their economic activity.

_Social Roles:_

Social roles consist of specific functions within a society’s division of labor e.g. the roles of citizen, parent, artist, doctor or janitor. Social roles are constituted by rules in two respects. Firstly, a rule or rules specify how individuals can come to occupy a given role. Secondly, the
rules specify the requirements, permissions and prohibitions associated with each role, and thereby assign it its distinctive social function.

For example, the rules specifying the social role of parent create this social role - no one could be a parent without them, regardless of how many children they bore. Current rules specify that people can become parents either by having a biological child or through legal processes of adoption. Individuals who do not meet either of these performative criteria for parenthood are prohibited from exercising significant authority over the lives of any children i.e. from performing the social functions associated with parenting. And those who do meet these criteria are required to perform the social role of parent, which is constituted by further norms that require individuals to look after their children, permit them significant latitude as to how they discharge this responsibility, and prohibit others from usurping it. These institutional norms are enforced both by legal sanctions for, say, parental negligence and kidnapping, and by informal social sanctions imposed upon people who try to interfere in other people’s parenting choices or upon parents who do not properly care for their children.

Imagine a society where institutional rules required that children be communally raised in government administered facilities and that decisions about how to raise them were made democratically by all members of the society. Individuals who kept their own biological children would be at risk of either criminal sanction or social stigma. While there would still be biological facts about which children were produced by which adults, these facts would have no further normative social implications. In such a society the social role of parent would not exist. Its functions would be distributed among the staff of the government run child-rearing facilities, which would provide day-to-day care and attention,
and the society as a whole, which would decide what form this care and attention ought to take.

_Social Esteem:_

Social esteem involves shared norms of appraisal and evaluation. Norms of esteem can be enacted in almost any context, from art and politics to parenting and economic productivity. Those who are deemed to excel at these actions can expect to receive greater benefits or rewards for their efforts than those who do less well. These rewards can take many forms, from material rewards to special status or additional rights.

Social esteem differs from personal evaluations, such as a person’s idiosyncratic appreciation for an otherwise very unpopular artist or musician. People who are entitled to esteem in virtue of their community’s norms of appraisal have standing to complain or otherwise sanction people who fail to grant them the benefits of esteem. People who fail to accord esteem to the right people can also expect to be sanctioned by their wider community, not just those whose merits they fail to appreciate. People might also be sanctioned by the wider community for repudiating established norms of, say, ambition or aesthetics by perhaps repudiating the value of hard work or high pay or making deliberately ‘ugly’ art. This is not the case with personal evaluations, which are not generally monitored or evaluated by others at all.

Any group of people that share any normative social practices will inevitably create

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56 It is worth clarifying that there can be and usually are also smaller scale instances of these kinds of goods, when people have rights, roles, statuses and esteem only in relation to a small sub-group drawn from the larger society, perhaps as small as two people. These smaller groups create and distribute structural goods within the limited context of, say, a household. A family, for example, might enact norms allocating rights to choose what to eat for dinner or what movie to watch afterwards. These local goods are also ‘made of rules’ but they are of no value to their holders in the broader society beyond the small group.
and distribute at least some of these goods - all such practices involve, minimally, the specification of different roles. Despite the important differences between the different structural goods, they are ontologically identical: all are made of normative social practices. Structural goods are usually inextricably intertwined. Statuses often trigger rights and are seen as qualifications for particular roles, while roles themselves often include particular rights, such as the right of doctors to prescribe medicine. Being disparaged or esteemed can, similarly, trigger improved or lesser status. Although roles, rights, status and esteem are distinct kinds of good they are all made up of complex clusters of socially normative actions.

Particular goods, such as the right to bodily integrity, can be characterized in very general moral or legal terms but in order to realized in practice, these abstractions must be enacted as a cluster of specific performative criteria, such as the right to refuse unwanted sexual advances and the requirement to submit peacefully to the will of police officers acting in their official capacity. The precise contours of this right depend upon precisely which of these more specific social rights individuals enjoy. The precise criteria involved and the interaction between different practices means that people will often enjoy different quantities of structural goods - more rights, more esteem - or different qualities - citizen and non-citizen, doctor and janitor. This means that the distribution of structural goods can be just or unjust. For example, women may enjoy an unjustly constricted right to bodily integrity if their society does not reliably monitor and sanction sexual offenses against them or unduly restricts their reproductive rights. This unjust distribution of rights may in turn reflect a more basic injustice in the specification and distribution of social statuses, with people assigned to different gender statuses and then evaluated according to unjustly sexist criteria. Societies may create roles that are inherently unjust, such as chattel slave, or may unjustly
disparage or fail to esteem people who perform certain roles that are not inherently unjust, such as teacher or mother. This account of institutions and essentially structural goods allows us to rebut the mediation and discontinuity objections.

The Mediation Objection

The mediation objection is formulated most clearly by Liam Murphy. Murphy refers to the institutional approach as ‘dualism’ in virtue of its distinction between two normative domains, institutions and personal conduct. He defends ‘monism’, according to which ‘…all fundamental normative principles that apply to the design of institutions apply also to the conduct of people’\(^57\). He characterizes the difference between these views in terms of the mediating role of institutions:

‘Whereas monism holds that people have direct responsibility for justice, dualism holds that as far as justice is concerned, the responsibility of people is mediated by institutions. If just institutions must aim at equality, monism holds that people must aim at equality too; dualism holds, by contrast, that people must aim at the existence of institutions that aim at equality.’\(^58\)

Murphy acknowledges the practical significance of institutions as efficient mechanisms of distribution:

‘…it is obviously true that, as a practical matter, it is overwhelmingly preferable that justice be promoted through institutional reform rather than through the uncoordinated efforts of individuals.’\(^59\)

But he denies that this suffices to redeem institutionalism:

\(^{57}\) Murphy, 1998, p 251.
\(^{58}\) Ibid, p 271.
\(^{59}\) Ibid. p 252.
‘…if equality or well-being is the underlying concern that produces a theory of justice, why would people not be directly concerned about these things? If people have a duty to promote just institutions, why do they lack a duty to promote whatever it is that just institutions are for?’ (282)

The mediation objection can appear at first glance to simply recapitulate a standard objection to pure procedural accounts of the value of institutions, which are often closely associated with deontological theories of justice. According to such views, distributive outcomes are rendered just in virtue of being produced by intrinsically just procedures and that there are no independent standards for evaluating outcomes other than essentially procedural values such as fairness and impartiality.

The standard objection to proceduralism echoes common concerns with deontology: that it implausibly fetishizes procedural processes and is forced to ignore the apparently obvious fact that even the fairest procedures can yield the wrong result: that the ‘wrong team’ can win a sporting contest despite not breaking any of its rules or that a defendant can be wrongly convicted or acquitted by a fair judicial process. The mediation objection seems to raise a similar concern about the institutional conception of the demands of justice and also to endorse the standard alternative to proceduralist accounts of the value of institutions: instrumentalism.

Instrumentalism is closely related to consequentialism. It holds that institutions have value only insofar as they bring about independently specified good outcomes but that they should be changed or bypassed if the outcomes can be better produced by a different set of rules or by direct action by individuals. The worry, therefore, is that the mediation objection also faces the standard objection to instrumentalism: that it licenses institutions that seem obviously unjust when they are able to produce substantively superior outcomes.
Instrumentalism, for example, might be thought to endorse intrusive police powers and lax restrictions on admissible evidence if this would ensure that the genuinely guilty were convicted and innocent acquitted; or that the rule of experts might be superior to democracy. Murphy, however, denies that the mediation objection is tied to any particular account of the value of institutions or indeed to any particular substantive theory of justice.  

He argues that the core feature of procedural theories of justice is that they seek to restrict the kinds of causes that shape distributed outcomes: to ensure, for example, that outcomes are shaped only by individual choices and not by bad luck, or only by impartial considerations rather than by arbitrarily discriminating distinctions between individuals or groups. Murphy argues that there is nothing about the idea of restricting the causes of distribution that is specifically tied to institutions but rather to any mechanisms that influence distribution, including personal conduct:

‘…nothing in the idea that the justice of a society’s practices is determined, not by the degree to which those practices promote a certain result, but rather by their intrinsic character, forces us to confine our interest to a society’s institutional practices.’

He notes that proceduralist theories are distinctively concerned with the causes of distributive outcomes but suggests that the relevant outcomes ‘could be determined by social practices that fall short of institutional practices’ and that there could be a monistic ‘account of pure procedural justice that evaluates the intrinsic character of both institutional and

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60 It is worth noting, however, that proceduralism and instrumentalism do not exhaust available accounts of the value of institutions. There are also hybrid instrumental proceduralist views. Such hybrid views argue that institutions are valuable not because they determine the goodness of outcomes or are mere tools for securing independently specified good outcomes. Rather they are intrinsically valuable mechanisms that also tend to produce good outcomes. So the rules of due process, for example, are valuable not simply because they are fair or impartial to all participants, which could potentially also be achieved by deciding verdicts using a coin-toss, but because they are also well-designed to determine the truth of the matter.

61 Murphy, 1998, p 284.
noninstitutional social practices’ (285). Murphy does not fully characterize his proposed
distinction between institutional and non-institutional practices, but his subsequent
discussion suggests that the latter include individual decisions about what to do with their
private property. He suggests that when an unjustly wealthy person gives money to an
unjustly poor person,

‘Even if she does not make these transfers on a regular basis, it is accurate to
say that each particular transfer has the effect of making her society’s
procedures better.’

Murphy argues that individuals are able to identify and correct outcomes that have been
caus ed unjustly - they can apply relevant procedural criteria in order to identify and then
directly alter outcomes that have been caused by, say, brute luck and not individual choice:

‘If she is much richer than another person…due to brute luck, a significant
transfer from her would make it the case that in her society, social factors or
brute luck are less productive of inequality than they otherwise would be.’

This demonstrates, Murphy suggests, that his critique of institutionalism does not rely on an
instrumentalist or consequentialist account of the value of institutions: that justice requires
the promotion by any available means of independently specified just outcomes. This
highlights the basic form of Murphy’s argument. Given that justice is concerned with
distribution and distribution can be shaped by both institutions and individual actions, it is
implausible to insist that the demands of justice only apply to institutions. It also highlights
what Murphy takes to be the clearest demonstration of the merits of monism, namely the

62 Ibid. p 285..
63 Ibid.
demands of justice in non-ideal conditions. Murphy argues that, when institutions are profoundly unjust, it is obvious that individuals ought to promote justice directly, rather than through ‘Quixotic’ efforts at institutional reform.\(^{64}\) It is not clear, however, that Murphy’s argument here relies on a plausible characterization of proceduralism, which is concerned not, I think, solely with the causes of outcomes but with the publicly recognized criteria by which outcomes are produced, namely with prevailing institutional rules.

I am not here concerned to defend proceduralism but to highlight the fact that its focus on the character of procedures may not be wholly motivated by a desire to restrict the causes of distributive outcomes. It also reflects a desire to ensure that such outcomes are generated by a procedure whose intrinsically fair character is known to and relied upon by all participants, who will therefore also recognize the fairness of the outcomes these procedures produce. Direct transfers between individuals in the course of non-institutional economic practices may partially correct for the impact of unjust procedures but they do not do so by responding to publicly recognized rules that are known by all to regulate their shared distributive practices. This suggests that, even if the outcomes of unjust procedures are corrected for by individual transfers, there would still be some remaining injustice that the transfers did not correct - the unjust procedures that produced the initial unjust outcome.

It also illustrates the need for a general descriptive account of the distributive role played by institutions in both just and unjust circumstances. Proceduralism and instrumentalism purport to describe the ways in which institutions can make distributions just. They do not thereby necessarily also tell us how institutions can make outcomes \textit{unjust}, because they do not even purport to offer a general description of their distributive role.

\(^{64}\) Ibid. p281.
above account of normative social practices and essentially structural goods provides just such a general description of the distributive role of social institutions.

Let’s focus again on the right to bodily integrity. The first and most important response to the mediation objection is that the only way to create and distribute this good is for every participant in a practice to comply with, monitor and enforce the relevant performative criteria of social interaction - it requires everyone in society to know and adhere to the norms specifying when it is permissible to touch another person. Institutional rules do not mediate the distribution of this good: they constitute it. Consider now the fact that this right is, I assume, unjustly distributed, with women enjoying too little of it.

This is an essentially procedural, institutional injustice. Everyday normative practices do not properly respect women’s moral right to bodily integrity, even though this right may be properly respected in law.\textsuperscript{65} Whatever law or morality say, actual social practices do not wholly prohibit sexual contact that has not been explicitly consented to, they permit the sanctioning of women who initially consent to sexual contact and then change their minds; and on women who get drunk or dress in revealing clothes but do not want to have sex; they fail to properly sanction men who touch women without their consent; they unjustly disparage the testimony of women who try to impose sanctions on those who have breached touched them without their consent. There is no way for individuals to correct this injustice directly; they can only do so by trying to alter prevailing social norms.

To put this in Murphy’s terms, just procedures of bodily integrity would require that sexual interaction only be ‘caused’ by the exchange of explicit consent between both parties and never caused simply by the desire of one party to touch the other. But people cannot

\textsuperscript{65} This may depend upon, for example, the justice of legal restrictions on abortion.
promote these procedures and hence try to ‘correct’ for this injustice by ensuring that they only initiate sexual contact as a result of the explicit consent of the person they touch. After all this is not forbidden or sanctioned by prevailing norms. The injustice of prevailing norms is not that they forbid consensual sex but that they do not properly prohibit sexual contact that is non-consensual. This means that a man, for example, does not improve these norms by obtaining consent from a woman even though he might have been able to avoid any social sanctions for touching her without her consent. Doing so does not in any way alter the prevailing normative expectations surrounding bodily integrity by ensuring that those outcomes within their immediate control are only produced by morally permissible causes.

The constitutive role of normative social practices thereby partially rebuts the mediation objection. However, because some of the goods of justice are not made of rules - such as material resources - individuals are able to influence their distribution in the course of actions that merely conform to prevailing institutional rules. Constitutive institutionalism does not therefore establish that all of the demands of justice are mediated by social institutions and so does not wholly refute the mediation objection. I take up this question again in chapter four.

The Discontinuity Objection

Constitutive institutionalism also makes possible a response to the discontinuity objection. Recall this objection contends that institutionalism implausibly exaggerates the normative distinction between those people with whom we share a set of institutions and those with whom we do not. Murphy argues against two defenses of this proposed discontinuity, one
involving the ‘thickness’ of social interaction and the other appealing more narrowly to the specific importance of sharing a political community.

With respect to the interaction view, Murphy argues that if people are unjustly deprived, justice demands that we help them, regardless of the thickness of our ties to them:

‘We are to imagine that a remote community not yet involved in any external trade or otherwise affected by global institutions would make no claims of justice on us, but that as soon as we begin to trade with them, thus including them in the world economy, something like the difference principle would suddenly govern our relations-requiring the immediate establishment (or extension) of institutions of taxation and transfer. I find it incredible that the application of the ground rules of economic interaction could have this much moral significance.’\(^6\)

Murphy argues that it is implausible to insist that the demands of justice only arise in the presence of pre-existing institutional ties. This invokes, he suggests, an implausibly stark moral discontinuity between duties of justice owed to participants and non-participants and suggest that individuals might be able to escape the demands of justice simply by ceasing to interact with others or by abolishing the state.

Constitutive institutionalism does not have these implications, although it is compatible with views that do. I make no claims here about the general merits of interaction-based views about scope of our obligations of justice. Constitutive institutionalism asserts the significance of interaction not as a trigger for the demands of justice but as a necessary precondition for the creation and distribution of some of the goods of justice. It is impossible to distribute rights, roles, status or esteem to people with whom we do not share at least one normative social practice and distributing these goods in the

\(^6\) Murphy, 1998, p 274.
manner required by justice will likely require a significant number of interdependent practices.

But this is just a sociological fact about the nature of practices. It has no immediate implications about who we ought to include in our practices of structural distribution - it merely says how structural goods must be created and distributed. It may well be that we owe duties of justice to people with whom we do not interact much or at all, and that we are required to provide them with structural goods, such as rights. But the only way to meet this demand is to either invite these people into our current practices or develop new practices that include them. Interaction may not trigger the demands of justice but it may sometimes be necessary in order to meet them.

Murphy also rejects attempts to defend the moral discontinuity between members and non-members by appealing to the normative significance of sharing a political community - of being subject to the coercive authority of a particular state:

‘We are asked to believe that people, as individuals, owe only limited duties to nonintimates, but that they nevertheless ought to accept that their government act according to strict egalitarian principles. It seems prima facie quite implausible that, properly understood, the egalitarian’s commitment to general equality in her community flows entirely via her concerns with legitimate governance…Most of us think that (non-minimal) states are valuable because of what they do for the quality of people’s lives or for other values, such as equality…But on the view being considered, equality and the well-being of strangers are no part of the reasons why we value states. So long as there is some minimalist or modus vivendi alternative that would satisfy the requirements of prudence, why would we then accept the cost of forming genuine political communities putting the point the other way around, those of us of an egalitarian disposition must, on this view, reject utterly the appeal of the utopian ideal of the withering away of the state.’ 67

Murphy here rejects the idea that the demands of justice are triggered only by the emergence

67 Ibid. pp 277-278.
of sovereign states and that they could be avoided by abolishing the state. It is more plausible, he suggests, that states are valuable because and to the extent that they help us achieve the demands of justice - demands that obtain independently of the existence of states. I am, again, not concerned here with the general merits of the view that the demands of justice apply only within states but with defending the more general institutional approach of which this is one influential instance.

Constitutive institutionalism has the resources both to reject the focus on states and to show why it might be plausible. Firstly, the definition of institutions as normative social practices does not by itself pick out any particular practices as the privileged site of justice and injustice. So constitutive institutionalism is compatible with views that assert the relevance to justice of cross-border, non-state practices such as those of the global economy, which constitute and distribute rights, roles and status to people across the world. But constitutive institutionalism also allows that different practices create and distribute different structural goods and that some of these goods may be more morally significant than others. The normative practices that regulate social interaction among, say, a group of children in the schoolyard, are arguably of less moral importance than the legal and political institutions of states. If the essentially structural goods of citizenship can be shown to be of unique moral importance, this might redeem the claim that the demands of justice apply with special force within states and are less demanding than any that apply across national boundaries. But it remains a substantive moral question whether or not it is just to create these goods at all or to deny them to people solely on the basis of where they were born. But the ‘stark discontinuity’ that Murphy so objects to reflects the unavoidable fact that structural goods, including citizenship, can only be distributed among the participants in a shared practice.
Conclusion

The institutional conception of the demands of justice is accused of fundamentally misunderstanding the relationship between individuals, institutions and distribution. It seems to rely on a distinction between rules and actions that drastically underestimates the role of everyday actions in constitution social practices of all kinds. And, partly as a result of this reified social theory, institutionalism is thought to imply that individuals can contribute to justice only indirectly, by trying to change the rules of their basic institutions and practices. Finally, it draws an implausibly sharp moral distinction between participants and non-participants in basic social practices.

In this chapter I have proposed a form of institutionalism that avoids these objections. Constitutive institutionalism relies on an account of institutions that emphasizes and seeks to specify the ways in which they are constituted in and by the innumerable everyday actions of their members - actions that conform to, monitor and enforce their rules. This analysis permits a principled distinction between actions that are more and less salient to the character of prevailing practices - with actions that merely conform to existing rules being generally less salient to the existence and overall character of a social practice than those that also monitor and enforce social rules. I also utilized this account to argue that some of the goods of justice - rights, roles, status and esteem - are necessarily created and distributed only by prevailing social rules and norms. This demonstrates that there are some aspects of a just distribution that are essentially institutional, insofar as their distribution can only be altered by altering the prevailing rules and practices of the relevant community. It also redeems the stark distinction between members and non-members, because only
participants in a community can enjoy these essentially structural goods.
Chapter Three:
The Pervasive Structure of Society

‘The happiness and prosperity of mankind, arising from the social virtue of benevolence and its subdivisions, may be compared to a wall, built by many hands, which still rises by each stone that is heaped upon it, and receives increase proportional to the diligence and care of each workman. The same happiness, raised by the social virtue of justice and its subdivisions, may be compared to the building of a vault, where each individual stone would, of itself, fall to the ground; nor is the whole fabric supported but by the mutual assistance and combination of its corresponding parts.’
--David Hume, Enquiry Concerning the Principles of Morals, Appendix Three.

‘…reflecting persons perceived that when society is itself the tyrant—society collectively, over the separate individuals who compose it—its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates: and if it issues wrong mandates instead of right… it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.’
--John Stuart Mill, On Liberty, Chapter One.

Do the demands of social justice apply to informal social practices in the same way as to legal and political institutions? This is denied by those who endorse a governmental account of the institutional domain of justice, according to which principles of justice apply directly only to legal and political institutions rather than to informal social practices, such as those of gender, culture, discourse and language. This governmental account of the domain of social is subject to the everyday life objection, which contends that the governmental specification of the demands of justice arbitrarily disregards the role of informal practices in shaping social distribution and, furthermore, that this scuppers any attempt to specify a distinctively institutional domain of justice, as contrasted from individual actions within social institutions.
This issue is prominent in the recent debate between John Rawls and G.A. Cohen. Rawls famously contends that social institutions constituting the ‘basic structure of society’ are the primary subject of principles of justice and, despite some ambiguities in his text, is plausibly understood as endorsing a governmental account of the basic structure. Rawls defends the primacy of the basic structure in terms of its distinctively significant impact on distribution. As part of his wide-ranging critique, Cohen argues that Rawls’ account of the basic structure is fatally ambiguous in its treatment of informal social practices. Cohen contends that informal practices, such as those of economic and family life, have just as significant an impact on distribution as those of law and politics. Rawls must either arbitrarily exclude them from the purview of justice or give up on the governmental account and on the more general claim that justice has a distinctively institutional domain. In this paper I shall defend the spirit but not the letter of Rawls’ view. I shall argue that Rawls is right to say that social justice is a distinctively institutional concern but that Cohen is correct that its domain cannot be coherently specified in governmental terms.

I introduce and defend the pervasive structure account of the institutional domain of justice. This account includes a distinctive subset of everyday practices on equal terms with legal and political institutions, namely those practices which build and support society-wide social norms and practices. It excludes all merely local practices as well as widespread activities that do not help constitute any social norms. I argue that the demands of social justice apply to:

*The pervasive structure of society*: the normative social practices enacted by every member of a society.

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68 Rawls (1993) and (1999a) and Cohen (1997) and (2008) are the key texts, but the literature is voluminous.

69 See especially Rawls (1999a), section 38, on rule of law and also Scheffler (2006).
The pervasive structure account implies that the demands of social justice apply to some, but not all, everyday activities. Individuals enact basic institutions in their everyday lives only insofar as their actions contribute to maintaining or altering social norms that are enacted jointly by their entire society. On this account, the demands of justice do extend significantly beyond conventional politics but do not collapse entirely into those of individual ethics.70

I argue that justice is indeed a distinctively institutional problem but that the relevant institutions extend beyond law and politics and into everyday practices of, for example, material consumption, linguistic expression and social habit. But the institutional domain of justice does not thereby include everything people do. Some widespread patterns of action do not in themselves enact any pervasive norms. Non-normative and merely locally normative activities are, I argue, not directly subject to the demands of social justice.

This chapter proceeds as follows. I first describe the pervasive structure account of the demands of justice, arguing that society-wide institutions are indeed distinctively relevant to justice by contrasting them with merely statistical regularities in behavior and merely local institutions. I then defend the pervasive structure account from two objections - that it implausibly includes too many banal and insignificant practices and that it implausibly excludes too many laws and the norms of powerful sub-groups. I move on to address the governmental account, and argue that the demands of social justice inevitably apply beyond legal and political institutions. I then apply the pervasive structure account to recent debates about the need for an ‘ethos’ of justice to complement just institutions. I conclude by

70 My account is indebted to, but importantly distinct from, views found in Young (2006) and (2011), James (2005a) and (2005b), Julius (2003), Weinberg (2009) and Hodgson (2012).
highlighting some important implications of adopting the pervasive structure account of the demands of justice. I rely throughout on the general account of the nature of institutions laid out in the previous chapter, which defines institutions as ‘normative social practices’ made of sets of performative criteria specifying how people are to go about social activities.

The Pervasive Structure of Society

I begin with a selective taxonomy of institutional norms. This prepares the ground for my subsequent discussion of which, if any, institutions are the distinctive concern of social justice. This taxonomy is deliberately partial, highlighting categories that are of special relevance to the governmental account of the demands of justice and my proposed alternative, the pervasive structure account.71

**Governmental** Rules that are made and enforced by a legitimate government and its agents in the police and judiciary: laws.

**Informal** Rules that are made and enforced by agents other than governments or by people not acting in their capacity as public officials e.g. linguistic norms, informal norms of social interaction, the internal rules of formal organizations like universities

**Explicit** A rule which its participants are aware of enacting e.g. most governmental rules, many norms of basic courtesy or etiquette, the written or explicitly accepted norms of a group or organization.

**Implicit** A rule which its participants are unaware of enacting and may even explicitly disavow e.g. norms of body language; hierarchical norms of gender, race and class; some governmental rules, such as (perhaps) basic norms of political and legal authority.

Implicit social norms can also be termed ‘normative habits’ in virtue of being simultaneously

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71 It omits, for example, performative norms involving material objects.
purposive and largely unconscious. The application of most explicit rules is likely to itself be regulated by implicit rules specifying criteria for appealing to and interpreting the explicit rules.72

All of these general types of rule can and do form interdependent institutional wholes. The existence of implicit institutions – and of implicit rules within mixed institutions - demonstrates that an institution need not be intentionally created or explicitly enacted in order to exist and effectively organize the interactions of a group of people. People can and do ‘know the rules’ of, for example, language, gender and courtesy despite there being no legislative body specifying and promulgating, let alone enforcing, their edicts. With this taxonomy in hand, I shall now describe the pervasive structure account. In doing so, I defend the special relevance to social justice of normative, as opposed to merely statistical, patterns of action and the distinctive importance of social, rather than local, institutions.

Institutions are ‘normative social practices’. But which normative practices are distinctively relevant to social justice and why? Recall that social justice, insofar as it is a distinctive ethical problem at all, is concerned with the joint activities of entire societies. I shall argue that this idea can be redeemed by attending to the distinction between social (or ‘societal’) institutions and merely ‘local’ institutions. According to the pervasive structure account, all and only social institutions are directly subject to the demands of social justice. I shall also defend the general importance of normative, as opposed to non-normative ‘rules’ of social life and argue that ‘merely statistical’ patterns of action can and should be non-arbitrarily excluded from the direct purview of social justice.

72 There can of course be explicit rules for the application of other rules, but the regress must surely stop somewhere with an implicit rule. In insisting that implicit and non-legalistic norms are fully ‘institutional’ I deny that there is any significant distinction between merely conventional and explicitly institutional social practices, as argued in, for example, Marmor, 2009.
Social and Local Institutions

Institutions come in all shapes and sizes. An institution could have as few as two members, such as people who live together and have an ongoing normative practice related to the distribution of household chores. Each does their share of the work because it is mutually believed that they will do so and because they can expect to be chastised if they do not. We might balk at calling such a practice an ‘institution’, given its informality and small scale, and if we like we can simply call it a normative practice, as long as we recognize its essential continuity with full-blown institutions like legal systems. Other institutions are larger and more concrete, including formal organizations such as universities and corporations.

In all cases, the rules of an institution are only enacted by its members. Non-members may know the rules - the chore-sharers may tell their friends about their regimen - but non-members do not have the right kinds of beliefs about what others expect them to do and their knowledge of the rules does not give them any reason to act as those rules suggest. A person may be an expert on the regulations of long defunct institutions or of many extant institutions of which they are not a member, but they do not take those rules to apply to them and none of their actions help to constitute the existence (if any) of the institution in question.

We are now in a position to distinguish social from local institutions.

Social institutions: those whose rules apply to and are enacted by every (or almost every) member of a society - their rules are pervasive. E.g. language; norms of gender, race and class; rules of political and legal authority; practices of property and exchange; some norms of cultural aesthetics, taste and etiquette; and various rules defining local institutions, such as families, companies and the like.

Local institutions: those whose rules apply to and are enacted by only a subset
of the members of a society. E.g. the internal norms of corporations, families and universities, sub-cultures, dialects, cliques and conspiracies.73

I leave aside for the moment the important issue of what exactly ‘societies’ are and how their boundaries are to be identified. In rejecting the governmental account of the demands of justice I cannot necessarily assume that societies are demarcated by legally recognized national borders, but I shall proceed here as if this were the case - nothing in this chapter depends upon this issue and I take it up in the next chapter. One reason to believe that only social institutions are relevant to justice is the intuition that social justice is concerned only with things that societies do as a whole. But there are two further reasons to believe that only social institutions are directly relevant to justice: scale and function.

Social institutions are, by definition, maximally large – they include all and only those normative social practices whose rules are enacted by virtually every member of a society. Social institutions are usually far more causally significant than local institutions – they have a greater impact on the overall distribution of benefits and burdens among the population of a society. This causal distinction between social and local institutions is especially obvious with respect to very small or insignificant local practices, such as the idiosyncratic conversational norms of a small group of friends. But it is less obviously true of the local practices of, say, families or the boards of large corporations. These local practices can have a significant causal impact on the distribution of resources by, respectively, shaping the

73 A further clarification may be helpful. Many local institutions might have very similar internal rules - this is likely the case with, for example, universities and corporations. If the relevant institutions are sufficiently widespread in a society such that many people are members of them, it might appear that these same rules are enacted by almost everyone in a society. But this would not make them a ‘social institution’. The internal practices of every corporation or family might be regulated by the same rules but, in every instance, these rules apply to and are enacted only by the members of each particular corporation. Employees of one company share no mutual beliefs or expectations with the employees of another company, even if they both enact rules with a similar content. The rules of each sub-group are indexed to their particular local practice and do not amount to social institutions, however widespread the local practice is.
characters of children and the availability of jobs and investment. The distinctive significance of social institutions over even these causally significant local practices lies in the functional dependence of local on social practices.

Social institutions determine to a significant extent the kinds and functions of local institution that exist in any society. Many local institutions are ‘nested’ within social institutions - they exist and function as they do only because of the pervasively recognized rules of social institutions. For example, families, corporations and universities have a pervasively enacted identity and function - such that virtually everyone in a society knows, at least approximately, what they are, what they are for and how to identify them. It is because of these pervasive social norms that such institutions can play the role they do in a society.

Families, for example, function as they do in large part because everyone enacts both legal and informal rules assigning biological parents primary authority over and responsibility for the care of their children. It is only in virtue of these pervasive social norms that families can have a significant causal impact on distribution by way of their effect on children. It is in virtue of these rules specifying the social function of the family that the family in general is a social institution while particular families, whose rules are enacted only by their members, are merely local.74 Of course it is also likely that the internal practices of particular families will utilize and participate in other pervasive social institutions, such as gender. Local practices are relevant to justice only insofar as they import pervasive social norms into their local rules. The rules of merely local institutions, and so also the actions constitutive of those rules, are not part of the pervasive structure of society and so not directly subject to the demands of

74 Not all local institutions need to be nested in this way - there can be secret or invisible institutions, such as criminal conspiracies or secret societies, which are not constituted by pervasively enacted social norms. But even criminal conspiracies are in part defined by pervasive norms, namely those prohibiting criminality. Similarly, secret societies can only be causally significant if their members also occupy powerful positions within a social or local institution which is functionally specified by pervasive norms.
social justice.

This is not enough by itself, however, to redeem a general distinction between institutional and non-institutional activities. The pervasive structure account drastically expands the ethical scope of social justice to include many ostensibly personal or private activities related to cultural, linguistic, economic and intimate activities. But, in addition to excluding local institutions, the pervasive structure of society also excludes some ‘rules’ that, like those of social institutions, do indeed characterize the behavior of almost everyone in a society. It is to these that I now turn.

Normative and Statistical Rules

Social institutions consist of iterated normative actions performed by everyone in a society – they are activities or actions that ‘everybody does’. But they are not the only such things - most societies also feature comparably widespread patterns of action that do not enact normative practices - are not institutional.\(^{75}\)

Normative Rules: Social norms specifying performative criteria e.g. of those of law, language, custom and habit.

Statistical Rules: Actions performed by everyone that do not comply with, enforce or monitor any performative criteria e.g. those reflecting human needs, like hunger, or widespread desires. This excludes actions performed by only a subset of people.

Statistical rules can and do have a significant impact on the ultimate distribution of resources. That everyone acts to provide themselves with, say, food and shelter, will have significant economic effects on those who can provide for those needs. A general preference for particular goods or services will have similarly significant effects as would a general ethos of

\(^{75}\) Elaborations of a similar distinction can be found in Rawls, 1999b, and Warfield Rawls, 2009b.
selfishness in occupational choice.

In light of their distributive significance and because they too are done by ‘everyone’, statistical rules are in important senses similar to the patterns of action that constitute social institutions. They are, therefore, plausible candidates for inclusion among the demands social justice. But if they are included in the domain of justice there is no longer any meaningful moral distinction between institutional and non-institutional activities, because statistical norms can and do arise in any and all contexts, and so no sense in which social justice is a distinctively institutional concern. There are, however, two reasons to exclude statistical rules from the purview of justice and so redeem a real ethical distinction between normative and non-normative practices: evaluative and sociological.

Recall the intuitive idea that justice makes distinctively moral demands on groups as such – it requires that they adopt social justice as one of their shared purposes, perhaps the most important one. Only normative rules promote shared purposes. Statistical rules merely reflect the way people happen to do things in a particular place, so their component actions cannot be evaluated with respect to any shared social reasons they respond to or common purpose they promote.

Statistical rules can consist of any combination of individual and social actions. The individual component actions of statistical rules may respond to individual reasons, such as hunger; or to social reasons, such as that eating donuts, for example, is conventional or customary. In the latter case, individuals eat in part because they are individually hungry, but they eat donuts rather than anything else because of the social reason that this is what people tend to do where they are, but not because uniform snack habits serve any further social purpose or are subject to any social norm – there are no sanctions for not eating donuts.
The relevant difference is nicely captured by the quote from Hume at the top of this paper. Statistical rules involve the contributions of many people, but each contribution is in a sense independent of all the others and need not reflect any joint endeavor in which all are engaged. They are like Hume’s ‘wall’ of benevolence - a huge structure that can be built from many isolated contributions. We can evaluate the state of affairs brought about by these aggregated contributions, such as their impact on distribution, and the merits of each component action, such as whether a particular individual was right to spend their money on donuts rather than vegetables. But we cannot evaluate the shared purpose embodied by statistical rules because there is no such purpose. Donuts are unhealthy and a society may be required to enact norms of healthy eating in order to eliminate the practice of eating them. But this does not imply that the practice serves the social purpose of making people unhealthy – this just happens to be a consequence. Statistical rules are not done by societies in virtue of some essentially joint social purpose – they are done by the members of societies in virtue of common human needs or desires or contingent facts about the customs and conventions of particular societies.

Normative rules are more like Hume’s ‘vault’ of justice - each individual contribution relies on the others and helps promote a shared purpose. The members of a group that enacts normative rules contribute to this joint action by each responding to the same social reason, such as the reason to have and maintain a common means of communication or exchange, as with norms of language and property, or to perpetuate male domination, as with norms of gender hierarchy. When we evaluate the justice of normative rules we evaluate the shared purpose embodied by these social reasons, in addition to its members’ individual actions and the distributive impact of their normative practice. While we might evaluate non-
normative practices as having bad effects on distribution or reflecting poor individual reasoning or ethics, we can evaluate normative practices as embodying or reflecting bad or immoral social purposes – things that the group as such should not do. Normative rules therefore capture, in way that statistical rules do not, the sense in which social justice is concerned with the purposes pursued by societies as such, rather than with the things that all of their members simply happen to do.

The sociological reason for including normative rules and excluding statistical rules from the domain of justice is that statistical rules can be in various ways generated and manipulated by normative practices. For example, institutional structures of production, subsidy, marketing and commerce can ‘cause’ a population to develop a preference for certain goods. On the other hand, new norms can also be developed to try to alter or eliminate statistical rules. Perhaps, for example, there would be less of a pattern of greed in occupational choice if there were a pervasive social norm permitting or even requiring people to evaluate and criticize the career choices of those around them.

Statistical rules grounded in universal human needs cannot really be altered and certainly not eliminated. But normative practices interact with these rules in important ways. The fact that people reliably need food and water, for example, means that they can be exploited, coerced and dominated by those who control access to these resources or, on the other hand, can be guaranteed access to them by institutionalized welfare provision. Similarly, the fact that everyone needs food, shelter and clothing means that these are conveniently universal markers of social status - performative norms of class and taste can be attached to how people eat and dress as part of broader systems of status hierarchy.

Statistical rules can of course have a causal impact on normative rules, as with the
establishment of welfare institutions to meet the basic human needs of all in a society, or the introduction of impartial judicial processes as a response to the predictable excesses of vigilante justice. But statistical rules only have these effects by causing or motivating groups to jointly enact particular institutions – they are not themselves a form of collective social regulation. The sociological priority of normative over statistical rules further supports my claim that only the former are directly subject to the demands of justice - normative rules are the mechanism by which societies jointly modulate the impact of statistical rules.

I have argued that the demands of justice apply to only to the pervasive structure of society – to social but not local normative practices and to society-wide normative activities but not equally widespread non-normative activities. This is an expansive but not unrestricted account of the demands of social justice. It redeems the distinctively institutional nature of social justice but belies any suggestion that a focus on institutions is necessarily inattentive to everyday life. The pervasive structure of society, which includes numerous non-legal social practices, is enacted in everyday life as much if not more than by way of legal and political institutions. I shall now address two challenges to the pervasive structure account: that it includes at once too much and too little.

Objection: too inclusive

The pervasive structure account might be thought to bring far too many distributively insignificant social practices under the purview of social justice, simply because they happen to be pervasively enacted by most people in a society. Its main opponent, the governmental account, includes only those institutions that deal with matters weighty enough to be legislated, such as democracy and economic rights, and which are enforced by the might of
the state. The pervasive structure account includes literally any normative practice that is enacted throughout a society, however frivolous its content or minor its sanctions - including cultural norms of, say, sporting preference. Such practices seem irrelevant to social justice.

I argue that we should embrace this counter-intuitive implication in light of the holistic nature of institutions. All institutions function as they do in virtue of the complex interdependence of their constitutive norms. The pervasive structure of society should be understood as a single, massive and massively complex institution that provides a normative framework for an entire society. Pervasive normative practices contribute to this holistic purpose even when their participants are oblivious to their relevance to it or disavow them as insignificant.

That institutions function holistically does not imply that every part of every institution is causally relevant to every outcome that the institution causes. In complex institutions, some rules can or should function autonomously without affecting or being affected by rules elsewhere in the system. In the judicial system, for example, rules of due process ought to function independently of the criminal law they help to apply - people should be treated the same regardless of the charges they face. As the example suggests, however, the functional autonomy of different aspects of a single institution is often a non-trivial achievement and cannot simply be taken for granted - it must often be achieved through another pervasive norm, such as one stipulating that all suspected criminals be treated alike.

More generally, we often wish to focus on some particular distributive problem or

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76 This line of thought is prominent in Walzer (1983).
area of social life, such as criminal law, and so will quite reasonably concern ourselves only
with especially salient aspects of the pervasive structure, such as rules of due process. But
this always relies on an implicit assumption that other aspects of the pervasive structure,
such as access to education or norms of social class, can be treated as fixed and do not
interact in important ways with the particular institutions we focus on. A full defense of any
critical evaluation or normative proposal always requires attention to the way in which the
particular practice under scrutiny interacts with the rest of the pervasive structure of society.

The same considerations apply to apparently banal practices. Consider a pervasive
norm of sporting preference which specifies minor social rewards for those who like baseball
and equally minor sanctions for those who dislike it. The sanctions and rewards might
amount to little more than exclusion or inclusion in friendly workplace banter. If this norm
of sporting preference is genuinely autonomous then it may indeed be irrelevant to
distributive outcomes. But this irrelevance should not be a matter of chance. Rather, like the
autonomy of due process and criminal law, it should be grounded in some other norm
specifying that people should not face any further social sanctions for failing to enjoy
baseball. It is also entirely possible, however, that this ostensibly banal norm is not
autonomous and is instead related to other more significant norms, such as those of
professional advancement, meaning that those who do not like baseball are seen as less
suitable candidates for promotion. This connection would probably be unjust, despite the
banality of the norm in question considered in isolation.

In order to evaluate a society as just or unjust, therefore, we must attend to the
interdependent set of all of its pervasive normative practices, not simply those that are of
obvious distributive significance but also those that are ostensibly, and even genuinely,
inconsequential.

**Objection: Too exclusive**

A different objection to the pervasive structure account points out that it probably excludes many particular laws from direct evaluation by principles of justice and also excludes the local practices of especially powerful social groups, such as governing elites or the shareholders of large corporations.

Most people do not know most laws and many comply with laws that they do know, such as those prohibiting interpersonal violence, for reasons unrelated to the existence of the law. Strictly speaking, therefore, many laws are not pervasively enacted throughout a society - they are enacted primarily by the police, courts and civil servants, and not by people in their everyday lives. In excluding many laws from the domain of justice, including perhaps laws of taxation and redistribution, the pervasive structure account seems to contradict a fundamental intuition about and usage of the concept of social justice – namely to evaluate laws. I embrace this counterintuitive implication too and deny that it undermines the pervasive structure account.

It is worth first noting that there are two senses in which laws might be described as just or unjust. One is specific to law – for example the idea that laws ought to be framed in general terms rather than specifying special treatment for any particular individuals or groups. This formal requirement can be understood as a specifically governmental form of justice – it is the just way to write laws. Any law can be just or unjust in this specialized sense. But

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77 Similar specialized senses of justice can be applied to other institutional activities in virtue of their particular function – universities might be required to protect intellectual freedom in a way that families or corporations are not.
social justice is concerned with the way in which laws form part of a broader institutional structure that shapes the distribution of resources. Some laws, perhaps many of them, may not be part of this structure because they have no impact on distribution either on their own or in concert with other laws – perhaps laws specifying which side of the road to drive on are like this. It may be that pervasive norms of legal justice, in the specialized sense, are a necessary condition for social justice, but this does not imply that all laws are relevant to social justice on their own account.

Another consideration in favor of the pervasive structure account is that many laws are indeed irrelevant to justice or are just solely in virtue of the pervasive norms granting authorities to make and apply them. This is probably true of, for example, the selection of specific dates as legally recognized public holidays or the protection of historic landmarks. The specific content of such laws is often contingent on morally irrelevant features of a society’s culture and history. What matters to justice is that they are produced by a legitimate legislative process. This depends upon norms of political authority that are almost certainly and perhaps even necessarily pervasive.

Furthermore, the fact that many laws are not pervasive likely reflects the impact of various other norms which may themselves be just or unjust. A society in which laws are kept deliberately secret would, presumably, be unjust in virtue of the fact that its pervasive norms of political authority grant legislators such unaccountable power. In actual societies, where most laws are not kept deliberately secret, there may nonetheless be pervasive norms relating to the formulation and promulgation of laws that make it costly or impossible for normal people to understand or apply them in their everyday lives. There may, for example, be unjust norms of judicial elitism that set unfairly high intellectual standards for
understanding written legislation or norms of occupational specialization that sanction amateurs who try to develop or utilize legal expertise.

On the other hand, it may be that justice requires societies to adopt pervasive norms assigning knowledge of and responsibility for legal and administrative matters to specialist institutions. The administration of taxation, for example, is important and highly complex and it would probably be inefficient to the point of injustice to require people to understand and apply tax laws to their economic transactions on a case by case basis. Justice might require that the actions of those specialists who make and administer the law are regulated by pervasive norms of democratic accountability. Insofar as justice requires a particular kind of taxation regime, therefore, its demands would apply directly only to the pervasive norms of public discourse, democratic politics and administrative transparency by which the members of a society influence and monitor their specialized tax officials. It is the job of these specialists to translate generically phrased government policies into legislative language that will function within the broader system of tax law. The norms regulating these specialist activities may be just or unjust, as may the government policies they enact, but the laws themselves could still lie beyond the direct purview of justice. This seems to me to capture all that we care about when we describe a taxation system as just or unjust.

The above considerations suggest not only that its exclusion of non-pervasive laws is not fatal to the pervasive structure account but that it further demonstrates the ability of this account to capture sociological complexities occluded by the governmental view. The demands of justice may not apply to many particular laws, but they do apply to pervasive rules assigning political, judicial and policing institutions the authority to make, interpret and enforce all laws.
Very similar considerations apply to the internal norms of powerful social groups, whether they are officially powerful, like governments, or just functionally powerful, like governing conspiracies or corporations. Imagine that members of a government enact local normative practices that systematically bias their activities in favor of a particular interest group, such as the fossil fuel industry. These practices could have a severely deleterious impact on distribution and so would seem to be unjust, but they are excluded from the pervasive structure in virtue of being merely local. I embrace this potentially counter-intuitive implication of my account. It illuminates the important respects in which social power is necessarily constituted by genuinely pervasive norms.

The biased local practices of the governing elite are relevant to justice only indirectly in virtue of the pervasive practices that constitute the government’s authority and permit it to enact biased internal norms without being held accountable by the broader population. The same goes for powerful private interests such as corporations. In the absence of pervasive norms that facilitate corporate power, such as American campaign finance regulations, such biased local norms might be ethically distasteful but would be irrelevant to justice, because corporations would have no great impact on the distribution of resources. My account enjoins us to turn our attention to the way in which the power of such groups is created by and dependent upon the enactment of pervasive norms by an entire society, including many who ostensibly lack significant social power.

Pervasiveness is entirely a question of numbers – of how many people enact a practice - but this focus on the ‘biggest’ rather than on the most salient practices, is justified both conceptually and sociologically. Conceptually, it redeems the intuition that justice is concerned distinctively with the activities of entire societies. Sociologically, it reflects the fact
that the pervasive structure of any society plays the unique functional role of determining which local and non-normative practices are causally salient to the overall distribution of resources. I shall now further defend the pervasive structure account by arguing that the governmental account is sociologically untenable.

Is the law special?

Three considerations can be marshaled in favor of the governmental account of the institutional domain of justice: coordination, coercion and change. I shall argue, however, that none of these uniquely picks out legal institutions. The argument in this section is inspired not just by G.A. Cohen’s famous ‘ethos’ objection to the Rawlsian focus on the ‘basic structure’. It is also indebted to the more general insight, notably formulated by John Stuart Mill in the epigraph to this paper, that informal social norms can be functionally akin to laws, differing only in the mechanisms, agents and sites of their enforcement and the nature of the sanctions imposed.

Coordination

The governmental account takes its cue from a broadly Hobbesian theory of social order, according to which the state’s legal power to coerce is the sine qua non of all social coordination. An unusually explicit defense of the governmental account can be found in Thomas Nagel’s critique of the idea of global justice. Nagel argues that ‘the nation-state is the primary locus of political legitimacy and the pursuit of justice’.\(^7\) He contends that

\[^7\] Nagel, 2005, p113, my emphasis.
common to a wide range of conceptions of justice: they all depend on the coordinated conduct of large numbers of people, which cannot be achieved without law backed up by a monopoly of force.\textsuperscript{79}

The line of reasoning is fairly clear. Social justice requires collective action to structure social life justly. Only a coercive legal order can effectively structure social life. The demands of social justice, therefore, apply primarily to states and their legal systems.

This argument is sociologically untenable. It is false that the activities of huge numbers of people can only be coordinated by way of state coercion. The existence and effectiveness of informal institutions, most prominently language, in coordinating the conduct of huge numbers of people belies the putative uniqueness of governmental institutions as a source of social coordination.\textsuperscript{80} It may be true that state coercion is necessary for any \textit{just} form of social coordination, but this normative claim must be explicitly defended as such, not grounded in anachronistic social theoretic stipulation.

The state can of course significantly influence the use of a particular language by requiring that it be taught in public schools and used in public administration. But such laws specify when a particular language must be used; they are not themselves linguistic rules. The same applies to non-legal norms more generally.

This highlights a deeper problem with the coordination argument. Legal institutions of law and politics serve the function of coordinating the activities and practices of a population. This means that governmental practices make no sense in the absence of the other practices they are intended to regulate – everyday normative practices of interpersonal interaction, economic and family life and so on. These everyday practices can and do

\textsuperscript{79} Nagel, 2005, p115.

\textsuperscript{80} Lewis, 1969, pp 44-45, gives a good example of the irrelevance of law to conventional coordination. He notes that it makes sense to drive on the same side of the road as everyone else independently of any sanctions threatened for driving on the ‘wrong’ side.
coordinate social interactions directly of their own accord – they are the ‘objects’ of legal regulation, they give law its point.

In the absence of law, everyday practices are likely to be deeply unjust and to be poorly integrated, leading to social instability. But even unstable or anarchic societies are still societies – their activities are still coordinated by a set of pervasive norms, such as, perhaps, ‘might makes right’ or ‘an eye for an eye’. States use laws to try to regulate these everyday practices and to coordinate them around the promotion of particular ends, such as justice or efficiency. Sometimes states fail in this endeavor, sometimes they succeed. But the law does not and certainly should not wholly supplant the coordinating role of non-legal norms. There could perhaps be a society where there were only legal rules and no pervasive, non-legal norms, although it is very hard to imagine how language would work there. But such a society would be an Orwellian nightmare, devoid of culture, courtesy and all the rest.

Coercion

Another defense of the governmental specification of the institutional demands of justice is found in Samuel Scheffler’s important examination of Cohen’s critique of Rawls:

‘…one obvious reason for [prioritizing governmental institutions that]…does not seem arbitrary…[is]…that the coercive structure is coercive. Coercion always requires justification, and this requirement is particularly urgent with respect to the coercive political power of the state.’

The idea is that coercion in general has a distinctive moral valence and that legal institutions are unique sites of institutionalized social coercion - so it is not arbitrary to identify the distinctive demands of social justice with the use and misuse of state power. The problem

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81 Scheffler, 2005, p124.
with the appeal to the distinctive moral import of coercion is that it does not, in fact, serve to pick out only governmental institutions. Informal social norms can be effectively coercive in the same way as law despite not being enforced by the threat of state violence.

Coercion is notoriously hard to define but, roughly, involves intentionally adjusting an agent’s incentive structure so as to give them only one reasonable choice, such as to hand over their wallet to a mugger or to refrain from theft.82 One way to coerce people is to threaten them with imprisonment or civil penalties if they fail to act as desired. But, as Mill points out, people can also be coerced by lesser social sanctions when these are imposed in very broad range of contexts by virtually everyone in a population.

Informal sanctions may be minor taken in isolation but their cumulative effect can be identical to that of law - namely to give people no reasonable choice but to comply. Consider norms of interpersonal courtesy and friendliness. The sanctions for being adjudged rude, untrustworthy or dangerous in any particular case are likely to be minor. But a person who is almost always seen this way will struggle to acquire goods or realize goals that require the generalized amity of others, such as walking the streets safely or pursuing a successful career. People can, therefore, be given no reasonable option but to conform to pervasive norms of friendliness or even, perhaps using norms of race or class, wholly excluded from acquiring those goods. Such informal norms are coercive in the same sense as laws.

Change

Scheffler also offers a third consideration that might serve to uniquely identify governmental institutions as the privileged domain of social justice.

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82 One of the challenges of specifying coercion is that incentive structures can be altered in this way by offering great rewards rather than severe punishments – and yet rewards are not usually thought of as coercive.
‘...the effects of coercive structure are...more “profound” than those of noncoercive structure: they are more insulated against the possibility of change through ordinary individual choices.83'

The idea is that laws are significantly harder to change than informal norms because the former are constituted largely independently of individuals’ everyday choices while the latter are constituted only by quotidian actions. This is also implausible. For one thing, laws are, like informal practices, changed through individual choices, namely those involved in legal and political activities. Are these ‘ordinary’ choices? I see no independent reason to regard them as out of the ordinary other than the claim that they are of special relevance to justice. But this is the very claim that we are trying to evaluate - the proponent of the governmental account needs to explain what makes legal and political choices special, not simply to insist that they are.

A stronger response highlights the immense difficulty of changing deeply ingrained normative habits, conventions and customs. Consider the pernicious nature of prejudicial norms of race, class and gender. Such norms are widely disavowed and repudiated and yet arguably continue to be enacted even by those who would ostensibly prefer not to do so. They would and do continue to be enacted even in contexts where it is illegal to take such considerations into account, such as job interviews - they are immune even to the power the state. Habitual and implicit institutions are not in general easier to change than laws.

The relative difficulty of institutional change is not a promising criterion for identifying the institutional demands of justice because there is unlikely to be any general fact about which institutions are more or less stubborn to reform. Changing the law can indeed be a long and complex struggle; but it can also be as easy as holding a single vote or

83 Scheffler, 2005, p125.
I have argued that all three attempts to defend the distinctiveness of governmental institutions fail to establish that informal institutions can be non-arbitrarily excluded from the demands of social justice. I shall now briefly discuss some more sophisticated forms of the governmental view that include a so-called ‘ethos’ of justice alongside legal and political institutions.

An Ethos of Justice

The contemporary literature concerning the demands of justice and debate between Rawls and Cohen has been dominated by discussions of the need for an ‘ethos’ of justice to complement just institutions.84 I shall use the pervasive structure account to show that this is an unproductive way to frame the issue and that no appeal to an ethos of justice can redeem the governmental account.

A society’s ethos consists of the dispositions, attitudes, motives and actions of its members as distinct from the governmental rules imposed upon them by their government. Two different interpretations of the kind of ethos required by justice can be found in the literature, although this distinction is not explicitly made:

**Political Ethos:** Those dispositions and actions etc. related to making, complying with and enforcing the law, including individuals' political preferences, norms of public discourse and peoples’ tendency to participate conscientiously in the political process.

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**Comprehensive Ethos:** All aspects of all individuals’ attitudes, dispositions, motives and actions - the total character of each person in the society.

Bringing the political ethos under the purview of social justice goes some way to addressing the short-falls of the governmental account in that it at least accounts for the extent to which the law itself functions only when individuals manifest the right kind of attitudes towards it. But the resultant view is still implausibly and arbitrarily narrow, excluding as it does society-wide informal norms that are not related to law and politics, such as those enacted in domestic or economic contexts.

Bringing a society’s comprehensive ethos under the purview of justice alongside its governmental institutions certainly avoids the everyday life objection. But the inclusion of the comprehensive ethos implausibly suggests that literally every aspect of every person’s character is relevant to social justice, including all kinds of idiosyncratic motives and dispositions as well as those concerning definitively frivolous things, such as a person’s disposition to always tie their right shoelace first. It also thoroughly collapses social justice into personal ethics, thereby sacrificing the distinctiveness of social justice as an ethical concept and practical problem.

The pervasive structure account dissolves this problem by recognizing that some, but not all, aspects of a society’s ethos are in fact ‘institutional’ in exactly the same way as governmental practices. Recall that all institutions are constituted only by individuals’ iterated normative social actions. The pervasive structure account includes within the domain of justice all and only peoples’ dispositions to enact pervasive social norms. The term ethos can

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85 Variations on this ‘governmental institutions plus political ethos’ view can be plausibly imputed to, for example, Rawls himself in his later work.
86 This kind of view can be discerned in the work of avowedly ‘comprehensive’ or ‘perfectionist’ liberals such as Mill himself and, more recently, Galston, 1991, and in some explicitly communitarian accounts of social justice.
then be usefully reserved for those attitudes and actions that do not constitute any institutions at all, namely statistical rules of social life, such as widespread dispositions to act selfishly or imprudently.

A final attempt to rescue the governmental account asserts that, whatever kind of ethos is required for social justice; it can be produced by the influence of law and public policy, so the actions and dispositions constitutive of the ethos are not themselves directly subject to the demands of justice. A society’s ethos, it is suggested, can be effectively shaped by laws regulating public education and, more generally, by the impact of laws that, say, explicitly reject gender hierarchy. Scheffler, for example, suggests that:

‘If family law were thoroughly egalitarian, and if norms of gender equality pervaded other areas of the law that have served to enforce gender differences, it is far from obvious to me that the egregious sexist patterns…could indeed survive and flourish.’

Whether the relevant ethos is specified in political, comprehensive or normative terms, the most serious problem with this causal proposal is that it is no more sociologically plausible than the narrow governmental account it purports to amend and improve.

It is undoubtedly true that institutions of all kinds do indeed shape the characters of their participants and that this is relevant to their evaluation. It may even be true, although I doubt it, that non-legal institutions can only persist in the presence of legal ones. But it is false that legal institutions can in general be used to mechanistically control or produce desirable patterns of informal everyday practice. There may well be specific contexts and occasions on which the law can mechanically determine a society’s non-legal norms, but this does not reflect a general sociological feature of the relationship between law and culture. It

87 This seems to be Rawls’ view, in his earlier work especially, see Rawls, 1999a, chapter 8.
88 Scheffler, 2005, p126.
is just as likely that informal practices influence the character of laws on particular occasions. The only plausible, wholly general claim about the relationship between legal and non-legal institutions is that they form a causally interdependent whole, with neither in general causally determining the other.

The pervasive structure view accounts for the plausible element of this causal proposal by highlighting the ways in which normative social practices can encourage, discourage and inflect statistically significant patterns of action. But even this does not amount to a general assertion of the causal primacy of social institutions over non-institutional aspects of social life. Statistical rules of motivation and need are also likely to causally influence a society’s normative practices. The causal relationships between social phenomena are, as a general matter, too complex and contingent to ground any general principles concerning the causal primacy of any aspect of the social world over any other.

I have argued that both simplistic and more sophisticated formulations of the governmental account are either vulnerable to the everyday life objection or fail to redeem the distinctiveness of social justice. I shall now conclude with a brief summary and by highlighting some of the implications of the pervasive structure account.

4. Conclusion

In this chapter I have proposed a revisionary account of the demands of social justice - the pervasive structure account. According to this view, social justice is indeed concerned primarily with institutions, but institutions are understood very broadly, in terms of any and all widespread social norms, whether these are legal, cultural, linguistic or anything else. It includes habitual and implicit normative practices on equal terms with legal and political
institutions but excludes both local institutions within a society and, more importantly, widespread non-normative patterns of action. I have also argued that the conventional governmental account of the institutional demands of justice is fatally undermined by its insistence on the primacy of law over informal everyday practices. The governmental account either fails to redeem any distinction between justice and ethics or relies on a sociologically untenable account of the way societies work. With this account in hand, I turn in the next chapter to an issue that I set aside earlier on – how to identify the boundaries of distinct societies now that we can no longer simply assume that they map on the legal borders between sovereign states.
In this chapter I shall argue that considerations of social justice apply to the socially normative structure not just of political communities, but of any community of practice – any group of people who share a set of institutions and norms. Social justice is, I argue, a context-relative concept.

This is a significantly revisionary account of the normative domain of social justice. It includes both thin communities, such as those united only by a common language, and thick ones, such as those of a household or a legal system. It includes communities of all sizes and durations, as long as their members all participate in a shared normative practice. There may, for example, be a community of practice including all human beings throughout history, perhaps one united by norms of rational agency, bodily gesture, gender and race. There are also very small and ephemeral communities of practice, such as a children’s game or a protest march. In addition to further redeeming the distinctiveness of social justice as a normative concept, this account provides a framework within which a number of other salient questions can be debated, such as whether states are the most important sites of justice and the existence and importance of a global basic structure.

All communities of practice include normative structures that specify roles and the rules relating those roles; create or facilitate access to some distinctive good or goods; and distribute these roles and goods among their participants. All are, I argue, therefore subject to the distinctively holistic norms of social justice – norms which apply not to just to the workings of the community but to its guiding purposes and even its very existence. Social justice is context relative in the sense that there is no single, inherently privileged site of
social justice – such as societies, nations or states – but a vast multiplicity of such sites, one for every community of practice.

The key elements of my proposed view are as follows:

The Many Sites of Justice.
The demands of social justice apply only to the overall purpose and distributive impact of the pervasive normative structure of any community of practice.

This definition reflects my claim that social justice applies not just so societies as conventionally understood but to any community and that it is a distinctively holistic normative concept, which applies to both the overall purposes and existence of a community, as well as its internal practices.

Community of Practice. Any group of people who participate in at least one shared normative social practice.

This is a deliberately capacious definition, including any rule-governed social activity, of any scale, duration and thickness. I use the account of the pervasive structure developed in the previous chapter. The key point here is that the pervasive structure includes not just those norms that are inherent to a particular community – the norms that give it its distinctive identity and purpose as, say, a criminal gang, a sports team or a corporation. It also includes imported norms and practices – norms which are shared by all members but also apply outside their distinctive community, the paradigm example of an imported practice is that of language – whose rules complied with in the course of almost every other practice. Imported practices may or may not help the group to pursue its ends but inevitably inflect distribution within a community.

Having laid out the key features of the view I wish to defend, I shall now briefly map
out the rest of the paper. I begin by introducing the problem at hand, noting some promising proposed solutions and highlighting the limitations of these proposed solutions. I then elaborate my context-relative account of social justice over the course of defending it from three objections. In section two I defend it from the objection that it renders our application of the term social justice wholly subjective and robs it of its usefulness as shared ideal. My defense involves elaborating the criteria for selecting any particular community as salient in a given context. Secondly, I defend it from the charge that it, too, sacrifices the distinctiveness of social justice, conflating it worth more generic normative social concepts such as efficiency or organizational ethics. Here I highlight the distinctively holistic nature of social justice and discuss the puzzling idea that it could be unjust to even create some communities in the first place. Thirdly and finally, I turn to the question of borders and boundedness and the objection that communities of practice are too vaguely bounded, and overlap and nest within each other too much to constitute a usefully determinate subject of moral enquiry. I here offer an account and taxonomy of boundary norms and of the moral relationships between different communities of practice.

The Problem: Norms, Borders and the Basic Structure

The institutional domain of social justice – the basic structure of society – is conventionally specified in terms of the legally coercive institutions of sovereign states. This conception of the site of social justice faces two broad challenges to, first, the coherence and second, the unique moral import, of the basic structure. This paper builds upon and combines promising responses to both of these worries, all of which endorse broadly pluralistic accounts of the

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89 This specification is not often explicitly defended – Nagel, 2006, and Scheffler, 2006, are rare exceptions.
sites of social justice – rejecting the inherent moral primacy of the state and its laws.

The first criticism, formulated most prominently by G.A. Cohen, contends that, with respect to a single society, the basic structure cannot be specified solely in terms of laws. 90 It must also include at least some informal norms and practices, and perhaps also some mere ‘local’ norms, such as the internal practices of families and businesses. But this expansion of the basic structure would, Cohen suggests, scupper the whole idea of the basic structure as a distinctive social activity and hence a distinct site of justice and justice – since it could now include virtually everything everybody does in a given society. The most promising response to this criticism involves abstracting from the legal specification of the basic structure to focus instead on the more general class of social activities of which legal institutions are just one important instance. With a more general account in hand – such as the account of normative social practices sketched above – it is possible to identify those features that demarcate institutions and practices that are sites of social justice from those that are not. Prominent examples of this kind of response are found in the work of Aaron James and Iris Marion Young. 91 While both offer powerful responses to Cohen’s criticism, their revised accounts of the sites of social justice are not entirely satisfactory.

Young argues that the subject of justice is social structure in general, rather than legal structure specifically. She defines social structures as large, complex and interdependent ‘social processes’ 92 made up of the ‘rules and resources’ 93 of ‘formal and informal…institutions’ 94 that ‘become visible in…a certain way of looking at the whole

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91 James, 2005 and Young, 2013. Another important, similar account is that of Hodgson, 2012 and see also Weinberg, 2009.
92 Young, 2013, p 53.
93 Ibid. p 60.
94 Ibid. p 66.
society, one that sees patterns in relations among people and the positions they occupy relative to one another’. Despite the reference to a ‘whole society’ in the above quote, Young does not claim that social structures demarcate and constitute distinct societal wholes. Rather, she plausibly contends that ‘many injustices in today’s world result from structural social processes that are potentially global in scope’ such as the ‘widespread practices, structural economic and social processes’ of the global garment industry.

I am sympathetic to Young’s arguments, but I believe that her account faces this problem: it seems to give up on the idea that social justice is distinctively concerned with the distribution of goods within a bounded social entity – such as a society – by the combined actions of all of its members. Because societies are bounded social entities, we can fairly easily pick out the institutions that determine whether a particular society is just or unjust – namely those that are ‘basic’ to its activities. Young makes no reference to the boundaries of social structures and so it is unclear, on her account, how we are to pick out the subset of social structures that are relevant to any particular distributive outcome. Her account cannot explain whether and why, for example, the social structure of the Nigerian economy is or is not relevant to the justice of land distribution in Canada.

Aaron James’ account faces a similar problem. James argues that social practices in general are subject to the demands of justice because ‘they exercise forms of power in ways that must be justifiable to each person they affect’. James contends that

‘social justice… applies…within, across, or including state institutions, in any context in which the action or behavior of different persons is coordinated in a regularized way, and such coordination yields forms of power in need of

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95 Ibid. p 70.
96 Ibid. p123.
97 James, 2005, p 28.
While I am, again, sympathetic to James’ account of the many contexts of justice, it seems to me that it too threatens to undermine the normative distinctiveness of social justice – the idea that it holistically evaluates the interdependent institutions and norms that structure distribution within a bounded social space. If, as James suggests, the demands of social justice apply to every exercise of ‘power in social organization’, it is unclear how we are to understand, for example, nested and overlapping social practices, such as the way in which linguistic practices are utilized within families, or in which a particular academic department exists within the broader practice of a university.

James’ account lacks, as does Young’s, an account of the boundaries of social practices and relations between overlapping practices. Neither account is, I think, sufficiently attentive to the fact that social structures and practices are unevenly distributed throughout the human social world – that some are local, some are national and others are global and that these different levels exist in complex relations of interdependence. My proposed context-relative account of social justice is similar to Young’s and James in that it appeals to the general phenomena of ‘normative social practices’ rather than the specific instance of legal institutions. But it adds an account of the distinctively holistic nature of evaluations of social justice, a general theory of social boundaries and an account of the nesting relationship between larger practices and those they contain.

The second criticism of the idea that the basic structure is the unique site of social justice concerns the issue of global justice. Where the first objection attacked the coherence of the idea of the basic structure, the second attacks the importance of basic structures,

98 Ibid.
regardless of their coherence. This objection points out that states are the hardly the only or necessarily even the most powerful determinants of distribution and argues that they cannot be plausibly retained as the primary site of justice and injustice. I shall not attempt to recapitulate this debate here but shall merely note two implausible positions on either side of it and a third, sketchier possibility mooted by A.J. Julius.99

One implausibly statist view contends that the only social interactions that raise considerations of justice are those involving the mutual imposition of a legal system within a single country. This view is implausible because it excludes from the purview of justice the huge amount of distributively significant interaction between states. At the other extreme lies a similarly implausible cosmopolitanism which contends that, because there is some significant cross-border interaction, there is just one single global standard of justice. This is implausible because, extensive though international interaction is, it does not yet amount to single global basic structure whose rules apply without differentiation across the whole planet in the same way that the laws of a state apply throughout its territory.

To resolve this puzzle we would need an account of the site of social justice that is neither dogmatically nationalistic nor unrealistically cosmopolitan but is instead sensitive to variations in the type and importance of interaction across borders. As Julius puts it, we need ‘a view for which the salience of global justice is increasing in the density of interactions across borders’.100 But Julius himself does not himself offer such a view – rather he concludes that we are currently ‘in a world of that confusing intermediate kind’ that is neither neatly divided into discontinuous societies nor yet perfectly global. He suggests that the best we can do is adopt ‘a mixture of the two standards [national and global], shifting

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100 Ibid. p 187.
weight toward the global one as ties between formerly self-contained societies multiply and deepen.\textsuperscript{101} I think we can do better than this – my proposed context-relative account of many sites of social justice allows us to take up any community of practice as delimiting a distinct site of social justice regardless of how large or small it is and how many other communities overlaps with. We can then select the relevant such community according to the distributive outcomes we are concerned with and the guiding aims of our enquiry.

This concludes my brief survey of the background to the problems addressed in this paper. The view proposed here is indebted to but goes beyond those of Young, James and Julius and seeks to fill in the penumbras I have identified in their accounts.

\textit{Social justice: A context-relative concept}

In this section, I defend the claim that social justice is a context-relative concept: that it can be applied to the normative structure of any community of practice. We take up a community of practice as a site of social justice and injustice by evaluating the distributive impact of its pervasive structure on its participants. All such communities create and distribute certain goods, such as rights, roles, status and resources. Different communities of practice distribute different things in different ways and will be salient to different contexts and problems. Communities of practice of all sizes and kinds overlap and nest within each other, relating to and influencing each other in complex ways.

It is natural to worry that the embrace of context-relativity about justice amounts to a more general acceptance that theories of social justice – and whatever social critiques and strategies such theories generate – are inevitably subjective and incommensurable, not on

\textsuperscript{101} Ibid. p 191.
metaethical grounds but because there is no objective fact of the matter about which particular community of practice we should focus on in any given context.

Consider, for example, the distributive outcomes of workers and the justice of labor practices. Let’s say that people in certain kinds of waged occupations end up with what looks like an unfairly small share of social resources. There are at least three communities of practice whose normative structures might be thought salient to the evaluation of these outcomes as just or unjust: the families of the workers themselves, their country and its labor laws, or the global economy in which all of these are situated. It is easy to see how different parties to this issue might prefer to regard different communities as salient to the evaluation of the outcome. Employers might prefer to focus on the role of cultural and familial norms on their employees’ desire to work hard and maximize their productivity—a culture of laziness might justify workers’ meagre rewards. Workers themselves might prefer to focus on national laws concerning minimum wages and collective bargaining, on the grounds that their employers are primarily to blame and should be made to pay them properly. Others—such as anti-capitalist activists—might regard the global economy as the most salient community because it is only by attending to the structure of this community of practice that relations between workers and employers can be properly analyzed. The traditional conception of the site of social justice has a clear answer to this question—the basic structure of society is the only candidate. But my proposed context-relative view might seem to imply that employers, workers and activists could all legitimately take up their preferred community, developing distinct and perhaps incompatible theoretical accounts of workers’ share of social resources. In order to allay this concern, I shall specify the two dimensions to which the site of social justice is relative: the distributive outcome in question and the aims
of enquiry.

The most basic sense in which justice is context-relative is that we can attend to and evaluate different distributive outcomes. I am concerned here primarily with evaluations of the comparative outcomes of *all individuals within* a single community of practice – these evaluations require us to evaluate the normative structure of the community in question. There are many communities of practice and they interact in complex ways, such that, to take just one example, the norms of a larger community, like an entire society, can significantly shape those of a smaller community within it, such as a family.

This means that once we have selected a particular distributive context to evaluate, such as the distribution of domestic labor within a particular family, it is not immediately obvious what frame of reference we should adopt in our assessment. Should we look at the particular family itself as a singular community involving these specific individuals, with all the nuances of their distinct familial practices? Or should we look at it as an example of a more general social form – the family – whose function and boundaries are specified not just by the idiosyncratic norms of its members but by the pervasive laws and cultural practices of their society? Perhaps we should move even wider, and evaluate the family in terms of even more general social practices, which arguably escape the bounds of any single nation, such as those of gender, parental authority and material production, the norms of all of which arguably contribute to the distributive outcomes within a single family. Our choice depends, I argue, on the nature of our enquiry, specifically, whether it is moral, causal or strategic. This is the second sense in which justice is context-relative.

First, assume that our primary concern is with moral responsibility: we looking for a
community to blame or to hold accountable for righting a wrong. Once we identify the individual or group that is morally responsible for the distributive outcome in question, we can ask how they were or were not facilitated in bringing it about by the normative structure of the community in which they acted. If it turns out that the relevant community is basically just or that its injustices made no difference to the outcome, we might conclude that there is no social injustice in this case, just the unjust action of an individual or group. Allocations of moral responsibility will, of course, be a controversial and complex matter to resolve in their own right, especially when it comes to large and diffuse communities, such as those united by linguistic practices or shared gender norms. Let’s assume, to specify the example a little further, that household chores are unequally assigned on the basis of gender, with female members of the household required to undertake a disproportionate amount of domestic labor. It is possible that moral responsibility lies not in the first instance with the family members themselves or with the structure of American society – but in the much broader community of practice that enacts sexist gender norms, which have the effect, when predictably and, let’s assume, blamelessly imported into this household, that domestic labor is regarded as ‘women’s work’. If there are facts about assignments of moral responsibility, there are facts about which community of practice is morally salient to any particular distributive outcome.

Alternatively, we might be concerned with the causes of injustice – regardless of who was to blame; we might want to know how this injustice occurred. There is, I assume, no single answer as to the cause of any particular distributive outcome but rather a huge range of causes stretching back through time, all of which are part of the chain of causes that ended

102 I talk here only about backwards looking responsibility but the same considerations apply, with relevant adjustments, to forward looking responsibility for responding to injustice.
up with, in this case, an unequal distribution of household chores. We might be concerned to identify the proximate cause of the distribution, in which case we will likely turn our attention to the family itself or to the other communities in which its members also participate and so which might have influenced their behavior at home. Or our interest might be historical, in which case we might choose to focus on the community of practice constituted by the families of those who are now adults in the household we are concerned with – these childhood experiences might explain why our current family is arranged the way it is. This kind of historical enquiry could also go much further back but the ultimate selection of a salient community of practice would be constrained by the facts about the chain of causes that generated the distributive outcome in question.

Finally, our motive might be strategic – a desire to change the outcome or prevent it occurring again by adjusting the normative structure of some relevant community. Our best strategy might be to focus on the norms of the family itself – after all this presents an obvious way to change the outcome by simply getting the family to adopt new rules for the assignment of chores. But it might that the family members are deeply intransigent and unwilling to change their ways or that it would be counterproductive for us to intrude upon their lives in the manner this strategy would require (this will depend, of course, on who we are – it might be our own family!) Our best strategy might instead involve using our society’s political institutions to try to either directly regulate the distribution of domestic labor or educate and encourage people to abjure sexist practices – this might be a good strategy if the unfair distribution reflects sexist gender norms. Even if this would not help our current family, it might prevent such injustices occurring in the future. Once we have settled on an attractive strategy we must attend to and evaluate the pervasive normative structure of the
community whose rules we seek to change.

I shall round off this response with some general reflections. Moral, causal and strategic considerations can but need not come together – morally responsibility need not track causal responsibility, and strategies for social change need not track either. Also, we are not necessarily required to attend to the pervasive structure of the community in which the distributive outcome occurred. When we evaluate distributive outcomes in an authoritarian society, for example, the morally, causally and strategically most salient community might be that of the small ruling elite, rather than the society at large. This account is neutral with respect to the objective importance of different communities and outcomes. I am happy to grant that the outcomes of an entire society are more morally important than those of a children’s playground game. But different agents of moral enquiry will find themselves concerned with different outcomes – the children who are always cheated, for example, might think it pretty important to theorize the injustice of the playground. Finally, and importantly, it might turn out for all I say here that one particular kind of community is salient in every context regardless of the outcome under consideration or the aims of enquiry – the nation state, for example. But as I have argued in this section, the salience of any community must be established on a case-by-case basis and cannot be assumed or dogmatically asserted. I turn now to a further objection: that my context relative account sacrifices the distinctiveness of social justice as a normative concept.

*The Distinctiveness of Social Justice: Holistic and Existential Evaluation*

We evaluate social activities according to many norms – efficiency, prudence, beauty – and also numerous distinctively moral norms, such as ideals of motive and virtue. It might be
objected to my proposed context-relative account of social justice that it conflates justice with some more generic social value. For example, by applying it to any and every community, I might be thought to conflate questions of social justice with the more generic normative question of how a community should be organized, where this ‘should’ could be a prudential norm of efficiency or a moral norm of organizational ethics. The traditional juridical specification of the site of social justice seeks to avoid this problem by claiming that social justice is distinctively concerned with the organization of states. In order to respond on behalf of my own context-relative account of justice, I appeal to two special features this account: its concern with the pervasive normative structure of a community and with existential questions about the purpose and existence of the community.

As I define them here, ideals of efficiency and organizational ethics take as fixed the overall purpose and identity of a given community and ask, respectively, how effectively their internal norms serve this purpose and whether they do so in a way that is morally permissible and desirable. This means that such evaluations need only attend to those norms and practices that are relevant to the pursuit of this purpose. Social justice, on the other hand, evaluates the overall purposes that communities pursue and attend to all norms that are pervasive within them, not simply those that are directly concerned with its defining purposes. We can distinguish between at least the following three kinds of social practice that might be pervasive in any given community, where pervasive simply means that most members comply with and enforce the norms of these practices most of the time.

Inherent: Norms and practices that define the distinctive character and identify of a given community – the practices that make a given community a family or a company, a sports club or a criminal gang.
Imported: Practices that are utilized in the course of the community’s inherent practices but which a) exist outside this community and b) are not necessary to the community having the identity it does i.e. are not inherent. The most common example of an imported practice is language: every family, for example, uses some language in the course of its inherent, familial practices, but languages exist outside families and familial practices can be conducted in many different languages.

Extraneous: Practices that are pervasive in a community but are not directly related to the purposes of the group. Extraneous practices may or may not also be imported. For example, it might be a pervasive extraneous norm in a workplace that everyone should be interested in discussing football.

Evaluations of efficiency or organizational ethics will tend to focus on the inherent norms of a community because they are concerned primarily with how well that community promotes its defining purpose – how good of a family, corporation or gang it is. Such evaluations will consider imported and extraneous norms only on the contingent basis that they affect how well the community pursues its distinctive ends. A corporation whose employees speak multiple languages, for example, may adopt internal norms specifying which language should be used for important internal communications, but only if the importation of multiple linguistic practices into the workplace is detrimental to the pursuit of the company’s goals.

By contrast, evaluations of social justice apply, I argue, to all of the pervasive norms of a community – all of its inherent, imported and extraneous norms – all of which combine to make up its pervasive normative structure. Social justice is a distinctively holistic normative concept. Social justice is concerned not with how well a community pursues its defining purpose but with how it distributes the goods of justice to its members. The precise nature of the goods distributed within any community will depend upon its inherent practices. But this distribution is brought about not just by these inherent practices but by the complex interaction of these practices with other norms pervasive in the community. Workplaces, for example, must conduct their inherent practices using at least one imported
linguistic practice – they must speak a language. I assume here that linguistic (or discursive) practices are relevant to the distribution of goods because they can, for example, help perpetuate sexist norms of distribution. Pervasive discursive norms might, say permit the description of identical character traits in different terms depending upon whether they are possessed by a man or a woman e.g. describing as ‘confident assertiveness’ in a man what would be described as ‘bossiness’ in a woman.

If this is correct, then the distribution of goods within a community will necessarily be inflected by the interaction between its inherent norms and these imported linguistic norms e.g. women will be promoted less often in part because they are described using different words. The same is true of extraneous norms, such as those of sporting preference. Such norms interact with inherent and imported norms to inflect the structure of distribution, as when men find it easier to build professional networks due to pervasive norms of informal sociability that favor traditionally masculine interests. If some pervasive norms do not, as a matter of fact, have any impact on distribution, this must either be a matter of pure chance – which may itself be unjust – or, more likely, will be due to some other pervasive norm counteracting or regulating their impact, such as compulsory anti-discrimination training or some form of affirmative action. Social justice differs from normative concepts such as efficiency and organizational ethics in part because it evaluates the entire pervasive structure of a community and not primarily its inherent norms.

The second sense in which my proposed context relative account of social justice differs from more generic norms of social evaluation is that it calls in to question the very existence and purposes of communities. Ideals of organizational ethics and efficiency take for granted the purposes of a community and ask how those purposes should be pursued.
These ideals apply even to communities that pursue morally impermissible purposes, such as a violent criminal gang. We can ask of such a gang whether its current practices effectively advance its criminal goals or treat its members fairly. Social justice, by contrast, is concerned with what sorts of goals people are morally required, permitted and prohibited from pursuing as well as with the institutional means they use to pursue them. Social justice does not treat the goals of any community as fixed - it is concerned to evaluate not only how a group pursues its goals but what those goals should be. With respect to some groups, like criminal conspiracies, justice requires that the group not exist - that its members dissolve it or that outsiders try to destroy it.

This raises a possible challenge concerning the foundation of new communities. While it makes sense to say that justice might require a group to dissolve itself, it does not seem possible to say that a group ought never to form itself in the first place – if the group does not exist, there is no one to whom this moral demand can apply to. This might imply that my proposed conception of justice cannot condemn as unjust the act of formation of a criminal gang but only claim that, once formed, such groups are immediately required to abolish themselves and so undermine my claim that social justice evaluates the purposes of communities. I am, however, happy to embrace the slightly counterintuitive claim there is no question of justice concerning the establishment of groups established *ex nihilo* – because such occurrences are, I believe so vanishingly rare as to be of little theoretical interest or relevance. Every actual human community has, I suggest, been founded by people who were already participants in a prior community of practice such as, minimally, a shared language.

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103 This issue troubled Rousseau, who said: ‘…I leave to anyone who would undertake it the discussion of the following difficult problem: which was the more necessary: an already formed society for the invention of languages, or an already invented language for the establishment of society’. Part One of Rousseau, 1984.
This means that the formation of a new community can be evaluated in relation to the practices of this pre-existing community. We can ask whether this prior community unjustly permitted or otherwise facilitated the formation of this new group. So, for example, we might conclude that the establishment of the original American colonies was unjust because it occurred because the pre-existing communities of European settlers unjustly denied the political standing of Native American tribes.

In this section I have argued that adopting a context-relative conception of social justice which can be applied to any community of practice redeems the distinctiveness of social justice as a moral concept. I argued that this context relative conception of social justice does not collapse into more general normative concepts such as organizational efficiency, because social justice evaluates the pervasive structure and the overall purposes of communities, rather than simply how they ought to pursue fixed purposes. I now turn to the issue of social boundaries and the relationship between overlapping and nested communities of practice.

Boundary Norms and Nested Practices

I turn now to a final objection facing my proposed context-relative account of the sites of social justice: that it does not, in fact, redeem the idea that social justice is concerned with bounded social entities. The worry is that communities of practice are not clearly bounded – that people can and do move in and out of them too often and too easily and that it is not clear where one ends and another begins, because people often participate in multiple practices simultaneously. I also take up a more specific form of this objection that focuses on the idea that boundary norms apply in the same way to members and to non-members of
a community and so cannot be included in the pervasive structures of communities without effectively implying that everyone, including non-members, is a participant in that community’s practices. This would threaten my claim that social justice applies to communities of practice as bounded social entities. I shall address these worries by first offering a general definition and partial taxonomy of boundary norms and a refined definition of communities of practice. I use this account to illuminate the different relationships in which members and non-members stand to a community’s boundary norms before concluding with a taxonomy of the sociological and moral relationships between overlapping practices.

I first argue that normative social practices are bounded by a special kind of social rule or norm: a boundary norm. Normative social practices are necessarily bounded by performative criteria specifying where, when and to whom the other norms of the practice apply. Boundary norms will sometimes specify sanctions for those who try to impersonate members despite not meeting the criteria for membership but they need not do so – with some practices, such as language, there is no way to pretend to participate and so no one could be sanctioned for doing so.

Boundary norms have two key features.

*Boundary norms:*

i) specify the criteria for membership in a practice;
ii) meeting these criteria triggers the rest of the norms of the practice.

Those who meet the criteria for membership in practice are then evaluated by other members in according to the pervasive norms of their community. In the absence of such a rule or of any people who meet the criteria it specifies, a practice ceases to exist, like a
language which no one speaks.

It helps to distinguish normative from non-normative social practices, which lack boundary norms. The non-normative social practice of New England coffee-drinking, for example, is not bounded by any social rule. The conditions of entry into this practice involve drinking coffee in the mornings in part because this is part of New England culture. Participation doesn’t require being in or even having visited New England. This social practice is bounded only by contingent facts about who comes to know about and identify with New England culture – not by any norm specifying criteria for membership and different normative expectations concerning members and non-members. People can enter or leave the practice without being evaluated by other participants and without any risk of social sanction – there is no way to illicitly enjoy the benefits of this practice, no sense in which anyone could ‘pretend’ to be a member. The practice of coffee-drinking is not by itself a community of practice in any morally significant sense because its participants do not try to get each other to act in any particular way in relation to coffee-drinking or anything else. They simply share a common understanding and set of expectations about the cultural status of coffee in New England.

Consider, by contrast, a domestic practice distributing household chores. The rules of this practice only apply to the members of the family in question. They expect each other to do their chores and to be sanctioned by each other if they fail to. But they do not expect their guests, say, to either do any chores or chastise family members who have not done theirs. Their guests do not meet the performative criteria for membership in the practice - these criteria presumably include being usually resident in the house and, perhaps, having a certain kind of emotional relationship to the other members - a lodger renting a room might
not be included in the practice. There are as many different kinds of boundary norms as there are normative practices, so any taxonomy is inevitably partial. Still, it is helpful to mention a few general categories in order to illustrate the generality of the concept.

Some communities of practice probably include as members every competent human agent or everyone with a human body – their boundary norms specify performative criteria such as ‘is an agent with a human body’. Examples of such maximally large communities of practice include normative social practices of gender and race, as well as very basic gestural practices such as that of pointing. We expect every competent human agent to know and conform to normative classifications of gender and race and to understand and comply with the norm that pointing is a way of guiding others’ visual attention. The boundaries of such practices are usually invisible because we never encounter any rational agents who lack human bodies and so are not and cannot be members of the communities of gender, race or gesture. The existence and nature of such maximally broad communities of practice can, however, be illuminated by imagining ‘breaches’ involving non-human agents. We would not have the same expectations about pointing if we encountered an agent without any identifiable limbs or fingers with which to indicate directions, or about gender if we encountered apparently ‘un-sexed’ beings. Were we to meet any such alien agents, it would be more obvious that these practices rely on boundary norms that demarcate distinctively human communities of practice.

Other boundary norms are physical, most prominently the legal borders of nations. These are abstract lines drawn on a map and, often, physical fences and border posts or lines drawn on the ground. Persons occupying space within the territory specified by these boundary rules are subject to the legal norms of the authorities in that country. Other
territorial norms specify the boundaries of institutions like universities and shops and are often specified architecturally in terms of the thresholds of buildings. When a person enters a bar, a university, a shop or their place of work, normative expectations are triggered that did not apply to them outside - such as the norm that they should buy a drink or obey their boss’ instructions.\textsuperscript{104}

Communities can enact a variety of distinct boundary rules and thereby establish different classes of participant. Physical presence in its territory is the minimal criteria for being subject to the legal authority of a state. But within the community of practice that enacts these basic norms of legal authority there are further sub-communities bounded by additional norms, such as the legal community of full citizens, which is bounded by laws of immigration and naturalization in addition to those concerning physical territory.\textsuperscript{105}

Another category of boundary norm involves qualitative standards - being ‘good enough’ at something to be a member of a community of practice. Practices with qualitative membership criteria include those of language, in which only competent speakers are subject to the full range of normative expectations related to linguistic communication. Others include vocational communities, such as those of scholarship or musicianship, in which only people adjudged by current members to meet a certain standard of intellectual and musical

\textsuperscript{104} These kinds of territorial borders work slightly differently to those of states, however, in that institutions can move between buildings or temporarily occupy some other space simply by performing their activities there and perhaps putting up a sign.

\textsuperscript{105} Not all practices permit of similar degrees of participation and classes of membership. Legal communities are relatively unusual in that non-members are usually capable of acting like members. Because of the relative ease with which people can ‘impersonate’ citizens and so gain the full benefits of membership in a political community, it is both possible and desirable for states to impose further rules distinguishing between citizens and people who are subject to the law simply in virtue of their physical location. Practices like language are much less amenable to this because it is impossible to pretend to speak a language that one does not speak. Linguistic competence, unlike legal subject-hood, is basically a binary normative criterion and there is no way for people to be partial participants in the way that undocumented immigrants, for example, participate either partially or on different terms in the practices of American society.
performance are evaluated by the community’s norms and permitted to impose them on others. Qualitative boundary norms also define the membership of families and friendship groups; people become members only when their relationships to the other members have a certain quality. Qualitative boundary norms often require people to demonstrate some aptitude for or commitment to the distinctive practices of the community they wish to join - as with vocational communities. But they can also apply unrelated qualitative criteria, as when only sufficiently wealthy people are permitted entry to private clubs.

This account of boundary norms permits a refined definition of a community of practice. Rather than simply consisting of a group of people who share a normative practice, a community includes all of the people who meet the membership criteria for this community – everyone who conforms to at least one boundary norm.

Communities of Practice:

i) any group of people who participate in a shared normative practice

ii) with respect to at least one boundary norm enacted by the group, the group includes every individual who meets the membership criteria specified by that norm.

A community of practice is a group which includes all and only the individuals who conform to at least one boundary norm enacted by the group. But the pervasive structure of any particular community is not limited to those norms triggered by the boundary rule – it also includes imported and extraneous practices when these are widely enacted by members of the community.

It is helpful to describe an imaginary search for communities of practice. First, we select some population of persons - usually a proper subset of all people but perhaps everyone alive. We then ask: does this group of people share any normative social practices
at all - are there any social rules they all enact? If not, this group is simply a random selection of unrelated individuals, and not a community of practice. We are left with a group of people all of whom enforce and comply with at least one boundary rule, such as the membership rules of an organization like a university – because every normative practice includes such a rule. But some such groups will constitute only part of such a community - if the group includes only some of the people who speak a language or some of the people affiliated with a particular university. Such subsets are not themselves communities of practice because there is an important sense in which their activities do not ‘make sense’ in isolation from the other members.

Take some subset of all competent speakers of English. They share mutual beliefs about how the other members of the subset will and should act when they are speaking English to each other. They also enact a boundary norm specifying criteria of basic linguistic competence that trigger these other expectations. It is only in virtue of ascribing these mutual beliefs and the social reasons of which they are part that the linguistic activities of this subset make sense as such - that they are communicating rather than merely making noises. But the relevant beliefs and the activities go beyond this subset. The members of the subset each have the same beliefs and expectations about people who are not in the group as currently specified - other speakers of English. They sometimes engage in linguistic communication with these other English speakers, acting on the same social reasons they share with members of the subset. These actions of the people in the subset do not make sense as such if we consider only the subset, because the social reasons that explain these actions apply more broadly – it generates beliefs and expectations about other English speakers not in the initial group.
Having offered a general account of the bounded nature communities of practice and refined my definition of such communities, I shall now briefly argue that boundary norms are always part of the pervasive normative structure of the communities whose membership they define. This is controversial for two reasons. Firstly, because it can seem that boundary norms are only complied with and enforced by those members of a community who actively police its borders, rather than by every member. Secondly, it seems that boundary norms apply to and are often widely complied with by non-members, which seems to imply that they are not properly counted as a practice unique to the members of a particular community. I shall rebut both of these concerns.

The first point is made by Hodgson, to whose expansive account of the basic structure to which I am otherwise broadly sympathetic. Hodgson argues that practices form part of the basic structure of a community when people have no real choice but to participate in them – when ‘they shape the social landscape in which individuals must act…’ 106 This has a similar extension to my own preferred criteria of pervasiveness – pervasive norms apply at all times and locations within a community and so cannot be easily avoided by members. But Hodgson denies that individuals ‘must act’ through legal borders:

‘Borders may be coercive, but they don’t set rules that you have to work through to pursue projects in general; they merely exclude certain specific options by restricting the territory that is accessible to you. This may influence how successful you are at pursuing your chosen conception of the good, but it does not amount to laying down a web of rules through which you have no reasonable choice but to operate...’ 107

Hodgson is, I believe, incorrect to claim that individuals do not have to ‘work through’ boundary norms in the normal course of their lives.

107 Ibid. p327.
Individuals implicitly apply and comply with boundary norms constantly. With respect to the borders of nations, for example, individuals attend to and comply with these rules whenever they assume themselves to be within a particular legal jurisdiction by relying on or appealing to its laws and also whenever they plan a journey within a single country. As a non-resident alien in the United States, the author of this paper is able to travel freely within the US, but I must take immigration papers with me if I travel to Canada or Mexico in order to re-enter the country. The location of these borders is therefore an immediate and quotidian concern for me when I plan journeys around and across the country. That individuals’ implicitly rely on and apply their country’s border rules is further illustrated by the tiny ‘breaches’ in territorial integrity constituted by foreign embassies, in which domestic powers have no legal authority and to which, therefore, fugitives can sometimes flee. An individuals’ presence in one country rather than another is defined by the legal borders of that country. Individuals do and must constantly assume that they are in a particular country and so also constantly apply, comply with and enforce basic norms of legal authority. Similar considerations apply to all communities of practice – their boundary norms are pervasively enacted by their participants.

The second problem is that it is not only the inhabitants of a particular country that have little choice but to participate in its boundary rules in the sense described above – people in Canada and Mexico must be similarly responsive to laws specifying the location of the US border and regulating permissible entrances and exits to the USA. This suggests, counterintuitively, that people in these other countries participate in the basic structure of American society. If this is the case, then we seem to have lost any sense that these are distinct, bounded social entities. We can respond to this worry by distinguishing between the
relationship that members and non-members have to legal borders in terms of their compliance with the performative criteria these rules specify.

People within the territory of the USA are subject to the legal authority of the US state – to all of the particular laws it enforces. People in other countries are not subject to these laws because they do not satisfy the relevant performative criteria – they are not in America. Outsiders may indeed need to be attentive to these laws in order to avoid any sanctions imposed on people who illegally enter US territory. But even if there were no such sanctions – if borders were open – it would remain true that people in other countries are not, in virtue of their physical location, currently members of or participants in the community of practice delineated by these legal borders. Members of the community do not have the right kinds of mutual beliefs and expectations about the social performances of non-members – people in America do not expect people in Mexico to comply with and enforce American laws.

In this section I have argued that the members of a community of practice constitute themselves as a bounded social entity in virtue of jointly enacting a boundary norm, that these boundary norms are part of the pervasive normative structures of such communities and that they do not apply in the same to non-members as to members. Communities jointly enforce rules determining who can access whatever goods or purposes are served by their other shared practices, such as the goods of family life or political citizenship. Although such communities are in an important sense self-constituting, in that they exist only insofar as their members act in the relevant ways, peoples’ abilities to constitute themselves as any particular kind of community of practice very often depend on the actions of people outside the group, especially of broader communities in which their particular practice is nested. It is
to these relations of dependence that I now turn.

The social world is made up of a complex network of overlapping and nested communities of practice. International practices of language and state sovereignty encompass and overlap political communities, which in turn include communities such as families and universities. Families often include romantic partnerships; while universities include particular academic departments. I shall first briefly characterize the relationships that sub-groups can stand in with respect to their broader communities before elucidating the relevance of these relationships to questions of social justice. I argue that there is an important asymmetry involved in the evaluation of nested practices.

The practices of nested sub-groups can stand in more or less significant relations to the norms of the broader group. Some sub-groups are explicitly mandated and created by the pervasive structure of their broader community – families and corporations, for example, take the form they do in large part because this form is mandated by the law and culture of particular societies. Other sub-groups are more loosely related to the pervasive structure of their broader community – these pervasive norms permit but do not require the formation of these groups. Friendship groups and other voluntary associations are like this – they are legally and socially permissible but their form is otherwise underdetermined by the structure of the broader society. Falling in between these two are sub-group practices that take up and utilize other, broader practices in the course of their own activities – the most prominent example being language, which is used by almost every community of practice. Linguistic norms do not mandate the creation of any particular communities nor specify their form but they arguably have a greater impact on the activities of such sub-groups that the law, for example, has on the (legal) activities of a group of friends. Linguistic norms provide a
medium within and out of which other communities can build their own practices – the form taken by these practices is likely to be influenced by the materials from which they are built. Regardless of the precise causal relationship between various sub-groups and their broader communities, the moral relationship is always the same. When we take up a particular community of practice as a site of social justice we hold fixed the norms of larger communities in which it is nested but evaluate the norms that the community enacts with respect to its own sub-groups.108

When we take up some community as a site or domain of social justice or injustice we evaluate its relationship to other communities outside it – including perhaps any in which it is nested – but hold the norms of those broader communities fixed. This is not the case with respect to sub-groups nested within the community under consideration. With respect to any community of practice, we can ask whether it is just with respect to the formation of further communities within it – we do not simply take these sub-groups as fixed and permanent – but we need not also ask if each of these subgroups is itself just. Justice might require states, for example, to protect rights to free association, prohibit criminal groups and mandate the basic form of especially important sub-groups, such as families and corporations. But the state is not thereby responsible for ensuring that every such sub-group treats its members fairly. Consider the family. Societies feature, let’s assume, pervasive rules and norms that establish the basic form that families are required to take; the way in which children are to be raised. These norms may or may not be just. But whether or not these rules are just does not depend on the norms adopted within any particular family. Perhaps

108 This asymmetry is discussed by Rawls in the context of individual economic transactions whose fairness cannot be discerned independently of the relative social positions occupied by those party to them. I here make a similar point with respect to iterated but merely local interactions. See, especially, Rawls, 1993.
the parents in one family unfairly favor one child over the others. Such unfair families can be consistent with perfectly just societal norms of family life – a society can be just without all of its sub-groups also being just. Such domestic unfairness would only reflect injustice in the broader society if the norms of that society permitted, required or predictably encouraged it.

This asymmetry has the important implication that sub-groups may be required, as a matter of justice, to adjust their internal practices to respond to injustice in the broader communities in which they are embedded. This contrasts with the broader groups, which may have to adjust their practices in order to ensure that they justly constrain and facilitate sub-groups within them. Consider, for example, linguistic practices that are imported into the practices of a university. These practices form part of the pervasive structure of the university and so are relevant to whether or not it is just. But assume, for the sake of argument, that these linguistic practices are unjustly sexist and that if they are adopted unmodified within the university they will unjustly shape its distribution of educational goods – perhaps by creating an atmosphere that is unfairly hostile to female students. This might seem to create an insurmountable barrier to the university ever being just because its participants cannot simply abjure language without ceasing to be a university at all. But they cannot alter these practices themselves because the language is enacted by a different, much larger community whose actions would also have to change in order to make it more just. This might seem to suggest that larger practices enjoy a certain normative priority over those smaller communities nested within them – that a university cannot be socially just unless its language is also just.

This is not the case. The members of the university community cannot simply change the norms of the wider language but they can change the way in which these norms
structure their own activities. Noticing that their language is inherently sexist, members of the university might be required as a matter of social justice to adopt special linguistic norms and practices that seek to negate or at least ameliorate the deleterious impact of this linguistic unfairness, perhaps by enacting norms requiring people to learn about implicitly or explicitly sexist terms and sanction those who continue to use them. In this way, the university could be wholly socially just despite being nested within an unjust community. The same considerations can be applied to any nested community. This captures a further sense in which justice is relative to context – a community that does not import any unjust practices does not need to respond to and ameliorate the effects of such practices in order to be just.

This concludes my defense of a context-relative conception of social justice. I have shown in this section how my proposed account deals with the overlapping and nested nature of social practices by elucidating the significant asymmetry between evaluating a community’s pervasive structure and broader practices within which it is embedded and smaller groups within it.

Conclusion

In this chapter I have argued that social justice is a context relative concept, applicable to the pervasive normative structure of any community of practice, regardless of the size, type or significance of the community. The correct community to take up with respect to any particular social outcome is relative both to our theoretical interests and facts about moral and causal responsibility for that outcome and available strategies for trying to change it.

This account is compatible with the possibility that, as a matter of fact, states are always the most salient site of social justice and injustice – that legal systems are always
morally and causally responsible for distributive outcomes and are always present the best strategic options for ameliorating injustice. It is also compatible with the possibility that there are genuinely global practices – a global community of practice – and that this global community is always the salient site of justice and injustice. But most importantly, this account allows us to take a much more nuanced and flexible approach to questions of social justice, adjusting our focus according to the complexities of the social world rather than implausibly insisting on the universal significance of states, laws and national boundaries.
Chapter Five:  
Everyday Direct Action

Political action is not the only means by which individuals can and should contribute to making their society more just by revising and reforming its basic institutions and practices. People are also required to work in their everyday lives to undermine unjust practices and implement just ones. Although the general thrust of this point is widely acknowledged, its full extent and implications for individual’s responsibilities for justice have yet to be worked out in detail. It is relatively uncontroversial that individuals ought to sometimes adjust their economic choices in light of ethical considerations, such as by refusing to patronize businesses owned and managed by avowed racists or the supporters of a heinously unjust political regime in a foreign country. In this chapter I argue that ethical consumerism of this kind barely scratches the surface of the extra-political contributions that individuals are required to make to in order to transform their basic social practices.

I shall argue that individuals are required to take everyday direct action on their basic structure as well as or instead of engaging in any form of conventionally political activism. I propose an initial framework for evaluating this demand in particular cases. Everyday direct action involves people transforming their relationship to prevailing social institutions and cultural and norms. They can do so by refusing to conform to their rules, attempting to sanction those who continue to do so, and seeking to establish new communities of practice with the ultimate goal of supplanting current norms. People are also required to abjure values, desires and character traits that are predicated upon the attainment or continued enjoyment of unjust positional goods - the rights, roles, statuses, esteem that they possess in virtue of their particular position within the practices of the basic structure. When basic
social practices are unjust, this effectively requires people to pursue at least a limited ethical transformation, because profound aspects of their characters and identities may turn out to be predicated on injustice. Significantly, this requirement applies with equal force to people who are unjustly advantaged by current practices and the victims of structural injustice. While these practices may treat people unequally, all participants contribute in exactly the same way to their ongoing existence, namely by everyday actions that conform to, monitor and enforce prevailing rules and norms.

Here are some possible implications of the requirement to engage in everyday direct action. Men might be required to stop exploiting their ability to go out in public without fear of sanction regardless of how carefully groomed and fashionable they are - perhaps by cross-dressing or otherwise deliberately flouting gendered norms of dress. Women too, might be required to give up whatever more constrained and precarious advantages they can get from their own position in this practice, such as by refraining from dressing in accordance with the prevailing norms of heterosexual male desire. Wealthy parents could be required to refrain from sending their child to a private school if their primary motive for doing so was to ensure for their child the advantages of an unjustly elevated position within prevailing practices of social class. They might also be required to challenge and chastise their friends who make a different choice, or even to stop being their friends entirely. Middle class and better off people in the developed might be required to sacrifice the comfort and luxury of a standard of living predicated upon the ongoing unjust exploitation of their former colonial subjects and the destructive transformation of the Earth’s climate. Each of these cases would, of course, require much more normative argument to work out both in general and for each particular person. I offer them here primarily as illustrations of the potential extent of
individuals’ everyday responsibility for justice.

I shall begin by first introducing everyday direct action in more detail and noting the relationship between my account and questions of moral complicity. I shall then argue that everyday direct action is an essential complement to conventional forms of political activism. After briefly responding to concerns that the proposed account is too individualistic and too easy, I shall consider at greater length the opposite charge, that it is too demanding, and even poses a potentially self-undermining threat to peoples’ deepest concerns and commitments. I shall mostly embrace this implication: justice can require people to seek to rid themselves of their own deepest desires and traits, to change themselves and their way of life. Although people do enjoy a personal prerogative to limit the burdens of their responsibility for justice, essentially unjust desires have no moral weight and so are not protected even by this prerogative.

A note on gender

I will call on a range of examples in this chapter but will most frequently invoke cases involving gender so it’s worth briefly laying out how I understand it.

Gender, I assume, is a social practice consisting of rules and norms of social performance. In its traditional form, the practice of gender uses the criteria of physical sexual characteristics to assign individuals to the social roles of ‘man’ or ‘woman’. The normative distinction between men and women is invoked in virtually every aspect of human life, from the most intimate domains of sex, family and romantic love; to public norms of dress, hygiene, movement and posture; and to evaluative standards of intelligence, merit and capability, with women and men assumed to be better and worse at different things and
evaluated differently when they act in similar ways.

Individuals whose bodies cannot be easily classified as male or female are likely to face social sanctions for failing to meet pervasive normative expectations, while those whose bodies are classifiable as male or female almost always face sanctions if they act, speak or appear in public in ways that flout the norms of their assigned gender role. In societies where gender non-conformity is taboo, those who do flout gender norms will struggle to realize even their most basic goals, such as housing and material sustenance. They will be, at best, stigmatized and ostracized wherever they go and, at worst, subject to socially sanctioned violence or judicial punishment.109

I assume here that most, if not quite all, of the social practices that utilize a binary normative distinction grounded in biological differences are in this respect unjust – biological distinctions simply do not matter and should not be taken into account in most aspects of social life. Some norms and practices, such as those concerned with procreation, are legitimately sensitive to biological differences but most are not. This leaves open the difficult question of whether gender practices should be abolished entirely or, instead, supplanted by a multi-faceted, non-binary system of gender roles and that is not implicated in unjust normative hierarchies of status and esteem and not tied to biological sex. Current practices of gender are inherently unjust to both men and women, insofar as they impose an arbitrary and constrictive set of possibilities that unjustly ignores variations between human bodies and the multiplicity of forms that social presentation could take if freed from the binary distinction between men and women. But with respect to its interaction with other

109 Butler gender trouble and bodies that matter, Dislocating Masculinity: Comparative Ethnographies (Male Orders) Paperback – January 28, 1994 by Andrea Cornwall (Editor), Nancy Lindisfarne (Editor), Sex, Gender and Society Paperback – 1972 by Ann Oakley (Author)
basic practices, gender norms are primarily unjust to women, who are systematically denigrated and disregarded in most economic, cultural, judicial and political practices. I have laid out this analysis of gender practices so that it can serve as an illustrative example of my proposed account of the demands of justice and my response to the worry that it is too demanding, particularly for the victims of injustice.

**Everyday Direct Action**

Here are some examples of everyday direct action people can take on gender practices:

*Retraining habits and traits:* People can work to alter ingrained and internalized social reactions that implicitly and habitually comply with and enforce prevailing norms. For example, by learning to pay proper attention to women with whom they interact and ceasing to instinctively defer to claims made by men; training themselves to react with disgust and censure to any explicit or implicit sexism in the words or deeds of people around them. This can also encompass broader efforts to acquire internalized and habitual familiarity with non-normative gender activities and roles.

*Building new communities:* This involves joining with others to form communities that pervasively enact anti-sexist norms and practices. These could be small, dense and strictly bounded communities, such as a queer commune, or larger, more diffuse communities of like-minded friends, colleagues or acquaintances.

*Refusing to conform:* Nonconformity can include flouting social requirements or prohibitions and either challenging or accepting the sanctions for doing so, as when a man cross-dresses or explores other traditionally feminine activities. Non-conformity can also involve making unexpected choices from socially permissible options, such as by refusing to participate in or take up opportunities and incentives made available by unjust practices. For example: a man could renounce or refuse to pursue traditionally masculine social roles, such as those of lawyer, executive or elected official.

*Reconfiguring roles and relationships:* This involves attending to and working to counteract the impact of gender norms on the specification and performance of social roles and the dynamics of interpersonal relationships. For example, a male executive might seek to fill this role in a way that abjures traditionally
masculine traits such as aggression and confidence and instead embodies traditionally feminine virtues such as compassion and collaboration. A heterosexual man might attempt to reconfigure his relationships with women so as to avoid and challenge traditional gender roles and norms such as those involved in sex, domestic labor, child-care and shared finances.

In practice, of course, these different kinds of everyday direct action combine and overlap in a myriad different ways. Building new communities, for example, could easily involve retraining habits, nonconformity and reconfiguring roles and relationships.

The value of everyday direct action lies in its immediate impact and its potential to set examples for others to follow. Each instance of everyday direct action for gender equality makes a tiny dent in the social structure constituted by the pervasive enactment of traditional gender norms. Each instance can also help to influence and inspire other people who are exposed to it to take their own everyday direct action. It does not necessarily influence others by trying to persuade them of the rightness of the cause but rather by demonstrating and recommending an alternative way of relating to others. The above list mentions just a few of the possibilities of everyday direct action. The possibilities and also the demands of everyday direct action ramify hugely when we consider the number of practices other than gender that individuals might be required by justice to challenge and change.

In arguing that people are required to take everyday direct action I do not mean to imply that they should do so either because they are morally complicit in injustice or because doing so will free them from any such complicity. Complicity is a form of attenuated moral responsibility involving contributions to collective wrongdoing. People are complicit in a collective wrong, let’s say, when they intentionally or negligently contribute by their actions to the achievement of a moral wrong even if they did not personally inflict the harm or commit the wrong and even if their particular contribution made no difference to its
occurrence.\textsuperscript{110} Structural injustice is a collective harm caused by an entire society by way of its enactment of a set of basic social practices. It is controversial, however, whether individuals are complicitously responsible for this wrong simply in virtue of their participation in the relevant practices and, if they are, whether they are all complicit to the same degree.\textsuperscript{111}

I do not try to settle this issue in this paper. I do not argue that people are all uniformly complicit in structural injustice in virtue of all helping to enact basic social practices, although this may very well be the case. And my account of everyday direct action is not intended explain how people can escape their complicity or otherwise ‘clean their hands’ of the taint of injustice, although it may well help to do so. I am concerned here primarily with the ways in which structural change can be achieved, and less with apportioning blame or responsibility for the unjust status quo. I assume only that individuals are morally required to build, support and comply with just institutions and that they are, conversely, required to undermine or exit unjust institutions. I assume that this requirement applies independently of considerations of complicity – people are required to contribute to structural change even if they are not properly deemed complicit in current structural

\textsuperscript{110} So, for example, a person is complicit in a bank robbery if they let the thieves use their empty property to store the stolen goods, even if they do nothing else to assist and do not gain from the robbery. A soldier could be complicit in a war crime if they helped plan the relevant mission but did not actually take part in it. See Kutz, 2000 especially, but also Beerbohm, 2012.

\textsuperscript{111} On the one hand, people have no real choice but to participate in these practices and so, while all of their particular participatory actions are intentional and many are voluntary, their general participation in the basic structure as a whole is not up to them. People were born and raised into basic social practices and have no choice but live in some relationship to some basic structure, even if not their original one. It might be too harsh, therefore, to hold them responsible for intentionally contributing to structural injustice. It is also inevitably difficult for anyone to understand both the real nature of their basic structure and the details of their own relationship to it, especially for people unjustly denied access to information or education. This suggests, similarly, that it may not be appropriate to hold people responsible for unjust outcomes on the basis of their negligent failure to grasp the implications of their own everyday practices. On the other hand, it certainly does seem that people sometimes can and so should discover both the overall nature and impact of their basic structure and their own contribution to its perpetuation. And, as already noted, each individual contributing is, in isolation, an intentional action, and most are not the result of direct coercion. So there are some countervailing considerations that might support the conclusion that many people are complicit in structural injustice.
injustice. I rely only on the fact that people do participate in and help to enact basic practices and so can act to help change them, and not on any further claim about their complicity or lack of it. I shall now argue that everyday direct action is an essential complement to conventional forms of political activism.

The Limits and Purpose of Activism

I shall now argue that the pursuit of justice should not and cannot be wholly mediated by practices of activism which are explicitly oriented to ‘making’ and ‘remaking’ prevailing social rules and practices. Justice must also be pursued by way of everyday direct action on the basic structure. I shall begin by first offering a general definition of activism drawn from Iris Marion Young.

Young argues that individual responsibility for justice primarily consists in publicly advocating for structural change:

‘Being responsible in relation to structural injustice means that one has an obligation to join with others who share that responsibility in order to transform the structural processes to make their outcomes less unjust.’

She further specifies that efforts to transform social structures involve organized political action:

‘Taking responsibility for structural injustice…involves joining with others to organize collective action to reform the structures. Most fundamentally, what I mean by “politics” here is public communicative engagement with others for the sake of organizing our relationships and coordinating our actions most justly. Discharging my responsibility in relation to the structural...’

112 It may be that this requirement ought to be modulated according to the degree of an individual’s complicity in injustice, although this would be implausible, I think, if it reduced the burden on someone well-situated to contribute to structural change but who happened not to be complicit.

113 Young, 2013, p 96.
injustice of homelessness might involve, then, my trying to persuade others that this threat to well-being is a matter of injustice rather than misfortune and that we participate together in the processes that cause it. We then would enjoin one another to work on our collective relationships and try to transform the necessary practices."

Young suggests that ‘to be political, action must be public’ and that it requires people to ‘organize collective action’ aimed at altering social structures. Young’s account yields the following definition of activism:

**Activism**: Organized, public, communicative, collective action aiming at structural social change.

This is a very capacious definition. It includes the full range of conventionally political public activities like lobbying, debating and protesting but also less conventional forms of political action within much smaller publics, such as secretive consciousness raising efforts among the members of a disadvantaged social group.

Activism is ‘organized’ not in the sense that it necessarily involves a formal organization, administration or bureaucracy, but in the sense that it is undertaken by people who intend to join together in the coordinated pursuit of structural change. Activism is ‘public’ in the sense of occurring in the ‘public sphere’ of the relevant community, and so potentially communicating with the entire population of a country, or every employee of a company. Activism is communicative in virtue of aiming to inform or persuade others to think and act in a certain way – this is true not just of activism that takes the form of linguistic expression but of any public act with explicit social and political aims, such as a

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114 Ibid. p 112.
115 Ibid. p 89.
116 Ibid. p 184.
117 Fraser, 1990.
blockade or an occupation. Young’s definition of activism encompasses a very wide range of activities. But my claim here is that it is still too narrow an account of individual responsibility for justice. In addition to activism, individuals are also required to promote justice in ways that are not organized, public or communicative, although they are collective: namely by taking everyday direct action.

The need for everyday direct action can be seen by considering the purpose of activism: namely that it seeks to change everyday practices. We can distinguish between two different structural goals activism might have and two ways it might seek to achieve those goals. Activists can try to change the law or to otherwise alter state institutions or it can try to alter non-legal, non-state institutions and practices such as those of public discourse, gender or culture. And they can pursue each of these broad categories of goal by two different means. Activists can seek to change the law by way of acting within state institutions, such as by trying to pass new legislation. They can also seek to change the law or otherwise alter state institutions by getting people to alter their everyday relationship to the law and the political authority of the state, such as by persuading them to break or cease enforcing certain laws. Similarly, activism can seek to alter informal, non-state practices by using the state try to influence and reshape these practices. The success of such efforts depends upon how responsive those practices are to whatever threats or incentives the state can muster and on the scope of legitimate state power - it is usually easier, for example, for the state to legitimately control public education than for it regulate the basic practices of family life. Activists can also campaign directly for cultural change rather than for a change in the law, trying to persuade people to alter their everyday practices of their own accord.

This shows that a lot of activism makes sense only as an effort to change the
prevailing norms and practices which regulate and structure everyday life, including everyday norms of legal and political authority and informal social practices such as those of gender and language. It is my contention that people are required to pursue such changes not just by way of the distinctively public, organized and communicative practices of activism but also by directly altering their everyday practices. Activism is a specialized role within a broader set of social practices. Not everyone either can or should become an activist or focus all of their efforts on activism. The efforts of activists make no sense in the absence of an audience of non-activists; people whose practices activists seek to change. These people can and should take everyday direct action to directly promote the goals that activists pursue by conventional political means.

The limitations of activism are illustrated by Jane Mansbridge’s analysis of the role of ‘everyday talk’ by ‘nonactivists’ about structural injustice. Everyday talk is, of course, a communicative activity, but it is not a form of activism because it is neither organized nor public - it is not part of an explicit, coordinated group effort to bring about structural change by persuading every member of the relevant community. Mansbridge argues that the significance of everyday talk lies in its contribution to public deliberation - to the goals of activism. I argue that, in addition to whatever deliberative, activist value it has, everyday talk and other non-communicative everyday actions, also contribute directly to structural change.

Mansbridge quotes a woman from Chicago talking about a dinner with her husbands’ more traditional family from the American South. The woman recalls that the men expected their wives to serve them their food, and that all of women, except her, initially moved to do so. When her husband asked her if she was going to serve him, she replied ‘I don’t fix your plate at home. Why would I do it here?’ Upon seeing this, the others ‘all of a sudden stopped
serving’ too and, we are left to assume, the men got their own food.\textsuperscript{118} The anecdote stops there so we do not know whether this resulted in any long term change in the practices of this family or the behavior of its members in other contexts.

Mansbridge suggests that this kind of everyday talk about gender is a ‘political act’ because and insofar as it contributes to public political deliberation. Mansbridge defends the importance of such actions by claiming that

\begin{quote}
\textquote{[e]veryday talk…is a crucial part of the full deliberative system that democracies need if citizens are, in any sense, to rule themselves…[it] prepares the way for formal governmental decisions and for collective decisions not to “decide”}\textsuperscript{119}
\end{quote}

I think that this analysis underestimates the significance of this contribution and predicates its value on a deliberative import that it can, but need not, possess. Mansbridge is surely right that, among other things, the woman’s action may have contributed to changing the beliefs and attitudes of those at the dinner and therefore influenced their future contributions to public deliberation about gender inequality. But, I argue, it need not have done so in order to make a contribution to changing the social structure of gender relations.

The woman’s intervention amounted, I claim, to a direct contribution to remaking the practice of gender. It was a form of everyday direct action. Her remark amounted to a suggestion that an alternative gender-neutral norm should be adopted in domestic life, namely the norm that everyone serves their own food. And this suggestion was, in this instance at least, apparently accepted by all participants. This is not a new norm if it only happened once, but any new norm has to start somewhere, and such changes are often proposed without ever being accepted and tried, so this contribution to remaking norms was

\textsuperscript{118} Mansbridge, 1999, p 218.
\textsuperscript{119} Ibid. p 212.
relatively successful even if it was a one-off. And even though this new norm was proposed and accepted only in the limited context of a single dinner party, the woman’s intervention was nevertheless a contribution to challenging gender norms more broadly, insofar as it highlighted one instance of the broader injustice of prevailing gender practices. The woman’s action had this direct impact on gender regardless of whether it had any further effects on public deliberation or anything else. This adjustment constituted a tiny, momentary change in the vast structure of gender relations. It is only by way of innumerable such changes that these relations could be wholly reorganized.120

The importance of everyday action can be usefully compared to the passage of legislation that coercively enacts a significant and widespread change in social practices. Compared to this, an instance of everyday direct action makes a negligible difference to social norms. This might be thought to show that everyday direct action is a trivial and inevitably second-best mechanism for social change. This objection assumes an overly simplistic account of legislative change and of individual contributions to any structural reform, including activist efforts. The passage of significant legislation is usually a climactic moment in long campaign. The success of such campaigns is far from guaranteed; many never gain any traction and quickly disappear. Everyday direct action will usually involve a

120 Mansbridge herself is, I think, sensitive to this point, as is illustrated by some remarks that are in tension with her claim that everyday talk is valuable primarily as a contribution to public deliberation. One sign of this tension comes in the quote above where Mansbridge notes that not all public deliberation ends with formal government decisions - sometimes the public decides that the government should not intervene in a particular context. Implicit in Mansbridge’s account of everyday talk about gender is the fact that a public’s decision not to make a formal governmental decision does not equate to a decision to retain current informal practices unchanged. Rather it is sometimes a decision to pursue structural change by non-governmental means - to pursue it instead by way of social activism and, I contend, by everyday direct action on the basic structure, such as this woman’s intervention with her sexist family. Mansbridge alludes to this process of non-governmental, structural change, but does not explore its implications. She notes that the result of successful attempts to remake cultural norms is that ‘many people…begin changing their lives…’ of their own accord (Mansbridge, 1999, p 220).
similarly long term effort by many people and with similarly nebulous chances of ultimate success. The main difference is that it never results in a clear moment at which it can be said that a structural change has been implemented and, indeed, its impact and progress are very difficult to measure at all.

Similar considerations apply to the value of individual instances of everyday direct action. Campaigns for political change will usually require the contributions of many people such that, as with all large scale collective actions, the contributions of each person make only a negligible difference to the eventual outcome. The same is true of everyday direct action. When one man succeeds in having one conversation where he treats his female interlocutors with equal respect he makes only the tiniest, most insignificant dent in prevailing gender practices. His contribution increases as he repeats this in more and more conversations and the dent grows larger as more and more men do the same thing. Ideally, enough people will make similar efforts, perhaps some of them inspired by his example, such that, eventually, gender relations are transformed across all of society. A particular instance of everyday direct action is, we should conclude, no more or less inherently pointless or worthwhile than a single vote or any other individual contribution to a social or political campaign.

**Objection: too individualistic or too easy**

I suggested above that everyday direct action differed from activism in virtue of not being public, organized or communicative but suggested that it was like activism in being a form of collective action. This might seem implausible in light of the examples offered above, particularly that of an individual who privately retrains their sexist conversational habits,
which seems an obviously solitary activity. This gives rise to a worry that everyday direct action is too individualistic and is insensitive to the importance of people joining together to take collective action to further the cause of justice. At worst, it may even seem to allow people to take the easy way out, adjusting some of their private choices without ever taking on the often significant costs of, say, public non-conformity.

This objection is best rebutted by recalling that the basic structure is itself a form of collective action despite not being always being explicitly coordinated and organized by its participants. The basic structure is collective because people are motivated to comply with and enforce its norms in large part by the fact that those norms are complied with and enforced by everyone else in their society. Its participants share mutual beliefs and expectations and all recognize and respond to the same social reasons, namely the implicit and explicit reasons that lead them to enact their particular basic practices (including ‘unjust’ motivating reasons that cannot be justified to all participants).

Individuals contribute to and participate in this collective action whenever their actions are responsive to the relevant social reasons. This includes, most prominently, all instances where they interact with at least one other person and rely upon and perpetuate shared understandings of prevailing norms. But people also respond to these social reasons and participate in these practices when they do not interact with others, such as when they get dressed in the morning in clothes suitable to their gender role, or when they pay for goods in a store rather than stealing them. Indeed, his is the case with collective action more generally, including organized activism - the activist who sits at home alone stuffing envelopes for a mailshot is surely still participating in an organized, collective and public activity. The same applies to everyday direct action. It is collective in virtue of its aims,
namely to alter prevailing social rules, and the reasons it responds to, namely the reasons underlying current practices and those that ought to motivate more just alternative practices. This rebuts the charge that everyday action is, in general, too individualistic, but the worry can be reformulated so as to draw a helpful distinction between more and less worthwhile forms of everyday direct action.

Rather than suggesting that everyday direct action is too individualistic, the worry now is that it is too easy, perhaps even self-indulgent. I shall respond to this worry by returning to the popular paradigm of what I call everyday direct action, namely ethical consumerism. I distinguish ethical consumerism from activist consumerism, such as organized boycotts, which are a form of organized and public, communicative direct action, and hence a form of activism. Ethical consumerism need not be organized or public and need not involve any communication – it is a form of everyday direct action on the economic structure.

It is my contention that, in themselves, economic decisions informed by considerations of justice are, in general, both relatively easy and relatively less effective contributions to structural change than forms of everyday direct action that involve interpersonal challenges prevailing norms. Shopping is an economic practice that is part of an interlocking system of practices that include, among others, practices of production and cultural norms of consumption. Ethically informed economic choices do nothing to alter the practice of shopping. Ethical consumption choices make a tiny material difference to the distribution of resources within productive practices and, potentially, help alter the structure of the market. This is not without value, but it is not necessarily all that significant. The

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121 It is criticized by Hussain, 2012.
practices of private property have a purposefully deracinating effect on the richly purposeful motivations that go into particular economic choices, translating the complexity of peoples’ productive efforts and their material needs, desires and potentially ethical intentions into a much simpler structure of money, prices and transactions. Because of this, it is difficult to use economic decisions alone to communicate, promote or defend any particular evaluative stance or strategic goal – their meaning is too easily lost among the numbers on a balance sheet.

Moreover, purchasing decisions do nothing in themselves to challenge prevailing cultural norms of material consumption. These norms grant individuals an extensive permission to spend their money however they like without being held directly accountable for their economic decisions – we don’t tend to watch each other shop or require each other to recount and defend our purchases. There are presumably some communities where making proactively ethical consumption choices is stigmatized and sanctioned e.g. where being a vegetarian is regarded as suspicious, elitist and rude. But it is vital to notice that these norms are enforced only in the course of some interpersonal interaction related to, in this case, food consumption. They are not enforced at the moment when food is bought but when a meal is shared. So merely refraining from buying meat has no impact on these informal norms of consumption unless the person concerned actively confronts others with their choice and, more generally, with their condemnation of the relevant practices of food production and consumption. But this confrontation and condemnation can occur regardless of whether the person involves also shops ethically. The rhetorical force of their defense of vegetarianism may well be blunted if they are known to also buy and eat meat. But it need not be – their apparent hypocrisy might
be justified by structural constraints they face, such as lack of access to reasonably priced and nutritious vegetarian food.

These remarks are hardly sufficient to decisively evaluate ethical consumerism and, to reiterate, I agree that it is a form of everyday direct action and so can have some impact on the basic structure. Moreover, there can be more to ethical consumerism than simply buying different things; it can also involve, for example, developing a more personal relationship with the people who produce and sell the things you buy. But the above discussion does illustrate an important point about the requirement to engage in everyday direct action.

If my critique of ethical consumerism is close to the mark, it suggests that individuals may not be permitted to discharge their responsibility for justice only in the course of actions that they undertake alone, rather than in the course of their interactions with others, because such solitary efforts are, in general, less effective ways of acting on the basic structure. People should avoid taking the path of least resistance in their everyday direct action, flouting and challenging prevailing unjust norms only in contexts where this is not too socially costly for them. A gender example may help clarify this point. A man can probably contribute to remaking gender practices by dressing up as a woman in the privacy of his own home. He may thereby help to positively reshape his own character and, ultimately, his own interactions with women and gender non-conforming people. But he could likely achieve these same effects and a vast amount more if he also cross-dressed in public, thereby confronting others with his own refusal to comply with prevailing norms. This would, of course, likely be much more costly for him. I shall now consider the objection that everyday direct action is, in general, too costly – that it demands too much
from people.

How demanding is structural injustice?

The requirement to engage in everyday direct action seems likely to pose a significant threat to peoples’ most basic values and character traits and so to threaten their identity and their integrity as persons. It has been argued that moral requirements are incoherent and self-undermining if they require people to sacrifice their identities. I shall first describe the extent of this demand and note the inclusion of a limited personal prerogative that gives people some latitude to mitigate its force. But I shall argue that in many cases the demand cannot be avoided, because unjust desires have no moral standing. Justice does require people who are formed unjustly to pursue an ethical transformation: to abjure the goods of structurally unjust social practices and participate in everyday direct action. I shall contrast this demand to the more traditional problem of demandingess before laying out some important distinctions that help to establish an initial framework for evaluating individuals’ everyday contributions to structural change.

In his brief remarks on the ‘natural duty of justice’ Rawls suggests that it

‘…requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.’122

I assume that the requirement to ‘further’ just arrangements equates, roughly speaking, to a requirement to do the opposite of ‘supporting and complying with’ unjust institutions – it requires people to undermine and flout them. My aim in this chapter is to show that people

ought to do so by way of everyday direct action. This duty of justice applies to anyone who participates in a basic structure, regardless of whether they are complicit in or to blame for its moral character. This reflects the fact that ‘natural duties’, as Rawls understands them,

‘…apply to us without regard to our voluntary acts…have no necessary connection with institutions or social practices; their content is not, in general, defined by the rules of these arrangements…[and] hold between persons irrespective of their institutional relationships…’123

People are morally required to contribute to structural change in unjust circumstances regardless of the details of our own position within a basic structure or any voluntary choices we may have made to try and renounce or distance ourselves from moral responsibility for its character. People are only required to further just institutions insofar as this is not too costly: this introduces the important idea of a personal prerogative to flout applicable moral requirements to some limited degree.

The idea of a personal prerogative has been specified by Samuel Scheffler. Scheffler defends a personal prerogative which ‘would allow each agent to assign a certain proportionately greater weight to his own interests than to the interests of other people’124. Such a prerogative creates some space for individuals to maintain a measure of integrity as agents while complying with the demands of morality. But how much space does this prerogative create within the demands of justice and what is the structure of the personal prerogative? How much latitude do individuals have to perpetuate unjust practices in order to preserve their identities and pursue their projects unaltered and what criteria should determine its precise scope?

123 Ibid.
The most obvious worry with the idea of a personal prerogative, both in general and in this particular case, is that it gives individuals carte blanche to retain and pursue immoral ends. This is particular pressing in the case of structural injustice, because of the likelihood that people in unjust societies are formed unjustly and that, as Rawls suggests, forms of life that are incompatible with justice have no moral standing. I shall now describe in more detail the extent to which people can be formatively influenced by unjust basic practices.

Basic institutions and practices play a significant role in determining the identities, characters, values and desires of their participants. This makes it very likely that most people in unjust societies are in some respects ‘formed’ unjustly. Unjust gender norms, for example, play a very significant role in the identities of most people. Basic practices of gender can form individuals in at least the following three ways.

_Desires and Values_
Ongoing participation in social practices causes participants to develop desires and values that accord with the values they are exposed to and the incentives and options available to their social position e.g. to simplify somewhat, men are more likely than women to come to value and pursue stereotypically male roles such as doctor or lawyer, while women are more likely to prefer traditionally female roles, such as teacher or nurse.

_Traits and Habits_
Participation in social practices also has a general impact on peoples’ character traits and habits, by disciplining and training them to feel, think and act in particular ways in any and all contexts. For example, the characters and habits of men and women can be significantly shaped by gender practices that treat men as socially dominant and require them to live up to this standard, while women can also internalize and be come to identify with expectations that they will be more passive and submissive.

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125 It is worth clarifying a potential ambiguity in the idea of people being ‘formed’ unjustly. This idea might be thought to highlight the causal history of peoples’ traits and desires – to point out that they come to have these desires as a result of the unjust practices they live in. This causal claim may or may not be true in particular cases but it is not directly relevant to the issue at hand. I am concerned with the _content_ of people’s desires and traits rather than their causal history.
Roles and Relationships
Some social roles and relationships are defined and individuated by the norms of gender. This means both that they are likely to be dominated by people of a particular gender and that anyone carrying out these roles has to meet gendered standards of performance. For example, the social role of doctor might be thought to reflect and reproduce masculine norms of paternalist domination. This might partially explain why it is kept distinct from the more caring, feminine role of nurse.

The severe demandingness of the requirement to engage in everyday direct action structural injustice lies in the conjunction of the formative influence of the basic structure with the familiar point that morality does not protect immoral desires and interests. Rawls, for example, explicitly avers that

‘…desires for things that are inherently unjust, or that cannot be satisfied except by the violation of just arrangements, have no weight. There is no value in fulfilling these wants and the social system should discourage them.’\textsuperscript{126}

This implies that individuals’ personal prerogative cannot give people carte blanche to retain and pursue essentially unjust desires, traits and relationships simply because giving them up would be costly – these costs are morally irrelevant. This suggests that the demands of structural injustice are very severe indeed. Rawls himself briefly alludes to this issue:

‘The beneficiaries of clearly unjust institutions (those founded on principles which have no claim to acceptance) \textit{may find it hard to reconcile themselves} to the changes that will have to be made. But in this case they will know that they could not have maintained their position anyway.’\textsuperscript{127}

The requirement to engage in everyday direct action allows us to make this more precise.

Recall the typology of everyday direct action from the beginning of the paper: retraining

\textsuperscript{126} Rawls, 1999a, p 230. See also p 27.
\textsuperscript{127} Rawls, 1999a, p 154, my italics.
habits and traits, building new practices and communities, refusing to conform and reconfiguring roles and relationships. The formative role of the basic structure makes it seemingly unavoidable that people who undertake everyday direct action will have to abjure some of their fundamental interests and traits.

To see how demanding this might be, note that, if gender practices are unjust, then occupying and performing a traditional gender role, namely man or woman, seems to be predicated upon and to perpetuate this injustice and so to have no moral standing. Justice would seem to require that people abjure or alter all practices associated with traditional gender roles and thereby fundamentally alter almost everything about themselves and how they relate to the world – their clothing, gesture and posture; the way they talk and listen to others; their emotional reactions; and even their ambitions and roles, insofar as these are inherently gendered. The demands of injustice only become more onerous when we consider the full range of norms and practices which are similarly formative and also very likely unjust, such as those of class, race and nation.

The full extent of these demands is further highlighted by the fact that they also apply to people who are disadvantaged by unjust practices. Those who are structurally disadvantaged intentionally contribute to and are formed by unjust practices to the same extent as those who benefit from injustice. More generally, basic norms of property, class, gender, race and nation are all complied with, monitored, maintained and enforced by the occupants of disadvantaged positions within these practices just as much as by those who are better off – by poor people, women, people of color and citizens of historically colonized nations. Norms of gender are not imposed on women by men but are, rather, enacted equally by men and women, even though the goods of this practice are not distributed
equally among those who enact it.

This means that the requirement to engage in everyday direct action applies with just as much force to structurally disadvantaged people as to the beneficiaries of injustice – women are as responsible as men for challenging and dismantling men. This is an important point not just because it is somewhat counterintuitive but because it highlights the moral significance of what James C. Scott calls the ‘weapons of the weak’ and Vaclav Havel calls the ‘power of the powerless’.\(^\text{128}\) This refers to the ability of those who are ostensibly deprived of power and voice by prevailing practices to nevertheless contribute to changing those practices both by way of activism and everyday direct action. These include, for example, the worker who undermines his boss’s authority without explicitly flouting it by, for example, displaying sarcastically exaggerated deference or thinly concealed disdain. On the other hand, the fact that the demands of structural injustice apply equally to the victims of injustice seems to be deeply unfair, amounting to a kind of double punishment – requiring them to give up whatever of value they managed to glean from their misfortune.

There are some basic practical constraints that serve to somewhat reduce the demands of structural injustice. For example, it is presumably beyond most people’s ability to transform themselves instantly and so they are perforce permitted to retain their unjust desires and traits for the period of time required to abjure or alter them. Similarly, people cannot take everyday direct action when they are unable to know enough about the character of their basic practices to know that or how they are unjust or what it would take to change them. This presumably applies to infants and people suffering from severe mental illness or developmental disability. It also applies to people who are unjustly denied access to

information or education, such as people living under a highly authoritarian regime which coercively prevents them from learning about their own society. Examples might include current citizens of North Korea and American chattel slaves. This is not to say that such disadvantaged people are ignorant of their own particular plight – which is unlikely – or that they are necessarily incapable of understanding their broader social context. But any who are involuntarily ignorant of structural injustice are not responsible for taking everyday direct action.

Further practical constraints reflect the considerations discussed in the previous chapter concerning the selection of a particular community of practice as the relevant domain or site of social justice and injustice in any particular case. It is, I assume, generally desirable that people focus their efforts on those communities and injustices they are best positioned to influence and whose injustices are most urgent, whether this is their family, their workplace, their nation or the whole human race. This does not equate to a permission to focus only on the least onerous forms of everyday direct action and, of course, it is likely that efforts in one community, like a family, will also have some impact on those communities with which its practices overlap, such as a nation.

These practical constraints, however, merely give some more precise form to the demands of structural injustice; they do not significantly reduce their extent. This raises the worry that this requirement is simply too demanding and therefore incoherent or self-undermining. This kind of objection to onerous moral requirements was famously developed by Bernard Williams. Williams argues that morality cannot be strictly impartial because it must recognize and defer to the special relationship that each person has to their own identities. As Williams puts it:
‘…my present projects are the condition of my existence, in the sense that unless I am propelled forward by the conatus of desire, project and interest, it is unclear why I should go on at all.’

Williams argues that the necessity of some measure of personal integrity undermines moral theories that propose impartial standards for the evaluation of actions, such as, most famously, act-utilitarianism, because such theories require people to treat their own deepest concerns as no more or less important than anyone else's or as mere sources of utility. Williams contends that

‘It is absurd to demand of such a man…that he should just step aside from his own project…it is to alienate him in a real sense from his actions and the source of his action in his own convictions…this is to neglect the extent to which his actions and his decisions have to be seen as the actions and decisions which flow from the projects and attitudes with which he is most closely identified. It is thus, in the most literal sense, an attack on his integrity.’

Moral requirements that are wholly insensitive to the special relationship between people and their own concerns are Williams suggests, self-undermining. They are justified by the concerns of persons while being simultaneously insensitive to the nature and significance of personhood, which necessarily involves a foundational set of values, commitments and identifications. The requirement to undertake everyday direct action seems to fall foul of this objection when it requires unjustly formed individuals to abjure traits, desires and roles that are foundational to their sense of self and to their deepest projects and commitments on the ‘impartial’ grounds that they are predicated on unjust social practices.

My initial response to this concern is to stand firm and insist upon the severity of the

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130 Smart and Williams, 1973, pp 116-117.
demands of injustice. People who participate in and are formed by unjust institutions and practices are required to pursue at least a limited ethical transformation when this is required in order for them to do their part in contributing to structural change and the pursuit of justice. People are not, in general, permitted to retain and pursue unjust traits and desires simply because these are significant to their sense of self. Rather, such people are required to change who they are and the way they live. This is the unavoidable and unfortunate upshot of being born and raised into an unjust society. The stark reality is that we must aim for a society in which people like us no longer exist.

There is, moreover, reason to doubt that the requirement to pursue an ethical transformation is entirely incoherent in the sense Williams has in mind. It seems possible for people to be persuaded of the injustice of their society and of their own character and to be thereby motivated to pursue the ethical transformation involved in taking everyday direct action to reform their basic structure. If people are fundamentally committed to justice, as they ought to be, then they are not thereby alienated from all of their most fundamental concerns. Rather, they identify with one of their desires and, in virtue of doing so, repudiate many of the others.

This echoes a familiar line of response to Williams’ objection on behalf of act-utilitarianism, which suggests that the worry dissolves once people take up the maximization of utility as their fundamental project. This defense of act-utilitarianism is not, I think, wholly plausible. Williams’ objection is, I think, that people who were fundamentally committed to the principle of utility would no longer be persons because they would have a detached and wanton relationship to whatever commitments and desires they found themselves with at any particular moment. Committed act utilitarians would have to be ready
to abandon or alter their other fundamental concerns at a moment’s notice, whenever the utility calculus meant that they could bring about better outcomes by doing something else. This wanton attitude is not compatible with these really being fundamental concerns. The only thing a committed act-utilitarian really cares about is maximizing the overall good; they regard themselves solely as a causal conduit for the promotion of utility. Williams objection, I take it, is that this is incompatible with being a person at all. Given my doubts about this response to the demandingness objection as it applies to act-utilitarianism, it is worth explaining why I am less concerned about a making similar response in defense of the demandingness of structural injustice.

The standard problem of moral demandingness is generated by the iteration of small, seemingly undeniable moral requirements, such as the duty to provide aid to others in an emergency when doing so costs little. The problem arises when and because there are always so many people we could help in this way that these iterated demands threaten to swamp the whole lives of those they apply to. The demandingness of structural injustice differs from this traditional problem in some important respects. Firstly, only structural injustice requires people to abjure their formative practices. If basic structures were just and people were justly formed, there would be no problem of demandingness. This suggests that, whereas act-utilitarianism, for example, may be essentially incompatible with personhood, structural injustice is only contingently so.

Furthermore, structural injustice is demanding regardless of whether justice is itself substantively demanding, whereas the traditional demand relies on morality having a specific content. Injustice is demanding because it is hard to change basic practices at all, whether or

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131 Symmetrical problems can be generated by rights and virtue based moral theories. See Chapell (ed.), 2009.
not the required change is very drastic or the new rules are hard to follow. This lends further support to my claim that injustice is not inherently incompatible with peoples’ status as persons because it suggests that the demandingness of structural injustice is grounded primarily in sociological facts about the formative impact of basic practices and not in any substantive theory of justice. Williams’ argument is directed primarily at theories of morality and so does not provide any direct ammunition against a demanding moral requirement grounded in contingent social facts rather than substantive moral principles. A third and especially significant difference between the demands of structural injustice and the traditional problem of demandingness provides the foundation for the partial amelioration of the former demands.

*Essentially and contingently unjust desires*

The traditional problem of demandingness directly threatens people’s interests by requiring them to impartially weigh these interests against those of other people. The demands of justice, by contrast, apply directly only to peoples’ contributions to basic institutions and practices and so only indirectly threaten their interests insofar as these are in various ways dependent upon unjust practices. This indirectness opens up the possibility that people can reconfigure and revise their desires, roles and relationships so as to disentangle them from unjust practices, thereby taking everyday direct action on the basic structure without sacrificing their deepest concerns and identifications.

The demandingness of structural injustice can be ameliorated somewhat by distinguishing between *essentially* and *contingently unjust* desires, traits and roles.
**Essentially Unjust:** A person’s value, desire, trait, relationship or role is essentially unjust if it is a desire to possess, maintain or pursue roles, rights, resources, status or esteem attached to a position in an unjust practice. For example:
- A man’s desire to arbitrarily dominate women, exploiting his unjustly advantaged position in the practice of gender.
- A wealthy American parent’s desire to secure an unjust advantage for their child, such as by sending them to a private school, thereby utilizing their unjust position within domestic economic practices.
- A relatively well-off person in the developing world’s desire to enjoy a high level of material comfort and to consume luxury goods, also exploiting their unjust position within global economic practices.

**Contingently Unjust:** A person’s value, desire, trait, relationship or role is contingently unjust if they do or can most easily pursue it by way of unjust practices, but it is not a desire for an unjust structural good. For example:
- A man’s desire to be consensually served by women.
- A wealthy American parent’s desire to the best they can for their children.
- A relatively well-off person in the developing world’s desire to consume the minimum level of resources necessary to participate in social life in their community.

Essentially unjust desires have no moral standing whatsoever and must be abjured – they are desires for the goods of structural injustice. Contingently unjust desires, on the other hand, seek goods that are not inherently unjust but which are most likely to be and most easily pursued by making use of unjust structural goods. This suggests that people with contingently unjust desires can retain their fundamental interests by working out how to pursue them without utilizing the goods of unjust practices.

The distinction between essentially and contingently unjust personal interests can ameliorate the demandingess of structural injustice, although it requires individuals to undertake the independently challenging tasks of evaluating their own motives and reconfiguring their practices. The examples noted above deliberately highlighted the substantive similarity between essentially and contingently unjust desires, although I shall,
again, focus on the gender case. It will not always be immediately transparent to a man, for example, whether he wants to exploit his masculinity to arbitrarily dominate women or simply wants women to consensually serve him within an otherwise egalitarian relationship. There are likely some contexts where a desire to be served cannot be appropriately pursued at all, such as in interactions with strangers or in the workplace. And we may think that it speaks ill of someone’s character if they desire to be served and never to serve others. But being a flawed and unpleasant person is not the same as being inherently unjust and it is, anyway, less obviously unethical for a man to desire to be served by women in certain specific contexts, such as sex.

A man who, upon reflection, finds that he desires to engage in consensual sexual domination of female partners, can take steps to ensure that he pursues this desire without heedlessly engaging in arbitrary, gender-based domination. Prevailing norms of sexual interaction are, I assume here, biased towards male desire and include an implicit threat of violence as a sanction for women who do not do as they are told. These norms mean that women are more likely to submit to sexual contact and engage in activities which they do not desire but which are desired by their male partners. This background of unjust gender norms means that men who innocently desire consensual sexual dominance risk arbitrarily dominating their female partners if they pursue this desire without heeding their structural context within prevailing gender practices. But if they do heed it, they can take proactive steps to avoid acting unjustly, such as by proactively seeking explicit advance consent for any sexual activity and making it as clear as possible that they do not desire their partners to do anything they are not entirely comfortable with. Moreover, when they do so, they help to implement new norms of sexual interaction and so undertake everyday direct action on the
normative structure of gender relations. This kind of reconfiguration is not always easy and is likely to require considerable creativity and flexibility, in addition to the challenges people face in interpreting the precise content of their own deepest desires, traits and roles. But it does serve to somewhat ameliorate the demandingess of structural injustice.

The distinction between essentially and contingently unjust desires can also partially illuminate the structure of individuals’ personal prerogative, which permits people to continue participating in unjust practices when the alternatives would be too costly. While the cost of sacrificing essentially unjust desires have no weight at all in this context, contingently unjust desires can sometimes justify continued injustice. It is not always possible for people to reconfigure their practices so as to pursue such desires without perpetuating injustice. A wealthy American parent who desires to do the best they can for their children may reasonably conclude that there is no adequate alternative to paying for private education – that they cannot satisfy this desire at all without utilizing their unjust structural advantages. This may be quite hard to establish but, if it is really the case, the parent’s personal prerogative probably permits them to pay for private schooling rather than betray their commitment to their children.\(^{132}\) This leads naturally to another, final, parameter by which individuals’ contributions to structural change can be evaluated and to the worry that the requirement to engage in everyday direct action is unfair to the victims of injustice.

\textit{Ill-gotten gains and making the best of a bad lot}

The example above suggested that wealthy parents might enjoy a prerogative to exploit their class privilege in order to promote only contingently unjust desire to do the best they can for

\(^{132}\) See Brighouse and Swift, 2009 for a defense of this analysis.
their child. Whatever we think of this conclusion it is, I think, intuitively much more plausible that a working class child who wins a scholarship to an elite private school is permitted to make the most of this opportunity, despite the fact that they thereby seek to benefit from unjust structural inequalities in the education system. This intuition can be explained in light of a further principle that structures peoples’ personal prerogative to act unjustly.

*Relative Advantage.* People who are unjustly positioned within a practice have a relatively broader prerogative to take as much advantage of it as they can.

To further illustrate this principle, consider a man and a woman preparing to interview for their dream job, a job central to both of their personal commitments. The person interviewing them is a notorious chauvinist. All else being equal, the principle of relative advantage suggests that the woman has a greater prerogative than the man to make use of unjust gender norms in order to win favor with the chauvinist interviewer. The male candidate enjoys a greater share of the structural goods created and distributed by the practice of gender – he is relatively advantaged within this practice. This means, I suggest, that he enjoys less scope than his female counterpart to play up to the interviewer’s chauvinism, such as by engaging in ribald, sexist banter – because to do so is to exploit the ill-gotten gains of masculinity. The woman, on the other hand, has greater latitude to exploit her femininity for all it is worth, because she is unjustly disadvantaged by the very sexist gender norms she thereby seeks to turn to her advantage. She may decide to dress in a sexually provocative manner or flirt suggestively with the interviewer, if she believes this will help her get her dream job. She does not thereby exploit any ill-gotten gains but, rather, makes the best of an unjustly bad lot.
In practice, of course, most people enjoy a complex combination of unjust advantages and disadvantages because they occupy positions in a multitude of practices, including race, class and nation and many others in addition to gender. White women, for example, enjoy the unjust advantages of their race but are disadvantaged by their gender. This complexity opens up more space for many people to respond to the demands of justice without being thoroughly alienated from their own identities, traits, desires and roles. It leaves only those in the most structurally dominant social positions with very little latitude to pursue their desires unchanged - particularly the white, male, wealthy citizens of highly developed nations. The best that such people can do is to creatively adjust their identities and desires, rather than sacrificing them entirely, and seek to use their unjust advantages to promote structural change.

Conclusion

In this chapter I have argued that individuals can and should further social justice by way of everyday direct action - quotidian actions that remake, flout or undermine unjust rules and norms. This is likely to require many people to pursue at least a limited ethical transformation, as they abjure and alter identities, traits, desires and roles that are formed by or dependent upon injustice. A final objection to my insistence on the requirement to undertake everyday direct action is that it is unduly moralistic in its desire to tell people that their lives, indeed their very selves, are impermissibly unjust. There is an important sense in which I embrace the charge of moralism. Social justice, despite its focus on institutions and social structures, inevitably has significant ethical implications for how individuals should live, especially in actual, unjust circumstances. The traditional philosophical focus on
activism is, I think, unhelpfully squeamish in its refusal to condemn as immoral the
characters, desires, roles and relationships of people who are formatively influenced by the
unjust social practices in which they grow up and live their lives. A significant implication of
the requirement to undertake everyday direct action is that people who fail to do so, or who
refuse to be held accountable for their everyday choices, should be subject to the full range
of available negative reactions: blame, shame and social sanctions.
Conclusion: Rescuing Liberalism…from Itself?

In this brief concluding note, I shall argue that the everyday practice account of the practical domain of justice may have the resources to resolve a deep tension within liberal theories of justice by detaching their attractive focus on individual freedom from their implausible focus on the state as the sole agent of justice.

For my purposes here, liberal theories of justice have two defining features:

1) The State: A just distribution of the benefits and burdens of social life is to be secured only by the state e.g. by protecting individual rights and by taxing and redistributing wealth.

2) Freedom: Individuals are morally free and should be socially free to pursue any values they find meaningful within the constraints established by legitimate law.

The tension within liberal theories of justice arises in virtue of the fact that they seem to leave people free to unjustly constrain each other’s freedom and unjustly shape distribution in the course of legally permissible actions. People can, for example, use their freedoms of speech and association to create and perpetuate informal social hierarchies that systematically and unfairly exclude some members of society, such as women, immigrants or people of color, from desirable social roles and other goods. Or they can, as G.A. Cohen famously charges, exploit their fortunate possession of socially valuable abilities to demand more than their fair share of resources, by refusing to perform valuable social roles without special incentives and rewards. 133 This seems to be straightforwardly incoherent: liberal theories endorse values in one domain, the state, while simultaneously endorsing the right of individuals to undermine those same values in their everyday lives.

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In light of these possibilities, liberal theories of justice seem to be fatally incoherent: their normative theory of justice, which requires all citizens to enjoy equal rights, is incompatible with their normative theory of social regulation, which permits citizens to deny each other equal rights. One option is to give up on the claim to offer a theory of justice and settle instead for the less ambitious aim of providing an account of legitimate, but potentially unjust, social order. Another option is to suggest that, while people should not be subject to judicial or informal sanction for acting contrary to liberal values in their everyday lives, they nevertheless ought not to do so. In other words, this response denies that individuals are morally free to act as they please in everyday life within the constraints of legitimate law and argues that liberal justice includes a substantive principle of personal ethics that individuals ought to abide by in their everyday lives. Neither of these is an attractive option. The first drastically reduces the interest of liberalism as a normative ideal of social life. The second sacrifices its most attractive feature, namely its attempted reconciliation of justice with ethical pluralism - the idea that a society can be just despite or even because its members are free to pursue a diverse range of values in their everyday lives.

It is my contention that the everyday practice account has some resources that can help resolve this tension by abandoning the traditional liberal focus on the state. This is, of course, not a trivial change and it may mean that the resultant view does not qualify as liberal at all. But I have no special attachment to the term and I think that the proposal has independent merit, regardless of its liberal bona fides. I shall illustrate this response by returning to the debate over Cohen’s incentives argument and the key example of self-interested occupational choices.
I shall use the everyday practice account to reframe this debate in terms of the sociological status of patterns of individual partiality and the extent to which liberal freedoms require informal norms of privacy or, as I call them, *prohibitions on criticism*. I invoke the views and arguments of Rawls and Cohen throughout this section but I am less concerned with interpreting and evaluating their specific arguments than with the broader problem these arguments explore – the extent to which liberal forms of institutionalism are necessarily tolerant of private selfishness and other forms of everyday injustice.

I assume that individuals ought, as a matter of justice, to enjoy an equal right to freedom of occupation. I also assume that individuals enjoy a personal prerogative permitting them to weigh their own interests above the impartial demands of justice, at least to some limited degree. Both of these assumptions are shared by Rawls and, more importantly, by Cohen too. Cohen’s embrace of a personal prerogative means that he accepts that some incentive-based inequalities are justified, even if they are incompatible with equality.134 Sometimes individuals will demand extra incentives to take on socially valued roles not because they are selfish market-maximi zers but because taking on the role requires them to sacrifice some morally legitimate personal interest, such as relationship with a loved one. Cohen accepts that this is permissible.

I shall also assume that Rawls does, in fact, require that individuals manifest an ‘ethos of justice’, meaning that they are motivated in their everyday lives directly by justice and not solely by the sanctions and threats built into their institutions. And while it is undoubtedly true that Rawls’ specification of this ethos or ‘sense of justice’ is fragmented

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and somewhat unclear, I shall also assume that he does not endorse an ethos of capitalistic
greed and acquisitiveness or unconstrained market-maximizing behavior.\textsuperscript{135}

These assumptions serve to significantly narrow the gap between Rawls and Cohen
on incentives. Rawls and Cohen can now be seen to agree on the following points:

1. It is unjust for societies to coerce people into particular roles or permit them to
be so coerced by their fellows.
2. It is unjust for societies to enact and perpetuate a culture of greed.
3. It is unjust for individuals to act solely out of self-interest in their economic
decisions.

The first point implies that societies ought to create and equally distribute an individual right
to freedom of occupational choice. This does not mean, of course, that there should be no
rules directly or indirectly constraining such choices but that these rules must create and
protect a significant sphere of choice within which individuals will not be coerced to either
abjure or pursue any particular career. This freedom will be indirectly constrained by
whatever institutions, norms and other forces determine the availability of particular social
roles – it is, for example, quite difficult to make a career as a blacksmith in a modern
economy, even though there is no law against doing so.

The individual right to occupational freedom will presumably be constrained by laws
prohibiting certain occupations, such as assassin, and must be protected by laws prohibiting
most kinds of public and private coercion – slavery, economic conscription and the like.
This also rules out as unjust informal norms and cultural practices that have a similarly
constraining effect. For example, a society might informally perpetuate a caste or class
system by way of cultural norms requiring children to pursue the same careers as their

\textsuperscript{135} Although Cohen certainly accuses Rawls of endorsing such an inegalitarian ethos, this is, as others have
pointed out, a rather implausible reading of Rawls’ text. For an especially clear rebuttal of Cohen’s
interpretation, see Scheffler, 2006.
parents. Such norms could co-exist with formal legal protection of the right to occupational freedom but would constitute this right such that it is ultimately distributed unjustly. This is the kind of injustice that liberal theories struggle to deal with due to their governmental conception of the domain of justice, but it is no problem for the everyday practice account.

The second point implies that societies should not enact an explicitly inegalitarian ethos – one that lauds and fosters greed and selfishness. This leaves open the important further question as to what informal norms of occupational choice are positively required by egalitarian justice. Similarly, the third point implies that individuals are required by justice to abjure pure market-maximizing behavior but does not explain how they are to balance the demands of equality with their legitimate (i.e. non-selfish, non-greedy) personal prerogative. A significant contribution to filling this latter gap has been made by Michael Titelbaum, who develops an account of a Rawlsian ‘full ethos’ of justice.\(^{136}\)

Titelbaum argues that a Rawlsian ethos of justice would permit individuals significant productive latitude to make occupational choices that do not maximize the resources enjoyed by the least well-off, because it would include a correlate of the first principle of justice and assign it lexical priority over distributive considerations. The first principle assigns rights and liberties in order to secure individuals’ freedom to revise and pursue a reasonable conception of the good. The lexical priority Rawls assigns to this principle means that it cannot be sacrificed for the sake of gains in efficiency or equality. With respect to a social worker who prefers to work in his home town than in a more socially deprived area where he could make more difference, the ‘full ethos’ implies that both the social worker and the least well-off would agree,

\(^{136}\) Titelbaum, 2008.
‘...that it is more important that the social worker choose his job on the basis of personal commitments central to his plan of life than it is that the worst-off individual's economic prospects be improved.’\textsuperscript{137}

Titelbaum’s proposed ethos of justice would permit individuals to make inegalitarian occupational choices to the extent that doing so was genuinely necessary to the development and pursuit of a reasonable conception of the good – such as the social workers’ desire to live in their home town. In this case the difference principle might enjoin the payment of additional incentives to the social worker to, say, allow them to commute from their home town to a more deprived community. This is, I think, broadly in line with Cohen’s endorsement of a limited personal prerogative.

But Titelbaum also notes that this productive latitude would not be unlimited and would properly be restricted only to those choices that are both necessary to the pursuit of an individuals’ partial ends and serve ends that are part of a reasonable conception of the good:

‘There will be occasions on which an individual has some desire to make a productive choice beneficial to his personal interests, yet his full ethos moves him to set aside those interests in favor of the option that best benefits society’s worst-off. A doctor motivated by a full ethos might hold out for a higher salary so he can buy a car large enough to fit his family, but he will not hold out for a car that accelerates with extra zip and performs exceptionally on tight turns.’\textsuperscript{138}

Titelbaum’s proposed Rawlsian ethos nicely addresses the issue of how individuals should ideally balance the demands of equality against their personal concerns. It also draws

\textsuperscript{137} Titelbaum, 2008, p314.
\textsuperscript{138} ibid. 319. For Titelbaum’s discussion of the scope of permissible productive latitude, see pp314-320.
attention to, but does not answer, the question of what informal norms egalitarian justice requires societies to enact with respect to individuals’ decision making process in this regard.

The everyday practice account enjoins us to attend to the actual institutions and practices that combine to constitute the right to freedom of occupation. When we do so, we see that, in addition to various laws, informal norms of privacy and deliberation also play a role in constituting this right. What are these norms and how do they constitute the right to occupational freedom? It seems to me that, as an empirical matter, many actual societies enact the following informal prohibitions on criticism, albeit with various exceptions and variations:

Prohibitions on criticism:
- a permission allowing individuals to choose their occupation without deliberating with others (except, perhaps, those to whom they owe special obligations, such as family members).
- a prohibition on enquiring into the justification of other peoples’ occupational choices or the level of remuneration they receive.
- a prohibition on holding to account and sanctioning people who make selfish occupational choices.

Informal prohibitions on criticism complement laws protecting individuals’ right to choose their jobs freely, allowing them to make these decisions without consulting with or facing sanctions from those whose distributive outcomes are affected by these choices. Any society will have some such norms concerning how individuals are to make their occupational decisions. Prohibitions on criticism are compatible with a liberal right to

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139 I am not especially concerned here with the truth of this empirical claim but rather with the role such norms inevitably play in constituting individual rights.

140 Except, perhaps, those to whom they owe special obligations, such as their immediate family.
occupational freedom. But it is less clear that they are compatible with a societal commitment to equality.

When individuals choose a career and consider the level of recompense they would require to take up particular jobs, they must weigh their personal preferences against the demands of equality, and are permitted to give more weight to their partial concerns when doing so, insofar as these are necessary to their pursuit of a reasonable life-plan. But how are they to determine what is necessary and which plans are reasonable? It may be obvious to a talented person that they are not permitted to hold out for a salary that would allow them to buy the car of their dreams. But this will not always be the case - many such choices will be much harder to evaluate. Consider, for example, someone who faces the choice between pursuing a personally fulfilling career as an artist - contributing relatively little to the least well-off – and a career as a social worker. Even if we assume that the desire for artistic fulfillment is reasonable, it is far from obvious that it is necessary to pursue this desire as a career, rather than as a hobby pursued alongside a more socially valuable job.

It is natural to assume that individuals, left to their own devices, are likely to overvalue their own interests, even if they are not responding to norms encouraging greed or selfishness. Even individuals with Titelbaum’s proposed Rawlsian ethos are likely, I assume, to exaggerate the importance, reasonableness and necessity of their own interests simply because the phenomenological immediacy of these interests distorts their cognitive processes. This is, I assume, a statistically prevalent ‘rule’ of social life and so would be a feature of any society. If this is indeed a general feature of human motivation, it suggests a way in which the Cohen’s incentives objection can be reframed and redirected.
Liberal prohibitions on criticism give free rein to individuals’ predictable biases by permitting them to ignore the opinions of others regarding the proper weight of their personal interests with respect to the demands of equality. By way of such norms, even an otherwise flawlessly egalitarian society collectively permits its members to exercise their personal prerogative without taking on board a range of opinions as to the reasonableness and necessity of their particular partial preferences. In such a society, the least well-off would be required to simply trust that talented individuals do not overstep the bounds of their legitimate prerogative when they demand disequalizing incentives. But in light of the predictable cognitive bias informing such decisions, the least well-off would have little reason to do so.

This suggests that egalitarian justice is incompatible with informal prohibitions on criticism; these norms predictably generate inequalities beyond those permitted by even a Rawlsian full ethos of justice. But prohibitions on criticism might be essential in any genuinely liberal social system, insofar as any alternatives might amount to unjust coercive constraints on individual freedom. Cohen’s incentives argument can, therefore, be reframed not as a critique of institutionalism in general but as an objection to any liberal formulation of egalitarian justice. The force of the objection turns on the extent to which prohibitions on criticism – and economic privacy more generally – are essential to liberal justice.

I cannot address this question in any depth here, but shall note that alternative informal norms need not by themselves mandate individuals to take any particular job at any particular level of compensation. They could therefore be compatible with the liberal

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141 It may well be, as Andrew Williams, 1998, argues, that there simply could not be any public norms with this degree of specificity, and certainly not in any kind of liberal society, given the amount of intrusive detail needed to settle these questions definitively.
principle that it is unjust for societies to coerce people into particular roles or permit them to be so coerced by their fellows. Alternative norms requiring greater deliberation and accountability in economic life might simply require individuals to attend to and take seriously the views of others with respect to the ethics of their occupational choices, but need not require them to always do as others advise. The institutional demands of justice would not, therefore, apply directly to individuals’ occupational choices but merely to the process by which those choices are reached.

This suggests that there may be scope within egalitarian liberalism to abjure the strong cultural protections on economic privacy embodied by prohibitions on criticism and, instead, require informal norms of openness, accountability and deliberative humility. Much more work would need to be done, of course, to specify the precise content of these informal norms, for example with respect to the parties with whom talented individuals ought to deliberate, the content of these deliberations, and the sanctions due those who refuse to engage in them. There is, I think, reason to hope that some such norms could be compatible with liberal rights while assuaging the egalitarian concern that talented individuals choosing their careers in total privacy would blamelessly demand an unfair share of social resources. Similar such norms of informal deliberation and accountability could presumably be implemented in other contexts too, such as family life – norms which do not require people to make any particular choice, thereby impinging on their rights, but which instead require them to deliberate with others about these choices.

If something like this is correct, then there is reason to hope that the liberal reconciliation of freedom and equality can be redeemed by repudiating the traditional
governmental focus of liberal theories of justice and instead adopting the everyday practice account of the institutional domain of justice.
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