

The Pervasive Structure of Society

Justice is often thought to be a distinctively institutional rather than a personal value. This means that the demands of justice apply to the individual actions that help constitute institutions and not to those which merely occur within an institutional framework. This *institutional* approach contends that the activities through which a society jointly enacts its own organizational structure are ethically unique and constitute a distinctive site of justice and injustice. There is controversy over how to understand institutionalism and how to apply it in practice. It has been argued that institutionalism is neither conceptually coherent nor a practically useful way of thinking about justice because it cannot plausibly explain exactly which institutions are subject to the demands of justice and which non-institutional actions are excluded from their purview.

A prominent interpretation of institutionalism contends that governmental institutions constitute the unique site of justice and injustice. On this *governmental* approach, individual actions are directly subject to the demands of justice only insofar as they shape the law and the actions of governments more broadly; actions that are not explicitly political need not be directly responsive to principles of justice. The governmental account is, I believe, implicit in much of the philosophical tradition and has, to a significant extent, defined the distinctive subject matter of political philosophy.¹

Governmentalism is threatened by arguments that social order is fundamentally a ‘social construction’ by its participants.² This does not render governments irrelevant (it is not an argument for political anarchism) but it significantly reduces their centrality to the character of social order and hence to fundamental normative questions, such as justice. It suggests that governmentalism fails to properly acknowledge the existence, nature and impact of widely authoritative social practices whose rules are enforced by society rather than governments.

This worry can be understood in terms of the feminist insistence that ‘the personal is

¹ It can be traced to ancient conceptions of justice as the art of government and law-making, early modern theories of the state as the necessary agent of social order and more recent accounts of states as the institutional agents of nations and peoples. In contemporary philosophy its influence can probably be traced to a basically Hobbesian conception of social order, according to which sovereign states are its primary foundation. See Nagel, 2005, for a rare occasion on which this is made explicit. I do not pursue this historical diagnosis further here; I am concerned with the conceptual coherence and practical implications of the approach.

² Giddens, 1984, is probably the most fully developed social theory based on this insight.

political³ and within the broader tradition of materialist critiques of mainstream political philosophy, notably that of Karl Marx:

‘The state abolishes, in its own way, distinctions of birth, social rank, education, occupation, when it declares that birth, social rank, education, occupation, are non-political distinctions, when it proclaims, without regard to these distinction, that every member of the nation is an equal participant in national sovereignty, when it treats all elements of the real life of the nation from the standpoint of the state...the state allows private property, education, occupation, to act in their way – i.e., as private property, as education, as occupation...to exert the influence of their special nature. Far from abolishing these real distinctions, the state only exists on the presupposition of their existence...’⁴

One of Marx’s underlying points can be reformulated in terms of the present debate. It contends that governmentalism improperly ignores everyday normative practices that enact and maintain non-political aspects of social order, such as the economy, family, gender, race and class relations. This yields the *everyday life objection* to governmentalism.

Everyday life objection: The justice and injustice of a society are always determined not only by its explicit governing practices but also by other social practices that it enacts and maintains, such as those of class, gender, race, language, production and consumption.

The key claims here are (1) that everyday practices are ontologically identical to governmental institutions: they too are sets of social rules jointly imposed across an entire society. And (2) that these everyday practices help determine whether a society is just or unjust. The objection invokes the empirical fact that there are norm-governed social activities *other* than those of legislating and enforcing the law. This apparently obvious point has little noted radical implications. It is, I shall argue, fatal to governmentalism and can be accommodated only by a radically reformulated institutionalism.

In this paper I defend a novel form of institutionalism that avoids the everyday life objection. I argue that the demands of justice apply to any and all laws, practices, rules and norms that are *pervasive* in a society and that they apply to all individual actions but only

³ Hanish, 1970.

⁴ Marx, 1978, ‘On the Jewish Question’, p 33.

insofar as they help to maintain or alter pervasive structural norms:

Pervasive structure as the site of justice: Principles of justice apply to the interdependent set of rules, norms and practices in place across an entire society.

This implies that there is no ethically significant difference between governmental and non-governmental practices. The demands of justice apply to informal, cultural, material and embodied practices as well as to those of law and politics. Political and informal practices form an interdependent institutional whole that determines whether a society is just or unjust. Justice is indeed an institutional value. But its demands inevitably apply to many ostensibly personal and private choices and activities insofar as these choices are *structurally salient* i.e. important to the maintenance or alteration of pervasive norms.

The paper proceeds as follows. I begin by defining institutionalism and defending it from an initial objection. I then introduce governmentalism and argue that it is fatally undermined by the everyday life objection. I then introduce my proposed alternative and argue that it compares favorably to other non-governmental forms of institutionalism.

1. Why are institutions special?

I begin by offering an account of institutionalism. The institutional concept of justice identifies the common subject matter of rival substantive theories of justice. The governmental and pervasive structure accounts are rival attempts to specify the practical implications of this concept.

I interpret institutionalism as a conceptual claim independent of substantive theories of justice. Institutional theories disagree on what justice requires but agree that its distinctive role is to regulate the basic terms of social life rather than the actions of individuals. With respect to examples and illustrations I will assume an egalitarian theory of justice, mainly because this is the norm in the literature. But the real disagreement concerns what we are talking about when we debate the substance of justice, rather than that substance itself. I assume, for reasons of simplicity, that requirements of justice apply to 'societies' in the conventional sense of sovereign states, although the view I ultimately defend is compatible with cosmopolitan

and anarchist rejections of the state. I also assume that principles of justice guide action and are not simply standards for evaluating states of affairs. More specifically, I assume that they are supposed to guide the actions of societies and not just agents of the state or government. This assumption is shared by governmental interpretations of institutionalism, which accept that societies are required to establish, support and cooperate with governments in pursuit of justice. I also assume that individuals are required to build and support just institutions.

Institutions have a huge impact on the experiences and outcomes of those living within them. They are not alone in this: nature, chance and individual choice play an important causal role too. The idea that institutions are an ethically distinctive domain of justice relies not just on their causal impact but on the manner in which this impact is brought about and their relationship to nature, chance and choice. I now describe three features of institutions which give them unique relevance to justice. These features are fairly uncontroversial in themselves and I do not defend them in detail. The debate centers more on their ultimate ethical and practical significance.

- i. *Jointly enacted, mutually recognized social rules:*

John Rawls offers the following account of institutions:

‘...by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities...These rules specify certain forms of action as permissible, others as forbidden; and they provide for certain penalties and defenses...when violations occur. 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...is to be followed.’⁵

Social institutions are made of sets of public rules of social performance jointly enacted by their participants. These rules specify, among other things, how to communicate, appear in public, form a family, engage in economic transactions and create laws. The existence of these

⁵ Rawls, 1999, p48

rules and of the institutions they constitute depends upon and consists in the mutual beliefs and expectations of their participants and the social performances that realize these rules in action by complying with them and monitoring the performances of others.

This helps render institutions a distinct site of justice because it makes possible forms of social coordination that could not be achieved without public rules, such as languages, currency and law. This facilitates the pursuit of common ends far more effectively than uncoordinated efforts. It also allows societies to attempt to modulate the impact of nature, luck and individual choice, such as by guaranteeing material needs like food and housing; protecting against bad luck, such as through a public health care system; and seeking to discourage damaging individual actions, such as through criminal law. Institutions are therefore the proper focus of ethical debates about what a society's common ends ought to be and how it ought to relate to other, non-institutional influences on people's lives. This is a key motivation for institutionalism.

ii. *A holistic institutional framework:*

For the purposes of thinking about justice, there is only one institution; a single, enormous, complex, interdependent system of social rules of many different kinds. Its various component parts, such as politics, the economy and the family, work together to shape peoples' lives. It is only when 'taken together as one scheme'⁶ that a society's institutions can be evaluated as just or unjust:

'We may also distinguish between a single rule (or group of rules), an institution (or a major part thereof), and the basic structure of the social system as a whole...[because] one or several rules...may be unjust without the institution itself being so. Similarly, an institution may be unjust although the social system as a whole is not. There is the possibility not only that single rules and institutions are not by themselves sufficiently important but that within the structure of an institution or social system one apparent injustice compensates for another. The whole is less unjust than it would be if it contained but one of the unjust parts. Further, it is conceivable that a social system may be unjust even though none of its institutions are unjust

⁶ Rawls, 1999, p6.

taken separately: the injustice is a consequence of how they are combined together into a single system.⁷

To evaluate whether a society is just, it is never sufficient to consider only a subset of the relevant institutions, let alone any of their particular rules in isolation - it is essential to attend to the combined impact of all of them.⁸

The holism of social structure amplifies its impact by creating complex interdependencies between the actions and outcomes of people who never interact directly and may be far apart both physically and temporally. This occurs, for example, when practices of intra-class marriage, inheritance and taxation combine to create concentrations of wealth and power that lead to economic and political domination. The particular outcomes that eventuate require all aspects of the institutional framework to be in place. Wealth would not become concentrated if cross-class marriage were the norm, if people did not normally pass their wealth to their children or if inheritances were taxed at a high rate. The justice or injustice of this simplified scenario depends upon the interplay of all of these institutions and, in reality, many others would also be involved.

iii. *Exhaustively term setting*

Rawls describes the basic structure as ‘the background social framework within which the activities of associations and individuals take place’⁹ and as establishing the ‘social conditions under which’¹⁰ particular interactions occur, such as between workers and employers, men and women or white people and people of color. Social institutions are *exhaustively term setting*: every interaction within them is constrained or in some way informed by their rules e.g. every action

⁷ Rawls, 1999, p50.

⁸ This holistic institution may not be explicitly and intentionally enacted by the society in the way that particular parts of it usually are, such as a legal system. But this does not make it any less an institution. According to institutionalism, there is a moral imperative for societies to attend to their institutional structure as a whole and try to make it just. But, in practice, many people tend to be ignorant, blamelessly or not, of the some of the components of their social structure and thus of the contingent nature of some of the outcomes they help produce. For example, people may wrongly believe that some distinctions, such as those of class or gender, are natural, fixed features of the world rather than social constructions whose existence and impact on people’s lives could, and perhaps should, be intentionally altered by their participants. An institution exists when people share the relevant mutual beliefs and expectations and perform as the rules require; it does not also require that they a further true belief about the existence, nature or purpose of the institution itself.

⁹ Rawls, 2001, p. 10.

¹⁰ Ibid. p. 53.

is either legal or illegal and occurs between people of particular race, class and gender; and every economic transaction occurs between people with specific class-positions that are very likely to influence their bargaining strategies.¹¹

The term-setting role of social institutions means that there is an asymmetrical dependence of smaller, local institutions on the larger institutions of an entire society. The rules of private associations are constrained by broader social rules, such as those specifying the rights of workers or wives and prohibiting cartels and conspiracies. The reverse is not the case; local rules do not constrain or inform actions outside of their particular setting e.g. the idiosyncratic rules of one workplace or family do not apply to other similar associations. Local institutions can certainly have a causal impact on broader norms – think, again, of cartels, conspiracies (and cabinets!). But their internal norms do not, by definition, apply to interactions beyond their boundaries. This asymmetry applies also to individual actions. This term-setting feature of social institutions further bolsters their ethical significance because they can potentially influence literally everything that occurs within them. This is another important mechanism by which institutions – and so societies – can seek to regulate the impact of nature, luck and individual choice.

This concludes my analysis of the institutional concept of justice. Institutions are of distinctive importance to justice because they have a uniquely significant impact on people's lives and characters in virtue of providing a holistic, term-setting system of mutually imposed social rules. It remains to be seen, however, which if any determinate set of institutions meets these criteria in any actual society. Before I consider this question I shall defend institutionalism from an important objection.

Murphy on justice as a collective effort

Liam Murphy argues that institutions do not constitute a distinct site of justice because individuals can and should also promote just outcomes directly, rather than only indirectly through building institutions. I defend institutionalism by arguing that it better captures the

¹¹ This is familiar from discussions of 'background justice': the need to adjust the social context of particular interactions to ensure that they are actually fair, rather than simply appearing to be so in virtue of, say, not being directly coercive. For example, accumulations of wealth might need to be taxed and redistributed in order to prevent them from undermining the fairness of labor contracts. Background justice ensures that all interactions take place on the terms specified by a theory of justice. Rawls, 2001, p. 53.

idea of justice as a distinctively collective requirement, which Murphy himself endorses.

Murphy accepts that

‘...as a practical matter, it is overwhelmingly preferable that justice be promoted through institutional reform rather than through the uncoordinated efforts of individuals...’

But he denies that the efficiency of institutional distribution grants institutions any special moral significance. Instead, he contends that:

‘...all fundamental normative principles that apply to the design of institutions apply also to the conduct of people.’¹²

Justice tells societies and their individual members to bring about a just outcome, such as equality, and

‘...it is not credible that what fundamentally matters is that the relevant institutions promote equality... rather than that equality...be promoted’.¹³

Murphy suggests that this is compatible with justice being a distinctively collective value, because

‘...nothing in the idea that my responsibility in respect of justice is my share of our collective responsibility in respect of justice necessarily implicates institutions.’¹⁴

Murphy suggests that, because individuals shape social outcomes through isolated, non-institutional actions, their actions share with institutions the key dispositional attribute of significantly influencing outcomes and so it is arbitrary to exclude them from the direct purview of principles of justice. I grant here for the sake of argument that individuals can and should contribute to justice by non-institutional means.

We can, however, accept that justice is not solely institutional while still insisting that

¹² Murphy, 1998, p 251.

¹³ Ibid. p. 283.

¹⁴ Ibid. p. 291.

the significance of institutions goes beyond their efficiency as mechanisms of distribution. We can blunt the force of Murphy's objection by highlighting the strongly collective nature of institutions. Murphy claims that justice being collective does not necessarily implicate institutions because people can do their share of the collective effort by non-institutional means. This treats justice as collective in a weak, aggregative sense. Institutionalism relies, however, on a stronger sense of collective action that better captures the idea of justice as requirement on societies as such.¹⁵

An action is collective when it is done by a group of people. A collective action is *aggregative* when it is performed by multiple people acting separately. When it starts to rain, people collectively 'put up their umbrellas'. This is an aggregation of isolated individual actions. A collective action is *joint* when it is done by a group whose members share and act upon reflexive beliefs and other attitudes about how others will act. Joint actions are *strongly* collective because each person does their part only because of their beliefs and expectations about how others will act. If the group was putting up its umbrellas as part of a choreographed performance, this would be a joint action, because each individual would be aware of and responding to the actions of others and they would share some mutual beliefs and desires.

Institutionalism regards justice as a strongly collective requirement that applies to the joint activities by which a society organizes its common life. Institutions are essentially joint, strongly collective activities. Non-institutional actions of the kind encouraged by Murphy, like giving food to the hungry, can contribute to the achievement of a collective, shared goal, such as reducing unnecessary suffering, without seeking to either maintain or alter any strongly collective joint activities. They can count as contributions to collective actions only in the weaker, aggregative sense. Institutionalism is concerned with the ways in which individuals contribute to strongly collective joint activities, namely those involved in building and maintaining social institutions.¹⁶ Institutional justice is special because it can only be achieved

¹⁵ See Tuomela, 2002, for more on this distinction.

¹⁶ The practical implications of the pervasive structure account appear similar to Murphy's but are in fact rather different. They also imply that individuals should do a lot more to promote justice than participating in conventional forms of political activity oriented towards making legal and governmental institutions more just. But the pervasive structure account contends that there are many ways other than conventional political action in which individuals help to maintain and could help to improve social institutions, norms and practices, such as informal norms of gender, economic decision making and legal authority. This kind of structural analysis can also

by individuals acting together in certain ways and never by individuals acting in isolation.

The term-setting function of social institutions also generates an asymmetry between the two senses of collective action. Isolated individual efforts to promote justice necessarily take place within an institutional framework which ‘sets the terms’ for those very efforts; making it possible, for example, for affluent people to give money or resources to those in need. Individual contributions to a weakly collective effort can be made easier or harder and more or less effective by the institutional context in which they occur, such as when international charitable donations are restricted or facilitated by rules regulating cross-border transfers. But the reverse is not true. Isolated individual actions do not help shape the institutions in which they occur because they do not rely on or seek to alter any shared beliefs and mutual expectations. The strongly collective enactment of institutions therefore enjoys practical priority over weakly collective individual contributions to justice.

This distinction between weakly and strongly collective activities provides an initial defense of institutionalism. It relies primarily on the fact that institutions are made of jointly enacted social rules but also appeals to their exhaustively term-setting function. A full defense of institutionalism also requires a specification of the institutions which are included in the domain of justice. With this in mind, I now turn to governmentalism.

2. Governmentalism

In this section I briefly define governmentalism and elaborate on the everyday life objection. Governmentalism is a popular way of specifying the practical implications of institutionalism:

Governments as the site of justice. The demands of justice apply directly only to the laws and governing institutions of a society (and not to any of its informal norms and practices).

Governmentalism asserts that the only institutions with the relevant features are those of law, government and politics. This implies that the demands of justice apply directly only to

be applied to direct contributions such as charitable giving. The pervasive structure account allows and enjoins us to evaluate such actions – indeed, all actions - not only in terms of how much good they do directly but also in terms of the norms and practices they participate in and help to maintain or subvert, such as those of philanthropy, aid and development.

individual's intentional efforts to enact, alter or maintain just laws i.e. political and judicial activities, such as voting, lobbying and campaigning and, for a small number of people, making and interpreting laws. These are the only relevant institutional activities.

The contemporary debate over governmentalism (and institutionalism more generally) was sparked by G.A. Cohen's critique of the work of John Rawls¹⁷ and, specifically, his rejection of Rawls' claim that the 'primary subject of justice is the basic structure of society.'¹⁸ Cohen argues that governmentalism is fatally undermined by the fact 'that choices not regulated by the law fall within the primary purview of justice'¹⁹ and concludes that justice requires 'not simply just coercive rules, but also an ethos of justice that informs individual choices' within those rules.²⁰ I shall sketch Cohen's argument only briefly as I mainly concerned with its being an instance of the everyday life objection.

Cohen's criticism of governmentalism is grounded in a challenge to the egalitarian credentials of Rawls' interpretation of the difference principle. Cohen argues that Rawls inconsistently licenses potentially unlimited private selfishness by talented individuals by permitting them to demand special incentives for performing socially valuable roles. Cohen argues that this contradicts Rawls' assumption that everyone in the just society is effectively motivated to bring about justice, which requires maximizing the well-being of the least well-off. Cohen contends that, were talented people actually motivated by the difference principle, they would perform socially valued roles without demanding extra pay, leaving more resources to contribute to the well-being of the worst off.

Cohen concludes that limiting the demands of justice to the basic structure is arbitrary. The fact that economic choices are not institutional actions in the relevant sense does not make them any less significant contributors to social outcomes; their impact on equality is just as 'profound' as that of laws. A theory of justice that applies only to governmental institutions and does not require individuals to adopt an ethos of justice in everyday life is, therefore, incomplete. It is also practically and motivationally incoherent.

Cohen's argument suggests that governmentalism is practically incoherent because it simultaneously asserts the fundamental importance of values such as equality while permitting

¹⁷ Cohen, G.A., 1997.

¹⁸ Rawls, 1999a, pp. 6-7.

¹⁹ Cohen, G.A., 1997, p. 4.

²⁰ Cohen, G.A., 1997, p. 10.

people to ignore or even subvert these values in non-political contexts where they could usefully promote them. It is motivationally incoherent because it requires people to act from a sense of justice in their political activities but not when they have the chance to do so in their everyday lives. Cohen's argument implies that a society just by governmentalist lights could be full of people who are either hypocritical or practically irrational and is therefore not plausibly described as fully just.

Cohen's argument is an instance of the everyday life objection; it picks out a particular case where non-political, everyday choices are relevant to justice in the same way as political activities and institutions. Cohen's argument is most usefully understood as taking aim not at selfish economic choices themselves but at informal cultural practices which permit and even encourage such actions, making economic greed widespread across classes and generations. The key claim is that governmentalism does not have the resources to condemn such norms directly because they are not part of governmental institutions. I will now argue that the everyday life objection is fatal to governmentalism.

3. Defending governmentalism

Governmental institutions and individual obligations

It has been argued that abandoning the governmental account is unnecessary because it already has the resources to condemn private selfishness. Scheffler, for example, argues that even though only the institutions of the basic structure are the subject of principles of justice, this does not 'place individuals beyond the reach of justice...[or]...insulate them from its influence.'²¹ Rawlsian principles of institutional justice 'have an important bearing both on individuals' responsibilities and on their motives'²² and therefore effectively, if indirectly, constrain everyday non-institutional choices.

Scheffler points out that institutional principles restrict everyday choices indirectly in four ways: (1) individuals ought to be motivated by their 'sense of justice' to create and uphold just institutions and act fairly within them; (2) the justice of individual conduct depends upon the justice of the institutional background of that conduct, such as private

²¹ Scheffler, 2006, p 109.

²² Ibid. pp. 103-104.

property and the family, and is thus derived from or constrained by principles of justice; (3) social institutions include rules that apply to individual actions rather than just to ‘background transfers’; and (4) social institutions help to shape individual’s characters.²³ Even if justice is only directly concerned with governmental institutions, this does not necessarily make it ‘easy’ for people to do what is required by the difference principle in their everyday lives. Individuals have to willingly enact and comply with the potentially onerous laws and policies that equality might require, such as very high progressive tax rates.

Scheffler argues that principles of justice play a significant role in indirectly constraining and shaping individual choices despite applying directly only to governmental institutions. This has some force as a defense of Rawls’ egalitarian credentials. It also captures some of what Cohen’s term ‘ethos’ seems to include, particularly the general duty of fairness and the basic structure’s influence on character. I argue, however, that it fails to redeem governmentality from the everyday life objection.

It is common ground on both sides that there should not be any laws mandating that individuals take particular jobs. This means that (1) the requirement to act fairly within existing laws will not prohibit greed – the rules permit talented people to demand incentives. Egalitarian occupational choices are also not guaranteed by (3), the fact that laws can regulate individual choices, because those specific choices are not to be legally regulated.

The impact of greed will be limited, therefore, only by: (2), laws securing background justice that might significantly limit the scale of incentives available to talented people and thus the amount of inequality that can result from even their greediest choices. And by (4): the dispositions formed in people by growing up under egalitarian laws, which leads talented people to not demand significant incentives.

This is insufficient, however, because neither of these will wholly eliminate the impact of a culture of greed. Background justice and the formative impact of living under egalitarian laws may reduce the impact and occurrence of economic selfishness. But in a society with a culture of greed, talented people will have a higher income threshold below which they will refuse to perform socially valued roles than in a society without such a culture. Norms of greed will blunt the egalitarian influence of the legal system. And the ethical influence of living

²³ Scheffler, 2006, pp. 107-110.

under egalitarian laws will likely also be blunted by the competing influence of growing up in a culture of greed. Such a society will not realize the goals of the difference principle as well as it could without this culture, despite having perfectly egalitarian laws.

Background justice and character formation promote equality in economic choice without requiring individuals to attend to the existence and impact of cultural norms permitting or encouraging selfishness or their role in perpetuating these norms. Scheffler's defense relies on governments to negate the effects of such a culture and promote an egalitarian alternative. A problematic motivational inconsistency therefore remains. Individuals promote equality in political contexts, including by advocating for policies which aim at their own ethical training. But in non-political contexts, they are permitted to maintain a culture that encourages them to seek whatever incentives are available and to unthinkingly act out whatever ethical dispositions they have acquired, including those potentially fostered by a culture of greed and selfishness.

The everyday life objection does not complain that governmentalism seeks to insulate individuals entirely from the demands of justice; it can acknowledge all the ways in which everyday choices are indirectly constrained by principles of justice that apply directly only to the law. Rather, the objection contends that the demands of justice must also apply directly to non-political actions that enact informal social practices. Scheffler's defense of governmentalism does not give proper weight to the fact that informal norms are enacted in everyday life.

Culturally sensitive laws

A further defense of governmentalism seeks to rebut this concern by contending that a society with egalitarian laws will not retain a culture of greed because governments can and should frame laws that are sensitive to and seek to improve unjust informal practices. This defense fails for similar reasons to the first.

Joshua Cohen points out that governmental 'institutions make a large difference to ethos'²⁴ and that unjust patterns of private action need not 'be condemned directly by a

²⁴ Cohen, J., 2002, p. 376.

principle of justice' as long as they would not 'emerge in a just society.'²⁵ Governmentalism can survive the everyday life objection because 'changes in institutions...would change the...preferences, attitudes, and sensibilities that constitute the social ethos.'²⁶

The idea is that a society with, say, a sexist culture can implement laws that correct for the unfair inequalities of power, opportunity and outcome that sexism produces, such as by gender-specific provisions in family and employment law. This will eventually erode the norms themselves. The government can also try to change cultural norms more directly, such as by including gender equality in the curriculum of a public education system or prohibiting sexist imagery in advertising.

It is true that laws interact with cultural norms and that governments ought to be sensitive to these issues. It is unclear that governments can really determine cultural norms, rather than merely influence them and there is no guarantee that egalitarian laws will erode and eliminate a selfish culture.²⁷ But this response also faces a simpler, Murphy-style objection concerning cultural norms.

Governments can be sensitive to the impact of sexist norms when designing laws. But so can individuals when designing their own, local rules and when contributing to broader practices in their everyday lives. Let's assume, for example, that sexist cultural norms can be perpetuated by and within monogamous heterosexual romantic relationships. When people enact such norms in their own relationships they (1) further habituate and train themselves into those norms and (2) display them approvingly to anyone else who encounters the relationship. Co-habiting heterosexual couples can account for and undermine these norms by attending to and trying to correct for their own internalized sexism when, say, they organize

²⁵ Ibid. p. 380.

²⁶ Ibid. p. 377. Ronzoni, 2008, similarly contends that governmental institutions should be evaluated in light of their relationship to and impact on informal practices. She argues that the justice of the basic structure depends not just on the explicit content of its rules but on the 'social conditions it should bring about' and the 'kind of society it is going to regulate.' The relevant context includes 'informal rules and norms...even if we do not conceive of them as direct part of the basic structure'. Gina Schouten, 2012, also argues that governments can legitimately intrude into everyday life to promote justice in informal practices. She argues that the state need not 'physically force' people to adopt a desired course of action but can use costs and rewards to manipulate 'the incentives that attach to various options in order to change the context against which citizens make choices' such as by mandating 'an educational curriculum that instills an egalitarian ethos' or offering 'high quality subsidized child care to encourage a more equal sharing of domestic labor between genders'. See also Scheffler, 2006, pp125-126 and Neill, 2011.

²⁷ Especially if we assume liberal constraints on state power. Often, of course, governmental attempts to influence culture will fail or backfire due to the government's own standing in that culture.

household practices that distribute domestic labor or teach their children norms of gender expression and identity.²⁸ Individuals can also try to alter cultural norms by changing the way they respond to the behavior of others in their everyday lives, as when men seek to reshape norms of masculinity by trying to sanction sexist behavior by other men. Justice requires society as whole to be non-sexist and, as Cohen suggests, requires governments to account for and try to alter unjust elements of the informal culture. But the proposed defense of governmentalism does not explain why individuals and associations could not also be required to further these goals.

The fact that individuals are *capable* of helping alter informal norms and practices in their everyday lives does not establish that they are or could be morally *required* to do so. One reason to doubt this is the thought that the societies in general can only alter any of their institutions through the mediating agency of the state. I consider this below. Setting this issue aside for the moment, I here contend that individuals can be responsible for their role in perpetuating and altering informal norms.

Informal practices are large-scale collective actions. Such actions threaten a central intuition about both backwards and forward looking attributions of moral responsibility to individuals because they lack control over the outcome – their tiny contributions make no difference.²⁹ The same institutions will exist regardless of what any particular person does, so individuals cannot be responsible for them. I offer no general solution to this problem here. I argue instead that any solution will apply in the same way to informal practices as to political institutions.

If there is no solution to this problem and individuals are not responsible for their contribution to over-determined collective outcomes, this is a problem for any theory that treats justice as a collective value. More specifically, the fact that individuals do not make a difference is also a problem for governmentalism, as witnessed by debates over a putative individual duty to vote, given that single votes are virtually always irrelevant to electoral outcomes.

Let's assume, for the sake of argument, that individuals are morally responsible for their contributions to political institutions. I understand by this that they are responsible for

²⁸ The same is true for other associations, like companies or schools. See Weinberg, 2009.

²⁹ See Kagan, 2011 for a thorough discussion of this issue.

the voluntary, intentional actions through which they participate in politics, such as voting, campaigning or protesting; and maintain the rule of law, such as respecting the authority of the police and courts. The actions through which individuals maintain and alter informal practices are also often voluntary and intentional, though people may often be less explicitly aware of what they are doing. Gender norms, for example, are enforced when people ostracize, mock or attack those who do not conform to them. These enforcement actions are voluntary and intentional – people could choose not to perform them on each occasion.³⁰

A key difference from politics is that individuals will usually understand that their political activities are contributions to shaping authoritative social practices because this is their publicly understood purpose. The actions that maintain informal norms are not usually publicly understood as contributions to shaping authoritative social practices – indeed people do not always realize the extent to which things like gender are in fact social constructs rather than natural facts. This only means, however, that people are more likely to be excused responsibility for their contributions to informal practices on the grounds of blameless ignorance. If a person quite reasonably believes that cross-dressing, say, is unnatural and dangerous, then they may not be responsible for complying with the norm themselves and seeking to impose it on others. But it is reasonable to assume that some of this ignorance is negligent, that some people should know better, and to insist that, once people understand what they are really doing in these contexts, they can be held responsible for their actions.

The process through which informal norms change is importantly similar to processes of political change. Laws are changed through extended, collective efforts to organize and build support for reform among enough people in a society that the necessary electoral and legislative victories can be achieved. This process can start with one person persuading someone else that the change is both desirable and achievable and can take many years to come to a conclusion. The only difference when it comes to changing informal norms is that there is no definitive electoral or legislative victory to clearly mark a successful effort. Instead, the entire process of change is much like the process of organizing the political support

³⁰ Although they can become habitual such that ceasing to perform them would require a process of re-training, rather than simply deciding to stop all at once.

needed to win these final victories, involving many smaller efforts of persuasion and pressure. Cultural change is enacted directly in everyday life in a piecemeal fashion, as more people perform differently more often in more contexts e.g. cross-dressing at work too, rather than only at a friendly bar.

The process by which informal norms are changed must also be strongly collective, just like politics. Because public rules regulate social performances, any efforts to change them necessarily involve more than one person – the performer and their audience on a particular occasion. Norms only begin to change when both parties change how they think about and respond to a particular social performance, such as a man wearing a dress in public. Just like building a political movement, changing cultural norms involves persuading more and more people to change how they think about and respond to a publicly recognized rule.

With gender, for example, change can start with a small number of people realizing that the socially enforced gender binary is unjust and that a much more liberal practice should be implemented. They might cease complying with and enforcing conventional norms of gender presentation among themselves, at least in some settings, and try to persuade others to stop doing so too. This effort may be lengthy, difficult and even dangerous, just like political struggles. But, eventually, as more and more people and associations are persuaded to change their ways, the restrictive norms can gradually disappear from the society entirely (or excepting some small enclaves) and be replaced with more permissive practices. The threshold at which this will happen – how many people have to change their behavior – will vary from case to case. This is also like political change, which can sometimes be achieved by small but determined minorities and sometimes requires super-majorities of virtually the entire population or their representatives.

These considerations establish that individuals in general *can* be held responsible for their role in shaping informal norms (excepting concerns about group agency which I address below). Specific attributions of responsibility will depend upon the details of each case. I have already noted that blameless ignorance might excuse some people from responsibility. Presumably this is also true in politics. Individual's control over their contributions to informal practices is also modulated by social power, which makes it easier to act differently. For some people, the costs of resisting or transgressing established norms are so onerous that they could be excused from such efforts even when they are fully aware of what they are

doing. For example, it is likely to be much harder for a poor person than an independently wealthy person to publicly flout or challenge norms of gender presentation, because the material risks, such as unemployment and homelessness, are much greater for the poor person. This is true in politics too, where it is often easier for those with social power to advocate radical change or utilize highly disruptive tactics.

In this section I have argued that the ability and responsibility of governments to be sensitive to cultural norms when framing laws and to try to positively influence these norms does not redeem governmentalism from the everyday life objection because individuals are also responsible for helping shape these norms in their everyday lives. I have not advanced a general account of individual responsibility for large-scale collective outcomes but have instead argued that individuals can be morally responsible for their contributions to informal practices by showing that these contributions are analogous in all relevant respects to political efforts. Individual responsibility for culture therefore stands and falls with individual responsibility for law and for justice more generally.

I conclude that Joshua Cohen's response fails to redeem the governmental account from the everyday life objection. The everyday life objection insists that it is inconsistent to require political efforts to combat unjust cultural norms but not quotidian ones, given that both help shape the relevant cultural practices. The problem for governmentalism is, again, that it embraces hypocritical or irrationally inconsistent motivations across political and non-political contexts, with people required to vote for laws that seek to erode unjust cultural norms while being permitted to perpetuate those norms in their everyday lives.

I now consider further attempts to defend the governmental account by appealing to putatively unique features of governmental institutions: things that mark them out from informal practices and justify their status as the sole activities to which the demands of justice directly apply. I consider appeals to coercion, publicity and agency.

Coercion

The governmental account has been defended on the grounds that justice is distinctively concerned with coercion. If coercion requires a special kind of justification that only principles of justice can provide, then these principles only apply to activities by which

societies collectively coerce their members.³¹ If only governmental institutions are coercive, they exhaust the domain of justice. Even granting that justice is indeed distinctively concerned with coercion, I argue that this cannot serve as a defense of the governmental account of justice.

The appeal to coercion fails to redeem the governmental account because informal practices can be functionally coercive in the same way as governmental institutions. Mill famously argued that, compared to laws, an informal norm,

‘... though not usually upheld by such extreme penalties...leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.’³²

For example, norms of gender presentation, such as those of dress and grooming, need not be legally enforced to be made effectively compulsory by the innumerable actions that impose them on children and punish adults who publicly flout them. This is so effective that they often become internalized, their status as norms invisible, thereby ‘enslaving the soul itself’. This involuntary education and the subsequent threat of social stigma and exclusion are as effectively coercive as a legal threat of imprisonment or civil penalty, even if each individual sanction is relatively trivial.

Such sanctions can make it impossible for transgressors to find somewhere to live, support themselves economically or be physically secure in public because almost all social contexts can be reasonably expected to be hostile to, say, a man wearing a dress or a women with bare breasts. In societies where such norms are very widespread, there is nowhere to go where they are not enforced - they are as effectively inescapable as state power.³³

The appeal to coercion cannot redeem governmentalism because legal and political institutions are not the only social practices whose rules peoples can be effectively forced into obeying. This point stands independently of the more general merits of the idea that there is a special relationship between justice and coercion. If there is such a relationship, then it applies just as much to functionally coercive informal practices as to governmental institutions.

³¹ E.g. Neufeld, 2009 and Scheffler, 2006, p. 125.

³² Mill, 2003, p. 91.

³³ Valentini, 2011, provides an account of this kind of informal coercion.

Publicity

The distinctiveness of governmental institutions has also been defended on the grounds that only they are 'public' in the requisite sense. Andrew Williams argues that publicity explains why the basic structure 'does not encompass the chosen behavior of market-maximizers.'³⁴ Publicity has three elements specifying the epistemic position of the participants in a practice:

'...individuals are able to attain common knowledge of the rules' (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements.'³⁵

Williams notes that

'...not all norms qualify as public... For example...those norms which are so informationally demanding that individuals are incapable of mutually verifying the status of their conduct.'³⁶

It is true that individuals are guided by personal norms of morality and prudence and that the application of these norms generally involves highly intimate judgments that cannot be mutually evaluated and enforced by the entire community.

Williams argues that the norms of an egalitarian ethos in occupational choice (for example) would be informationally demanding in this way and so could not be institutionalized.³⁷ This important dimension of egalitarian justice can therefore only be realized by each individual person on their own. The egalitarian credentials of occupational choices depend, among other things, upon how individuals subjectively experience different occupations i.e. how unpleasant or otherwise they find them. They also depend upon the precise contours of each individual's prerogative to prioritize their own interests and relationships over the demands of justice and permissibly demand extra rewards for filling

³⁴ Williams, 1998, p232.

³⁵ Ibid. p.233.

³⁶ Ibid. p. 234.

³⁷ Ibid. p. 241.

socially valuable roles.³⁸

Evaluating such choices requires detailed information about peoples' subjective experiences, alternative choices and personal relationships. For example, a person with a socially valued skill, such as being a doctor, might prefer a less socially valuable career, like, being an artist, or might have family obligations that conflict with a useful medical career, such as to care for an aging parent.³⁹ They could be required to sacrifice their preferences and family for the sake of justice without additional reward; or they might be permitted to demand additional payment to compensate for their sacrifice; or even to refuse to be a doctor at all. This depends upon the strength of their preferences and the details of their family obligations. This information cannot feasibly be public in the sense needed to evaluate individual compliance with egalitarian principles of justice.⁴⁰

Williams concludes that occupational choices cannot be directly subjected to the demands of justice. This promises to redeem the governmental account by providing principled grounds for the exclusion of many everyday choices, and the informal norms guiding them, from the direct purview of principles of justice. I argue that there are two related problems with the appeal to publicity.

The basic problem is that informal social norms are also public, just like the rules of governmental institutions. Informal norm-governed social practices like languages consist of public rules - they rely on mutual knowledge and shared expectations.⁴¹ I do not mean that all norms of all kinds are public. Norms of prudence and personal morality regulate people's actions without being known to or enforced by anyone else. Non-social norms of prudence or morality can be sufficiently widespread that they regulate the behavior of most people in a society without being jointly enacted or mutually evaluated. These are regularities of individual action rather than inter-subjective standards of social performance (and, like other such

³⁸ These considerations can, as Cohen himself seems to accept, justify individuals in demanding extra 'incentives' for filling particular social roles, thereby leading to departures from equality in income that are compatible with justice.

³⁹ See Estlund, 1998, and Baynes, 2006, on this issue.

⁴⁰ Williams, p. 239.

⁴¹ Williams invokes Rawls' own definition of an institution as a 'public system of rules' so it is worth noting, as an interpretive matter, that Rawls explicitly intends this to apply to '*any form of activity* specified by a system of rules', including 'games and rituals, trials and parliaments.' Rawls means the term to encompass all norm-governed social practices and not just formal or governmental institutions.

regularities, society can try to regulate them institutionally). But all social norms are, by definition, public – they are social only in virtue of being known and enforced by a group of people.

The epistemic criteria for publicity are satisfied by governmental institutions in part because the state publicizes its laws and regulations and guarantees widespread compliance with them. But people can also acquire the relevant knowledge without explicit legislation or a formal enforcement mechanism. The rules of a language, for example, are mostly known only implicitly by its speakers, who often could not explicitly describe their content or how to apply them despite their immense practical expertise. These rules are primarily known due to people's immersion in a linguistic community. Mutual confidence in widespread compliance with linguistic rules comes from the reasonable shared assumption that everyone desires to communicate effectively and so will not unilaterally change the meanings of words etc.

Cultural norms, such as those of gender presentation, can similarly be public without laws that, say, prohibit men from wearing dresses in public. Our epistemic confidence that very few men will do so comes from living in a community whose norms largely forbid it. We know that these rules are widely enforced and indeed internalized such that most men never develop or never explore a desire to wear 'feminine' clothes in public. And we can know that most men who do want to wear dresses will be discouraged by their overriding desire to be able to appear in public un-molested.

Common knowledge of informal norms is diffuse and often implicit. Its exact rational justification and evidential base can be hard to specify but are difficult to deny. This contrasts with the centralized, explicit information provided by governmental institutions about the content and application of the law. Publicity, however, requires knowledge but does not specify what kind of justification this knowledge ought to have. I am not aware of any arguments that only governments can provide the right kind of justification. I conclude, therefore, that there is no relevant epistemic difference between public laws and public norms.

The second problem with the appeal to publicity builds on this point by considering the informal norms that regulate occupational choices. These norms concern *how* people make significant personal decisions. Such choices could, I argue, be effectively regulated by egalitarian public rules without those rules mandating particular decisions and so without requiring the wide dissemination of personal information that Williams rightly suggests is

neither practicable nor desirable.

Social practices often create ‘permissions’ within which individuals can make a range of choices, as in contract law or games. Occupational freedom requires that individuals be permitted to pursue any occupation that is not generally forbidden and not be socially coerced into any particular role. But practices can also establish a hierarchy among permissible decisions, rewarding some and sanctioning others without making any compulsory or prohibited.

In a competitive sporting contest this hierarchy is shaped primarily by an informal norm or explicit rule requiring players to try to win. This norm does not tell players exactly what to do— to pass or shoot, jab or hook, bunt or swing - but it provides a public norm that guides their reasoning and by which their decisions can be interpreted and evaluated. Spectators are usually confident that players are abiding by this norm even though they may not always understand how their specific decisions are supposed to contribute to victory.⁴² We can trust that people are trying in good faith to serve a value, such as victory or justice, even when we do not understand exactly how their particular actions do so. I argue that an egalitarian ethos could be realized by informal public norms specifying *how* individuals ought to decide between legally permissible occupational choices without specifying those choices themselves.

It is quite difficult for people to properly assess the scope of their legitimate partiality on their own because of an inevitable tendency to exaggerate the importance of their personal concerns. This predictable bias makes it difficult to be mutually confident that people’s decisions conform to an egalitarian ethos. The extent to which this bias shapes such choices is not a fixed fact, however; it is to some extent socially constructed and depends on the cultural context in which occupational choices are made.

Such choices are regulated by norms specifying what values, if any, people should consider, like equality and self-interest, and by norms regulating the decision-making process itself, such as who to share intimate information with in order to get advice and how to respond to advice and criticism from intimates and strangers. I argue that such rules could constitute a publicly verifiable egalitarian ethos.

⁴² As with Muhammad Ali’s famous ‘rope-a-dope’ tactics in the Rumble in the Jungle against George Foreman or when football teams play ‘on the counter-attack’, mostly ceding possession and territory to their opponents.

In a society with an unjust ethos, prevailing norms might encourage selfishness or merely fail to encourage or educate people to critically evaluate their legitimate partiality. Cultural norms could largely prohibit criticism of occupational choices and permit people to make choices without consulting anyone at all. These norms would give free rein to individual biases and any cultural impetus towards greed. People who make even the most brazenly selfish decisions would be able to reliably call upon those around them to sanction and silence anyone who attempts to hold them to account.

In an egalitarian society, however, prevailing norms could instead: (1) encourage and educate people to make egalitarian occupational decisions; (2) require them to seek out advice from a wide range of people; and (3) require the imposition of informal sanctions on those who fail to do so. Such norms do not require detailed information to evaluate compliance and so could be public in the same way as linguistic and gender norms. We could be confident that most people know and comply with them through our immersion in the common culture that effectively forces them.

A social requirement to seek out the most egalitarian option from among legally permissible economic choices could function analogously to the requirement to try to win a competitive game. It would be a public norm and thus a widely known ‘social fact’ that most people were trying to make egalitarian decisions and seeking out a range of perspectives to neutralize their biases. We could thus be confident that most occupational choices were within the scope of people’s legitimate prerogatives without knowing the personal details behind every specific choice and despite people sometimes making mistakes. People who did not try at all would face social sanctions just like competitors who don’t try to win. This specific defense of the possibility of a public norm of egalitarian occupational choice can be modified and applied in other contexts, such as family life.⁴³

⁴³ This discussion highlights another important issue concerning the demographics of most people’s social circles. An unjust society might informally permit people to make occupational choices without consulting anyone at all, but people will often consult valued friends anyway. In a society that is socially segregated by, say, economic class, most people’s circle of intimates is likely to reflect only a narrow range of the society as a whole. So even if there were a norm requiring people to seek advice about how to make egalitarian choices, the advice they receive would likely be distorted by the limited perspective and biases of their social group, such as by inflating the minimally acceptable income that people are permitted to prioritize over equality. This reflects the holistic nature of the institutional concept of justice, in which the impact of informal norms, such as those surrounding occupational choices, is shaped by and in turn influences other parts of the structure, such as the material and cultural structures that lead to social segregation along class lines.

I argue that occupational choices themselves can therefore remain ‘non-institutional’ and not directly subject to the demands of justice while nevertheless reliably conforming to public standards of egalitarian concern. I do not offer this argument as a definitive account of an egalitarian culture that respects individual choice. I intend it as an illustration of the ways in which including informal norms in the domain of justice facilitates a flexible and empirically plausible approach to this problem and to the general question of how societies should regulate intimate individual choices (which they inevitably do anyway in virtue of the term-setting role of social institutions).

I conclude that publicity does not redeem the governmental account because informal social norms are also public and because they can regulate highly personal choices in way that establishes public trust without requiring the detailed information needed to mandate particular choices.

Agency

A further attempt to redeem the special significance of governmental institutions appeals to the need for an institutional agent of justice.⁴⁴ David Miller argues that

‘Social justice requires the notion of a society...with an institutional structure that...is capable of deliberate reform by an agency such as the state...’⁴⁵

The predictability that advice will be distorted in this way means that an egalitarian ethos in a class-society might require people to seek out and attend to the opinions of strangers from outside their class. Prohibitions on criticism would have to be substantially relaxed. An alternative would be the elimination of the problematic social segregation such that most people’s circle of intimates was more representative of all classes. Eliminating class-segregation might also, of course, require eliminating economic classes entirely such that the relevant biases did not arise at all. Indeed, it would not be surprising if an egalitarian ethos could work only in combination with largely class-less, non-capitalist economic structures. It was, after all, Rawls’ own view that justice as fairness could not be realized by welfare-state capitalism. He proposes instead either democratic socialism or property owning democracy, both of which are designed to eliminate class distinctions.

⁴⁴ Another version of this argument contends that the demands of justice apply in contexts where there are ongoing social practices which generate injustices that can be rectified only by the establishment of governing institutions to coordinate and adjust them. Versions of this argument can be found on both sides of the global justice debate. Meckled-Garcia, 2008, argues that the demands of justice apply only to and within states because they are the only institutions with sufficient authority to coordinate and control social life, while Ronzoni, 2009, and Valentini, 2011, separately argue to the contrary that international practices are a site of justice and injustice precisely because they lack such a coordinating authority. These arguments are subject to the same kind of concerns I discuss here with respect to Miller.

⁴⁵ Miller, 1999, p. 4.

The idea is that (1) principles of justice can only usefully be applied to a society that is capable of acting to implement them and (2) that societies can only do this by way of authoritative governing institutions issuing and enforcing explicit and effective decisions about the rules of social life. This means that most of the work of justice must be done by law-makers and public officials, although the demands of justice do not apply to them exclusively because '[v]ery often the cooperation of citizens is needed to make the reforms work.'⁴⁶ But, if there is no 'agency with the power and directing capacity that the state is supposed to have...then we no longer live in a world in which the idea of social justice has any purchase.'⁴⁷

This argument rebuts the everyday life objection by denying that informal practices have the same ethical weight as governmental institutions because there is no way for society to control and regulate them for the sake of justice. It allows that governments can be sensitive to problematic cultural norms when writing laws and try to foster better ones. But beyond such indirect efforts it is pointless – even meaningless - to apply theories of justice to informal practices. Governmental institutions are controlled by governments. Cultural norms are not controlled by anyone; there is no person or body that can respond to moral requirements to alter these practices and so no practically relevant sense in which moral requirements can apply to them. I argue that this appeal to agency relies on an unduly narrow conception of the kinds of collective action to which moral requirements can apply and, in practice, risks dogmatically fetishizing hierarchical organization.

Recall that weakly collective outcomes are produced by independent individual actions that combine to create an effect different from that produced by each person. Strongly collective outcomes are produced by joint actions in which individuals combine with others to pursue a common goal together by way of a complex of interdependent mutual beliefs and expectations. Group agency is a special form of joint action involving explicit decision procedures for generating beliefs, desires and intentions that can be attributed to the group

⁴⁶ Ibid. p. 6.

⁴⁷ Ibid. I here set aside the possible interpretation of this argument according to which it is literally the case that only public officials are required to respond to the demands of justice and individuals themselves are merely to be shepherded towards justice by the state's coercive power. I do not know of any argument in the literature defending exactly this view and it is ruled out by my stipulation that the demands of justice apply to societies as such. It is, anyway, an implausible interpretation of governmentalism because governments require the cooperation and sometimes guidance of their citizens.

independently of the attitudes of its members.⁴⁸

The literature often classifies weakly collective and joint actions together as ‘unstructured’ collectives or even non-collectives.⁴⁹ This is misleading. Weakly collective activities are genuinely unstructured in virtue of not even being joint; they consist of aggregates of individual action but do not involve mutual attitudes or shared intentions. Non-agential joint actions, however, can be highly structured despite not being group agents. Some joint activities really are ephemeral and chaotic, but others, like informal social practices, can be long-lasting and highly organized, despite being non-agential. Practices like gender, race and class specify complex criteria of social performance and evaluation and play a vital role in coordinating social life despite lacking a decision procedure that could render them the actions of a group agent. It is neither accurate nor useful to group these activities with mere aggregations.

There is disagreement about whether weakly collective outcomes can be subject to any distinctively collective moral requirements.⁵⁰ I grant for the sake of argument that they cannot - a crowd as such cannot be obliged to roar or not roar, because it is not a collective entity but a mere aggregation of individuals. Any moral requirements attach only to the individual members of the crowd. Individual members of such collectives could be required to take steps to ‘collectivize’ the group - to organize themselves so as to be able of responding to collective requirements and coordinating their actions so that, for example, the inchoate cheering becomes a distinct chant.⁵¹ But this process of collectivization and organization need not always involve establishing a group agent. So it is plausible that non-agential jointly acting groups can be subject to collective moral requirements.

There are many occasions where non-agential groups do (or are in a position to do) ethically significant things that their individual members could not do alone, as when a group of people who witness an accident must work together to rescue the victim. As Schwenkenbecher argues,

⁴⁸ Pettit and Schweikard, 2006.

⁴⁹ See e.g. Lawford-Smith, 2015, and Schwenkenbecher, 2013.

⁵⁰ Wringer, 2010, argues that they can.

⁵¹ Lawford-Smith, 2015, defends this view. Aas, 2015, argues, on the contrary, that the possibility of this kind of coordination suffices for the existence of a group that can be subject to moral requirements.

‘If...the...passers-by together hold a duty to do everything they can to save the victim...then who actually holds that duty? It cannot be an entity that supervenes on the individuals, a novel agent (like a group agent) because there is no such agent...But neither can each of them hold an individual duty to save the victim, because...no individual can save the victim on her own.’⁵²

Schwenkenbecher argues that the individual passers-by

‘have a duty to assist the driver in order to save his life, but they hold that duty together with the other passers-by....the duty is held jointly. Because the duty can be discharged jointly, the condition that ‘ought’ implies ‘can’ is satisfied even if there is no...group agent.’⁵³

Joint duties require that the members of the group have a capacity for joint action e.g. the passers-by can communicate so as coordinate their actions.

If informal practices were merely weakly collective, the appeal to agency would have some force. It would imply that those involved could only be required as individuals to organize themselves so as to then be able to promote justice collectively. But informal practices are strongly rather than weakly collective. They are not group agents but they are joint actions and can only be adjusted through the joint action of their participants, by changing the way their actions combine to promote their common end. There is no question of whether these groups have the capacity for joint action because they are already performing one.

So the only further issue is whether the duty of justice must apply to a single group agent or whether it can be joint duty requiring individuals to join with others to organize their activity without constructing a group agent. I am not aware of any argument that would block this slightly weaker interpretation of the collective nature of the demands of justice. It is compatible with the idea that individuals can be jointly required to establish group agents, such as states, without insisting that only such agents can subject to the demands of justice.

In addition to this conceptual point it is worth considering whether any practical differences between governmental institutions and informal practices might support the appeal to agency. They differ significantly with respect to the origins of their rules and the means of their enforcement. I argue that these differences do not justify applying the

⁵² Schewnkenbecher, 2013, p7.

⁵³ Ibid.

demands of justice only to governmental institutions.

The rules of governmental institutions and the laws they make are the result of explicit decisions made and enforced by a centralized hierarchical organization. Informal norms, on the other hand, are the result of collective acceptance by their participants.⁵⁴ Social practices often create or interact with social hierarchies, such as that between parents and children, which help to enforce and maintain their rules. But informal norms are enforced within many different hierarchical and non-hierarchical relationships, rather than a single authoritative organizational structure.

The state can (in theory) alter society-wide rules virtually instantaneously; laws come into force at a specific moment and the rules change. By contrast, societies do not explicitly decide changes to their informal norms and tend not to have publicly recognized, authoritative mechanisms for doing so. Cultural change is a decentralized process involving innumerable local decisions to resist, criticize and try to alter prevailing norms, as we see with ongoing efforts to prohibit many forms of explicit racism and sexism in social contexts where they used to be permitted.

I assume that these processes of decentralized decision making, enforcement and change can be legitimate sources of authoritative social requirements, particularly in domains where social regulation is desirable but the use of state power is not, such as language or occupational choice. Societies can surely be morally required to jointly enact new norms just as they can be required to enact and respect new laws. The appeal to agency risks arbitrarily fetishizing centralized, hierarchical forms of society-wide collective action. This is dogmatic insofar as it ignores the empirical fact, central to the radical force of the everyday life objection, that many of the most significant collective activities are decentralized and relatively horizontal.

Justice may well require that societies accept the authority of states because they are necessary to achieve justice. But this does not mean that its demands apply only to institutions with that kind of centralized, hierarchical authority. This conclusion is further bolstered by a stronger riposte to the appeal to agency which highlights the socially constructed nature of government authority itself. This undercuts the putative practical distinctions between

⁵⁴ Tuomela, 2002, chapter 5.

government and culture canvassed above.

Governments are not the only or primary agents of their own ability to regulate social life. The ability of the state to have any authority at all over prevailing social rules depends upon a social practice of legal authority enacted by society as a whole. The state's coercive power might be the underlying cause of the existence of this practice and so ultimately explain its authority. But the day-to-day effectiveness of laws does not rely on universal surveillance and enforcement or a threat to use the extreme violence that the state is capable of.

The everyday authority of the state relies on social norms. These include a norm mandating acceptance of its authority in virtually all spaces and contexts, such that, if the police show up, most people will not violently resist them and will often help them instead. People must also expect each other to obey the law in the absence of the police and impose informal sanctions on each other when they commit or threaten to commit illegal acts.⁵⁵ There must also be a norm requiring that crimes be reported to the police, which is not itself usually legally required.⁵⁶

To the extent that these norms are sufficiently widespread, the state has effective authority. But these norms cannot be legislated and enforced by the state itself; they must, instead, be an informal social practice.⁵⁷ The agency of the state is parasitic upon the practices through which society accepts and enforces its authority. The actual extent and nature of the state's authority is determined by the details of this practice and the way it interacts with state's enforcement efforts. Some elements of this practice can be significantly loosened or even suspended entirely for some laws and in certain contexts, such as those regulating driving speeds, the private sale of controlled substances, corporate fraud and sexual violence.⁵⁸

⁵⁵ It is an interesting further question whether people are actually usually applying and obeying the law directly in many of these cases rather than purely social norms that apply independently of the law but track parts of its content. Perhaps the law merely operates in the background to back up these norms when serious non-compliance occurs or is threatened. This possibility grounds an anarchist argument against the necessity of the state.

⁵⁶ So-called 'misprision of felony' was a crime under English common law but has been eliminated from most modern legal systems. See Curenton, 2003.

⁵⁷ Imagine if it was compulsory to report all crimes witnessed. How would this law be enforced if not by an informal norm?

⁵⁸ The author's own neighborhood provides a good example of this. I live on a square in central Madrid that features a fairly open drug-market, with numerous people actively selling their wares to passersby. The police occasionally harass the dealers and no one tries to stop them. But as far as I know, no one else tries to obstruct their illegal efforts. The law sanctioning this activity is thus modulated by a norm permitting it, at least in this

The state can, of course, adjust its enforcement mechanisms to account for these informal permissions. But such changes will then interact with other informal norms regulating acceptable levels of state-intrusion and may be costly or impossible for the state to maintain. If this is right, then the agency objection fails on its own terms because the group agency of the government is parasitic upon the non-agential joint activities of the people.

In this section, I have rebutted five defenses of governmentalism. Two purported to identify ways in which governments indirectly constrained everyday choices and thus avoid the force of the everyday life objection. I argued that these attempts failed to blunt the force of the objection because they did not give proper credit to the fact that people enact informal practices directly in their everyday lives. Three defenses purported to identify a feature of governmental institutions lacked by informal practices: coercion, publicity and agency. I argued that informal practices actually have all of these features: they give individuals little choice but to comply, are known to all and are collectively enacted and controlled by society as a whole through decentralized processes of social construction. I conclude that the everyday life objection is fatal to governmentalism. I shall now introduce and defend an alternative interpretation of institutionalism that avoids the objection.

4. The pervasive structure of society

I argue that social practices are subject to the demands of justice when they are *pervasive*. This means that their rules are generally known and complied with in a society and so set the terms for all interactions between its members. More precisely:

Pervasive structure as the site of justice: Principles of justice apply to the interdependent set of rules, norms and practices in place across an entire society.

In this section I lay out the social-theoretic foundations of this account, elaborate on the idea of pervasiveness and argue that it better realizes the core features of institutionalism than other alternatives to governmentalism.

particular location. The impact of this norm would change, of course, if the police were to focus more resources on preventing this illegal trade.

Social Theory

The pervasive structure account draws upon a heterogeneous tradition of ‘practice-based’ social theory⁵⁹ united by the claim that ‘many social entities and their characteristics are performatively constructed by the group members.’⁶⁰ Everyday social performances – iterated, meaningful and mutually evaluated activities - are the foundations of social order and should, therefore, be the fundamental objects of social enquiry, analysis and evaluation, including for political philosophy.

This approach is marked by its radical insistence on the significance of apparently trivial activities. The ostensibly boring things we do every day – like dressing, working, eating, walking, talking, having sex, raising a child, - are actually vital to the maintenance of social order. The precise way in which we perform these quotidian activities depends upon and participates in foundational normative practices through which society as a whole collectively organizes its common affairs. The activities and the practices they enact can seem unimportant and can be hard to notice at all, because they are so habitual and widespread and because of the distorting and distracting effects of ideology and power, which can mask the vital, quotidian domain of social power.

When we focus on the details of our everyday actions, we recognize the contingency of our social practices – that they could be otherwise – and our own agency in maintaining and changing them. Consider, for example, micro-norms of gesture and posture in conversation, which most of us are barely aware of and may seem irrelevant to larger social issues. Yet these norms play a role in perpetuating social hierarchies of gender and class. Consider, for example, the possible social meanings of looking someone in the eye while you address them, rather than at their feet or their breasts. It can be hard to avoid perpetuating such norms, so deeply ingrained have they become. Yet it is clearly possible to notice them, attempt to restrain one’s own habitual reactions and work with others to establish new conversational norms. If enough people join such efforts, the norms could eventually change across all of society.

⁵⁹ This social theory should be distinguished from the view of the same name in political philosophy concerning how to work out the substance of justice in particular cases. This sense of practice-dependence makes the meta-normative claim that the substance of justice depends upon the nature and purpose of the institutions concerned. See Sangiovanni, 2008 and James, 2005b.

⁶⁰ Tuomela, 2002, p2.

This social theory has a number of advantages with respect to my proposed reformulation of institutionalism to account for the everyday life objection. One is empiricism: we discover which social rules exist and how to change them by studying everyday life, not law books. This reflects a sociological strand of the approach pioneered by Harold Garfinkel. Garfinkel's 'ethno-methodology' regards the primary job of sociology as investigating the methods by which social facts are created, maintained, used and altered by people themselves in everyday life.⁶¹ It eschews the formal statistical analysis common in social science and instead utilizes ethnographic methods to reconstruct participants' own understanding of their practices. Another influential sociological contribution to this approach is the method of 'conversation analysis' pioneered by Erving Goffman, which illuminates the implicit normative structure navigated during interpersonal interactions.⁶²

Another advantage is that this approach analyzes the complex collectively intentional structure of social practices, rather than relying on a simplistic picture of governments as the agents of social rules. These analyses have been provided by philosophical accounts of social practices and collective intentionality generally and of the mechanisms of social construction specifically.⁶³ The practice-based approach also facilitates detailed analyses of the ways in which individual actions can utilize shared understandings to create and alter social facts. These include the theory of speech acts, pioneered by J.L. Austin, and the broader school of ordinary language philosophy of which Austin was a leading figure.

The practice-based approach also highlights the visceral ways in which internalized social practices shape people's characters and motives, rather than just the ways in which laws can establish external incentive structures that influence people's choices. At the same time, this strand of the approach also helps highlight ways in which individuals can disrupt and challenge even the most ingrained social norms. These ideas are developed most thoroughly by a strand of Francophone social theory beginning with the situationists Guy Debord⁶⁴ and Raoul Vaneigem⁶⁵ and continuing with Michel Foucault⁶⁶, Pierre Bourdieu⁶⁷ and Michel De

⁶¹ Garfinkel, H., & Rawls, A., 2002

⁶² Goffman, 1959.

⁶³ See e.g. Hacking, 1999 and Haslanger, 2012.

⁶⁴ Debord, 2000.

⁶⁵ Vaneigem, 1979.

⁶⁶ Foucault, 1977.

⁶⁷ Bourdieu, 1999.

Certeau.⁶⁸

These and subsequent authors have investigated the ways in which macro-structures of power and ideology manifest and reproduce themselves in everyday practices of, for example, sex, medicine, aesthetic taste and urban perambulation while also providing opportunities for subversion. Another example of this approach is Judith Butler's analysis of the performative nature of gender roles, which highlights the ways in which appearing in 'drag' can simultaneously reveal the contingent nature of prevailing norms of gender identity and expression and point towards more fluid alternative configurations they could take.⁶⁹

This diverse and powerful tradition is united by its insistence on the fundamental significance of social performances and provides a vital corrective to the outmoded social theoretic assumptions of the governmental account, which is, I have argued, fatally insensitive to how societies actually work.

Pervasiveness

Pervasiveness is an empirical property. A practice is 'in place' when people 'know' its rules in virtue of sharing the relevant mutual beliefs and expectations about social performances. A practice is pervasive when enough people know its rules that they are in place in all relevant social contexts e.g. when enough people speak a particular language that it is the expected medium of communication everywhere you go in the society. Pervasive practices are, therefore, the only ones enacted by a society as a whole. This captures the ideas that justice as a requirement of societies and that the institutions relevant to justice are exhaustively term-setting.

Pervasiveness is compatible with a degree of ignorance but, at some point, if too few people know the relevant rules, a practice is merely local, embedded in the pervasive structure but not part of it. So in a society with more than one language, the relevant pervasive norms would likely be those criteria, known to all, specifying which language is suitable in which places and situations. Pervasive practices inevitably set the terms for local ones. They can do so explicitly and directly, as with legal norms of incorporation and family life, or implicitly and indirectly, as when norms of class, gender and race suffuse and modulate the local practices of

⁶⁸ de Certeau, M., & Rendall, S., 1984.

⁶⁹ Butler, 2006.

businesses and families.

In order to be ‘in place’ practices must also enjoy a fairly high degree of compliance, although most practices continue to exist in the face of some non-compliance. There is therefore some unavoidable empirical vagueness as to when a practice exists and when it is pervasive. This vagueness does not undermine the applicability of the concept, however, as it applies to all institutions, including governmental ones, which can be in place despite some people not knowing and not complying with the law.⁷⁰

Institutional and non-institutional actions

In addition to attacking governmentalism, G. A. Cohen also advanced an argument against institutionalism more generally. He contends that, if governmentalism is rejected, no alternative formulation of the institutional site of justice could redeem the basic distinction between institutional and non-institutional actions. He argues that institutionalism cannot be extended to include informal practices because, once it is,

‘...the ambit of justice can no longer exclude chosen behavior, since the usages which constitute informal structure...are bound up with the customary actions of people.’⁷¹

Cohen claims that any more expansive institutionalism ultimately collapses into incoherence because informal practices are only constituted by individual actions (‘chosen behavior’). If such practices are included in the basic structure, it is no longer possible to distinguish between institutional actions, to which the demands of justice apply, and non-institutional actions, which are excluded from the direct force of those demands.

A signal virtue of the governmental account is that it facilitates a clear practical distinction between actions that ‘build and support’ institutions, such as voting and legislating,

⁷⁰ Pervasiveness also captures a plausible core of attempts to defend the governmental account by appealing to the coerciveness of law. Part of the intuitive force of this is the idea that people have no reasonable way of escaping from or flouting state authority. The pervasive structure account captures this idea of inescapability without committing itself to any account of the normative significance of coercion. The pervasive structure is inescapable insofar as there is no way to access the goods of social life in a society without participating compliantly in at least some of its pervasive practices at least some of the time, such as those of its language and economy.

⁷¹ Ibid. p. 20.

and actions that ‘merely comply’ with prevailing rules, namely all other legally compliant actions. This interpretation of the distinction collapses when informal practices are included in the domain of justice. The need for a clear account of the nature of institutions and their relationship to individual actions is, indeed, acknowledged on both sides of the debate.⁷² The pervasive structure account provides it.

The distinction between institutional actions that make the pervasive structure and non-institutional actions that merely occur within it does not exclude any class of actions from the purview of justice. It instead adopts a ‘structural perspective’ on all actions.⁷³ A structural perspective draws upon the complex intentionality of social practices, in which people pursue individual ends, like coming to own a lamp, by participating in and so contributing to joint ends, like the enactment of a common system of production and exchange which allows them to buy things like lamps. The same action, making a purchase, can be understood and evaluated from both perspectives; as an individual action and as a contribution to social structure. This facilitates a response to the worry that, if the demands of justice are applied directly to informal practices, there is no way to non-arbitrarily distinguish between institutions and actions that occur within them.

First of all, many actions that comply with and so help to enact pervasive norms are entirely idiosyncratic or are common to only a small sub-group within a society – such as those enacting the rules of a particular family or company. These actions are not performed by society acting jointly and so are not directly subject to the demands of justice. This is also true of patterns of action that are very widespread but which are not joint, institutional activities, such as those grounded in widespread dispositions, such as hunger. The fact that virtually everyone acts to satisfy their need for food does not make this an informal norm because there is no inter-subjective content to the individual actions: they are aggregative but not joint collective actions.

These considerations demonstrate that a structuralist approach to justice can draw a clear and principled line between actions that make institutions and actions that occur within them.

⁷² See Cohen, 1997, pp. 28-29, Murphy, 1998, pp. 268-269 and Scheffler, 2006, p. 124.

⁷³ This closely echoes Young, 2011, p.70 and is hinted at in Rawls, 2000, p. 791.

Institutional actions: Actions that participate in the joint enactment of pervasive norms.

Non-institutional actions: Actions that participate in the joint enactment of non-pervasive norms or are caused by widespread dispositions rather than joint intentions.

The governmental account does not enjoy an advantage in regard to the distinction between institutional and non-institutional actions.

Alternative proposals

The pervasive structure account is indebted to and builds upon a number of broadly practice-based, non-governmental accounts of the domain of justice. In this final section, I argue that the pervasive structure account does a better job at capturing the core features of institutionalism described at the beginning of this paper, specifically the holistic and exhaustively term-setting nature of the institutions relevant to justice.⁷⁴

Iris Marion Young and Aaron James have separately defended accounts of the site of justice that reject governmentalism and focus on social practices. Both of their accounts are, however, insufficiently attentive to the idea that justice is concerned with distinct societal entities – social wholes – and not with social structure or mutually enforced social regulations in general.

Iris Young argues that ‘structure’ in general is the subject of justice. She rejects the idea that the site of justice is ‘a *part* of the society, a small subset of its institutions, that is more fundamental than other parts’. Young associates this idea with Rawls’ ambiguous account of the basic structure but it clearly also amounts to a rejection of governmentalism. She contends that

‘...the structural processes that tend to produce injustice for many people do not necessarily refer to a small set of institutions, and they do not exclude everyday habits and chosen actions. Social structures are not a part of the society; instead they involve, or become visible in, a certain *way of looking* at the whole society, one that sees patterns in relations among people and the positions they occupy relative to one another.’⁷⁵

⁷⁴ I do not discuss the highly illuminating account offered in Julius, 2003, which I take to be largely compatible with my own.

⁷⁵ Young, 2011, p.70.

In a related discussion of individual responsibility for justice, Young argues

‘...that individuals bear responsibility for structural injustice because they contribute by their actions to the processes that produce unjust outcomes. Our responsibility derives from belonging together with others in a system of interdependent processes of cooperation and competition through which we seek benefits and aim to realize projects.’⁷⁶

Aaron James similarly rejects a narrow focus on governmental institutions and instead argues that ‘power in social organization’ is the subject of justice:

‘State or major institutions are constituted by complex systems of social practices, and so exercises of power in such institutions are subject to principles of social justice. But appraisal of social justice also applies to social practices 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 wields forms of power in need of justification to each person.’⁷⁷

I argue that the pervasive structure is more precise than these views because it contends that the demands of justice apply directly only to the interdependent set of practices that are pervasive within a society.

Young does not claim that social structures demarcate and constitute distinct societal wholes and nor does James with regard to social practices or social organizations. Both offer powerful arguments in defense of the idea that justice is about institutions in general rather than governments in particular. But neither discuss the boundaries of social structures and so it is unclear, on their accounts, how we are to pick out the subset of social structures that are relevant to any particular injustice or the distinctive responsibility of the particular group of people that enact them. They therefore fail to capture an important element of the intuitive concept of justice – that it applies to societies as such – and are unhelpfully vague as tools in the practical task of diagnosing and addressing injustice. These issues are illustrated by Young’s discussion of the potentially global nature of structural injustice.

Young contends that ‘many injustices in today’s world result from structural social

⁷⁶ Ibid. p. 105.

⁷⁷ James, 2005a, p. 28.

processes that are potentially global in scope.⁷⁸ This is plausible enough. But Young's account does not tell us why some practices matter more in some contexts than in others. Young's account of global injustices 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. This is true for domestic cases too, where we need to know whether and why pervasive gender norms are more relevant to the overall division of domestic labor in a society than the idiosyncratic rules of particular households. The pervasive structure account resolves this indeterminacy by picking out only those practices that are pervasive within a society. The pervasive structure of a society forms an interdependent institutional whole that sets the terms for every action within it. It therefore has a privileged role in explaining the experiences and outcomes of people across different social positions.⁷⁹

When we wish to diagnose and analyze a specific injustice, the pervasive structure account gives us a clear practical guide. Once we have picked out the most important group within which the injustice occurs – such as a single country or many – we try to identify its pervasive practices and work out how they have influenced the outcome we are concerned with.

The account offered by Louis-Philippe Hodgson also fails, I argue, to properly account for the holistic nature of the institutional domain of justice. Hodgson rejects a narrowly governmental specification of the basic structure and argues that the basic structure is instead identified in terms of its impact on the exercise of individual agency.

I contend that the main concern of justice is neither pervasive influence broadly construed nor legal coercion narrowly construed but rather a more complex kind of impact that I call *controlling influence*...[S]tructures and institutions exert controlling influence on a person to the extent that they set rules and constraints through which the person has to act to exercise her capacity for a conception of the good...[T]he basic structure is the primary subject of justice because it exerts controlling influence. Whether a given structure or institution is also part of the

⁷⁸ Young, 2011, p. 123.

⁷⁹ The pervasive structure account can also be extended to international or global practices as well as local, associational ones by way of the idea that every practice includes a 'boundary norm' specifying criteria for counting as a participant in the joint activity. This allows us to identify the pervasive structure of any group that shares a practice, from the norms of a single family to the shared practices that constitute the global economy. I do not explore this idea further here but note it only to illustrate the superior precision of the pervasive structure account.

primary subject of justice...depends on whether it exerts a similar influence.⁸⁰

Hodgson seeks to pick out the subset of institutions with special significance for their participants due to governing very general activities, such as using external objects, which necessarily occurs through legal institutions of private property.⁸¹ This is an attractive proposal because it allows for the inclusion in the basic structure of informal norms that exercise a controlling influence over individual agency. But it fails, I argue, to properly account for the holistic nature of the basic structure; specifically, the way in which ostensibly insignificant pervasive norms are relevant to the justice of the structure as a whole.

The pervasive structure includes all pervasive norms however apparently insignificant. The demands of justice can apply to apparently insignificant social practices simply because they happen to be pervasively enacted, such as pervasive cultural norms of sporting preference that seem irrelevant to social justice and which presumably do not meet Hodgson's standard of controlling influence. Their inclusion in the domain of justice is, however, justified in virtue of the holistic nature of institutions.

All institutions involve the complex interdependence of many rules. The pervasive structure of society is a single institution. Different parts of an institution can function independently of each other. For example, rules of judicial 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. But the functional autonomy of different parts of a single institution is often, as in this case, achieved by way of an explicit norm. It can also occur by chance. This difference is morally significant.⁸²

A pervasive norm of sporting preference might specify minor rewards for those who like baseball and minor costs for those who dislike it, such as exclusion or inclusion in informal workplace socializing. If this norm functions autonomously then it is probably irrelevant to justice because the benefits and burdens it allocates are morally insignificant – there is no great social cost to disliking baseball. But if it interacts with more significant norms, such as those of professional advancement, then it could contribute to injustice, because those who do not like baseball might be unjustifiably regarded as less suitable for

⁸⁰ Hodgson, 2012, pp. 306-307.

⁸¹ Ibid. p. 314.

⁸² This line of thought is prominent in Walzer, 1983.

promotion.

Justice might require that society enact norms ensuring that such irrelevant considerations do not shape opportunities in this way rather than leaving this up to chance. Even if banal norms do function autonomously, the foundation of this autonomy is itself a matter of justice, as with judicial due process. In order to evaluate a society as just or unjust we must attend to the interdependent set of all of its pervasive normative practices, not only those that seem to play an especially significant role in the lives of their participants but also those that are ostensibly, and even genuinely, inconsequential. Hodgson fails to account for this significant complexity of social institutions.

The pervasive structure account also departs from and, I argue, improves upon Hodgson's (and other) accounts by potentially excluding many laws from the pervasive structure. Hodgson seems to accept that all of criminal and civil law are part of the basic structure on the grounds that

‘...pursuing one's conception of the good normally requires entering into certain kinds of relations with others — employment, contract, and so on — that are also regulated by the legal system.’⁸³

The pervasive structure account, by contrast, likely excludes many particular laws, including those of taxation and contract, because it is likely that most people do not know them, meaning they are not pervasive. I argue that this apparently counterintuitive implication is justified and further illustrates the usefulness of the pervasive structure account's empirical approach. One advantage is that the pervasive structure account gives a more plausible analysis of the role of laws and governments in the pursuit of justice.

Justice is concerned with the way in which laws form part of a broader institutional structure that includes some genuinely pervasive norms specifying how laws can be made and enforced. This reflects the exhaustively term-setting nature of the institutional site of justice, which significantly determines the character of all activities within it, including those of governments. The justice of non-pervasive laws should be understood as deriving from the character of these pervasive norms of legitimate political authority. Laws specifying arbitrary coordinating conventions, such as which side of the road to drive on, are plausibly just or

⁸³ Hodgson, 2013, p. 314.

unjust only in virtue of being legitimately imposed. This is likely to also be true of more obviously important laws such as those of taxation and contract.

The administration of taxation, for example, is sufficiently complex that it would probably be inefficient to the point of injustice to require people to understand and apply tax laws in their everyday lives. Justice might instead require that tax law be written and implemented ‘in the background’ by specialist officials whose actions are governed by genuinely pervasive norms of democratic authority and accountability. Insofar as justice requires a particular kind of tax regime, therefore, its demands would apply directly only to the genuinely pervasive norms of public discourse, democratic politics and administrative transparency by which society directs and monitors its tax officials.

I contend that this captures all that we care about when we describe a taxation system as just or unjust, namely that society is required to enact and monitor particular taxes at particular rates but can mostly ignore the particular laws and regulations that implement these decisions. The demands of justice may not apply to many particular laws, but they do apply to pervasive rules that assign political, judicial and policing institutions the authority to make, interpret and enforce all laws.

This concludes my discussion of alternative non-governmental forms of institutionalism. I have argued that these alternatives fail to properly account for the holistic nature of social institutions or for the extent to which the terms of governmental authority are themselves established by pervasive social norms. I conclude that the pervasive structure account of the institutional domain of justice provides the most plausible interpretation of the idea that justice is a distinctively institutional value.

Conclusion

The pervasive structure account of the domain of justice has significant implications for how we think about and pursue justice and for the methods and concerns of political philosophy. It radically revises the widely accepted idea that the demands of justice are distinctively institutional by identifying the relevant institution as the ‘pervasive structure’ of society – a complex whole consisting of all and only those jointly enacted social practices enacted throughout a society.

The pervasive structure account threatens the prevailing alignment of political philosophy with the methods of public policy, law and political strategy and suggests that it should be oriented more towards ethnography, collective intentionality and direct action. It also threatens the basic distinction between political philosophy and the rest of ethics, by highlighting the ways in which individuals shape and could reshape their social world by reshaping their own lives, habits, values and characters.

The pervasive structure account denies that there is any ethical priority to pursuing justice through conventional political action rather than by directly enacting a just economy or non-oppressive culture through a struggle to transform everyday life. By showing that informal practices are relevant to justice in the same way as law and politics, it implies that philosophical accounts of the ‘practical implications’ of principles of justice should always go beyond policy and political strategy and explain how the proposed institutions would shape everyday life. Theories of gender justice, for example, must go beyond laws and policies that recognize and seek to correct for the impact of patriarchal norms. They must also consider the innumerable, intimate activities through which gender distinctions are created and perpetuated in everyday life by pervasive social norms, such as those of dress and sexuality, and the complex ways in which these norms are entangled with people’s sense of self and their deepest desires and commitments.

It also means that people can be required to create and maintain just institutions directly in their everyday lives. What I call ‘everyday direct action’ is a necessary complement to pursuing change by political means. It can involve retraining habits and character traits so as to stop enacting engrained norms and variously flouting or challenging unjust norms. People can also contribute directly to transforming pervasive norms by reconfiguring personal relationships structured by those norms, such as romantic partnerships or sexual relationships that reproduce unjust gender distinctions. Justice can also require people to help enact new norms and practices to replace unjust ones, whether by diffusely promoting, say, anti-sexist norms in many contexts or by joining a commune or occupation that seeks to enact a whole new form of life in a more confined social space.⁸⁴ This means that in unjust societies where people have been formatively shaped by unjust practices, people can be required to pursue a

⁸⁴ For more on this kind of ‘pre-figurative’ activity see e.g. Graeber, 2002.

significant ethical transformation.

Justice is an institutional concept. But individuals create and recreate the relevant institutions every day. The pursuit of justice will, can and surely does require us to change not just how we vote or the laws we pass, but to transform society by transforming our everyday lives and, thereby, also transforming ourselves.

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