

Institutions and the Demands of Justice

I. INTRODUCTION

In the first sentence of the first section of *A Theory of Justice* Rawls writes that “justice is the first virtue of social institutions.” He soon elaborates:

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.

Somewhat later in the book, we find this crucial passage:

The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.¹

In this article I defend the contrary view: all fundamental normative principles that apply to the design of institutions apply also to the conduct of people.

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1. Cambridge, Mass.: Harvard University Press, 1971. The three passages are found at pp. 3, 7, and 54–55.

Like all of his philosophical thought, Rawls's conception of justice as a normative realm distinct from that of ethics or morality has been extremely influential. It is true that the general idea that distributive justice must be promoted through the structural reform of society rather than individuals' do-gooding is not new with Rawls; it has long been taken for granted by pretty much everyone with egalitarian sympathies. Likewise, Rawls is not the first philosopher to discuss the importance of social institutions in forming people's interests, character, and sense of justice.² But Rawls offers a novel philosophical interpretation of the role of institutions that has been very widely accepted. For Rawls, the significance of institutions is not just causal; in a fundamental way, institutions are what normative political theory is all about.

It is only this idea of the foundational role of institutions in normative political theory that I question. Thus Rawls is surely right to highlight the formative significance of institutions.³ And it is obviously true that, as a practical matter, it is overwhelmingly preferable that justice be promoted through institutional reform rather than through the uncoordinated efforts of individuals—a point worth emphasizing in an era characterized by the state's abandonment of its responsibility to secure even minimal economic justice and by politicians' embrace of "volunteerism" as a supposed substitute.⁴

Though Rawls's conception of the difference between political justice and personal ethics now seems very much the mainstream view, it is a

2. See, e.g., *A Theory of Justice*, §69.

3. As Rawls says, "everyone recognizes that the institutional form of society affects its members and determines in large part the kind of persons they want to be as well as the kind of persons they are" ("The Basic Structure as Subject," in *Political Liberalism* [New York: Columbia University Press, 1993], p. 269).

4. I refer primarily to the United States in the wake of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which was signed by President Bill Clinton on August 22, 1996. When addressing a rally of volunteers at the Presidents' Summit for America's Future in Philadelphia on April 27, 1997 (where he was joined by former Presidents Jimmy Carter and George Bush as well as General Colin Powell), President Clinton had this to say: "We're still losing too many kids to crime, to drugs, to not having decent income in their home and to not having a bright future. And we're here because we don't think we have to put up with it, and we believe that together we can change it. Isn't that right?" (Quoted in James Bennet, "At Volunteerism Rally, Leaders Paint Walls and a Picture of Need," *New York Times*, April 28, 1997.). For a thorough explanation and evaluation of the effects of the Personal Responsibility and Work Opportunity Reconciliation Act, see Helen Hershkoff and Stephen Loffredo, *The Rights of the Poor* (Carbondale and Edwardsville: Southern Illinois University Press, 1997).

significant innovation in political philosophy.⁵ The clearest contrast comes from the utilitarians who, despite their intense interest in institutional design, have always used the same criterion to evaluate institutions and personal conduct.⁶ But I will not defend utilitarianism in particular. I will make the general argument that any plausible overall political/moral view must, at the fundamental level, evaluate the justice of institutions with normative principles that apply also to people's choices. We should not think of legal, political, and other social institutions as together constituting a separate normative realm, requiring separate normative first principles, but rather primarily as the means that people employ the better to achieve their collective political/moral goals.⁷

Despite the reference to "separate subjects" in the above quotation,

5. In "The Basic Structure as Subject" (first published in 1978), pp. 259–60, Rawls accepts Hugo Adam Bedau's criticism of his claim to the contrary in *A Theory of Justice*, pp. 10–11; see further Bedau, "Social Justice and Social Institutions," *Midwest Studies in Philosophy* 3 (1978):159–75. As Bedau says, "[b]ecause institutionalism may now seem so plausible and attractive, we might not realize how relatively novel it is even today" (p. 162). In 1995, Brian Barry writes: "If Rawls had achieved nothing else, he would be important for having taken seriously the idea that the subject of justice is what he calls 'the basic structure of society'. . . . Rawls's incorporation of this notion of a social structure into his theory represents the coming of age of liberal political philosophy" (*Justice as Impartiality* [Oxford: Clarendon Press, 1995], p. 214).

An important example of Rawls's approach can be found in the increasing willingness of economic analysts of law to employ a utilitarian criterion (rather than some criterion of efficiency that does not require interpersonal comparisons of utility) for the evaluation of legal rules while ignoring the dramatic implications the utilitarian criterion would have if employed by people; the assumption must be that the criterion does not apply to personal choice. See, for example, Louis Kaplow, "A Fundamental Objection to Tax Equity Norms: A Call for Utilitarianism," *National Tax Journal* 48 (1995):497–514.

6. As Rawls notes in "The Basic Structure as Subject," pp. 260–61. See also Henry Sidgwick, *The Methods of Ethics*, 7th ed. (London: Macmillan, 1907; repr., Indianapolis: Hackett, 1981), pp. 457–59, and (for a note on Bentham) pp. 87–88. As Rawls also notes, libertarianism, as defended by Robert Nozick in *Anarchy, State, and Utopia* (New York: Basic Books, 1974), also rejects the idea of special principles for the design of institutions, see Rawls, "The Basic Structure as Subject," pp. 262–65; see also the brief discussion of Nozick in the text below. Many other contemporary opponents of Rawls's idea could be cited; for one example, see Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), p. 4 and passim; and see Bedau, "Social Justice and Social Institutions," pp. 162–64, for a survey of some discussions of justice roughly contemporaneous with *A Theory of Justice*.

7. Since I am arguing that we should see normative political theory as continuous with ethics or morality, terminology becomes a problem. Should we talk here about a person's "moral" goals or her "political" goals? Each is somewhat misleading, as are slogans such as "it's all politics" or "it's all morality."

Rawls clearly does not believe that the subjects of justice and morality are entirely distinct. Both in *A Theory of Justice* and *Political Liberalism* the theory of justice is treated as part of moral theory, where the latter is understood broadly to include, at least, principles appropriate for the design of institutions and principles appropriate for the guidance of personal action.⁸ So the two subjects Rawls has in mind are both moral subjects in a broad sense. I am interested in the specific claim that the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle. I will use the label “dualism” for this claim and “monism” for its denial.

Monism is of course compatible with the existence of specifically political principles of a nonfundamental kind, such as the principle that taxation should be levied according to taxpayers’ “ability to pay.” What monism rejects is any defense of such a principle by appeal to a fundamental one that does not also apply directly to people’s conduct. It should therefore be clear that monism does not have the absurd implication that all morally defensible legal principles are ipso facto valid moral principles. In rejecting the distinction Rawls draws between politics and morality, I am not rejecting the distinction between law and morality. Thus it might be appropriate to enact legislative or constitutional provisions that are not plausible moral principles. Rawls’s difference principle could possibly be an example.⁹

Monism is also fully compatible with such views as that the duties of state officials are very different from the duties of private citizens, or that the duties of citizens are very different from the duties of stateless people. These are questions of personal conduct; different moral views are sensitive in different ways to political roles and political context. Monism is even compatible with the idea that just institutions have some kind of intrinsic expressive value: just institutions could have expressive value that is not reducible to the value of their effects even though the principles that tell us that the institutions are just are not fundamentally principles *about* institutions.

What monism rejects, then, is that there could be a plausible fundamental normative principle for the evaluation of legal and other institutions that does not apply in the realm of personal conduct. What mo-

8. See *A Theory of Justice*, e.g., p. 120; *Political Liberalism*, p. 11.

9. For the difference principle, see *A Theory of Justice*, pp. 75 ff., and p. 264 below.

nism rejects is the kind of principle Rawls says his difference principle is.¹⁰

The example of the difference principle is appropriate, for my discussion will focus exclusively on distributive justice. This is because almost all the substantive arguments for and against dualism that I am aware of concern distributive justice.¹¹ More narrowly still, a main hope behind all the arguments for dualism seems to be that it will help with a fundamental problem faced by, specifically, *egalitarian* theories of distributive justice: the problem of the unreasonable demands such theories of justice may potentially impose on some people.

As the focus on distributive justice should suggest, I understand the case for dualism to be largely independent of the main themes of *Political Liberalism*. It is true that Rawls includes dualism in his definition of the “political conception of justice” introduced in that book.¹² The language of dualism also figures in the account of a political conception of justice as one that stands free of, and is compatible with, a range of “comprehensive views.”¹³ But this central issue for *Political Liberalism* of how a conception of justice can be justified and stable in a society made up of people with a range of different moral, philosophical, and religious views in fact seems to be neutral between dualism and monism.¹⁴ Rawls does not believe that an overlapping consensus of reasonable comprehensive doctrines will necessarily include all of the principles of justice found in his own preferred theory of justice, justice as fairness.¹⁵ Thus there is room for reasonable disagreement about principles for the design of institutions too—we cannot say that the overlapping consensus just comprises those principles from the various reasonable doctrines that apply to the basic structure of society. Moreover, there seems to be no reason why there could not be an overlapping consensus on a set of principles—a subset of all the moral/political

10. “The difference principle . . . applies to the announced system of public law and statutes and not to particular transactions or distributions, nor to the decisions of individuals and associations, but rather to the institutional background against which these transactions and decisions take place” (“The Basic Structure as Subject,” p. 283).

11. A reason for rejecting dualism that I do not discuss, which does not turn on issues of distributive justice, would be that it is incompatible with Raz’s conception of political authority; see Raz, *Morality of Freedom*, chap. 4.

12. See p. 11.

13. See pp. 12–15.

14. See esp. Lecture IV.

15. See, e.g., *ibid.*, pp. 223–27.

principles adhered to by various groups in the polity—that apply not only to the basic structure but also to people. Of course, an overlapping consensus that embraces only principles that apply just to institutions is also possible. But the possibility of a dualist overlapping consensus counts neither for nor against the plausibility of dualist egalitarian conceptions of justice.

My aim in what follows is to evaluate dualism and monism on their own terms; I want to investigate what arguments are available for either view that do not just amount to arguments for some particular moral/political theory. I do not suppose, of course, that the evaluation of dualism and monism can be in some sense metanormative or nonnormative. The aim is rather to adduce normative considerations in favor of either view whose force can extend beyond the confines of any one fully worked out theory of justice or morality.

Dualism has been criticized before, perhaps most prominently by Robert Nozick, who posed the pertinent question: “In virtue of what features of the basic structure, features not possessed by microcases, do special moral principles apply that would be unacceptable elsewhere?”¹⁶ But the arguments for dualism that I will consider were all offered after Nozick wrote his critique. And though several points I will make along the way repeat points made by Nozick, the arguments for monism I will discuss—the recent incentives argument of G. A. Cohen and my own argument concerning nonideal theory—are not at all concerned with the issue of entitlements that frames his critique.¹⁷ What binds together all the arguments I will consider is an underlying concern to describe a plausible and robust egalitarian theory of distributive justice that nevertheless appears to make reasonable demands on people in just and unjust circumstances. That this Rawlsian project is worthy I take for granted; my aim is to show that dualism hinders rather than helps it.

Nevertheless, as I will argue in my concluding section, there is an aspect of Rawls’s institutional approach to justice that we should embrace even though we reject dualism. If we think of justice as being about institutional design we will naturally think of people’s responsi-

16. Nozick, *Anarchy, State, and Utopia*, p. 205. Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989), pp. 25–28, rightly notes that Rawls’s distinction does not concern size; but this point does not undermine the substance of Nozick’s discussion.

17. “The only reason I have thought of for discounting microtests of the fundamental principles is that microsituations have particular entitlements built into them.” Nozick, *Anarchy, State, and Utopia*, p. 206.

bility for justice as being in an important sense collective: we together, through our institutions, secure justice. Indeed it seems possible that the idea that justice is a collective responsibility is one of the motivations behind Rawls's dualism. I fully embrace that idea, and I see in it the basis of an answer to the central problem, mentioned above, of describing a robust egalitarian conception of justice that nevertheless makes reasonable demands on people. But we can accept that justice is fundamentally a matter of collective obligation without accepting that it is fundamentally a matter of institutional design.

II. THE DIVISION OF LABOR

The first argument in favor of dualism turns on what Rawls calls an institutional division of labor. Rawls offers this argument in "The Basic Structure as Subject," where he also notes that the reasons for (what I call) dualism were not fully explained in *A Theory of Justice*.¹⁸ Rawls had said in the book that the "basic structure is the primary subject of justice because its effects are so profound and present from the start."¹⁹ But of course the immense practical significance of the major social institutions in determining people's life prospects does not at all support the claim that special criteria are required for the evaluation of those institutions. The division-of-labor argument, by contrast, does promise to provide such support.

In "The Basic Structure as Subject" Rawls says that the basic structure of society comprises background institutions that preserve justice by correcting the outcomes of ordinary market transactions among people. As defined by Rawls, institutions in the basic structure do not apply to people in their daily lives and are thus to be distinguished from legal rules that do, such as those governing contractual relations. "What we look for," Rawls says,

is an institutional division of labor between the basic structure and the rules applying directly to individuals and associations and to be followed by them in particular transactions. If this division of labor can be established, individuals and associations are then left free to advance their ends more effectively within the framework of the basic

18. See "The Basic Structure as Subject," p. 258n.

19. P. 7.

structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.²⁰

Note that Rawls here seems to offer a narrower characterization of the basic structure than he did in *A Theory of Justice*.²¹ In a passage from the book already quoted, Rawls defines the basic structure of society as “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.” In the passage just quoted from “The Basic Structure as Subject,” Rawls seems to narrow the account of the basic structure, and thus the subject of justice, to those institutions that preserve background justice without impinging directly on people’s daily lives. Thus the institution of contract law, which does impinge upon people’s daily lives insofar as it rules out force and fraud in contractual relations, does not count as part of the basic structure, whereas on the broader characterization offered in *A Theory of Justice* it would seem to. I will return to these two conceptions of the basic structure shortly.

The ideal of a division of labor is developed further by Thomas Nagel in *Equality and Partiality*.²² Though Nagel writes of “a moral division of labor,” the basic idea is the same. It is to take the business of securing justice off people’s plates in their day-to-day lives. Assuming that any plausible theory of justice is egalitarian and will thus—in a capitalist society at least—include a redistributive component, we face the question of how best to achieve that redistribution. The idea that people must constantly think about how well-off other people are and adjust their behavior accordingly is morally unappealing. People lead freer and better lives, facts of normative significance, if they can devote most of their concerns to their own affairs without always monitoring levels of well-being or degrees of social inequality. A division of moral labor that leaves to background institutions the job of securing a just distribution in society and holds people responsible for only a limited set of negative duties would enable us to eat our cake and have it too. We would achieve our egalitarian aims without making ourselves miserable in the process.

20. Pp. 268–69.

21. As Pogge points out, *Realizing Rawls*, pp. 21–24.

22. New York: Oxford University Press, 1991, chaps. 6, 9. Nagel does not offer the division of labor argument in defense of dualism.

Now it should be noted that Nagel believes that the idea of the division of moral labor brings with it serious problems. One theme of *Equality and Partiality* is that, once a division of moral labor is in place and people are for the most part concerned mainly with their own interests, it is hard to see how they can be expected to continue to support the background institutions that, for some of them at least, operate so strongly to their detriment. We want to liberate people from day-to-day concerns about how well everyone else's lives are going, but we rely on some such concern when we expect people to *support* just institutions.²³ I will return to this problem briefly in the next section.

I am just as attracted to the ideal of the division of labor as is Rawls or Nagel. But unlike Rawls, I do not think that this counts in favor of the view that justice is a separate subject requiring different principles.²⁴ It is true that the ideal of the division of labor presents a further clear motivation for paying special attention to the design of institutions. For these institutions, we now see, have two virtues: not only do they secure justice more effectively than could people acting without institutions, they also minimize the costs people must sustain to secure justice. But none of this supports the idea that different normative principles apply to institutional design on the one hand and personal conduct on the other.

Note first that Rawls's narrow conception of the basic structure, and thus the account of an institutional division of labor that builds on it, appear to depend on an inaccurate assumption about the way different kinds of legal institutions impact on people. We should not attempt to secure justice via those legal rules "applying directly to individuals and associations and to be followed by them in particular transactions"; the work of securing economic justice is left to the institutions of the basic structure which do not apply directly to individuals. But this distinction between background institutions and those legal rules that apply directly to people and associations is not tenable. The central institutions of the basic structure, on the narrow account, are those of taxation and transfer. We may say that the legal rules governing transfer payments do not "apply" to the recipients of those payments. Nothing similar can be

23. See chaps. 9 and 10. Thomas C. Grey succinctly stated the problem in his review of *A Theory of Justice*, see "The First Virtue," *Stanford Law Review* 25 (1973):323-25.

24. See "The Basic Structure as Subject," pp. 265-69.

said about the collection side of the system, as the legal rules that make up the institution of taxation obviously apply directly to individuals and associations. The idea is perhaps that whereas the rules of contract law apply to every agreement, and do so obtrusively, the rules of tax apply to individuals and associations infrequently and unobtrusively; but this too is inaccurate. Income taxation of individuals by withholding is comparatively unobtrusive, but it is just one aspect of the regime. As Anthony Kronman points out in an extensive discussion of this point, sales tax applies to every instance of certain kinds of transaction made by individuals.²⁵ He could also have mentioned that income taxation can be very obtrusive indeed for those not subject to withholding; even though the tax does not apply to each transaction, many self-employed persons probably think about taxation more or less constantly.²⁶ If we consider commercial associations, it is obvious enough that the taxation aspects of major corporate deals generate a significant proportion of the legal work (and expense) involved.²⁷

Kronman goes on to argue that it may be no less intrusive on people and associations to promote distributive justice through the law of contracts. He also suggests that this might be the more efficient route to take.²⁸ Neither possibility seems at all likely to me. But what is clear is that there is no general reason, no reason of principle, to think that some parts of the law will always be less obtrusive, less restrictive of individual liberty, than others. It is possible to design a taxation and transfer scheme of great obtrusiveness; wage earners could be required to write weekly checks to specified recipients, for example. This would be an absurdly inefficient way of securing distributive justice, but that is the point. Whether taxation and transfer, on the one hand, or contract law, on the other, can better achieve the aim of securing justice while leaving people as free as possible to pursue their own interests unhin-

25. See "Contract Law and Distributive Justice," *Yale Law Journal* 89 (1980):503-4.

26. Indeed, sales taxation is potentially much less obtrusive, and thus less costly to individuals, than is income taxation even for those subject to withholding. Where sales tax is incorporated into the final sale price, the consumer gives the existence of the tax no thought at all. Certain other forms of consumption tax are likewise invisible to the consumer. See Deborah L. Paul, "The Sources of Tax Complexity: How Much Simplicity Can Fundamental Tax Reform Achieve?" *North Carolina Law Review* 76 (1997):151-221; Joel Slemrod and Nikki Sorum, "The Compliance Cost of the U.S. Individual Income Tax System," *National Tax Journal* 37 (1984):461-74.

27. See also Kronman, "Contract Law and Distributive Justice," p. 504.

28. *Ibid.*, pp. 507-10.

dered by the machinery of justice is in large part an empirical question, subject to changing circumstances.²⁹

So the narrow definition of the basic structure Rawls appears to work with in “The Basic Structure as Subject” does not correspond to any principled doctrinal or structural division in legal systems. Thus this account of the basic structure would make it impossible to know which parts of our legal system should be regulated by principles of justice, and which parts should not. Rawls’s concern is to isolate out those institutional structures which do not apply directly to people, or do so less intrusively, as the proper site for the application of principles of justice. But it is obviously not feasible to approach taxation policy, for example, under the assumption that part of the law of taxation is in the basic structure and part of it is out. The division-of-labor argument for dualism, as I have so far construed it, therefore employs a conception of the basic structure that is in fact incompatible with dualism, for dualism must be taken to imply that we can easily identify the realm in which principles of justice apply.

All this suggests that Rawls did not after all intend the account of the basic structure offered in “The Basic Structure as Subject” to differ significantly from that offered in *A Theory of Justice*. Indeed a passage in the article suggests that Rawls understands contract and property law and the background institutions of taxation and transfer as together belonging to the one structure that should be evaluated as a whole by principles of justice.³⁰ Perhaps this is the best interpretation of what Rawls writes, since it is indeed hard to see how legal rules applying directly to people could be regarded as entirely outside the purview of justice, so that, for example, sales taxes, or principles of unconscionability in contracts, could in principle not be evaluated on grounds relating to distributive justice.³¹

However, reverting to the broader notion of the basic structure does not help the division-of-labor argument for dualism. If the proper site

29. See *ibid.*, p. 507

30. See the only full paragraph on p. 268. The interpretation that Rawls did not see himself as narrowing the account of the basic structure is supported by the fact that at other points in “The Basic Structure as Subject,” and in portions of *Political Liberalism* that were written later, Rawls defines the basic structure in the same broad terms used in *A Theory of Justice*; see *Political Liberalism*, e.g., pp. 35, 258.

31. On the latter in the U.S. context, see Uniform Commercial Code §2–302; Restatement (Second) of Contracts §208; E. Allen Farnsworth, *Contracts*, 2nd ed. (Boston: Little,

for the application of principles of justice is a basic structure that includes, at least,³² all of law, it might seem that we have found a structural divide—that between law and nonlaw—that corresponds to the desired division of labor. But in fact there is no reason to think that the application of principles of justice to legal institutions alone removes from people the burdens of securing justice. It would be possible, for example, to enact a positive law requiring citizens to aim at justice continually in their daily lives. A criminally enforced regime of “a thousand points of light” may be a thoroughly unappealing idea, practically and normatively, but it is perfectly possible.

The ideal of the division of labor thus provides no support one way or the other for the view that principles of justice apply exclusively to the design of institutions. The ideal does, of course, offer guidance on how our institutions might best be designed, but that is a different matter. Monists can easily agree with that.

To develop this last point, it may help to sketch a conception of justice that rejects dualism, but embraces the ideal of the division of labor. The view I will sketch is one that sees distributive justice as based on some principle of beneficence. That is, on this view distributive justice is about benefitting people, increasing their well-being. This is of course what utilitarians believe, and utilitarianism is one beneficence-based approach. But utilitarianism is distinctive for claiming that beneficence is *all* there is to political morality; utilitarianism is a one-principle theory. The view I will sketch explains distributive justice in terms of beneficence but leaves open what other principles of political morality there may be. For example, one can believe that distributive justice should be understood in terms of beneficence and also believe that people have rights of various kinds that constrain efforts to promote well-being. Furthermore, there is no reason why a beneficence-based conception of distributive justice must agree with utilitarianism that what is to be promoted is *aggregate* well-being, without regard to its distribution. A par-

Brown, 1990), pp. 323–39; Duncan Kennedy, “Distributive and Paternalist Motives in Contract and Tort Law,” *Maryland Law Review* 41 (1982):563–658; Michael J. Trebilcock, *The Limits of Freedom of Contract* (Cambridge, Mass.: Harvard University Press, 1993), pp. 97–101.

32. I discuss the question of which institutions count as part of the basic structure further in the next section. See also Pogge, *Realizing Rawls*, pp. 22–23.

ticularly attractive principle of beneficence that is sensitive to distribution, and that qualifies, to my mind, as an egalitarian principle, is what Derek Parfit calls the principle of weighted beneficence.³³ This principle holds that when promoting well-being, one should give (some) priority to promoting the well-being of those who are worse off. Benefits to worse-off people matter more, they have greater moral weight.³⁴

If we think of distributive justice in terms of weighted beneficence we see no distinction between the principles that govern the design of institutions and those that govern personal conduct. Within the constraints imposed by whichever rights we recognize, institutions should be designed so that they maximize weighted aggregate well-being over time; likewise people, within the same constraints, should act so as to promote the same thing: aggregate weighted well-being over time. Approaching social justice via a principle of weighted beneficence, we embrace monism. However, when designing institutions, it will make eminent sense from within this perspective to remove as much as possible the burdens of promoting weighted well-being from people's day-to-day lives. It will make eminent sense to set up background structures of taxation and transfer such that people can for the most part pursue their own interests, "secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made." If the background institutions are doing their job properly, people will not have to think too much about promoting general well-being,

33. See *Equality or Priority?* (The Lindley Lecture, The University of Kansas, 1991). The phrase "weighted beneficence," which does not appear in this publication, comes from Parfit, "On Giving Priority to the Worse Off," unpublished ms., 1989. T. M. Scanlon describes a version of weighted beneficence in "Rawls' Theory of Justice," in Norman Daniels, ed., *Reading Rawls* (Stanford: Stanford University Press, 1989), pp. 197, 201.

34. The beneficence-based conception of justice should not be confused with the charity view criticized in Thomas Nagel, "Poverty and Food: Why Charity Is Not Enough," in Peter G. Brown and Henry Shue, eds., *Food Policy* (New York: The Free Press, 1977), pp. 54–62. A beneficence-based approach neither renders matters of justice optional, nor automatically treats existing legal entitlements as legitimate (see *ibid.*, p. 56). Brian Barry criticizes a conception of international justice based on beneficence (or "humanity") in part for leaving status-quo legal entitlements in place; see "Humanity and Justice in Global Perspective," in J. Roland Pennock and John W. Chapman, eds., *Ethics, Economics, and the Law* (New York: New York University Press, 1982), pp. 243–50. Again, any approach to justice that *does* do this is obviously defective, but there is nothing in the idea that justice should be understood in terms of beneficence that leads to such a conclusion.

and this liberation is, from the point of view of beneficence, all to the good.

III. COHEN, INCENTIVES, AND THE FAMILY

The natural fit between the ideal of the division of labor and the account of justice as weighted beneficence confirms that the attractiveness of the division of labor does not in itself count for or against dualism. I turn now to an argument of G. A. Cohen to the effect that the combination of dualism and an institutional division of labor will almost always produce injustice. We turn then from an argument in favor of dualism to an argument against it.

In his recent article, "Where the Action Is: On the Site of Distributive Justice," Cohen argues for the view that "principles of distributive justice . . . apply to the choices that people make *within* the legally coercive structures to which, so everyone would agree, principles of justice (also) apply."³⁵ That is, he presents an argument for monism. To explain Cohen's argument I need first to introduce a different argument he made some years earlier.

In his Tanner Lectures, "Incentives, Inequality, and Community," Cohen presented an argument against the standard interpretation of the operation of Rawls's difference principle.³⁶ The difference principle holds that social and economic inequality is justified only where it occurs in an overall scheme that improves the expectations of the least advantaged members of society.³⁷ Cohen focuses on the question of why inequality might improve the prospects of the worst-off group in society and thus be justified by the difference principle. The standard assumption is that in a fully equal society people will lack incentives to work hard, take risks, etc. If, however, high earnings, and thus inequality, are tolerated, people, especially "talented" people,³⁸ will have the right incentives: they will work hard, and this will redound to everyone's benefit. This kind of inequality is "necessary" to improve the prospects of

35. *Philosophy & Public Affairs* 26, no. 1 (winter 1997):3.

36. Reprinted in Stephen Darwall, ed., *Equal Freedom* (Ann Arbor: University of Michigan Press, 1995), pp. 331–97. See also, "The Pareto Argument for Inequality," *Social Philosophy and Policy* 12 (winter 1995). "Where the Action Is," pp. 5–10, contains a helpful summary of the earlier argument.

37. See, e.g., *A Theory of Justice*, pp. 75 ff.

38. I endorse Cohen's remarks about the focus on "talented" people in standard discus-

even the people who will be worst off in the unequal society and is thus sanctioned by the difference principle.

Cohen's objection here is that the inequality is only "necessary" to improve the prospects of the worst-off group because without incentives, those who could work hard will not. If people were equally productive with or without incentives, there would be no need to depart from equality. Thus the difference principle, as standardly interpreted, actually tolerates inequality which is *not* necessary to improve the prospects of the worse off. For there is another possibility: the talented could simply choose to work hard without the additional rewards. Cohen concludes that for the difference principle to be really satisfied there must be an egalitarian ethos in society, an ethos that will lead people to choose to work hard even in the absence of inequality-creating incentives.

Cohen's incentives argument was intended to show that Rawls's own account of justice, properly interpreted, tolerated far less inequality than Rawls and others had supposed.³⁹ To adapt Cohen's argument to the terms of my discussion, however, we can say that whereas Nagel raises doubts about the feasibility of a division of labor that leaves to background institutions the job of promoting justice, Cohen argues that a society characterized by such a division of labor is unlikely to be just. In other words, Cohen believes that it is not possible to create a society where (to repeat Rawls's words once more),

individuals and associations are . . . left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.⁴⁰

For the basic structure, on its own, is not capable of making those corrections for all possible patterns of individual choice. If justice is to be secured, people have to make decisions contrary to their own interests—they have to choose actions that will promote justice.

sions of this issue. As he says, all that needs to be true of the relevant people "is that *they are so positioned that, happily for them, they do command a high salary and they can vary their productivity according to exactly how high it is*" ("Where the Action Is," pp. 6–7).

39. See, e.g., "Incentives," p. 378. The argument contains a great deal of detail and attention to Rawls's texts that I will not consider here. For a summary of the argument that Rawls himself should say that a society that provides economic incentives is unjust, see "Where the Action Is," pp. 7–9.

40. "The Basic Structure as Subject," p. 269.

Cohen here brings out a further serious problem with the ideal of the division of labor. Or rather, he gives us reason to modify the content of the ideal. As I originally presented it, the ideal of the division of labor described a world where people can be relatively unconcerned about issues of justice in their daily lives—in two senses. First, their motivations and their deliberations about what to do need not focus on how best to secure justice. Second, they can typically act in whatever way will promote their self-interest. Cohen has in effect established that we should not be too hopeful about the degree to which we can attain the second of these two elements of the original ideal. A passage from “Incentives, Inequality, and Community” makes the point well:

It is not true that, in the society I have in mind, a person would have to worry about unfortunate people every time he made an economic decision. Liberals would regard that as oppressive, and, whether or not they are right, one function of the egalitarian ethos is to make conscious focus on the worst off unnecessary. What rather happens is that people internalize, and—in the normal case—they unreflectively live by, principles which restrain the pursuit of self-interest and whose point is that the less fortunate gain when conduct is directed by them.⁴¹

I am not sure that the word “ethos” is ideal for Cohen’s purposes, but the point is clear. He is not saying that justice requires that all people develop benevolent or equality-loving characters. He is saying that in a just society it is inevitable that many people will quite typically have to make choices contrary to their self-interest. In the ideal of the division of labor as I originally presented it, people have to choose contrary to interest in only a small number of cases—to support the just regime, and, within the just regime, to comply with a narrow range of negative duties. It is compatible with the revised ideal that people must choose contrary to self-interest more or less all the time. But the revised ideal is nevertheless certainly worth having, since it points to a just world where people’s deliberative and emotional lives need not be swamped by concern with the aims of justice. Moreover, if we take seriously Nagel’s concerns about the tension within the original ideal caused by the need for people to make the often severely contrary-to-interest

41. P. 384, note omitted.

choices necessary to sustain the regime, it might in the end appear that the revision to the ideal forced on us by Cohen's incentives argument is not so dramatic after all.⁴²

Though Cohen's incentives argument operates in the context of Rawls's own theory of distributive justice, the results seem to have quite general application. Thus, for example, I think that a beneficence-based view of justice can also hope to accommodate only the revised and weaker form of the ideal. However I will not here attempt to spell out how this story would go.

Having set out Cohen's incentives argument (and having digressed a little on its impact on the ideal of the division of labor), we are now in a position to present his case against dualism. Cohen notes that Rawlsians would object to his incentives argument on the ground that it mistakenly assumes that principles of justice apply to the ordinary day-to-day choices of people when they in fact apply only to institutions in the basic structure.⁴³ In response to this "basic structure objection" to his incentives argument Cohen presents an independent argument against the idea that the basic structure alone is the subject of justice. I will lay out that argument presently. But I find it striking that Cohen does not offer the simple reply to this objection that I believe he is entitled to, viz. "to the contrary, my argument provides a strong reason to reject the idea that principles of justice apply only to the basic structure." He is entitled to this reply, I believe, because dualism is not the natural or default view, departures from which require conclusive justification. At any rate, I can for my own case say that Cohen's incentives argument counts as a strong objection to dualism. If dualism makes it impossible even to discuss how people ought to change their behavior, within an institutional scheme, in order to better achieve the aims of justice, then that seems to be a very good reason to reject dualism. Cohen's demanding conclusions about what justice requires of people may not, in the end, be right, but it cannot be the case that they are simply irrelevant to the topic of justice.

42. Cohen's result may, however, undermine one very important aspect of the ideal of the division of labor, viz. that it promises the compatibility of distributive justice and a market economy—important on most egalitarian theories because of its informational value. On this issue see Nagel, *Equality and Partiality*, pp. 91–95; Joseph Carens, *Equality, Moral Incentives, and the Market* (Chicago: University of Chicago Press, 1981).

43. "Where the Action Is," p. 10.

I will now very briefly summarize the main argument Cohen himself presents against the idea of the basic structure as subject.⁴⁴ Cohen's concern is with the question of which institutions are in the basic structure and which are not. He notes that Rawls sometimes lists the institution of the family as part of the basic structure. Susan Moller Okin has argued that this must be the case and that *A Theory of Justice* pays insufficient attention to the application of principles of justice to gender-based inequalities within families.⁴⁵ Cohen does not dispute that practices within families should be judged according to principles of justice. But Okin is wrong, he says, to think that Rawlsian principles of justice can be used in this way. Rawlsian principles of justice do not apply to ordinary day-to-day choices, but only to the design of institutions; and although institutions that depend on the coercive powers of the state are not sustained by ordinary day-to-day choices of people, institutions not sustained by state coercive powers, such as the family, are indeed instead sustained by people's ordinary day-to-day choices. So if the family is subject to principles of justice, principles of justice apply to people's ordinary day-to-day choices. Thus, contrariwise, to maintain the view that principles of justice do not apply to individual choices, Rawls must accept that they do not apply to the institution of the family. But that, Cohen submits, would be contrary to Rawls's stated concern with the justice of those social structures that have a profound impact on a person's life prospects. Since it is that concern which motivates the focus on the basic structure to begin with, Rawls's best option is to abandon the idea that justice does not apply to the ordinary choices people make against the backdrop of the basic structure.

In an endnote to his article, Cohen expresses doubts about his claim that legally coercive institutions, such as those of taxation and transfer, are not sustained by people's day-to-day choices.⁴⁶ I agree that the role individual choice plays in maintaining a social institution is by no means obvious, and that the contrast Cohen draws in his argument against Rawls may not be tenable. But Cohen ends by saying that he can concede this, since the upshot would be that *all* institutions are sustained by individual choice, and thus that Rawls's separation of two normative spheres would be even more clearly undermined. This seems to

44. *Ibid.*, pp. 17–23.

45. Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), chap. 5.

46. "Where the Action Is," pp. 28–30.

me to be wrong. If all institutions—those enforced by the coercive power of the state and those not—are fundamentally sustained by the choices people make, that does not mean that a Rawlsian could not distinguish between principles that apply to institutions and principles that apply to ordinary personal choice. For the choices that sustain institutions such as the family are not like the choices we make about how to expend our resources, or even the choices we make about how hard to work. What is striking about the choices that sustain the family is that they form a pattern of choice, more or less uniform across society. A person's decision about whether to work hard for less money is of course also in some ways affected by the choices others are making, but not in the same way as are the choices of husbands and wives about how to divide domestic labor. To say otherwise seems to deny the reality of the family as a special kind of social form; it would be to make any identifiable pattern of behavior in society, such as a majority tendency to self-seeking behavior, as much of an institution as the family is, and thus also as great a constraint on social and personal life as the family is.⁴⁷

Cohen is right to insist that those who believe that justice is about the design of institutions and not individual choice owe us a better account of what institutions are, precisely. But I do not believe that his own remarks on the nature of institutions yet refute dualism. I cannot offer a theory of the nature of social institutions and the role of individual choice in their maintenance, but it does seem that a plausible account of institutions that could be used to block Cohen's argument may be available.

Nevertheless, even if Cohen's official reply to the basic-structure objection to his incentives argument is unsuccessful, we have seen that his incentives argument by itself provides a direct reason to abandon dualism.

IV. INSTITUTIONS AND PEOPLE'S OBLIGATIONS

So far we have encountered one powerful reason to reject dualism and no reason to accept it. I turn in the next two sections to sketch a further pair of arguments in dualism's favor. The arguments are Rawlsian in spirit, though not explicitly offered by him. While the division-of-labor

47. It may be that Cohen would simply accept this (to my mind) tendentious implication. See his reference to the "ethi that sustain gender inequality, and inegalitarian incentives," *ibid.*, p. 23, and the discussion of blame in the final section of the article, especially p. 26.

argument for dualism is somewhat indirect, claiming in effect that the dualist approach brings with it a certain benefit, the arguments I will next consider both provide direct grounds for believing that the principles that govern institutional design do not apply to people's choices. In each case, the idea is that the existence of institutions gives rise to a special kind of normative problem, one that institutions are responsible for, but people are not.

As background for these arguments, and for my own later argument for monism, I must first explain how, on the dualist view, the virtues of institutions relate to the responsibilities of people. Some such connection there must be. Justice may be a virtue of institutions, and we may thus be able to say that particular institutions are in themselves just or unjust, but people must be subject to some kind of requirement to support those institutions, for they cannot become virtuous and remain so all of their own accord. I am not here repeating the point that it is hard to imagine a set of institutions that manages to secure distributive justice without impinging upon people's daily lives to some degree. Rather, the focus now is on those special choices—as opposed to what I have been calling ordinary or day-to-day choices—that people need to make in order that the right kinds of institutions exist over time; such choices would include those of how to vote in elections.⁴⁸ (It will be recalled that Nagel's skepticism about the feasibility of the division of labor turned on the need for these institution-supporting choices.)

Of course Rawls does not ignore the need for a principle connecting people to institutional design and survival. He postulates that people have a natural duty to support just institutions.⁴⁹ In addition, “we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves.”⁵⁰ This is

48. See also Nagel, *Equality and Partiality*, p. 89. As Barry Friedman pointed out to me, raising a further problem for dualism, the line between institution-supporting choices and day-to-day choices is not bright: Is it, for example, my institution-supporting duty to engage people in political discussion to help keep the sense of justice of my fellow citizens true and alive?

49. See *A Theory of Justice*, pp. 115, 333–37. As A. John Simmons has pointed out, it is hard to see how this natural duty to support just institutions is supposed to link people with any particular set of just institutions; see *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), chap. 6. See also Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), pp. 190–216; Jeremy Waldron, “Special Ties and Natural Duties,” *Philosophy & Public Affairs* 22, no. 1 (winter 1993):3–30.

50. *A Theory of Justice*, p. 334; see also p. 115.

precisely what one would expect. The dualist view is that principles of justice are used to evaluate institutions and do not apply to people's own choices. Principles of justice therefore describe the responsibility of institutions. But then the responsibility that people have in respect of justice must be to support and bring about just institutions. If people have any responsibility at all in respect of justice it must presumably be this one, since the principles of justice do not describe their responsibility (what else would their responsibility be?). And people must in any case have this responsibility for the dualist view to make sense: since institutions are not agents and don't actually have any responsibilities at all, it is only people who can ensure that institutions satisfy principles of justice.

These points allow us to put the basic disagreement between monism and dualism in somewhat different terms than have been used so far. Whereas monism holds that people have direct responsibility for justice, dualism holds that as far as justice is concerned, the responsibility of people is mediated by institutions. If just institutions must aim at equality, monism holds that people must aim at equality too; dualism holds, by contrast, that people must aim at the existence of institutions that aim at equality.

V. INTERACTION

If justice is in some fundamental way all about institutional design, it is natural that people's responsibility in respect of justice would concern institutions, and not directly what just institutions concern themselves with. But why, to return to our main question, would we think that justice was all about institutional design? One possibility, which emerges most clearly in the work of Thomas Pogge, turns on the idea that interaction of a certain regularized kind generates new kinds of obligations.⁵¹ In Pogge's view, the obligations people have to other people merely as

51. See *Realizing Rawls*, pp. 1, 20–28; 273–80; “Cosmopolitanism and Sovereignty,” *Ethics* 103 (1992):48–57; “A Global Resources Dividend,” in David A. Crocker and Toby Linden, eds., *Ethics of Consumption: The Good Life, Justice, and Global Stewardship* (Lanham: Rowman & Littlefield, 1998), pp. 501–7, 527–28; “The Bounds of Nationalism,” in Jocelyne Couture, et al., eds., *Rethinking Nationalism, Canadian Journal of Philosophy*, Supplementary Vol. 22 (Calgary: University of Calgary Press, 1998), pp. 463–504. In what follows I draw a view out of Pogge's writings; I do not claim to be offering a full account of his actual position.

such are fairly weak, but the obligations people have to others with whom they are interacting according to reasonably well-established ground rules are strong. These strong obligations direct people in the first instance to those ground rules of interaction themselves: people have an obligation not to impose unjust ground rules of interaction on others.⁵²

Pogge's perspective on distributive justice is cosmopolitan and his argument for global rather than merely domestic justice draws heavily on the institutional approach. The world's rich "are causally deeply entangled in the misery of the poor and [we] cannot extricate ourselves from this involvement so long as their misery continues."⁵³ This causal link, coupled with the fact that the current scheme of institutions—the current nature of our global causal entanglement—could be replaced with a feasible alternative under which the world's poor would do very much better, turns the current complacent behavior of most of the world's rich into rights-violating behavior; we are violating the rights of people not to have unjust institutions imposed on them.⁵⁴

This is only the sketchiest summary of a complex argument, but we see in it the general form of the dualist position. Institutionally governed interaction—causal entanglement according to more or less regular ground rules of economic and political interaction—generates an obligation that, absent that interaction, does not exist. But that obligation is not to do what principles of justice tell us just institutions would do. Our responsibility is to make sure that the institutions do that, so that we are no longer violating other people's rights by imposing unjust institutions on them.

My main objection to dualism (in Section VII) will be that all views of this kind are implausible precisely because they have us aim at the good of institutions rather than at the good institutions can best do. But apart from that general point, I find this version of dualism implausible on its

52. See, e.g., *Realizing Rawls*, p. 32.

53. "A Global Resources Dividend," p. 505. For extensive discussion of global interdependence as establishing the domain of global distributive justice, see Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), pp. 143–53; Beitz later rejects the relevance of interdependence, see "Cosmopolitan Ideals and National Sentiment," *Journal of Philosophy* 80 (1983):595, citing the criticism of David A. J. Richards, "International Distributive Justice," in Pennock and Chapman, eds., *Ethics*, pp. 287–93; see also Pogge, *Realizing Rawls*, p. 241, n. 3.

54. See "A Global Resources Dividend," pp. 504–7.

own terms. Pogge's overriding purpose is to establish the moral importance of global inequality. To do that, he believes it important to distinguish injustice, the imposition of unjust institutions, from the mere failure to assist other people or alleviate existing inequality in the world. The aim is to shore up the importance of (genuine) injustice by contrasting it with a less significant moral concern and cautioning people not to confuse the two. Thus there is posited a strong moral discontinuity: the existence of institutionally governed interaction makes all the moral difference; it defines the group of people among whom justice is an issue.

Now it is true that we are today all connected via global institutions of the kind Pogge mentions. And indeed, since any causal explanation of the current world distribution of resources or well-being would run in part through the prevailing institutional set-up, we can say that the connection is causal. But it remains unclear to me why the fact of causal connection should have any significance for the question of justice. If the world's poor could be shown all to be worse off because of the advent of global institutions, then perhaps the causal role of institutions would have some intuitive significance—the idea could be that while people need not do very much to help each other, they must not hurt each other, and this is what institutions have done. But the upshot of this would be that the rich have a duty to make sure that the institutions they control leave no one worse off than she would have been in the absence of global institutions. This clearly falls far short of Pogge's conception of global justice; nor is it the case that he wants the significance of institutions to depend on their having made people worse off (think about the domestic case).⁵⁵ But since that is so, it is a mystery why the fact that institutions are of causal significance should entail that they have special significance for justice as well.⁵⁶

55. But see "The Bounds of Nationalism," pp. 491–94, for some discussion which suggests that Pogge may after all be sympathetic to this line of thought; I interpret him to be here offering a second-best argument to an audience skeptical about more robust claims of global justice. The argument is nevertheless very weak on its own terms, because of the implausibility of the premise that global institutions have made the world's poorest worse-off than they would have been in the absence of institutional interaction with the world's rich. Pogge, *ibid.*, p. 494, writes that the rich could not disprove this claim; this seems so, since any claim of this kind is wildly speculative, but why do the rich have the burden of proof?

56. It would not help to say that in not promoting feasible alternative schemes under which the poor do better, the rich cause the poor to be worse off. This would be to appeal

Pogge does not discuss extensively his reasons for thinking that institutions mark out the scope of justice, and it may be that he has other arguments in mind. But the full argument would have to be rather compelling, because the claimed moral discontinuity is so stark. We are to imagine that a remote community not yet involved in any external trade or otherwise affected by global institutions would make no claims of justice on us, but that as soon as we begin to trade with them, thus including them in the world economy, something like the difference principle would suddenly govern our relations—requiring the immediate establishment (or extension) of institutions of taxation and transfer.⁵⁷ I find it incredible that the application of the ground rules of economic interaction could have this much moral significance.⁵⁸

It should be noted that one could advance a monist version of Pogge's argument. It could be thought that the existence of institutional interaction simply defines the scope of our (strong) obligations in respect of human inequality or well-being; on this view people's responsibility

to the kind of negative causation that some say is involved when I fail to rescue a drowning person; see, e.g., John Kleinig, "Good Samaritanism," *Philosophy & Public Affairs* 5, no. 4 (summer 1976):382–407. But if that is plausible, the rich also cause the terrible plight of the world's poor by not doing other things, not connected to institutions, such as contributing to private development projects.

Scanlon, "Rawls' Theory of Justice," p. 202, plausibly (though for the contrary view, see Barry, "Humanity and Justice," p. 233) treats Rawls's focus on institutions as equivalent to his stipulation that the problem of justice is to find fair terms of cooperation among people engaged in cooperation for mutual advantage. For this aspect of Rawls's view, see, e.g., *A Theory of Justice*, p. 4; *Political Liberalism*, pp. 15–18; for a succinct reconstruction—endorsed by Rawls, *Political Liberalism*, p. 17n.—see Allan Gibbard, "Constructing Justice," *Philosophy & Public Affairs* 20, no. 3 (summer 1991):264–79. Scanlon's interpretation is congenial to Pogge's cosmopolitan version of justice as fairness, as he suggests that on Rawls's view "considerations of justice apply at least whenever there is systematic economic interaction; for whenever there is regularized commerce there is an institution in Rawls' sense" ("Rawls' Theory of Justice," p. 202); see also Pogge, *Realizing Rawls*, p. 241. But since neither Rawls nor Pogge defends dualism by reference to the conception of justice as fair terms of cooperation, I will not pursue this possible ground for the special significance of institutions for justice; see also n. 58.

57. Pogge makes clear that prior to the trading there would still be fairly weak duties of morality owed to such a community; but there will be no (strong) duties of justice; see, e.g., "Cosmopolitanism and Sovereignty," p. 51.

58. The discontinuity here objected to is made worse if the significance of institutions for justice is explained via Rawls's conception of justice as fair terms of cooperation (see n. 56). For relevant discussion see Gibbard, "Constructing Justice"; Nozick, *Anarchy, State, and Utopia*, pp. 185–86; Richards, "International Distributive Justice"; Allen Buchanan, "Justice as Reciprocity versus Subject-Centered Justice," *Philosophy & Public Affairs* 19, 3 (summer 1990):227–52.

would be to promote equality or general well-being among those with whom they are interacting in the relevant way and not necessarily, as in the dualist version, to promote the justice of the ground rules of that interaction. (Indeed some remarks of Pogge suggest that this might be his own view.)⁵⁹ But the possibility of this monist interpretation does not show that my objection to the moral discontinuity Pogge's view entails is not really an objection to dualism. For dualist views all require some such account of the special significance institutions have for the question of justice, whereas monist views do not. Of course I have no general argument against the possibility that institutions have the kind of special significance sufficient to provide the initial motivation for a dualist view. My strategy in this section and the next is therefore simply to question the motivation behind two particular arguments for dualism.

VI. DEMOCRATIC LEGITIMACY

Pogge's argument was originally offered as an explicit elaboration and defense of Rawls's dualism. The next dualist view, which turns on the notion of democratic legitimacy, echoes the Rawlsian idea that a theory of justice applies in the first instance to a closed political community as well as the deep connections in Rawls's work between distributive justice and the political values of a constitutional democratic state.⁶⁰ As with the interaction view, I will not attempt to do more than sketch the main features of the argument, so that we can form some rough idea of its potential strength. Furthermore, though my presentation of the argument from democratic legitimacy is inspired mainly by writings of Ronald Dworkin, I do not claim here to be offering an accurate account of Dworkin's own views.⁶¹

59. As, for example, when he writes of a "sharp and strong negative duty not to collaborate in the imposition of an unjust institutional scheme without working toward institutional reform *or at least helping the victims of injustice*" ("Three Problems with Contractarian-Consequentialist Ways of Assessing Social Institutions," *Social Philosophy and Policy* 12 (1995):242–43, my emphasis).

60. For these Rawlsian ideas, see, e.g., *Political Liberalism*, pp. 11–15.

61. The argument from democratic legitimacy was originally put to me, as an interpretation of Rawls's case for dualism, by Ronald Dworkin and Thomas Nagel in a session of their Colloquium for Law, Philosophy, and Social Theory at NYU School of Law. I have also benefitted greatly from reading Dworkin, "The Roots of Justice," unpublished ms. 1997. For points similar to those offered in this section see G. A. Cohen, "If You're an Egalitarian, How Come You're So Rich?" in the published version of Cohen's 1996 Gifford Lectures (Cambridge, Mass.: Harvard University Press, forthcoming).

The central claim of the argument from democratic legitimacy is that the strictest requirements of distributive justice—the requirement of “equal concern” in Dworkin’s account—apply only within the boundaries of a particular state. Two features of states are especially significant in explaining this fact. First, they claim a monopoly on the legitimate use of force within their jurisdictions, and second, when they speak, they speak in the name of an entire political community.⁶² Since states have these features, their treatment of their citizens is subject to special moral/political constraints that do not apply to people or ordinary associations, or to states in their relations with other states. In particular, if states are to use force legitimately, and to speak legitimately in the name of the entire political community, they must satisfy the strictest requirements of distributive justice in their treatment of their citizens. (Weaker requirements of distributive justice may apply to interstate relations and between rich and poor individuals wherever located.)

Thus, the duties that people have in respect of full-fledged distributive justice all flow from their roles as citizens, or, at least, as members (somehow defined) of the relevant political community. Absent membership in some such community, a person’s duties in respect of distributive justice will be different in kind, and weaker. And the duties that members of political communities have in respect of full-fledged distributive justice are that they promote and support just state institutions. (As with the interaction view, one could perhaps offer a monist version of the democratic legitimacy view⁶³—though it is unclear how people’s direct efforts at, say, promoting equality could improve the legitimacy of the state.)

I am more attracted to the cosmopolitanism of Pogge than the state-based conception of distributive justice on which this second argument depends.⁶⁴ The increasingly global nature of what Pogge calls the ground

62. See further Dworkin, *Law’s Empire*, chaps. 5 and 6. Cf. Rawls, “The Basic Structure as Subject,” p. 277: “there are no social ends except those established by the principles of justice themselves. . . .”

63. Dworkin, in a brief passage addressing the duties of rich people in the nonideal case, contemplates (but does not endorse) the principle that we should “live with only the resources we think we would have in a fair society, doing the best we can, with what is left, to repair injustice through private charity” (“The Foundations of Liberal Equality” [1990] in Darwall, ed., *Equal Freedom*, p. 261). This would be to reject dualism.

64. Dworkin and Rawls are of course not the only philosophers who defend the view that distributive justice is in the first instance an internal matter for each state. For a

rules of economic interaction, not to mention the existence of powerful political institutions such as the International Monetary Fund, puts severe pressure on the isolationist version of dualism. The kind of genuine self-government that inspires the argument from democratic legitimacy is increasingly out of the reach of states, with the possible exception of a few that are extremely powerful economically or militarily. Of course there is nothing in the view that rules out the development of multinational or global states; but in their absence the smaller and less powerful states seem to be in danger of falling outside the domain of full-fledged distributive justice. If isolationism were plausible, however, the account of the special significance of institutions for justice that turns on the conditions of democratic legitimacy would seem to have more promise than the account that appeals to causal entanglement.

Nevertheless, and even apart from the problems facing any isolationist conception of justice, I find this second account of the special significance of institutions for justice *prima facie* as implausible as the first, and for the same reason: the moral discontinuity it appeals to is simply too dramatic.

We are asked to believe that people, as individuals, owe only limited duties to nonintimates, but that they nevertheless ought to accept that their government act according to strict egalitarian principles. It seems *prima facie* quite implausible that, properly understood, the egalitarian's commitment to general equality in her community flows entirely via her concerns with legitimate governance. Consider the question of why, on this view, any powerful and resource-rich person would ever think it a good idea to become a member of a political community. Of course, for most people there is no choice in the matter, but the thought experiment is, I think, revealing. Most of us think that (non-minimal) states are valuable because of what they do for the quality of people's lives or for other values, such as equality. Whether or not the current system of nation states does more harm than good, some geographical division of the labor of government seems likely to be part of the best total institutional scheme.⁶⁵ But on the view being considered, equality and the well-being of strangers are no part of the reasons why we value

well-known argument for this view see Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), chap. 2.

65. See Pogge, "Cosmopolitanism and Sovereignty," for a very interesting suggestion of a territorial nesting of political authority.

states. So long as there is some minimalist or *modus vivendi* alternative that would satisfy the requirements of prudence, why would we then accept the cost of forming genuine political communities?⁶⁶ Putting the point the other way around, those of us of an egalitarian disposition must, on this view, reject utterly the appeal of the utopian ideal of the withering away of the state.

Once again we have a dualist view motivated by an implausibly strong claim about the significance of institutions for justice, in this case focusing on the institutions of a particular sovereign state. Of course the two special features of states are undoubtedly of normative significance. If wrongs committed by way of official state action are worse than the wrongs of private citizens, these features would figure in any explanation of that asymmetry. My point is the specific one that the two features of states are not sufficient to motivate the idea that distributive justice in its full-fledged form is to be understood essentially as a constraint on legitimate governance. Once again I have not done more than scratch the surface of the argument. One or other of the two motivations for dualism may well be defensible against my intuitive objections, and there may be other motivations for dualism I am not aware of. But it does seem fair to say that we have not found any overwhelmingly strong reasons in favor of departing from the more traditional monist view. We can now turn to what I think is the strongest, or at least clearest, reason to resist any such departure.

VII. INSTITUTIONS AND NONIDEAL THEORY

The premise of my argument is that an acceptable theory of justice must have acceptable implications for both ideal and nonideal theory. Rawls makes it very clear in *A Theory of Justice* that in his view the appropriate order of argument is to address ideal theory first: we ask first what principles of justice would be appropriate in a world where institutions are stable and supported by all people. Only after our ideal has been specified, he says, can we begin to think about nonideal situations.⁶⁷ But even if Rawls is right about the correct order of argument, the nonideal theory

66. There is some similarity between this point and Nozick's criticism of Rawls's use of the notions of cooperation and reciprocity; see Nozick, *Anarchy, State, and Utopia*, pp. 193, 223.

67. See, e.g., *A Theory of Justice*, pp. 8–9, 245–46.

that is generated by the ideal theory must itself be plausible. I am not saying that a theory of justice is incomplete until every detail of nonideal theory is fully worked out, but rather that if we follow Rawls and devote most of our attention to ideal theory we should at least make sure that our ideal account has no clearly implausible implications for the associated nonideal theory.⁶⁸

I find this initial premise hard to doubt. After all, none of us will ever live in a society where all people fully support and comply with the principles of justice, not even via an overlapping consensus.⁶⁹ What we will always appeal to in practice are principles of nonideal theory. If our theory has implausible implications for the nonideal case, the theory may have some intellectual interest, but it would fail as a normative political theory.

That is the rather simple background premise of my argument. And the remainder of my argument is rather simple too, amounting to a single intuitive claim. It seems to me that any political theory that accepts Rawls's bifurcation of the normative realm into one set of principles for institutions and another for people will yield an implausible account of what people should do in nonideal circumstances. Thus there is a general reason to reject dualism.

To see this, recall that on the dualist view the duty of people in respect of justice is to support and promote just institutions, not to aim directly at the ends those institutions strive to bring about. Cohen's incentives argument shows, I believe, that this position is problematic even for ideal theory. The institutions may be the best they can be, but if people can do more to promote the aims of justice a view that refuses to extend the principles of justice to personal conduct is *prima facie* deficient. But the underlying issue emerges most clearly when we focus on nonideal theory. Recall Rawls's brief remarks on the natural duty of justice for the

68. See Annette Baier, "Theory and Reflective Practices," pp. 207–27 in *Postures of the Mind* (Minneapolis: University of Minnesota Press, 1985), p. 212: "Most moral theorists who outline and defend norms which are valid in conditions of full compliance . . . give some recognition to the need for supplementary accounts of what moral norms hold good in more realistic conditions, and give some promissory notes about working back from the world they have presented in their theory to the actual world. Maybe such promises can be kept, but only when they have been kept will we know just how much guidance the full-compliance world provided in the journey away from it, back to the actual situation in which we act."

69. On the difference between Rawls's earlier notion of a well-ordered society and his later notion of an overlapping consensus, see Rawls, *Political Liberalism*, pp. xvi–xvii.

nonideal case: we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves. This means that in an unjust society, a society of great inequality or great suffering by the worst-off, people are required to promote institutions that will alleviate the inequality and suffering. On the dualist view, our concern with inequality or the amount of suffering abroad is necessarily *mediated* through institutional structures. But if equality or well-being is the underlying concern that produces a theory of justice, why would people not be directly concerned about these things? If people have a duty to promote just institutions, why do they lack a duty to promote whatever it is that just institutions are *for*? A bad answer will be that the most effective way to promote equality or well-being is to promote just institutions. This is a bad answer because when it is correct it is the answer that anyone should give. As I have said, if we accept monism we regard institutions as of overwhelming practical significance. In many nonideal situations the best thing an individual can do to alleviate inequality or suffering is to support appropriate institutional reform. But monism does not see the responsibilities of people as fundamentally mediated by the question of institutional design in the way that dualism does.

Note that this point is similar to, but not the same as, the objections made to the two motivations for dualism. I objected to the interaction and democratic legitimacy views on the ground that the reasons offered for dualism did not seem strong enough to justify the stark moral discontinuities these views involved. These objections, though important at the level of abstract theory, may not seem to have that much importance—especially not that much practical importance—once we are on the right side, as it were, of the discontinuities. The current objection is to the practical implications of granting a fundamental mediating role to institutions *within* the domain of justice, whatever that may be.

The case to focus on is of course a nonideal situation where it is not true that the best way for people to alleviate inequality or promote well-being is to promote just institutions. For here monism tells people to do what they can to bring about an improvement directly. If injustice is about inequality, people should do what they can to reduce it. If they can have a greater impact on inequality by aiming directly at its reduction than they would have if they directed their energies to institutional

reform, this is what they should do. Dualism tells a different story: even if the individual could do more to reduce inequality, alleviate suffering, or whatever, by direct action, this is not what justice requires her to do. Justice requires her to promote just institutions even if she is sure that the *aim* of the just institutions she is promoting would be better served if she herself pursued that aim directly. How could this be right?

The point is clearest in the international context. Here a dualist would believe, following Pogge, that justice requires an egalitarian set of institutions to replace the mostly informal and decidedly inegalitarian institutions that currently prevail.⁷⁰ But it could not be right that an individual rich First Worlder is required to devote her resources to the Quixotic task of promoting just international institutions. Such a person could clearly do so much more to alleviate suffering or inequality by doing what she can on her own—by giving money to humanitarian aid agencies. With a stark example like this, dualism starts to seem fetishistic.

Though less stark, I believe the point is equally valid for the domestic case. What is the best thing a just American billionaire can do with the fraction of his fortune that he doesn't really need?⁷¹ Donate it to the Democratic Party? Run for president or found a "third" party? Set up a political action committee to pressure members of Congress to pursue a more just welfare policy? Or might it be better for him to donate the money directly to inner-city hospitals or schools around the country (with adequate oversight, of course)?

This last example illustrates a further important point.⁷² To say that billionaires should do what they can directly, rather than through the reform of institutions, is not to say that they should ignore currently available institutional structures. It may be best for them to use existing institutional structures as the most efficient way to promote well-being or equality. It bears repeating that the point I am making has nothing whatsoever to do with some idea that individualized charity is generally superior to institutional programs as a means for the achievement of

70. See Pogge, *Realizing Rawls*, Part III, "Globalizing the Rawlsian Conception of Justice"; "A Global Resources Dividend."

71. In late 1998 there were 189 American billionaires; see *Forbes Magazine*, October 12, 1998.

72. I am indebted in this paragraph to Lewis Kornhauser.

justice.⁷³ Though this may sometimes be the case in the domestic context too, my argument does not in fact depend on its being a serious possibility. Rather, the fundamental point is that it is not always best, from the point of view of justice, to devote one's efforts to *making institutions, considered in themselves, just*. Dualism tells us that principles of justice govern the design of institutions. Monism tells us to use whatever means are available to promote justice in a society. Those best means might include the promotion of fully just institutions, the support and funding of existing unjust institutions, or some direct noninstitutional effort to promote well-being or equality. Furthermore, even when our efforts are best directed toward improving or creating institutions, it may sometimes be appropriate to aim at institutions that are not fully just; in a particular nonideal world, fully just institutions may be dangerously unstable.⁷⁴

It might be thought at this point that dualism could be adapted to answer my concerns, at least for those cases where less than perfect institutions seem to be the best instruments for the achievement of the aims of justice. It might be thought that an appropriate nonideal theory for dualism would instruct us to design whatever institutions would, in the prevailing circumstances, best promote the underlying aims of the ideal theory that describes fully just institutions. In other words, dualism could embrace the idea of principles of justice for the design of nonideal institutions in a nonideal world. But such a position would actually be less intuitively plausible than the standard version of dualism. For once we accept that the principles that govern the design of ideal institutions essentially describe means to an end, the oddness of thinking that justice is concerned with some means to that end but not others becomes rather evident.⁷⁵ It should now be clear that it is not an accident that Rawls is committed to both the primacy of the basic struc-

73. Indeed, like Cohen, and for similar reasons, I find it somewhat distasteful even to think about individual efforts to promote justice; see "If You're an Egalitarian, How Come You're So Rich?"

74. Cf. Cohen, "Incentives," p. 395: "[A]ccording to an ancient Marxist wisdom, justice is not the first virtue of institutions in conditions of scarcity. Under those conditions a just distribution may be impossible to achieve, since powerful people will block it. In that case striving for justice may make everyone worse off, and unjust laws and institutions should not be 'reformed or abolished.'" (Quoting Rawls, *A Theory of Justice*, p. 3).

75. A related point is made by Michael Phillips in "Reflections on the Transition From Ideal to Non-Ideal Theory," *Noûs*, 19 (1985):563–64.

ture as the subject of justice and the primacy of ideal theory; the two positions are mutually supporting.

It is worth emphasizing that a dualist cannot respond by simply agreeing that the responsibility a person has in respect of justice in the nonideal case is to do whatever she can to promote the aims expressed in the principles of justice. That is the straightforward abandonment of dualism, of Rawls's central idea that principles of justice do not apply directly to individuals. Of course, we saw that defenders of the interaction view and perhaps even the democratic legitimacy view could adopt monist versions of their theories of justice; but that is not what concerns us here. Perhaps dualist views could provide principles of some third kind to guide personal conduct in the nonideal case, but I have no idea what considerations would govern the formulation of such principles.⁷⁶

The point I have made is simple and intuitive. Where people live within the domain of justice they must concern themselves with the substantive political/moral aim expressed in the principles of justice, be that the aim of equality, the aim of increasing weighted well-being, or some other aim. It is not credible that what fundamentally matters is that the relevant institutions promote equality or well-being, rather than that equality or well-being be promoted. Even if the existence of just institutions has some kind of expressive value, that could scarcely be *more* important than the actual achievement of greater equality or increased well-being. The point can be missed if we think only about ideal theory. It is tempting to shrug off Cohen's incentives argument on the ground that any society whose institutions are doing the best they can must after all be just *enough*.⁷⁷ But if we look to nonideal theory and the nonideal case—the actual case of flagrant failure by most societies and by the world as a whole to secure justice—then that response is not available. Whatever motivation one might have for embracing the dual-

76. In his most recent article Pogge suggests that people in nonideal circumstances must either promote just institutions or, failing that, *compensate* the victims of the current unjust institutional regime; see "The Bounds of Nationalism," p. 503. This does not seem to be compatible with a dualist interpretation of his view, since we do not compensate people for an ongoing violation of their rights, we stop violating their rights—which in this case means that we stop imposing unjust institutions on them.

77. I am not suggesting that Cohen himself has ignored the importance of the nonideal case; see "If You're an Egalitarian, How Come You're So Rich?"

ist view, it is hard to see how it could survive reflection on its implications for the theory we need in the actual world.

VIII. PURE PROCEDURAL JUSTICE

My discussion may be thought to reflect a fundamental misunderstanding of the nature of Rawlsian political theory, and thus of dualism. I have in mind the idea that while Rawlsian political theory expresses a conception of pure procedural justice, my arguments, which make frequent reference to the *aims* of just institutions, proceed from an incompatible consequentialist perspective.

Pure procedural justice, in Rawls's definition, "obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed." As an example, Rawls mentions a fair bet.⁷⁸ Pure procedural theories of justice thus evaluate a social system on the basis of the intrinsic character of its procedures or practices.⁷⁹ A consequentialist theory of justice, by contrast, evaluates the justice of a society by looking to the effectiveness of its procedures in achieving a certain social goal: a certain degree of equality in society, a maximal promotion of weighted well-being, etc.

On first sight it might seem that a pure procedural theory of justice is compatible with dualism only.⁸⁰ But in fact nothing in the idea that the justice of a society's practices is determined, not by the degree to which those practices promote a certain result, but rather by their intrinsic character, forces us to confine our interest to a society's *institutional* practices. Nagel offers examples of what a pure procedural theory would be concerned with in the intrinsic character of a society's procedures: "what kinds of causes they permit to determine social outcomes,

78. *A Theory of Justice*, p. 86.

79. See Nagel, "Justice and Nature," *Oxford Journal of Legal Studies* 17 (1998):304.

80. It might seem that the second half of p. 282 in "The Basic Structure as Subject" shows that Rawls sees a connection between the idea of pure procedural justice and dualism. But I do not read Rawls as there offering the idea of pure procedural justice as further support for dualism. Rather, he is explaining the operation of the difference principle—understood both as incorporating an element of pure procedural justice *and* as applying to background institutions only (and thus delivering the benefits of the division of institutional labor). The claim that a "fair distribution can be arrived at only by the actual working of a fair social process over time" does, however, require further comment; see p. 287 below.

whether they discriminate between people on grounds that are unfair, whether they fail to treat people as they deserve, whether they penalize people for things that are not their fault, and so forth.”⁸¹ It seems clear enough that all these things could be determined by social practices that fall short of institutional practices.

As we have said, it is of course desirable to draw a normative distinction between (say) unfair discrimination by the state and unfair discrimination by an individual. But the normative difference between official and unofficial wrongful action is not what marks out the idea of pure procedural justice; that distinction can be made within the terms of an account of pure procedural justice that evaluates the intrinsic character of both institutional and noninstitutional social practices. Moreover, not all institutions represent the state in its official capacity.

So the division between consequentialist and pure procedural political theories cuts across the division between monism and dualism. My discussion of what will “better achieve the aims of justice” is innocent too, since it need not refer to the achievement of a lower level of inequality or a higher level of well-being in society; the aims of justice are also better achieved— according to pure procedural political theory— when the intrinsic character of social practices conforms more nearly to some ideal.

It might now be said that though there is a sense in which we can say that the aims of a pure procedural theory of justice are better achieved the more nearly the intrinsic nature of a society’s procedures conform to some ideal, this does not implicate *individuals* at all, since they can do nothing to change a society’s practices. But why would we think that people are incapable, on their own, of improving a society’s procedures or practices? It is true that no one person can single-handedly make a society’s practices perfect, but then neither can any one person eradicate suffering or inequality.

To develop this point, we can consider what is for us the most important item on Nagel’s list of characteristics of social practices—“what kinds of causes they permit to determine social outcomes.” There are a range of possible criteria for the evaluation of the way social outcomes are generated in a society. Nagel himself explores (and rejects) the possibility that naturally caused inequalities are not unjust: if this were

81. “Justice and Nature,” p. 304.

right, we would say that a society's procedures are just if purely natural differences between people determine social outcomes, but unjust if socially caused differences do.⁸² Similarly, Dworkin and others argue that it is unjust if social outcomes are determined by (some kinds of) brute luck, by events over which a person had no control.⁸³ It is clear enough that an individual can do something about eradicating inequalities caused in either of these ways. Her efforts will have to be more sophisticated than if she were simply concerned with inequality of well-being however caused, but that raises no fundamental bar to action. If she is much richer than another person, for reasons that are social, or, alternatively, due to brute luck, a significant transfer from her would make it the case that in her society, social factors or brute luck are less productive of inequality than they otherwise would be. Even if she does not make these transfers on a regular basis, it is accurate to say that each particular transfer has the effect of making her society's procedures better.

It might next be objected that this kind of incremental improvement in a society's practices is not what pure procedural accounts are about. Such accounts aim rather to describe what fully just social practices look like. But of course it cannot be the case that pure procedural theories fail to rank as better and worse social practices that fall short of the ideal; if this were so, such theories would be entirely useless to human beings doomed to apply only nonideal theory.⁸⁴ So we must assume that the nearer a society's procedures conform to the ideal, the more just is the society. And thus, since social practices go beyond institutional practices, it must be accepted that in nonideal circumstances a person may best be able to promote justice by improving noninstitutional social practices. My argument against dualism applies to consequentialist and pure procedural theories of justice alike.

82. See "Justice and Nature."

83. See "What Is Equality? Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (fall 1981):283–345. Dworkin's view is a good deal more complicated than is suggested by this distinction, and indeed not all inequalities caused by factors over which a person has no control are thought by Dworkin to be unjust; see also "What Is Equality? Part 1: Equality of Welfare," *Philosophy & Public Affairs* 10, no. 3 (summer 1981):185–246; "What Is Equality? Part 3: The Place of Liberty," *Iowa Law Review* 73 (1987):1–54; "Foundations of Liberal Equality." G. A. Cohen defends the idea that inequalities caused by factors over which a person has control are not unjust in "On the Currency of Egalitarian Justice," *Ethics* 99 (1989):906–44.

84. Dworkin himself makes this point in "What Is Equality? Part 3: The Place of Liberty," pp. 38–45.

But if all this is right so far, what now do I say about these words of Rawls: "A fair distribution can be arrived at only by the actual working of a fair social process over time in the course of which, in accordance with publicly announced rules, entitlements are earned and honored. These features define pure procedural justice."⁸⁵ Does not this passage make it clear that pure procedural justice cannot be promoted by people in the way described? Dworkin makes a similar remark, in the context of a brief discussion of nonideal theory: "since a just distribution cannot be established counterfactually, but only through just institutions, we are unable to judge what share of our wealth is fair."⁸⁶

These remarks by Rawls and Dworkin are somewhat misleading, I believe, or at least easily misinterpreted. Shortly after the just-quoted words, Rawls writes: "if it is asked in the abstract whether one distribution of a given stock of things to definite individuals with known desires and preferences is more just than another, then there is simply no answer to the question." This is so, but, in the context of Rawls's criteria of justice, not obviously relevant. It is true that compared to a criterion of justice that distributes goods to definite individuals with known desires and preferences the difference principle is a principle of pure procedural justice. But that does not mean that a fair distribution, in the *relevant* sense of a distribution of primary social goods in accordance with the difference principle, can be arrived at only by the actual working of a fair social process over time. The same point applies for the fragment of Dworkin's theory of distributive justice presented earlier. It is true that what counts as a fair distribution of resources at any one time cannot be determined just by looking at who has what. On a view that distinguishes between different causes for inequality in resources, a more subtle inquiry is required; among other things, we need to know whether one person has more than another because of choices they both made, or whether the disparity is due instead to brute luck. But this does not mean that we do not know what a fair distribution is without setting up a procedure and letting it run; a fair distribution is one where, among other things, there are no inequalities of resources that are due to factors beyond people's control. Now Dworkin's actual theory of distributive justice is very complicated, and it may be that informational problems would make it impossible for people to promote justice on

85. "The Basic Structure as Subject," p. 282; see also, *A Theory of Justice*, p. 88.

86. "Foundations of Liberal Equality," p. 261.

this account. But that would be a practical rather than a theoretical bar. There is thus no reason in principle why on (monistic variants of) either Rawls's or Dworkin's account of distributive justice people cannot take direct steps to make their society more just, using the most effective available means.⁸⁷

IX. THE DEMANDS OF JUSTICE

Rawls's division-of-labor argument explicitly links dualism to the attractiveness of a less intrusive, and in that sense less demanding, theory of justice; I endorsed the importance of the division of labor for the issue of demands but rejected the connection with dualism. In the arguments that I drew on to present the interaction and democratic legitimacy views, Pogge and Dworkin also give an important place to the issue of the demands of justice. In both cases, though in different ways, the institutional view is presented as more reasonable or plausible with respect to demands than any view that holds people directly responsible for

87. This discussion illustrates the fact that the notion of pure procedural justice makes sense only relative to some baseline distribution, a distribution that the pure procedural theory makes no judgment about. (For a related point, though addressed to Nozick's notion of an entitlement theory of justice, see Robert J. van der Veen and Philippe Van Parijs, "Entitlement Theories of Justice," *Economics and Philosophy* 1 [1985]:70–74.) Thus the difference principle, which demands that institutions achieve a certain result, namely equality of primary social goods except where inequality is to the benefit of the worst off group, and which would thus at first sight seem to be a consequentialist criterion, nevertheless counts as a criterion of pure procedural justice *relative* to a "distribution of a given stock of things to definite individuals with known desires and preferences," since according to the difference principle people's desires and preferences are not relevant in the determination of distributive shares. The reason Rawls finds it relevant to point this out, I believe, is this. It is natural, when thinking about distributive justice, to look directly to the actual distribution of well-being or goods to particular people and ask whether that distribution is just. This distribution is what ultimately matters to the people involved. This is why it is appropriate to point out that, relative to *this* distribution in particular, justice as fairness embodies pure procedural justice: it pays no attention to the question of which people—with their particular desires and preferences—occupy which places in the distribution of social goods. (See Pogge, *Realizing Rawls*, p. 203: "[the difference principle] embodies an element of pure procedural justice insofar as it regulates how individuals get 'distributed' over the various index positions.")

The upshot of this point would seem to be that the distinction between pure procedural and consequentialist theories of justice is not all that deep. Both kinds of theory give people a result to aim at; the only difference is that in the case of pure procedural theories the result in question is typically not a certain distribution of well-being or resources (which is what people really care about), but rather a distribution of well-being or

achieving the aims of justice.⁸⁸ It is in the issue of demands, I suspect, that the most powerful underlying motivation for dualism can be found.

The standard way of thinking about the problem of what are reasonable moral/political demands focuses on the cost or sacrifice imposed on complying agents.⁸⁹ If we take this view of the problem, however, dualism is actually of no help. It is true that monistic nonideal theory, if it requires people to do as much as they can to promote equality or well-being, seems to be extremely demanding on many well-off people—especially in a cosmopolitan version. But a requirement that people do whatever they can to bring about the existence of just institutions would be just as demanding. Dualism changes the content of the demands of justice but does not evidently reduce their extent. One reason why dualism might be thought to help with the problem of demands is that we naturally consider the dualist position through the lens of ideal theory, and it is clear that the demands on each person are less under ideal institutions—which ensure that all people make their contributions—than in a nonideal situation of partial compliance. Even for the ideal case, however, the standard approach to the problem of demands might lead us to count, say, the difference principle as extremely demanding on those people who would do better in some alternative, less egalitarian social system.⁹⁰

resources that can be traced to certain causes. This is why I do not follow Nagel in referring to pure procedural theories of justice as *deontological* (“Justice and Nature,” p. 304). Deontological moral principles condemn or require actions of certain kinds, without reducing the goodness or badness of the action to the goodness or badness of its results. Deontological political principles must then condemn societies that allow, say, brute luck to determine social outcomes, even if doing so promotes, say, the level of aggregate well-being. The idea is not that it is a good result if brute luck does not determine social outcomes; rather, allowing brute luck to determine social outcomes is simply something that societies must not do. But since societies are not super-agents, but just collections of people, the only way to understand this “must not do” is that people should be more concerned about whether practices in their society allow brute luck to determine social outcomes than about other goals, such as the aggregate level of well-being. When pure procedural or “deontological” theories of distributive justice are incorporated into people’s practical lives, they seem to collapse into consequentialist theories.

88. See Pogge, e.g., *Realizing Rawls*, p. 34, “A Global Resources Dividend,” p. 502; see Dworkin, “The Roots of Justice.”

89. See, e.g., Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), chap. 1.

90. Nagel puts the issue of the sacrifice (measured against a baseline of feasible alternative systems) that can be reasonably be required of people in an ideally just society at the center of *Equality and Partiality*.

In any case, it is clear that for nonideal theory, the theory we need, dualism neither helps nor hinders with the problem of demands as standardly understood. Rawls himself is clearly aware of this. His natural duty of justice for the nonideal case contains the caveat “at least where this can be done with little cost.” Here he does not make the implausible assertion that the demands of justice on people in nonideal circumstances only apply when they bring little cost—such a view would doom us to injustice pending some miracle of general supererogation. Rather, in writing “at least,” he leaves the problem of demands for another day. What I want now to suggest is that Rawls’s commitment to dualism can be read in such a way as to suggest an entirely different approach to the problem of demands.

We can start by noting that Rawls includes no cost caveat to the natural duty of justice for the ideal case. And he explicitly rejects the relevance of comparing people’s levels of well-being under justice as fairness with the levels they would enjoy in some feasible alternative scheme.⁹¹ On the standard approach to the issue of demands, this seems odd, since we after all can very well make sense of such comparisons. If the natural duty of justice requires billionaires to vote for the difference principle, supposing they could vote instead for *laissez-faire*, is it not clear that the natural duty of justice is asking rather a lot of them? Why shouldn’t there be a question of the reasonableness of the demands, somehow measured, made under ideal compliance?⁹² One reason may be that there actually is no appropriate baseline available for such assessments of demands—in either the ideal or the nonideal case.⁹³ Another may be that the standard approach simply misdiagnoses our intuitive concerns about demands. Rawls’s focus on the basic structure and his assertion of a limit to individual sacrifice in the nonideal case only lend support to a diagnosis of our concerns about demands that looks, not to the extent of the demands people face, but rather to the question of what the appropriate demands on a complying agent are in nonideal situations. When we think institutionally, we naturally think collectively. We think that justice is something for all of us as a group,

91. See “The Basic Structure as Subject,” 278–79.

92. See Nozick, *Anarchy, State, and Utopia*, pp. 189–97; G. A. Cohen, *Self-Ownership, Freedom, and Equality* (Cambridge: Cambridge University Press, 1995), pp. 223–26; and n. 90.

93. See Liam B. Murphy, *Moral Demands in Nonideal Theory* (New York: Oxford University Press, forthcoming), chap. 3.

rather than for each of us individually. In the ideal case of full compliance we are all doing our share, and, we might think, there is no issue about whether the demands, on all of us, are reasonable. On this interpretation, it is no accident that Rawls adds no cost caveat to the natural duty of justice for the ideal case; the point would not be that the demands in the ideal case are moderate enough, but rather that no issue of demands arises since we are all doing our fair share. The real issue of demands emerges when only some of us do our part in carrying out a collective obligation. Here the utilitarian story, which requires each person to keep benefitting others up to the point where this does as much harm as good, despite the fact that each would need to do much less if all were doing their share, can be regarded as failing to take into account the collective nature of the demands of justice. One way of taking the collective nature of the demands of justice into account would be to regard the duty of each person in nonideal circumstances as limited to her share of the collective burden.⁹⁴

Here I mention a view about reasonable demands in the nonideal case that I hold but which obviously cannot be attributed to Rawls. But we do have here another possible reason why we might be tempted to think that dualism helps with the problem of demands. Even if Rawls's commitment to the basic structure as the subject of justice does not reflect a sense that justice is a collective obligation, one that we must shoulder together, it naturally suggests such a view. If I am right, adopting such a view allows us to make progress with the problem of demands; and what it certainly does is explain why we might think that there can be no problem of demands under full compliance. In any case, however, dualism itself plays no role here. The idea that justice is a collective obligation is fully compatible with monism; 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. This is fortunate since, as I have argued, it is a mistake to think that justice is fundamentally all about institutional design.

94. See L. Jonathan Cohen, "Who Is Starving Whom?" *Theoria* 47 (1981):65–81; Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), pp. 30–31; Murphy, "The Demands of Beneficence," *Philosophy & Public Affairs* 22, no. 4 (fall 1993):267–92, and *Moral Demands in Nonideal Theory*; much work would be required before the view presented in the last work could take into account problems of institutional design.