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## Individual Morality and the Morality of Institutions

**Abstract** This paper discusses the relationship between moral philosophy and political philosophy. It holds that political philosophy in some way is part of moral philosophy as the former deals with the content of moral standards governing the relations between individuals and institutions. That would be the purpose of the „morality of institutions“, while the so-called „individual morality“ would inform the standards applicable to individuals. On the basis of a conception of individual morality as it relates to contractualism and a discussion of the morality of institutions that closely follows John Rawls' theory of justice, the paper addresses the question of the foundations of the obligation to comply with institution-defined standards that are directed towards individuals. At the end, it focuses in particular on the difficulty of rationalizing that obligation in the case of unjust institutions.

**Keywords:** Moral philosophy, political philosophy, institutions, theory of justice, John Rawls, duty of compliance

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### 1. Introduction

My topic is the relation between moral philosophy and political philosophy – that is to say, the relation between the subject matter of these two enterprises. Is political philosophy simply a subfield of moral philosophy? I believe that in an important respect it is, but that it is nonetheless marked off as distinct. As my title indicates, I will take the first fundamental distinction here to be that political philosophy is concerned with institutions in a way that the rest of moral philosophy – what I will call individual morality – is not.

By individual morality I mean the moral standards that apply to individuals. Primarily, this means standards that determining the permissibility, impermissibility, and blameworthiness individual actions, but it can also include conclusions about values – about the best way to live – that are also commonly called moral. Many moral standards apply to us whether or not others are generally complying with them. For example, the prohibition against the use of deadly force has exceptions – we are permitted to use deadly force when we are attacked and this is necessary to preserve our lives. But this prohibition (with exceptions) holds whether or not it is being generally observed. It would still be wrong for us to attack someone who presented no threat to us even if many, or even most people were not observing this constraint. But other conclusions about the permissibility of individuals' actions depend on the principles that others are in fact following.

Suppose, for example, that the general use of products containing a certain chemical poses a threat to the health of all of us, and that there is no ambiguity about the appropriate remedy, which is simply to stop using such products. (I assume that the burden involved in doing this is the same for everyone, and I will neglect for the moment effects on the lives of those who work in the industry that produces these chemicals and sells products containing them.) If, recognizing this fact, most people have adopted a policy of not using these chemicals, then, I believe, it would be wrong for me to go on using them. (To put the matter in the terms of my own contractualist moral view, a principle permitting people to exempt themselves from this established practice is one that could reasonably be rejected.)<sup>1</sup>

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The practice of abstaining from the use of products containing this harmful chemical is what I am going to call an institution. An institution exists when people are generally not merely conforming to certain standards but see these as standards that they *should* comply with, in part because they believe that many others are doing likewise. This is a very abstract conception of an institution, but I am going to assume that states, legal systems, universities and other things we normally call institutions are institutions in this abstract sense, even though they are much more complex than the simple institution in my example.

The conclusion I just stated, about the wrongfulness of using products involving the harmful chemical when others are abstaining from such use out of recognition of the harms involved, depends on the existence of an institution in a way that the prohibition on the use of deadly force does not. But it is still a conclusion within individual morality. Political philosophy, as I am going to understand it, is concerned with moral standards for appraising institutions themselves – for example, as just or unjust.<sup>2</sup> The conclusions it reaches may have implications for what individuals may or should do, but these conclusions are not on their face conclusions of this kind. They are, rather, conclusions about institutions.

Conclusions arrived at in both of these subjects seem to be *moral* judgments in some broad sense. But what sense is this? This is the first question I want to address about the relation between the two subjects: in what sense are the questions they both deal with *moral* questions? My second question concerns the relation between these two subjects: what implications conclusions about the morality of institutions have for the permissibility or impermissibility of individual conduct, and whether the content of conclusions about the morality of institutions is exhausted by these implications.

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1 As presented in *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998).

2 These are what John Simmons calls questions about the *justification* of institutions. See Simmons, „Justification and Legitimacy“, *Ethics* 109 (1999), 739–771.

## 2. Diverse understandings of morality (a slight digression)

I believe that the term ‘moral’ is widely used without a clear, shared understanding of its content.<sup>3</sup> This is true not only in public discourse but also in academic discussions. It is generally agreed, I believe, that morality claims to be something important – that moral standards are supposed to be ones that everyone has good reasons to take seriously as (normally overriding) guides to conduct. But even people who believe that moral standards have this kind of authority are often quite unclear about what reasons we have to follow these standards. And people who are clearer about this often have different reasons in mind.

One way to identify the reasons that one takes to support moral requirements is to focus on the kind of distress one feels, and takes to be appropriate, when one realizes that one has fallen short of the requirements of morality in a given case. This is what I call the remorse test. The character of this remorse indicates the nature of the reasons one takes to support the standards one has violated. Identifying what one *takes* these reasons to be is, of course only first step in the reflective process. One then needs to ask whether they are, in fact, good reasons or whether, as Nietzsche would say, they are not good reasons, and susceptibility to them is a sickness one should try to transcend.

I believe that this process of reflection uncovers two kinds of diversity. First, different people take morality as they understand it to be backed by different reasons (in some cases good reasons, in other cases not.) But, second, in my own case, the remorse test seems to me to indicate that I take the term ‘moral’ to apply to standards backed by quite different reasons, and by different *good* reasons. I conjecture that this is true of other people as well, and I want to explore briefly this second form of diversity.

The central component of individual morality as I understand it – what I call the morality of what we owe to each other – is something we have reason to care about because we have reason to care about our relations with others in which justifiability of this kind plays an important role. There is, I believe a corresponding version of the morality of institutions, consisting of standards that institutions must meet if they are to be justifiable to those to whom they claim to apply. Much depends, of course, on the particular form of justification that is involved. Roughly put, I take it to be justification in terms of the interests of those who are affected. In what follows I will concentrate on this form of individual morality and of the morality of institutions, and it is in this sense that I regard them as both forms of *morality*. Moral wrongs of the

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3 I discuss this diversity of views more fully in „What Is Morality?“ in *The Harvard Sampler*, Jennifer M. Shephard, Stephen M. Koslyn, and Evelyn M. Hammonds, eds. (Cambridge, MA: Harvard University Press, 2011) pp. 243–266.

kind I have in mind are identified by a particular form of remorse: the feeling of alienation from others that comes with the realization that one has treated them in a way that could not be justified to them, or that one is participating with them in an institution that could not be justified to them (and even depending on their participation in this institution.)

But failures of this kind are not the only kind of thing that is commonly called morally wrong. Various kinds of personal fault, such as failure to work hard, or to strive for what is valuable, for example, are also plausibly called moral faults even when they do not involve failures in what one owes to others.

In *Anna Karenina*, Tolstoy describes Levin, returning from a day of mowing in the fields with his peasants, as feeling morally superior to his brother, who has been lazing at home, reading. When we read this, it makes sense to us. But what idea of morality is involved? It might be that Levin feels less alienated from his peasants because he has been (at least in a token way) sharing their labor. This would be to invoke morality in the narrow sense I have described. But when we read the passage we might instead be thinking just that it is somehow *better* to be engaged in good, honest physical labor than to be stretched out on the sofa all day with a cigarette and a novel.

The latter idea is a matter of what Bernard Williams, in *Ethics and the Limits of Philosophy*, called ethics – a matter of how best to live – as opposed to morality, which is concerned just with our obligations to others. Until Williams wrote, the terms, ‘morality’ and ‘ethics’ were, at least in most academic circles, used more or less interchangeably. The fact that a philosophy course was called „Ethics“ or „Moral Philosophy“ would not indicate any expected difference in content. And one thing about this content is that it is unlikely to have anything to do with sex. That is to say, although some forms of conduct involving sex, such as rape, would be morally wrong in the sense dealt with in such a course, this would only be because they were instances of more generic wrongs, such as the use of force, violence or deception. Sex itself – the number of individuals involved, whether they were men or women, the parts of the body used, and so on would be of no moral consequence, in the sense of ‘moral’ that would be discussed.

Out in the world, of course, things are quite different. If you read in the newspaper that there is a question about some politician’s morals, you know right away that it has to do with sex. And if it is ethics that is mentioned, then it probably has to do with money. It seems to me, however, that this popular way of understanding the distinction between ethics and morality has things importantly backwards. If there is a difference, as Williams suggested, and as I think there is, between questions of obligation and broader questions of value about how to live; and if there are moral issues having to do with sex that go beyond what we owe to others, as I believe there are,

then these issues are matters of ethics rather than morality. They have to do with what is worth valuing and how rather than with what is permitted or forbidden. This may sound like pedantic terminological housekeeping, but it is of genuine importance. It sounds melodramatic to say that many lives are spoiled by the widespread confusion on this point, but I believe that that is in fact the case. But that is a topic for another lecture.<sup>4</sup>

I have mentioned sex and hard work as two subjects of moral concern in a sense of ‘moral’ that goes beyond what we owe to others. Another is loyalty to a cause or institution. Such loyalty, which is plausibly called a moral virtue, is not something required by principles specifying what one owes to others. It is rather a matter of steadfastness in one’s commitment to a cause or institution that is worth caring about. A person who turns out to be disloyal is open to criticism, by others who are committed to this cause or institution, not only, or mainly, for failure in what he owes to *them*, but also for insufficient commitment to *it* – to the cause or institution in question. And this is a moral failing only insofar as *it* is worthy of this kind of commitment.

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My point in this discussion of the diversity of understandings of the term ‘moral’ is not only that different people seem to use this term with different things in mind but also, as I have said, that each of us uses it to refer to what I suggest we should see on reflection as a diverse collection of values. When we recognize this diversity the question we should address is not „which conception captures what *morality* really is?“ Rather, the questions we should ask are: „what are these values, which of them are really worth caring about, and how to they fit together?“

Corresponding to this diversity in ways of understanding individual morality, there is diversity in moral criticisms of institutions. As I have said, the institutional morality that I will mainly discuss focuses on the justifiability of institutions to individuals, based on their individual claims. But, just as there can be criticism of individuals, plausibly called moral, based on their responsiveness to particular values other than their obligations to others, so also institutions might be criticized on the basis of the valuable ends they promote, the kind of individuals they tend to produce, or the kind of lives they encourage these individuals to lead.

Rawls puts forward what I am here calling an individualist version of the morality of institutions when he says at the outset of *A Theory of Justice* that he is viewing a society as a „cooperative venture for mutual advantage“ (Rawls 1999: 4–5) designed to advance the good of the individuals with disparate aims and purposes who are taking part in it. A conception of justice,

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4 The title might be, „From a Moral and Ethical Point of View, Sex Is Like Work“. I leave it as a homework problem to figure out why this is so.

as Rawls understands it, is a set of standards for assessing the claims that such individuals may make against a system of cooperation, understood in this way. Such a conception establishes what he refers to as the „bonds of civic friendship“ limiting individuals’ pursuit of their disparate aims. This way of understanding justice – and what I am calling the morality of institutions – differs sharply from the one that would be appropriate for society conceived as a set of individuals united in the pursuit of some shared goal or value.

Institutions of the latter kind include universities, political parties and action groups, as well as some businesses. We are invited to rely on and support in these institutions various ways insofar as they are guided by important values. What does it mean for an institution to be *guided by* values? I take it to mean this. Institutions are comprised of individuals to whom they assign various roles and responsibilities. To say that an institution is guided by certain values is to say that it is so organized that it will be responsive to these values if the individuals who are assigned these roles do their assigned parts. Whether this happens or not depends on the way in which the institution is organized, and on what might be called its internal „economy of influence“ – that is to say, on the pattern of motivations that the individuals who take part in it are responsive to.<sup>5</sup>

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So, for example, an airline is guided by the value of passenger safety if it is so organized that information about weather conditions and the mechanical condition of planes gets to the individuals who make decisions about flights, and the individuals who have this role are motivated to make the appropriate decisions about whether to fly or not, based on this information. When I decide to fly, I trust the airline to be guided by this value.

Similarly, Harvard University purports to be guided by the value of producing high-level scholarship and high quality education. It invites people to trust it by sending their children to study there and by placing confidence in the research that Harvard produces. It also invites loyalty, that is to say, invites donors to see that it is worth supporting, and those of us to work there see that it is worth working hard and sacrificing other commitments to do our jobs well. Corruption of an institution occurs when the internal economy of influence of an institution is such that it does not operate in the way required to be responsive to the values that are supposed to give others reason to care about it.

So understood, corruption, trust, and loyalty are normative notions. That is to say, they have to do with what reasons people have to behave in certain ways and hold certain attitudes. These notions also sound moral. But in what sense are they moral? One moral element is that of honesty – whether institutions are really doing what they purport to be doing and invite people

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5 See Larry Lessig, Memorandum of October 9, 2009 <http://www.ethics.harvard.edu/images/resources/pdfs/v1.0.pdf>.

to rely on their doing, or whether they are engaging in a form of deception that is ruled out by moral standards. This is not, however, the whole of the story. If I were to withdraw my trust and loyalty from an institution – whether it is an airline, Harvard, or the FDA – I might believe that it had been dishonest, by sailing under false colors, but my main underlying reason would be not that it had been misleading me but that it was not really responsive to the values in question. This matters to me not only because I object to being misled but also because I care about these values. So the main normative force of notions of trust, loyalty and corruption in this context derives from the particular values that are in question, whether this is personal safety, intellectual quality, or some other value.

This is parallel to what I said a few moments ago about disloyalty as an individual failing. If one person who is committed to some cause criticizes another for being insufficiently loyal to it, this may involve a charge of „letting the rest of us down“ by this lack of commitment. But this is not the main thing. The loyalty that is expected (and in this case held to be lacking) is not in the first instance a sense of obligation to the rest of us, who are fellow devotees of the goal. Loyalty in this case is in the first instance a matter of being motivated by commitment to the goal itself.

So the normative force of the relation that exists where there is loyalty and trust toward an institution, and lost when this is undermined by corruption is, so to speak, *vertical*. It is a relation between an individual and an institution, deriving from some value to which that institution is presumed to be responsive. This is in contrast to the *horizontal* moral ties between individuals who are cooperating members.

### **3. A preliminary question about the morality of institutions and its relation to individual morality**

I have so far been concerned with the question, „In what sense of ‘moral’ are individual morality and the morality of institutions both about morality?“ I have identified one understanding of „morality“ in which this is so. My second question about the relation between individual morality and the morality of institutions is how moral conclusions of this kind about institutions lead to moral conclusions about what individuals ought or ought not to do, and whether these conclusions about individual morality exhaust the normative content of conclusions about the morality of institutions.

I will address these questions within the framework of Rawls’s theory, because it offers a fully worked-out account of the relevant notions: of justice as the central notion of institutional morality and of the relation between the justice of institutions and the duties of individuals. In doing this I do not mean to be arguing from authority, presuming the correctness of Rawls’ view. It may

be that once we see what conclusions Rawls' account leads us to we will be led to question its basic assumptions and look for an alternative.

Principles of justice, according to Rawls, are standards for assessing individuals' claims against their institutions, in particular against what he calls the Basic Structure of their society. The role of these principles is to determine the validity of demands that those institutions be changed. In what Rawls calls a well-ordered society its members share what he calls a sense of justice. This means that they agree on principles of justice, and are motivated by them. Further, if the society is well-ordered, the citizens believe correctly that their institutions satisfy these principles. In the first instance, we can think of being motivated by their sense of justice as having a settled tendency to comply with institutions one believes to be just, to demand change when one believes institutions are unjust, and to acquiesce in such changes when they are demanded by others. This fits with Rawls's remark about a shared sense of justice as an „equilibrating device“. (Rawls 1999: 458) Even just institutions, he says, are likely to become unjust as conditions change. When this happens, the sense of justice that the citizens of a well-ordered society share motivates them to demand, work for and accept changes that are required to bring their institutions back to justice.

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Our sense of justice is what leads us to feel distress of the kind I described in section 2 when we consider the way our unjust institutions treat others, who must comply with these institutions in order for them to function and to meet our own needs. In Rawls's words, mentioned above, institutions that are not fully just strain the „bonds of civic friendship“, and the distress I described is an awareness of this strain.

Distress of this kind is an all too familiar feature of moral and institutional life. But what is the practical significance of this distress? Rawls says that it motivates us to do what is needed to make our institutions more just: taking standards of justice seriously means taking them as action guiding in the voting booth, and on other occasions on which one can have an effect on institutional arrangements. The sad fact, however, is that we generally find ourselves living under, and depending on, institutions that do not meet standards of justice in ways that we ourselves cannot do much, if anything, to change. We are trapped, via the institutions within which we live, in a morally unacceptable relationship with others who are involved in or affected by those institutions.

It is worth pausing to note the essential role of institutions in this kind of distress. If I hear that someone far away is abusing someone else, I may feel outrage. But what I am outraged about does not involve *me*. On the other hand, if I learn that an institution on which I rely operates by exploiting people somewhere, this does involve me, and occasions the kind of distress I am describing, even if I had no role in creating this institution and could not do anything to change it.)



Similar distress may also arise at the level of individual morality. Utilitarianism is often criticized as unacceptably demanding. But, taking into account the plight of all the people in the world who are in desperate need, and whom we could help, it seems likely that any plausible account of individual morality will involve standards of individual conduct that we are not in fact meeting, and that we are not likely to meet (given our concerns for ourselves and those close to us.) If so, then both individual morality and the morality of institutions have their painful side.

These may not, however, be separate problems. The requirements of individual morality that we are most likely to fall short of in this way – such as duties to help the distant, or not so distant, needy – are problems that really require institutional solutions. So the pain of realizing that one is falling short in these ways is really a case of the first kind of distress that I mentioned (of participating in institutions that do not meet standards of justice.)

The examples I just referred to involved our relation to poorer people in other parts of the world. But the points I have made apply domestically. We rely on the poor people in the U.S. who pick our fruit just as much as on the poor elsewhere who pick our coffee. So the same problems arise.

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Some might say that, insofar as injustice of this kind is something we have no way to avoid, distress about it is idle utopian hand-wringing. But it seems heartless to dismiss it. I naturally read the moving final paragraph of *A Theory of Justice* as expressing a longing for a condition in which such distress could in good conscience be avoided. However eloquent one finds that passage, however, one may still wonder whether justice, in the ideal sense with which Rawls is concerned, has anything to tell us about how to think about what to do in the conditions under which we actually live.

#### **4. Justice and duties to comply with institutions**

So far, these are claims only about the motivational role of a sense of justice. Nothing has been said about individual morality – about duty or obligation. I will now turn to the question of how conclusions about justice or injustice lead to conclusions about what individuals ought to do – to the link between the morality of institutions and individual morality. In Rawls' work, this link is forged by what he calls the Natural Duty of Justice. This duty, he says, „requires us to support and to comply with just institutions that exist and apply to us“ and also „constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves“. (Rawls 1999: 99) I will discuss the two parts of this duty in turn, beginning with the duty to comply.

The rationale for this duty might be briefly put by saying that if an institution is just, then individuals have no valid reason to object to it or to demand

changes. It would seem to follow that they have no justification for failing to do what the institution requires of them. (This may seem too quick, but I will explain later why I believe it is not.) What Rawls says is that we have a duty to comply with institutions that *exist*, that are *just*, and that *apply to us*. In order to understand what is involved in these three conditions, and the relation between them, it will be helpful to return to my example of the harmful chemical.

I said earlier that if most people have adopted a policy of not using these chemicals then, I believe, it would be wrong for me to go on using them. This conclusion lies within individual morality – it is a conclusion about what it is morally permissible for an individual to do. But it depends on a conclusion within what I am calling the morality of institutions, since it depends on the fact that the practice in question not only exists but also is just. But we should pause for a minute to consider what this means. It is natural at first to conceive of the justice of an institution in purely distributive terms. So, for example, the practice in this example would be unjust if (without some further justification) it required only some people to abstain from the use of products containing the chemical while allowing others to continue doing so. More generally, we might say that a practice is just if it distributes benefits and burdens in an equitable manner. This might be correct if „benefits“, „burdens“ and „equitable“ are understood in a sufficiently broad manner. But putting the matter this way may direct our attention away from the question of whether the benefits that the practice brings, however evenly they are distributed, are sufficiently important to justify the requirements it imposes, even if these are the same for everyone.<sup>6</sup>

I chose the example of the harmful chemical because I took it to be a case in which this requirement of sufficient importance was fulfilled. A clearer, or at least more dramatic example would be a system of cooperation for maintaining the dikes that keep the sea from washing us all away. A contrasting case would be Robert Nozick's example of the neighborhood public address system. (Nozick: 1999: 90–95) Suppose, he says, that there is a system of loudspeakers in your neighborhood and some of your neighbors get the idea that it would be a nice thing to make use of it for regular programming, provided by neighbors who can choose what to do – to report news, play music, read poetry or something else. They post a list assigning every member a time at which he or she is supposed to do this. After a few weeks have gone by, your assigned time arrives. You find that you have

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6 In what follows, I will assume that the benefits in question are benefits to individuals, specifically to those participating in the process, although the latter assumption will not be crucial. This makes the duty in question a matter of what I called above horizontal obligation. It is an interesting question whether and when institutions can be justified in the way I am presently considering by the fact that they are needed to promote some impersonal value. The idea that coercive institutions, at least, cannot be justified in this way would, I suppose, be a generalized form of Mill's Harm Principle.

enjoyed the institution very much. Even so, Nozick says, you have no obligation to take your turn if you do not wish to do so.

Insofar as this is so, I believe, it is so because the benefits that the institution provides are not sufficiently important to justify, as it were, conscripting all the neighbors to participate. A *just* institution of this kind would have to be voluntary. That is, it would have to allow neighbors to opt out if they so choose. Nozick suggests that the practice he describes is just, having in mind, I suppose, that it treats all the neighbors equally. But the practice is not just if it imposes unjustifiable obligations, and this is what his argument calls our attention to.

This brings us to the third condition Rawls states: that the institution *applies* to one. What is it for an institution to apply to someone in the relevant sense? Given the prior condition, that the institution is just, I believe we can take this to mean simply that the institution *claims* to apply to one. The question then is to whom can an institution justly claim to apply? The answer, I believe, is that a *just* institution can claim to apply only to those whose participation is needed in order to provide the benefits in question, and it can claim this only if these benefits are sufficiently important to justify the constraint that it involves.

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This solidifies what I earlier said might have seemed too quick a move from the fact that an institution was just – that no one had a valid complaint against it – to the conclusion that people were obligated to comply with it. This is a sound move because, as we have just seen, one complaint individuals might have against an institution is that it could not justly claim to apply to them. This explanation may seem to make the move valid by trivializing it, or, rather, by simply pushing the question one step back, to the question of what an institution must be like in order to be just. Nonetheless, reflection on the difference between the case of the harmful chemical and Nozick's public address system seems to me to indicate that this is where the question belongs.

## 5. Unjust institutions

We seem to have reached the conclusion that the justice of an existing institution is a sufficient condition for there to be a duty to comply with it.<sup>7</sup> Is it also a *necessary* condition? Is there no duty to comply with unjust institutions? This seemed to be so in the example of the neighborhood public address system. But that was a special case, for two reasons: because the injustice in question just lay in the absence of an „opt out“ provision, and because the benefit at stake was not very weighty. Things would, I think, be different in the case of an unjust scheme for maintaining the dikes. Justice does not

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<sup>7</sup> In the terms of John Simmons' paper, cited above, this amounts to the claim that an answer to the question of justification also settles the question of legitimacy.

seem *always* to completely undermine a duty to comply. Few if any existing large scale social institutions (what Rawls calls „basic structures“) are fully just, but it does not seem to follow that people have no obligation at all to comply with their requirements. So if we say that an institution is *legitimate* if those living under it have a duty to comply with its requirements then justice seems to set a higher standard than mere legitimacy.

But legitimacy, understood as an all or nothing affair, is too blunt a concept to handle the range of cases we should be interested in. For one thing, duties to comply vary, depending on an individual's position in an institution. If an established practice for curbing the use of products containing a harmful chemical were unjust, it would not follow that those who were the *beneficiaries* of this injustice had no duty to comply with the practice. Second, even if the injustice of a practice changes the moral situation of those who are victims of this injustice, it may not do so simply by removing any duty to comply with the requirements of the practice.

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This is even clearer in the case of the victims of injustice in actual societies. Consider, for example, one of the worst off groups in our society, people who are born and live in urban black ghettos.<sup>8</sup> These people grow up in conditions that present them with very limited opportunities for economic advancement, with severely limited political power, and with educational opportunities so poor as to make it unlikely that they will overcome these conditions. Institutions that avoidably put people in such conditions are seriously unjust, but this injustice does not *simply* undermine the duty of these people to obey the law. Its effects are more complex.

We need, then, to look more closely at the ways in which the fact that an institution is unjust affects the moral situation of those to whom it applies. I will approach this question using two strategies more or less simultaneously. The first is to consider what the second part of Rawls' Natural Duty of Justice might have to say about such cases. The second, which will be in the background, is to ask, as a contractualist, what principles governing the conduct of people in unjust institutions would be ones that no one could reasonably reject.

The second part of Rawls' Natural Duty of Justice „constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves“. This principle resolves what otherwise might have seemed to be a paradox in regard to „institutions not yet established“. Consider again the case of the hazardous chemical.<sup>9</sup> If a practice of abstaining

8 What I say about in the following paragraphs is greatly indebted to Tommie Shelby's much fuller discussion in, „Justice, Deviance, and the Dark Ghetto“, *Philosophy & Public Affairs* 35 (2007) 126–160.

9 The institution involved in this example is not a basic structure in Rawls's sense. I will return later to the difference this makes.

from the use of products containing this chemical is established, then it is wrong for individuals to fail to comply with it. But if the great majority of people continue to use these products, despite the known effects, then this practice does not exist. Is it still wrong for any one individual to use these products? If giving up the products involves some cost, and any single individual's use of the products does not make a significant difference to the health hazard, then there may seem to be a paradox. On the one hand, it seems pointless for one individual to give up the products for no significant benefit. On the other hand, their general use violates a principle that no one could reasonably reject, and is causing serious harms. It therefore seems clearly incorrect to say that no one is doing anything wrong by continuing this use. So is the principle forbidding such use conditional on its being generally complied with, or not? Call this the non-compliance dilemma.

The appearance of a dilemma here depends on considering only two alternatives: compliance and non-compliance. The third alternative is that when there is general non-compliance, what non-rejectable principles require is that we make known to others our willingness to go along with a principle forbidding the use of these products, and urge upon them the importance of doing likewise. This may involve abstaining from the use of the products ourselves, to provide an example to others and as a sign of good faith. If a person has done this, and general non-compliance persists, then it might not be wrong for this person not to comply, if complying has significant personal cost. This alternative is expressed by the relevant clause of Rawls' Natural Duty of Justice.

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Turning now to the case of institutions that exist but are unjust, recall that principles of justice, as Rawls understands them, are standards for assessing basic structures, and in particular for assessing demands for change. Rawls describes a shared *sense* of justice as an „equilibrating“ source of motivation. We are now considering *principles* of justice as a source of justification, rather than a *sense* as (merely) a source of motivation.

Consider first the position of the participants of an unjust institution who benefit from the fact that it is unjust. Since the demands for change from those whom the institution treats unjustly are valid, it would be wrong for the beneficiaries of the injustice to resist the changes demanded. Rawls' Natural Duty goes farther, and requires that they work to promote such changes „when this can be done without too much cost“ to themselves. This requirement seemed correct in the case of institutions „not yet established“, and it seems just as correct in this case. But there is a question how the „costs to oneself“ are to be measured. In particular, does the loss of unjustly acquired benefits count among these costs? The answer that seems correct, and seems to follow from Rawls's account, is that they do not. Insofar as the demand that such benefits not be given is valid (which follows from the fact that the are unjust,) how can there be a valid objection to giving them up?

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Turn now to the position of those who, like the ghetto poor discussed in Shelby's paper, are the victims of unjust institutions. These people are, as we have said, entitled to demand changes in the institution, to make it more just. But these demands will be idle, and have no „equilibrating effect“, without some means for making them effective. In the case of an isolated practice of the kind I was imagining in my hazardous chemical example, the only possible means may be just public expression, backed perhaps by threats to withhold compliance. If these expressions are unavailing, then actual withdrawal of compliance could be justified as the only effective means of bringing change, and it would seem that those who benefit from the injustice of the scheme could not complain of the loss of benefits. That is, they could not complain about no longer getting the benefits of the institution without bearing their share of the costs. But if the number of those treated unjustly is large enough that their withdrawal undermines the effectiveness of the institution as a protection against the relevant harm, the unjust beneficiaries will not be the only ones who suffer. (Or, as in the dike-maintenance case, the might suffer greater harm than is justified by the degree of injustice.) There is a question, then, of how far non-compliance is justified when it has these costs. I do not have a systematic answer to this question. (I doubt that there is one.) The point is just that the importance of the benefit an institution provides, and hence the cost of losing this benefit, is one factor that needs to be taken into account in determining whether non-compliance is justified, just as it must be taken into account in determining whether individuals must be given the right to opt out.

Things are different in the case of what Rawls calls a basic structure, which includes mechanisms for its own alteration: political procedures for making and changing laws and legal institutions for challenging them. In order to be just, such institutions must include mechanisms through which demands for change can be made effective (mechanisms through which the „equilibrating function“ of a shared sense of justice can be realized.)<sup>10</sup> Where such mechanisms exist, the case that I have just sketched for withholding compliance is undermined.

But such mechanisms do not exist in the case of the ghetto poor in the U.S. As Shelby emphasizes, they are politically as well as economically isolated. It is unjust that they lack adequate representation, but also that they are stigmatized in a way that makes the larger society not inclined to take their complaints seriously. Their situation is one of what I will call *persistent injustice*: serious economic injustice coupled with an (unjust) absence of effective political means for demanding change. The question is how far victims of persistent injustice are released from any duties to comply with an unjust institution.

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10 As Charles Beitz argues, one requirement of political equality is that citizens have effective political means for protecting themselves against injustice. See his *Political Equality*, pp. 110–114.

One argument for the permissibility of non-compliance in such a case is the argument for civil disobedience as a means for expressing demands of justice. As in the case of an unjust practice for avoiding the effects of a hazardous chemical, but for different reasons, non-compliance is justified as a means of protesting persistent injustice because there are no alternative, legal means for expressing demands for change. The classic case for civil disobedience sees it as operating by appeal to the sense of justice of those in positions of power, in particular to their reluctance to punish violators of what they recognize as an unjust law. For the reason mentioned above regarding the political isolation of the ghetto poor, this appeal may be less effective in the case of *economic* injustice than against general denial of civil rights. If the majority regards ghetto citizens as lazy and immoral, then civil disobedience in support of a demand for greater equality of opportunity may be ineffective, because it fails to appeal to the sense of justice of the majority.

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This brings us to the question of whether what I have called persistent injustice undermines the obligation of disadvantaged citizens to comply with its laws (quite apart from whether non-compliance is an effective means to promote change toward greater justice.) The analogy with a system of cooperation like the one in the hazardous waste example suggests that this might be so. If an institution is persistently unjust, and non-compliance by those treated unjustly would not involve unacceptable costs, then the majority could hardly claim that citizens who are the victims of persistent injustice would be violating relations of reciprocity by failing to comply with its laws. These relations were already being systematically violated by the majority. But we need to look more closely at the question of what laws might justifiably be violated and why.

Even if ghetto residents had no obligation to comply with every law as such, they would still have natural duties to others. It would, for example, still be wrong for them to do things that cause pain, injury or death to other individuals. Many instances of theft may also belong in this category. Even if institutions of property are unjust, it is wrong to steal people's food, or their means of livelihood, such as the car they need to get to work.

But many laws do not merely forbid things of this kind. I have in mind laws such as zoning regulations, drug laws, laws against prostitution, and some forms of financial regulation. It is not implausible I believe, to say that victims of extreme injustice might be justified in violating some laws of this kind (by selling drugs, for example, or defaulting on their credit cards if they are charged an unjustifiable rate of interest) when this is necessary to get by and to support themselves and their families. (Shelby 2007: 152) It is not clear that in violating such laws they would be violating duties of reciprocity owed to the rest of us.

The plausibility of this claim (at least *I* find it plausible) rests on several factors that need to be made explicit. First, there is an appeal to *necessity*: to the fact that these forms of crime may be the only way for ghetto residents to survive economically. This factor is present also the familiar example of whether a parent could be justified in stealing a drug, needed to save a child's life, from a pharmacist who refused to sell it, or refused to do so at a reasonable price. Second, as the word 'reasonable' here suggests, there is the question of whether crime deprives others of things that they have a just claim to. Some of the crimes mentioned are „victimless crimes“. The wrongfulness of violating laws proscribing such things (and the permissibility of enforcing them) seems to me seriously undermined if the political process through which they are enacted is seriously unjust. Even where violating laws involves costs to others, if the benefits that would be lost are benefits that are gained only in virtue of the unjust nature of the practice, then, as I remarked earlier, it seems to follow that the person cannot complain of losing them.

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Duties of justice do, however, limit non-compliance in a different way. The Natural Duty to promote the existence of just institutions, does, I believe, require even victims of injustice not to act in ways that can be foreseen to worsen the prospects for improving unjust institutions. So, in Shelby's words, this duty requires them „to not take courses of action that would clearly exacerbate the injustice of the system or that would increase the burdens of injustice on those in ghetto circumstances or others similarly situated, at least not when these negative consequences can be avoided without too much self-sacrifice“. (Shelby 2007: 154)

Finally, going beyond the question of obedience to law, and the permissibility of enforcement, there is another range of obligations that can be affected by injustice, which is the obligations of those treated unjustly to be willing to work on the terms made available to them. If they do not owe it to us to be willing to cooperate on these terms, then it is unjust to withhold other forms of public benefit, such as public assistance, medical care and other benefits from those among the poor on the ground that they are refusing to do their share.

Returning to our own perspective, rather than that of the disadvantaged, this puts a slightly different light on the feeling of being trapped in institutions that treat others unjustly. This feeling arose from the observation that it is beyond our power to do much to make our institutions fully just. This seems true. But if what I have said is correct, then standards of justice have implications for things that we can do: for example, for the position we should take on welfare policy, drug laws, and general issues of law enforcement and incarceration. These might at first seem matters of social policy rather than fundamental justice. But if what I have been saying is correct then justice has something important to say about them.



I have been investigating the relation between the morality of institutions and the morality of individual action. In the last part of my paper I have been considering whether the justice of an institution is a necessary condition for there being a duty to comply with it. If, following Rawls, we think of the basic institutions of a society as „schemes of cooperation for mutual benefit“, and if we see the duty to comply with such an institution as a duty of reciprocity owed to one’s fellow citizens, then it may seem that if a basic structure is unjust, at least if it is persistently unjust, then individuals have no duty (at least not a duty of reciprocity owed to their fellow citizens) to comply with its laws. This seems too stark a conclusion. But I have tried to show that the situation is more complicated than this picture would suggest. I have tried to explore some of these complexities in the relation between conclusions about justice – conclusions in the morality of institutions – and conclusions about the morality of individual action.

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Tomas M. Skenlon

## Individualni moral i moral institucija

**Apstrakt** U ovom članku raspravlja se o odnosu između moralne i političke filozofije. Smatra se da je politička filozofija na izvestan način deo moralne filozofije, pošto se prethodna bavi sadržajem moralnih standarda koji rukovode odnosima između pojedinaca i institucija. To bi bila svrha „morala institucija“, dok bi takozvani „individualni moral“ upućivao na standarde primenljive na pojedince. Na osnovu koncepcije individualnog morala u odnosu na kontraktualizam i rasprave o moralu institucija koja pomno prati teoriju pravde Džona Rolsa, u članku se postavlja pitanje o temeljima obaveze da se podržavaju institucionalno definisani standardi upravljani na pojedince. Na kraju, članak se posebno usredsređuje na teškoću racionalizovanja te obaveze u slučaju nepravednih institucija.

**Ključne reči:** moralna filozofija, politička filozofija, institucije, teorija pravde, Džon Rols, dužnost podržavanja

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### 1. Uvod

Moja tema je odnos između moralne filozofije i političke filozofije – to će reći, odnos između predmeta istraživanja tih dvaju poduhvata. Da li je politička filozofija naprosto potpolje moralne filozofije? Verujem da u jednom važnom pogledu ona to jeste, no ipak se politička filozofija određuje kao distinktna. Kako moj naslov nagoveštava, kao prvu fundamentalnu razliku ovde ću uzeti da se politička filozofija bavi institucijama na način na koji se veći deo moralne filozofije – ono što ću nazvati individualnim moralom – ne bavi.

Pod individualnim moralom podrazumevam moralne standarde koji se odnose na pojedince. To, prevashodno, podrazumeva standarde koji određuju dopuštenost, nedopuštenost i prekora vrednih individualnih postupaka, no oni mogu uključivati i izvođenje zaključaka o vrednostima – o najboljem načinu življenja – koji se takođe obično nazivaju moralnim. Mnogi moralni standardi važeći su za nas bez obzira na to da li ih se ostali generalno pridržavaju ili ne pridržavaju. Na primer, zabrana upotrebe smrtonosnog oružja ima izuzetke – dopušteno nam je da pribegnemo smrtonosnom oružju kada smo napadnuti, što je neophodno kako bismo sačuvali svoje živote. No ova opšta zabrana (sa izuzecima) važi nezavisno od toga da li je se generalno pridržavamo. Ipak bi bilo neispravno da napadnemo nekoga ko za nas ne predstavlja nikakvu pretnju, čak i ako se mnogi, ili pak većina ljudi ne bi pridržavali tog ograničenja. Međutim, neki drugi zaključci o dopuštenosti individualnih postupaka zavise od principa koje drugi zapravo slede.

Pretpostavimo, na primer, da opšta upotreba proizvoda koji sadrže izvesne hemikalije predstavljaju pretnju po zdravlje svih nas, i da nema dvosmislenosti u pogledu odgovarajućeg leka, koji je jednostavno prestanak upotrebe takvih proizvoda. (Pretpostavljam da je teret koji se podrazumeva u činjenju toga isti za svakoga, a za trenutak ću prenebregnuti dejstvo na živote onih što rade u industriji koja proizvodi takve hemikalije i prodaje proizvode koji ih sadrže). Ako je većina ljudi, prepoznajući ovu činjenicu, usvojila politiku neupotrebe tih hemikalija, onda bi, verujem, s moje strane bilo neispravno da nastavim da ih upotrebljavam. (Da to izrazim terminima svog kontraktualističkog moralnog stanovišta, princip koji ljudima dopušta da sebe izuzimaju iz ove ustanovljene prakse jeste princip koji bi se razložno mogao odbaciti).<sup>1</sup>

Praksa uzdržavanja od upotrebe proizvoda koji sadrže tu štetnu hemikaliju jeste ono što ću nazvati institucijom. Institucija postoji kada se ljudi ne samo generalno prilagođavaju izvesnim standardima, već te standarde shvataju kao one kojih bi *trebalo* da se pridržavaju delimično zbog toga što veruju da mnogi drugi to isto čine. Ovo je vrlo apstraktna koncepcija institucije, no ja ću pretpostaviti da države, pravni sistemi, univerziteti i druga uređenja koje obično nazivamo institucijama jesu institucije u ovom apstraktnom smislu, iako su umnogome složenije od jednostavne institucije u mom primeru.

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Zaključak koji sam upravo izneo, o neispravnosti upotrebe proizvoda koji sadrže štetne hemikalije kada se ostali uzdržavaju od takve upotrebe kroz prepoznavanje štetnih posledica, zavisi od postojanja institucije na način na koji zabrana upotrebe smrtonosnog oružja ne zavisi. Međutim, to je i dalje izvođenje zaključaka unutar individualnog morala. Politička filozofija, kako je ja razumevam, bavi se moralnim standardima zbog procenjivanja samih institucija – na primer, kao pravednih ili nepravednih.<sup>2</sup> Zaključci do kojih ona dospeva mogu imati implikacije po ono što pojedinci mogu ili bi trebalo da čine, no oni po svom izgledu nisu zaključci te vrste. Oni su pre zaključci o institucijama.

Zaključci do kojih se dolazi u obe ove oblasti čini se da predstavljaju *moralne* sudove u izvesnom širem smislu. No koji je to smisao? To je prvo pitanje koje želim da postavim o odnosu između ove dve oblasti: u kojem smislu su pitanja za koja se obe oblasti zanimaju *moralna* pitanja? Moje drugo pitanje tiče se odnosa između te dve oblasti: kakve implikacije izvođenje zaključaka o moralu institucija imaju po dopuštenost ili nedopuštenost individualnog ponašanja, te da li se sadržaj zaključaka o moralu institucija iscrpljuje tim implikacijama.

1 Kako je izloženo u mojoj knjizi *Šta dugujemo jedni drugima* (*What We Owe to Each Other*, Cambridge, MA: Harvard University Press, 1998).

2 To je ono što Džon Simons (John Simmons) naziva pitanjima o *opravdanju* institucija. Videti Simons, „Justification and Legitimacy“, *Ethics* 109 (1999): 739–771.

## 2. Različita shvatanja morala (mala digresija)

Smatram da se termin „moral“ u velikoj meri upotrebljava bez jasnog, zajedničkog shvatanja njegovog sadržaja.<sup>3</sup> To važi ne samo za javni diskurs, već i za akademske rasprave. Postoji opšta saglasnost, verujem, da moralni zahtevi predstavljaju nešto važno – da moralni standardi treba da budu takvi da svako ima dobre razloge da ih shvata ozbiljno kao (obično nadvladavajuće) vodiče za ponašanje. Međutim, čak i ljudima koji smatraju da moralni standardi poseduju ovu vrstu autoriteta često nije sasvim jasno kakve razloge imamo da sledimo te standarde. A onima kojima je to jasnije često imaju različite razloge na umu.

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Jedan način da se identifikuju razlozi koje shvatamo kao podršku moralnim zahtevima jeste da se usredsredimo na vrstu ogorčenosti kakvu osećamo, i koju prihvatamo kao prikladnu, kada shvatimo da u nekom datom slučaju nismo ispunili zahteve moralnosti. To je ono što ja nazivam testom pokajanja. Karakter tog pokajanja ukazuje na prirodu razloga koje shvatamo kao podršku standardima koje narušavamo. Identifikovanje načina na koji *shvatamo* prirodu tih razloga predstavlja, dabome, samo prvi korak u ovom reflektivnom procesu. Potom moramo da se upitamo da li oni, zapravo, predstavljaju dobre ili, pak, ne tako dobre razloge, u kojem bi slučaju, kako bi Niče rekao, prijemčivost za njih označavala bolest koju treba prevazići.

Smatram da ovaj reflektivni proces otkriva dve vrste različitosti. Kao prvo, različiti ljudi shvataju moral, onako kako ga shvataju, kao podržan različitim razlozima (u nekim slučajevima dobrim, u nekim ne tako dobrim razlozima). Ali, kao drugo, čini mi se da u mom primeru test pokajanja ukazuje na to da termin „moral“ shvatam kao da važi za standarde koje podržavaju sasvim različiti razlozi, te različiti *dobri* razlozi. Pretpostavljam da isto važi i za druge ljude, pa ukratko želim da istražim ovaj drugi oblik različitosti.

Središnja komponenta individualnog morala onako kako ga ja razumem – koji nazivam moralom onoga što dugujemo jedni drugima – jeste nešto o čemu imamo razloga da se staramo, zato što imamo razloge da se staramo o vlastitom odnosu prema drugima, u kojem odnosu opravdivost (*justifiability*) ove vrste ima važnu ulogu. Postoji, smatram, korespondirajuća verzija morala institucija, koja se sastoji od standarda koje institucije moraju da zadovolje kako bi postale opravdive pred onima za koje se tvrdi da važe. Mnogo toga zavisi, naravno, od osobenog oblika opravdanja koje se tu podrazumeva. Grubo rečeno, takvo opravdanje shvatam u terminima interesa onih koji su tu uključeni. U nastavku ću se usredsrediti na ovaj oblik individualnog morala i morala institucija, i upravo ću ovom smislu oba shvatati

3 O toj raznovrsnosti shvatanja potpunije raspravljam u „What Is Morality?“, u *The Harvard Sampler*, Jennifer M. Shephard, Stephen M. Koslyn, and Evelyn M. Hammonds, eds. (Cambridge, MA: Harvard University Press, 2011): 243–266.

kao oblike *moral*a. Moralne neispravnosti vrste koje imam na umu identifikuju se pomoću osobenog oblika pokajanja: osećanja otuđenosti od drugih koje nastupa shvatanjem da smo ih tretirali na način koji se pred njima ne bi mogao opravdati, ili da s njima učestvujemo u nekoj instituciji (koja pak zavisi od njihovog učestvovanja) koja sa pred njima ne bi mogla opravdati.

Ali podbacivanja ove vrste nisu jedina vrsta stvari koja se obično naziva moralno neispravnom. Različite vrste ličnih mana, kao što su propust da se naporno radi ili da se teži nečemu vrednom, na primer, plauzibilno se naziva moralnim manama, čak i kada one ne sadrže podbacivanja u onome što dugujemo drugima.

U *Ani Karenjini* Tolstoj opisuje Ljevina kako se, po povratku s dana košnje u poljima sa svojim seljacima, oseća moralno nadmoćnim u odnosu na svog brata koji se, čitajući, izležava u kući. Kada to čitamo, za nas to nema smisla. No kakva je ideja morala tu sadržana? Može biti da Ljevin oseća da je u manjoj meri otuđen od svojih seljaka zbog toga što je (makar na sličan način) delio njihove muke. To bi značilo uvesti moral u užem smislu koji sam opisao. Međutim, dok čitamo taj odeljak mogli bismo, naprotiv, pomisliti da je upravo nekako *bolje* biti angažovan u dobrom, poštenom fizičkom radu nego se po ceo dan tegliti na divanu uz cigaretu i roman.

Potonja ideja je pitanje onog što je Bernard Vilijams (Bernard Williams), u *Etici i granicama filozofije*, nazvao etikom – pitanjem o tome kako najbolje živeti – kao suprotstavljenu moralu, koji se tiče upravo naših obaveza prema drugima. Sve dok to Vilijams nije napisao, termini „moral“ i „etika“ upotrebljavali su se, makar u većini akademskih krugova, više ili manje kao međusobno zamenljivi. Činjenica da je neki filozofski kurs nazvan „etika“ ili „filozofija morala“ ne bi ukazivao na bilo koju očekivanu razliku u sadržaju. A jedna stvar u vezi s tim sadržajem jeste da je malo verovatno da on ima bilo kakve veze sa seksom. To će reći, iako bi neki oblici ponašanja koji podrazumevaju seks, kao što je silovanje, bili moralno neispravni u smislu u kojem bi se obrađivali unutar takvog kursa, to bi bilo tako samo stoga što bi oni predstavljali primere opštijih neispravnosti, kao što su primena sile, nasilje ili prevara. Seks sam po sebi – broj uključenih individua, da li su u pitanju muškarci ili žene, koji su delovi tela korišćeni, i tako dalje – ne bi bio ni od kakvog moralnog značaja, u smislu „morala“ o kojem bi se raspravljalo.

U svetu, dabome, stvari stoje sasvim drugačije. Ako u novinama pročitate da se dovodi u pitanje moral nekog političara, odmah znate da to ima veze sa seksom. A ako se pominje etika, onda to verovatno ima veze s novcem. Međutim, meni se čini da ovaj popularni način razumevanja distinkcije između etike i morala značajno unazađuje stvari. Ukoliko postoji neka razlika, kako to Vilijams sugeriše, i kao što ja mislim da postoji, između pitanja obaveza i širih pitanja o vrednosti načina življenja, te ako postoje moralni problemi, kao što smatram da postoje, povezani sa seksom koji su s one strane

onoga što dugujemo drugima, onda su ti problemi pre stvar etike nego morala. Oni su pre povezani s onim što je podložno vrednovanju i načinu vrednovanja nego s onim što je dopušteno ili zabranjeno. Ovo zvuči kao pedantno terminološko gazdovanje, ali je od istinske važnosti. Zvuči melodramatično reći da su brojni životi osakaćeni rasprostranjenim brkanjem ove razlike, ali ja smatram da je upravo to slučaj. No to je tema za neko drugo predavanje.<sup>4</sup>

Pomenuo sam seks i naporan rad kao dva predmeta moralne zainteresovanosti, u smislu „morala“ koji je s one strane onoga što dugujemo drugima. Još jedna takva zainteresovanost tiče se odanosti opštem dobru ili instituciji. Takva odanost, koja se plauzibilno naziva moralnom vrlinom, nije nešto što zahtevaju principi koji specificuju ono što dugujemo drugima. To je pre pitanje postojanosti u privrženosti nekom opštem dobru ili instituciji koja je vredna staranja. Osoba za koju se ispostavi da je neodana podložna je kritici, od strane onih koji su privrženi tom opštem dobru ili instituciji, ne samo, ili ne mahom, zbog podbacivanja u onom što ona duguje *njima*, već i zbog nedovoljne privrženosti *toj stvari* – opštem dobru ili instituciji o kojoj je reč. A to je moralno podbacivanje samo ukoliko je *to* vredno te vrste privrženosti.

Moja poenta u ovoj raspravi o različitosti razumevanja termina „moral“ nije samo u tome što se čini da različiti ljudi upotrebljavaju taj termin s različitim stvarima na umu, već i u tome što ga, kako sam rekao, svi upotrebljavamo da ukažemo na nešto što bi, sugerisao sam, trebalo da uvidimo kao raznovrstan skup vrednosti. Kada prepoznamo tu raznovrstanost, pitanje koje bi trebalo da postavimo nije „koja koncepcija zahvata ono što *moral* jeste?“. Pitanje koje bi trebalo da postavimo pre glasi „kakve su te vrednosti, koja je od njih zaista vredna staranja, i kako se one zajedno uklapaju?“

Ovoj raznovrstanosti u načinima razumevanja individualnog morala korespondira raznovrstanost u moralnoj kritici institucija. Kao što sam rekao, institucionalni moral o kojem ću uglavnom raspravljati usredsređuje se na opravdivost institucija pred pojedincima, a koja je zasnovana na njihovim individualnim zahtevima. Međutim, kao što može postojati kritika individua, koja se plauzibilno naziva moralom, koji je pre zasnovan na njihovoj osetljivosti prema osobenim vrednostima nego na njihovim obavezama prema drugima, tako se i institucije mogu kritikovati na osnovu vrednih ciljeva koje one pospešuju, vrsti pojedinaca koje one teže da stvore, ili vrsti života na koji one podstiču te pojedince da ga vode.

Na početku *Teorije pravde* Rols (John Rawls) predlaže ono što ja ovde nazivam individualističkom verzijom morala institucija, kada kaže da društvo shvata kao „kooperativni poduhvat na uzajamnu korist“ namenjen tome da unapredi dobro pojedinaca koji u društvu učestvuju s različitim ciljevima i

4 Naslov tog predavanja mogao bi da glasi „S moralne i etičke tačke gledišta, seks je poput rada“. Ostavljam kao domaći zadatak problem da se razluči zašto je to tako.

svrhama. (Rawls 1999: 4–5) Konceptija pravde, kako je Rols razume, jeste izvestan skup standarda za procenjivanje zahteva koje pojedinci mogu izneti protiv sistema saradnje, shvaćenog na ovaj način. Takva konceptija ustanovljava ono što on naziva „vezama građanskog prijateljstva“, koje ograničavaju težnje pojedinaca ka različitim ciljevima. Ovaj način razumevanja pravde – a što ja nazivam moralom institucija – oštro se razlikuje od onog koje bi bilo prikladno za društvo shvaćeno kao skup pojedinaca ujedinjenih u težnji ka nekom zajedničkom cilju ili zajedničkoj vrednosti.

Institucije potonje vrste uključuju univerzitete, političke partije i aktivističke grupe, kao i pojedine biznise. Pobuđeni smo da na razne načine podržavamo te institucije i da se u njih uzdajemo sve dotle dok se one rukovode važnim vrednostima. Šta to znači da se institucija *rukovodi* vrednostima? Smatram da to znači sledeće. Institucije se sastoje od pojedinaca kojima se dodeljuju razne uloge i odgovornosti. Reći da se neka institucija rukovodi izvesnim vrednostima znači reći da je ona tako organizovana da će biti osetljiva na te vrednosti ukoliko pojedinci kojima su dodeljene te uloge izvršavaju svoje dodeljene zadatke. Da li se to događa ili ne zavisi od načina na koji je ta institucija organizovana i od onog što bi se se moglo nazvati njenom unutrašnjom „ekonomijom uticaja“ – to će reći, od motivacijskog modela na koji pojedinci, što u toj instituciji učestvuju, reaguju.<sup>5</sup>

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Na primer, neka vazduhoplovna kompanija rukovodi se vrednošću bezbednosti putnika ukoliko je tako organizovana da informacije o vremenskim prilikama i mehaničkom stanju aviona dospevaju do pojedinaca koji donose odluke o letovima, a pojedinci koji imaju tu ulogu motivisani su da donesu odgovarajuće odluke, zasnovane na tim informacijama, u vezi s tim da li poletati ili ne. Kada odlučim da putujem avionom, verujem da se vazduhoplovna kompanija rukovodi tom vrednošću.

Slično tome, Univerzitet Harvard tvrdi da se rukovodi vrednošću stvaranja stručnosti na visokom nivou i visokokvalitetnog obrazovanja. On poziva ljude da mu veruju slanjem dece da tamo studiraju i polaganjem poverenja u istraživanja koja se na Harvardu sprovode. On takođe poziva na odanost, odnosno poziva darodavce da uvide kako je on vredan podrške, te nas koji tamo radimo da je vredno napornog rada i žrtvovanja ostalih obaveza da valjano obavljamo svoje poslove. Kvarenje institucije nastaje kada je unutrašnja ekonomija uticaja institucije takva da ne funkcioniše na način koji zahteva da se bude osetljiv na vrednosti koje drugima treba da pruži razloge da se staraju o njoj.

Tako shvaćeni, kvarenje, poverenje i odanost jesu normativni pojmovi. Odnosno, oni moraju biti povezani s razlozima koje ljudi imaju da se ponašaju

5 Videti Larry Lessig, Memorandum of October 9, 2009 <http://www.ethics.harvard.edu/images/resources/pdfs/v1.0.pdf>.

na izvesne načine i da zauzimaju izvesne stavove. Ti pojmovi takođe zvuče kao moralni pojmovi. No u kojem su smislu oni moralni? Jedan moralni element jeste element poštenja – da li institucije zaista čine ono što tvrde da čine i pozivaju ljude da se uzdaju u njihovo činjenje, ili pak pribegavaju izvesnom obliku obmane koji moralni standardi isključuju. To, međutim, nije čitava priča. Ako nameravam da povučem svoje poverenje i odanost nekoj instituciji – bila to neka vazduhoplovna kompanija, Harvard ili FDA (Uprava za hranu i lekove)\* – mogao bih pomisliti da je ona postala nepoštena, da se pokazuje u lažnom svetlu, ali moj glavni, osnovni razlog ne bi bio taj da me je ona obmanula, već da nije bila stvarno osetljiva na vrednosti o kojima je reč. To mi je važno ne samo stoga što se protivim tome da budem prevaren, već i stoga što mi je stalo do tih vrednosti. Dakle, glavna normativna snaga pojmova poverenja, odanosti i kvarenja u ovom kontekstu proizlazi iz osobenih vrednosti o kojima je reč, bilo da se radi o ličnoj bezbednosti, intelektualnom kvalitetu ili nekoj drugoj vrednosti.

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Ovo se podudara s onim što sam maločas rekao o neodanosti kao individualnom podbacivanju. Ukoliko jedna osoba koja je privržena nekom opštem dobru kritikuje drugu zbog nedovoljne odanosti tom opštem dobru, to za sobom može povući optužbu „ostaviti nas ostale na cedilu“ tim nedostatkom privrženosti. No to nije glavna stvar. Odanost koja se očekuje (a koja u ovom slučaju izostaje) nije pre svega osećaj obaveze prema nama ostalima, koji smo saprivrženici istom cilju. Odanost u ovom slučaju jeste pre svega biti motivisan privrženošću samom tom cilju.

Dakle, normativna snaga odnosa kakvi postoje kada ima odanosti i poverenja prema nekoj instituciji, i koji se gube kada institucija biva potkopana korupcijom, takoreći je *vertikalna*. To je odnos između pojedinca i institucije, koji proizlazi iz neke vrednosti za koju se pretpostavlja da je ta institucija na nju osetljiva. To je u suprotnosti sa *horizontalnim* moralnim vezama između pojedinaca koji predstavljaju kooperativne članove.

### 3. Preliminarno pitanje o moralu institucija i njegovom odnosu prema individualnom moralu

Dosad sam se bavio pitanjem „U kojem se smislu ‘moralnog’ individualni moral i moral institucija tiču morala?“ Identifikovao sam jedno razumevanje „morala“ u kojem je to slučaj. Moje drugo pitanje o odnosu između individualnog morala i morala institucija glasi kako moralni zaključci ove vrste u vezi s institucijama vode moralnim zaključcima u vezi s tim šta pojedinci treba ili ne treba da čine, i da li zaključci o individualnom moralu iscrpljuju normativni sadržaj zaključaka o moralu institucija.

\* FDA (Food and Drug Administration) je agencija Ministarstva za zdravstvene i ljudske usluge SAD (prim. prev.).



Ova ću pitanja postaviti unutar okvira Rolsove teorije, zato što ona nudi potpuno razrađeni opis relevantnih pojmova: pojma pravde kao središnjeg pojma institucionalnog morala i pojma odnosa između pravde institucija i dužnosti pojedinaca. Čineći to ne mislim da raspravljam sa stanovišta autoriteta, pretpostavljajući ispravnost Rolsovog shvatanja. Može biti da ćemo, čim uvidimo kojim nas zaključcima Rolsov opis vodi, dovesti u pitanje njegove osnovne pretpostavke i tragati za nekom alternativom.

Principi pravde, prema Rolsu, predstavljaju standarde za procenjivanje zahteva pojedinaca protiv njihovih institucija, naročito protiv onoga što on naziva „osnovnom strukturom“ njihovog društva. Uloga tih principa jeste da odrede valjanost zahteva koji će promeniti te institucije. U onome što Rols naziva dobro uređenim društvom njeni članovi dele ono što on naziva osećajem za pravdu. To znači da su oni saglasni oko principa pravde i da su njima motivisani. Nadalje, ukoliko je društvo dobro uređeno, građani s pravom veruju da njihove institucije zadovoljavaju te principe. Pre svega, možemo zamisliti njihovu motivisanost osećajem za pravdu kao ozbiljnu sklonost podržavanja institucija u koje se veruje kao pravedne, da zahtevaju promenu kada poveruju da su te institucije nepravedne, te da pristanu na takve promene kada ih drugi zahtevaju. Ovo se uklapa s Rolsovom opaskom o zajedničkom osećaju za pravdu kao „uravnotežujućem sredstvu“ (Rawls 1999: 458). Kako se prilike menjaju, čak će i pravedne institucije, kaže on, verovatno postati nepravedne. Kada se to dogodi, osećaj za pravdu koji građani nekog dobro uređenog društva dele motiviše ih da zahtevaju, prihvataju i rade za promene koje su neophodne kako bi se njihove institucije vratile pravdi.

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Naš osećaj za pravdu jeste ono što nas nagoni da osetimo ogorčenost, one vrste koju sam opisao u drugom odeljku, kada razmotrimo način na koji naše nepravedne institucije tretiraju druge, koji ih moraju podržavati kako bi te institucije funkcionisale i zadovoljile naše potrebe. Rečeno Rolsovim rečima koje sam već navodio, institucije koje nisu potpuno pravedne zatežu „veze građanskog prijateljstva“, a ogorčenost koju sam opisao jeste svest o toj zategnutosti.

Ogorčenost ove vrste isuviše je dobro poznata crta moralnog i institucionalnog života. No kakav je praktični značaj ove ogorčenosti? Rols kaže da nas ona motiviše da činimo ono što je neophodno kako bismo naterali naše institucije da budu pravednije: shvatiti standarde pravde ozbiljno znači shvatiti ih kao vodiče za delanje u glasačkim kabinama, ali i u drugim prilikama u kojima se može dejstvovati na institucionalna uređenja. Tužna je činjenica, međutim, da sebe generalno zatičemo kako živimo pod institucijama, i zavisimo od njih, a koje ne zadovoljavaju standarde pravde na načine koje sami ne možemo mnogo, ako iole, promeniti. Upetljani smo, posredstvom institucija unutar kojih živimo, u moralno neprihvatljiv odnos s drugima koji su uključeni u te institucije ili su pod njihovim uticajem.

Nije na odmet primetiti suštinsku ulogu institucija u ovoj vrsti ogorčenosti. Ako izdaleka čujem da jedna osoba psuje drugu, mogu osetiti zgražavanje. Ali to zbog čega sam zgrožen ne tiče se *mene*. S druge strane, ako saznam da neka institucija u koju se uzdam funkcioniše tako što negde eksploatiše ljude, to me se tiče i daje povoda za vrstu ogorčenosti koju opisujem, čak i ako nisam imao nikakvu ulogu u njenom stvaranju i nisam mogao ništa učiniti da je promenim.

Slična ogorčenost može nastati i na nivou individualnog morala. Utilitarizam se često kritikuje kao neprihvatljivo zahtevan. Međutim, uzevši u obzir neprilike svih ljudi u svetu kojima je očajnički potrebna pomoć i kojima bismo mogli pomoći, čini se verovatnim da će svaki uverljivi opis individualnog morala sadržati standarde individualnog ponašanja koje zapravo ne zadovoljavamo, i koje verovatno nećemo zadovoljiti (s obzirom na našu brigu o sebi i o onima koji su nam bliski). Ukoliko je to slučaj, onda i individualni moral i moral institucija imaju svoju bolnu stranu.

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Međutim, može biti da ovo nisu odvojeni problemi. Zahtevi individualnog morala koje najverovatnije ne zadovoljavamo na ovaj način – kao što su dužnosti da pomažemo udaljenim, ili ne toliko udaljenim, siromašnima – predstavljaju probleme koji zaista iziskuju institucionalna rešenja. Dakle, bolno shvatanje da ne zadovoljavamo zahteve na ove načine zaista je primer prve vrste ogorčenosti koju sam pominjao (učestovanja u institucijama koje ne zadovoljavaju standarde pravde).

Primeri kojima sam upravo pribegao podrazumevaju naš odnos prema siromašnjima u drugim delovima sveta. Ali poenta koju sam istakao važi i za domaće prilike. Oslanjamo se na siromašne ljude u SAD koji beru naše voće baš kao što se oslanjamo na siromašne u drugim zemljama koji beru našu kafu. Dakle, izranjaju isti problemi.

Moglo bi da se kaže da, sve dok nepravda ove vrste predstavlja nešto što ne možemo da izbegnemo, ogorčenost u vezi s tim jeste zaludno utopijsko kršenje ruku. No čini se bezdušnim odbaciti ga. Dirljivi poslednji pasus *Teorije pravde* prirodno čitam kao da izražava čežnju za uslovima u kojima bi takva ogorčenost bez griže savesti mogla biti izbegnuta. Međutim, ma koliko bio rečit taj pasus, ipak se možemo zapitati da li pravda, u idealnom smislu za koji je Rols zainteresovan, ima išta da nam kaže kako da mislimo u vezi s tim šta činiti u uslovima pod kojima aktualno živimo.

#### 4. Pravda i dužnosti podržavanja institucija

Ovo su dosad samo tvrdnje o motivacionoj ulozi osećaja za pravdu. Ništa nije rečeno o individualnom moralu – o dužnosti ili obavezi. Sada ću se vratiti pitanju kako izvođenje zaključaka o pravdi ili nepravdi vodi zaključcima o tome šta pojedinci treba da čine – vezi između morala institucija i individualnog

morala. U Rolsovom delu ta je veza skovana pomoću onoga što on naziva „prirodna dužnost pravde“. Ova dužnost, kaže on, „zahteva od nas da podržavamo postojeće pravedne institucije koje važe za nas“ i takođe nas „prinuduje da unapređujemo pravedna uređenja koja još nisu ustanovljena, bar kada se to može učiniti bez prevelikih troškova za nas“ (Rawls 1999: 99). Raspravljajući redom o dva dela ove dužnosti, počev od dužnosti podržavanja.

Za obrazloženje ove dužnosti moglo bi se ukratko reći da, ako je neka institucija pravedna, onda pojedinci nemaju valjan razlog da joj se protive ili da zahtevaju promene. Čini se da bi sledilo da oni nemaju opravdanje za propust da učine ono što ta institucija od njih zahteva. (Ovo može izgledati prebrzo, ali kasnije ću objasniti zašto smatram da nije). Rols kaže da imamo dužnost da podržavamo *postojeće, pravedne i za nas važeće* institucije. Kako bismo razumeli šta je sadržano u ova tri uslova, i šta podrazumeva odnos između njih, biće od pomoći vratiti se mom primeru štetne hemikalije.

Ranije sam rekao da, ako je većina ljudi usvojila politiku neupotrebe tih hemikalija, onda bi za mene, smatram, bilo neispravno da nastavim da ih koristim. Ovaj zaključak pripada području individualnog morala – to je zaključak o tome šta je pojedincu moralno dopušteno da čini. Ali on zavisi od izvođenja zaključaka unutar područja koje nazivam moralom institucija, pošto zavisi od činjenice da praksa o kojoj je reč ne samo postoji već i da je pravedna. No, predahnimo za trenutak kako bismo razmotrili šta to znači. Prirodno je, pre svega, poimati pravednost neke institucije u čisto distributivnim terminima. Tako, na primer, praksa u ovom primeru bila bi nepravedna ukoliko bi (bez nekog daljeg opravdanja) zahtevala samo od nekolicine ljudi da se uzdržavaju od upotrebe proizvoda koji sadrže tu hemikaliju, a drugima dopuštala da nastave da to čine. Uopštenije, mogli bismo reći da je neka praksa pravedna ako raspodeljuje koristi i terete na pravičan način. To bi moglo biti ispravno ako se „koristi“, „tereti“ i „pravično“ shvataju na dovoljno širok način. Međutim, postavljanje pitanja na ovaj način može skrenuti našu pažnju s pitanja da li su koristi koje ta praksa donosi, ma koliko ravnomerno bile raspodeljene, dovoljno važne da opravdaju zahteve koje ona nameće, čak i ako su ti zahtevi isti za svakoga.<sup>6</sup>

Primer sa štetnom hemikalijom izabrao sam stoga što ga smatram primerom u kojem je zahtev dovoljne važnosti ispunjen. Jasniji, ili makar dramatičniji primer bio bi sistem saradnje za održavanje nasipa koji zadržavaju more da nas potpuno poplavi. Suprotan slučaj predstavljao bi Nozickov (Robert Nozick)

6 U onome što sledi pretpostaviću da koristi o kojima je reč jesu koristi za pojedince, pogotovo za one koji učestvuju u tom procesu, iako potonja pretpostavka neće biti presudna. Dužnost o kojoj je reč to pretvara u stvar onoga što sam nazvao horizontalnom obavezom. Interesantno je pitanje da li i kada se institucije mogu opravdati na način koji sada razmatram, na osnovu činjenice da one iziskuju pospešivanje neke impersonalne vrednosti. Ideja da makar prinudne institucije ne mogu biti opravdane na taj način predstavljalo bi, pretpostavljam, izvestan uopšteni oblik Milovog principa štete.

primer komšijske razglasne stanice. (Nozick: 1999: 90–95) Pretpostavimo, kaže on, da postoji neka razglasna stanica u vašem komšiluku i da neki vaš komšija dođe na ideju da bi bilo zgodno upotrebiti tu stanicu za redovno emitovanje, koje obezbeđuju komšije kadre da proberu šta činiti – saopštavati vesti, puštati muziku, čitati poeziju ili nešto drugo. Objavljuje se lista koja svakom članu zajednice određuje vreme kada to treba učiniti. Posle nekoliko sedmica dolazi red na vas. Nalazite da veoma uživete u toj instituciji. Čak i da je tako, kaže Nozik, nemate obavezu da prihvatite svoj red ako to ne želite.

Ukoliko je to slučaj, to je stoga što, smatram, koristi koje ta institucija pruža nisu dovoljno važne da opravdaju, takoreći, regrutovanje čitavog komšiluka da u njoj učestvuje. *Pravedna* institucija ove vrste morala bi biti dobrovoljna. To jest, ona bi morala da dozvoli komšijama da odustanu ukoliko tako odluč. Nozik sugerise da praksa koju on opisuje jeste pravedna, imajući na umu, pretpostavljam, da ona sve komšije tretira jednako. Međutim, praksa nije pravedna ako nameće neopravdive obaveze, a njegov nam argument upravo na to skreće pažnju.

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To nas dovodi do trećeg uslova koji Rols iznosi: da institucija *važi* za nekoga. Šta u relevantnom smislu znači da institucija *važi* za nekoga? Uzevši u obzir prvi uslov, da je neka institucija pravedna, smatram da možemo uzeti da to naprosto znači da ta institucija *zahteva* da *važi* za nekoga. Pitanje onda glasi za koga institucija s pravom može zahtevati da *važi*? Odgovor, smatram, glasi da pravedna institucija može zahtevati da *važi* samo za one čije je učestvovanje neophodno kako bi se obezbedile koristi o kojima je reč, te da ona to može zahtevati samo ukoliko su te koristi dovoljno važne da opravdaju ograničenje koje to za sobom povlači.

To učvršćuje ono za šta sam ranije rekao da može predstavljati prebrz korak od činjenice da je neka institucija pravedna – da niko nema valjan prigovor protiv nje – do zaključka da su ljudi obavezni da je podržavaju. To je ispravan korak zato što, kao što smo upravo videli, prigovor koje bi pojedinci mogli da upute protiv neke institucije glasi da ona ne bi mogla s pravom zahtevati da *važi* za njih. Možda se čini da ovo objašnjenje pravi taj korak valjanim time što ga trivijalizuje, ili pre time što ga naprosto gura nazad ka pitanju kako jedna institucija mora izgledati da bi bila pravedna. Pa ipak, meni se čini da refleksija o razlici između primera štetne hemikalije i Nozиковog primera razglasne stanice ukazuje na mesto kojem to pitanje pripada.

## 5. Nepravedne institucije

Izgleda da smo dospeli do zaključka da je pravednost neke postojeće institucije dovoljan uslov da postoji dužnost da se ona podržava.<sup>7</sup> Da li je to i

7 Prema navedenom članku Džona Simonsa (John Simmons), to se svodi na tvrdnju da odgovor na pitanje o opravdanosti rešava i pitanje o legitimnosti.

*nužan* uslov? Ne postoji li dužnost da se podržavaju nepravedne institucije? Čini se da je to slučaj u primeru komšijske razglasne stanice. No to je poseban slučaj, iz dva razloga: pošto nepravda o kojoj je reč upravo leži u odsustvu odredbe „odustajanja“, i pošto korist tu nije mnogo značajna. Stvari bi, smatram, stajale drugačije u slučaju neke nepravedne sheme za održavanje nasipa. Ne izgleda da pravda *uvek* potpuno podriva dužnost podržavanja. Od postojeće ogromne skale društvenih institucija (ono što Rols naziva „osnovnom strukturom“) malo ili nimalo njih je u potpunosti pravedna, ali ne čini se da iz toga sledi da ljudi nemaju nikakvu obavezu da podržavaju njihove zahteve. Dakle, kada kažemo da je neka institucija *legitimna* ukoliko oni koji žive od nje imaju dužnost da podržavaju njene zahteve, onda se čini da pravda predstavlja jedan viši standard od puke legitimnosti.

Međutim, legitimnost, shvaćena kao pitanje onog sve ili ništa, isuviše je otvoren pojam da bi se nosio s opsegom slučajeva koji bi trebalo da nas zanimaju. Jer, pre svega, dužnosti podržavanja se menjaju, zavisno od položaja individua u nekoj instituciji. Ako je neka ustanovljena praksa za obuzdavanje upotrebe proizvoda koji sadrže izvesnu štetnu hemikaliju nepravedna, iz toga ne sledi da *korisnici* te nepravde nemaju nikakvu dužnost da podržavaju tu praksu. Drugo, čak i ako nepravednost neke prakse menja moralnu situaciju žrtava te nepravde, može biti da se ona ne menja jednostavnim povlačenjem dužnosti podržavanja zahteva te prakse.

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Ovo je još jasnije u slučaju žrtava nepravde u aktuelnim društvima. Razmotrimo, na primer, jednu od najlošije stojećih grupa u našem društvu, ljude koji su rođeni i koji žive u gradskim crnačkim getoima.<sup>8</sup> Ti ljudi odrastaju u uslovima koji ih izlažu veoma ograničenim šansama za ekonomski napredak, uz strogo ograničenu političku moć i toliko siromašnim obrazovnim šansama da postaje malo verovatno da će oni moći da nadvladaju te uslove. Institucije koje stavljaju ljude u takve izbežljive uslove ozbiljno su nepravedne, no takva nepravda ne podriva *na jednostavan način* dužnost tih ljudi da se povinuju zakonu. Njene posledice su složenije.

Dakle, moramo da pobliže sagledamo načine na koji činjenica da je neka institucija nepravedna utiče na moralnu situaciju onih na se koje ta institucija odnosi. Ovom ću pitanju pristupiti pribegavajući, manje ili više istovremeno, dvema strategijama. Prvom ću strategijom razmotriti šta bi nam drugi deo Rolsove „prirodne dužnosti pravde“ mogao reći o takvim slučajevima. Uz pomoć druge strategije, koja će se nalaziti u pozadini, pitaću se, kao kontraktualista, koji bi principi što upravljaju ponašanjem ljudi u nepravednim institucijama bili oni principi koje niko ne bi mogao razložno da odbaci.

<sup>8</sup> Ono što ću reći u narednim pasusima umnogome dugujem Šelbijevoj (Tommie Shelby) iscrpnijoj raspravi u „Justice, Deviance, and the Dark Ghetto“, *Philosophy & Public Affairs* 35 (2007): 126–160.

Drugi deo Rolsove „prirodne dužnosti pravde“ „prinuđuje da unapređujemo pravedna uređenja koja još nisu ustanovljena, bar kada se to može učiniti bez prevelikih troškova za nas“. Ovaj princip razrešava ono što bi inače moglo izgledati kao paradoks u odnosu na „institucije koje još nisu ustanovljene“. Razmotrimo opet primer opasne hemikalije.<sup>9</sup> Ako se ustanovi praksa uzdržavanja od upotrebe proizvoda koji sadrže tu hemikaliju, onda je za pojedince neispravno da podbace da je se pridržavaju. Međutim, ako velika većina ljudi nastavi da upotrebljava te proizvode, uprkos poznatim posledicama, onda ta praksa ne postoji. Da li je za bilo kog pojedinca i dalje neispravno da ih koristi? Ako odustajanje od korišćenja proizvoda za sobom povlači izvestan trošak, a pojedinačna upotreba tih proizvoda ne ugrožava u značajnoj meri zdravlje individua, onda to može izgledati kao paradoks. S jedne strane, čini se besmislenim da se pojedinac liši tih proizvoda a da od toga nema nikakvu značajnu korist. S druge strane, opšta upotreba tih proizvoda narušava princip koji niko ne bi mogao razložno da odbaci i uzrokuje ozbiljne štete. Stoga se čini jasnim da je neispravno reći da niko ne čini ništa pogrešno nastavljajući da ih koristi. Dakle, da li je princip koji zabranjuje tu upotrebu uslovljen njegovom opštom podrškom ili ne? Nazovimo tu dilemom ne-podrške.

Pojavljivanje dileme ovde zavisi od razmatranja svega dve alternative: podrške ili nepodrške. Treća alternativa se sastoji u tome da – kada postoji opšta nepodrška, a uzevši u obzir zahteve neodbacivih principa – drugima otkrijemo našu spremnost da prihvatimo princip koji zabranjuje upotrebu tih proizvoda i da ističemo važnost sličnog postupanja. To može podrazumevati da se sami uzdržavamo od upotrebe tih proizvoda, da pružamo primer drugima kao znak iskrenosti. Ako neka osoba tako postupa, a opšta nepodrška opstaje, onda možda za tu osobu nije neispravno da se ne pridržava tog principa, ukoliko bi pridržavanje označavalo značajan lični gubitak. Jedna relevantna rečenica iz Rolsove „prirodne dužnosti pravde“ izražava ovu alternativu.

Vratimo se sada slučaju postojećih a nepravednih institucija, prisetimo se da principi pravde, kako ih Rols razume, predstavljaju standarde za procenjivanje osnovnih struktura, a naročito za procenjivanje zahteva za promenom. Zajednički osećaj za pravdu Rols opisuje kao „uravnotežujući“ izvor motivacije. Pre nego osećaj kao (prosti) izvor motivacije, sada razmatramo *principe* pravde kao izvor opravdanja.

Razmotrimo najpre položaj učesnika neke nepravedne institucije koji izvlače korist iz činjenice da je ona nepravedna. Pošto zahtevi za promenom onih koje ta institucija tretira nepravedno jesu valjani, za korisnike te nepravde

<sup>9</sup> Institucija u ovom primeru ne predstavlja osnovnu strukturu u Rolsovom smislu. Kasnije ću se vratiti toj razlici.

bilo bi neispravno da se opiru zahtevanim promenama. Rolsova „prirodna dužnost“ ide još dalje, te zahteva da korisnici rade na tome da pospeše takve promene „kada se to može učiniti bez prevelikih troškova“ za njih. Čini se da je ovaj zahtev ispravan u slučaju institucija „koje još nisu ustanovljene“, a isto tako i u ovom slučaju. Međutim, postavlja se pitanje čime „troškove za nas“ treba meriti. Pogotovo, da li se gubitak nepravedno stečenih koristi računa u te troškove? Odgovor koji izgleda ispravan, a čini se da sledi iz Rolsovog opisa, glasi da se takav gubitak ne računa. Sve dok zahtev da takve koristi ne treba da budu pružene jeste valjan (što sledi iz činjenice da su one nepravedne), kako može postojati validan prigovor protiv odustajanja od njih?

Vratimo se sada položaju onih koji su, poput siromašnih u getoima o kojima se raspravlja u Šelbijevom članku, žrtve nepravednih institucija. Ti su ljudi, kao što sam rekao, ovlašćeni da zahtevaju promene u toj instituciji kako bi je napravili pravednijom. No ti će zahtevi biti uzaludni, i neće imati „uravnotežujuće dejstvo“, bez određenih sredstava koji će ih učiniti efikasnijim. U slučaju izolovane prakse vrste kakvu sam zamislio u mom primeru opasne hemikalije, jedino moguće sredstvo može biti tek javno izražavanje, možda podržano pretnjama uskraćivanja podrške. Ako su ta izražavanja uzaludna, onda bi stvarno uskraćivanje podrške moglo da se opravda kao jedino efikasno sredstvo koje donosi promenu, te se čini da oni koji imaju korist od nepravednosti te sheme ne bi mogli da se žale na gubitak koristi. To jest, oni ne bi mogli da se žale što više ne stiču koristi od te institucije, a da ne nose svoj udeo u tim troškovima. No ukoliko je broj onih nepravedno tretiranih dovoljno veliki da njihova zadržka podriva efikasnost te institucije u vidu zaštite od relevantne štete, nepravedni korisnici neće biti jedini koji trpe. (Ili, kao u primeru održavanja nasipa, mogli bi pretrpeti veću štetu nego što stepen nepravde to opravdava). Postavlja se, dakle, pitanje u kojoj je meri nepodrška opravdana kada povlači takve troškove. Nemam sistematski odgovor na to pitanje. (Sumnjam da uopšte postoji takav odgovor). Poenta je upravo u tome da važnost koristi koju neka institucija obezbeđuje, a otuda i trošak gubitka te koristi, jeste faktor koji se mora uzeti u obzir pri određivanju da li je nepodrška opravdana, baš kao što se to mora uzeti u obzir pri određivanju da li se pojedincima mora dati pravo da odustanu.

Stvari stoje drugačije u slučaju onoga što Rols naziva osnovnom strukturom, što uključuje mehanizme samoizmene: političke procedure za donošenje i izmenu zakona, te pravne institucije za njihovo osporavanje. Da bi bile pravedne, takve institucije moraju uključivati mehanizme pomoću kojih zahtevi za promenom mogu biti učinjeni efikasnim (mehanizmi pomoću kojih se „uravnotežujuća funkcija“ zajedničkog osećaja za pravdu može ostvariti).<sup>10</sup>

10 Kao što Čarls Bajc (Charles Beitz) tvrdi, jedan od zahteva za političkom jednakošću jeste da građani imaju efikasna politička sredstva da se zaštite od nepravde. Videti njegovu knjigu *Political Equality* (1989): 110–114.

Gde takvi mehanizmi postoje, primer uskraćivanja podrške koji sam maločas skicirao je oslabljen.

Međutim, takvi mehanizmi ne postoje u slučaju siromašnih u getoima u SAD. Kao što Šelbi naglašava, oni su i politički i ekonomski izolovani. Ne samo da nemaju adekvatan broj predstavnika, oni su i stigmatizovani na način koji veće društvo čini nesklonim da ozbiljno shvati njihove žalbe. Njihova je situacija situacija koju nazivam *istrajnom nepravdom*: ozbiljna ekonomska nepravda udružena s odsustvom efikasnih političkih sredstava za zahtevanje promene. Pitanje je u kojoj su meri žrtve istrajne nepravde oslobođene dužnosti da podržavaju neku nepravednu instituciju.

Jedan argument u prilog dopuštenosti nepodrške u takvom slučaju jeste argument u prilog građanske neposlušnosti kao sredstva izražavanja zahteva pravde. Kao i u slučaju nepravedne prakse izbegavanja posledica opasne hemikalije, ali iz drugačijih razloga, nepodrška se opravdava kao sredstvo protivljenja istrajnoj nepravdi, budući da ne postoji nikakva alternativa, pravna sredstva izražavanja zahteva pravde. Klasični slučaj za građansku neposlušnost jeste shvatanje da ona funkcioniše apelujući na osećaj za pravdu onih što se nalaze u položaju moći, pogotovo na njihovo opiranje da kazne prekršitelje zakona koji se prepoznaju kao nepravedni. Iz već navedenog razloga u vezi sa političkom izolacijom siromašnih u getoima, ovaj apel može biti manje efikasan u slučaju *ekonomske* nepravde nego protiv opšteg poricanja građanskih prava: ako građane getoa većina shvata kao lenje i nemoralne, onda građanska neposlušnost može biti neefikasna u podršci zahtevu za većom jednakošću šansi, budući da podbacuje u apeloivanju na osećaj za pravdu većine.

To nas dovodi do pitanja da li ono što sam nazvao *istrajnom nepravdom* podriiva obavezu građana u nepovoljnom položaju da se povinuju zakonima (sasvim odvojeno od pitanja da li nepovino vanje predstavlja efikasno sredstvo za pospešivanje promene u pravcu veće pravde). Analogija sa sistemom saradnje poput onog u primeru opasnog otpada sugeriše da bi to moglo biti slučaj. Ako je neka institucija istrajno nepravedna, a nepovino vanje onih nepravedno tretiranih ne bi podrazumevalo neprihvatljive troškove, onda bi većina teško mogla da tvrdi da bi građani koji su žrtve istrajne nepravde narušavali reciprocitetne odnose prestajući da se povinuju njenim zakonima. Te je odnose većina već sistematski narušila. Međutim, moramo bliže da sagledamo pitanje u vezi s tim koji bi zakoni mogli opravdano da se prekrše i zašto.

Čak i da stanovnici getoa nemaju nikakvu obavezu da se povinuju svakom zakonu kao takvom, oni bi ipak imali prirodne dužnosti prema drugima. I dalje bi, na primer, bilo neispravno da čine stvari koje nanose bol drugim pojedincima ili uzrokuju njihovu povredu ili smrt. Mnogi primeri krađe takođe mogu spadati u ovu kategoriju. Čak i ako su institucije svojine nepravedne,



neispravno je od ljudi krasti hranu, ili njihova sredstva izdržavanja, poput automobila koji im je potreban da bi se dovezli do posla.

Međutim, mnogi zakoni naprosto ne zabranjuju stvari ove vrste – na umu imam zakone kao što su propisi o podelama na zone, zakone o farmaceutskim proizvodima, zakone protiv prostitucije, te neke vidove finansijske regulacije. Smatram da nije uverljivo reći da bi žrtve krajnje nepravde mogle da se opravdaju kršeći pojedine zakone ove vrste (na primer, prodajom lekova ili neizmirenjem svojih novčanih obaveza ukoliko su opterećeni nekom neopravdanom kamatnom stopom) kada je to neophodno kako bi se snašli i zbrinuli sebe i svoje porodice. (Shelby 2007: 152) Nije jasno da li bi kršeći takve zakone narušavali dužnosti reciprociteta koje duguju nama ostalima.

Uverljivost ove tvrdnje (makar je *ja* smatram uverljivom) počiva na nekolicini faktora koji se moraju razjasniti. Prvo, postoji pozivanje na *nužnost*: na činjenicu da ti vidovi krivičnog dela mogu predstavljati jedini način za stanovnike getoa da ekonomski prežive. Ovaj faktor iznosi i poznati primer u vezi s tim da li bi roditelj mogao da se opravda što krade neki lek, koji je neophodan kako bi sačuvala život svog deteta, od apotekara koji odbija da ga proda, ili odbija da ga proda po nekoj razumnoj ceni. Drugo, kao što reč „razumno“ ovde sugeriše, postoji pitanje u vezi s tim da li izvesno krivično delo lišava druge ljude stvari na koje oni upravo pretenduju. Pojedini od pomenutih krivičnih dela jesu „krivična dela bez žrtava“. Neispravnost kršenja zakona koji zabranjuju takve stvari (i dopuštaju njihovu primenu) izgleda mi ozbiljno podrivena ukoliko je politički proces posredstvom kojeg su oni doneseni ozbiljno nepravedan. Čak i kada kršenje zakona podrazumeva troškove za druge, ako koristi koje bi bile izgubljene jesu koristi koje su stečene samo na osnovu nepravedne prirode prakse, onda se čini da sledi, kako sam ranije naznačio, da osoba ne može da se žali na njihov gubitak.

Dužnosti pravde, međutim, ograničavaju nepodršku na jedan drugačiji način. Smatram da „prirodna dužnost“ da se pospešuje postojanje pravednih institucija zaista zahteva, čak i od žrtava nepravde, da se ne postupa na načine za koje se može predvideti da će pogoršati izgleda za popravljavanje nepravednih institucija. Tako, prema Šelbijevim rečima, ta dužnost zahteva od njih „da ne zauzimaju pravce delanja koji bi jasno pogoršali nepravdu sistema ili koji bi povećali terete nepravde za one u okolnostima getoa ili za neke druge slično situirane, makar ne onda kada se te negativne posledice mogu izbeći bez previše samožrtvovanja“ (Shelby 2007: 154).

Konačno, nezavisno od pitanja o poslušnosti zakonu i dopuštenosti primene, postoji još jedan opseg obaveza na koje nepravda može uticati, obaveze onih nepravedno tretiranih da dobrovoljno rade pod raspoloživim uslovima. Ako nam oni ne duguju to da dobrovoljno sarađuju pod takvim uslovima, onda je nepravedno siromašnima uskraćivati druge oblike javne pomoći, kao što

je socijalna pomoć, zdravstvena zaštita i ostale pomoći na temelju toga da oni odbijaju da obavljaju svoj deo posla.

Vraćajući se vlastitoj perspektivi, pre nego perspektivi onih u nepovoljnom položaju, ovo baca malo drugačije svetlo na osećanje upetljanosti u institucijama koje druge tretiraju nepravedno. Ovo osećanje izranja iz zapažanja da prevazilazi naše moći da učinimo nešto više kako bismo svoje institucije napravili potpuno pravednim. Čini se da je tako. Međutim, ako je ono što sam rekao ispravno, onda standardi pravde imaju implikacije po stvari koje možemo da učinimo: na primer, po poziciju koju možemo da zauzmemo u vezi s politikom blagostanja, zakonima o farmaceutskim proizvodima i opštim pitanjima o primeni zakona i hapšenjima. Isprva bi moglo izgledati da se ovde radi o pitanjima socijalne politike pre nego o fundamentalnoj pravdi. No ukoliko je ono što sam govorio ispravno, onda pravda ima nešto važno da kaže o tim pitanjima.

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Ispitivao sam odnos između morala institucija i morala individualnog delanja. U poslednjem delu svog članka razmatrao sam da li je pravednost neke institucije nužan uslov za postojanje dužnosti da se ona podržava. Ukoliko, sledeći Rolsa, o osnovnim institucijama društva mislimo kao o „shemama saradnje na uzajamnu korist“, te ukoliko dužnost da se neka takva institucija podržava shvatamo kao dužnost reciprociteta koju dugujemo našim sugrađanima, onda može izgledati da ako je osnovna struktura nepravedna, makar ako je istrajno nepravedna, onda individue nemaju nikakvu dužnost (makar ne dužnost reciprociteta koju duguju svojim sugrađanima) da se povinuju njenim zakonima. Ovo izgleda kao isuviše uvrnut zaključak. No nastojao sam da pokažem da je situacija složenija nego što ova slika sugeriše. Pokušao sam da istražim neke od tih složenosti u odnosu između izvođenja zaključaka o pravdi – zaključaka unutar morala institucija – i izvođenja zaključaka o moralu individualnog delanja.

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