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Norms and the Agency of Justice*

Abstract: In this paper I argue that when thinking about justice, political philosophers should pay more attention to social norms, not just the usual subjects of basic principles, rights, laws, and policies. I identify two widely-endorsed ideas about political philosophy that interfere with recognizing the importance of social norms—ideas I dub 'compulsoriness' and 'institutionalism'—and argue for their rejection. I do this largely by focusing on questions about who can and should be an agent of justice. I argue that careful reflection on these questions supports a kind of pluralism that reveals the importance of social norms, three types of which I discuss.

0. Introduction

There are two common ideas about the subject matter of political philosophy which I will call *compulsoriness* and *institutionalism*. Here are these ideas as expressed, respectively, by two of the most influential political philosophers of our era, Brian Barry and John Rawls:

> *compulsoriness*
> "Political philosophy is not about what we may think it would be nice for people to do but what, at any rate in principle, they can be made to do." (Barry 2002, 140)

> *institutionalism*
> "We start with the basic structure and try to see how this structure itself should make the adjustments necessary to preserve background justice. [...] [I]ndividuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made." (Rawls 1993, 268–69)

Compulsoriness is the idea that political philosophy is about justifying the coercive power of political institutions. That is what Barry is talking about in re-

ference to people being 'made' to do things. Institutionalism is the idea that political philosophy is primarily a project of structuring the major political, economic, and social institutions so as to make society just or to diminish social problems, rather than a project of telling individuals and groups of individuals what to do to directly achieve these aims. Rawls instructs us to "start with the basic structure", particularly the "background institutions" of society. Elsewhere, he stresses that his principles of justice are appropriate only for the institutions of the basic structure, not for individuals in their everyday lives or private associations (Rawls 2001, 10).

In this paper I present an alternate picture of the subject matter of political philosophy, one that rejects both compulsoriness and institutionalism, largely by presenting an alternative to institutionalism that is incompatible with compulsoriness. I suggest the adoption of a *pluralist* conception of the agency of justice, one that takes us beyond institutions, to recognizing individuals and associations as acceptable agents of social justice. To successfully adopt pluralism in respect to the agency of justice means that in assessing a theory of justice, and in assessing the justness of a society based on such a theory, we must look at more than merely the theory's prescribed institutions. Instead we must look for the presence of a diversity of agents of justice, and we must look for the presence of whatever it is that sustains them. My main examples of such agents will be what I call *justice-serving associations*. I aim to draw attention to the fact that social norms—not just principles, laws, policies, rights, and the other usual suspects—play an important role in sustaining these associations and other non-institutional agents of justice. Further, there is potential for mutual reinforcement, with some of these agents helping to sustain the norms that in turn sustain them. More generally, the study of social norms, central as it is to questions about the agency of justice, may be more central to political philosophy than is typically acknowledged.

In *Section 1* I say more about the problem of the agency of justice, explain the pluralist approach, and introduce a few non-institutional agents of justice. Let me stress at the outset that I do not provide a full-fledged argument for pluralism here. Doing so is beyond the scope of this paper. However, I do hope to say enough to make this unfamiliar idea sound reasonable. In *Section 2* I discuss how an acceptance of pluralism complicates the tasks of political philosophers, such as the tasks of describing the just society in theory and recognizing such a society (or deviations from it) in our world. It does this by introducing as possible agents of justice a variety of social entities, and by holding that an agent of justice need not intend to bring about justice. This widens the focus of political philosophy, and in *Section 3* I look at three kinds of norms that play a role in motivating these agents of justice. What we will see is that a pluralistic account of the agency of justice may be superior to institutionalism in terms of motivation for just acts and stability. In the *final section* I present some further, related points against compulsoriness that arise from a consideration of pluralism and norms.

1. The Agency of Justice

The topic of the agency of justice emerges from a set of questions about who makes society just. Some of these questions are *descriptive*, in which the aim is to figure out whether, given a conception of justice, some agent or other could in principle or in fact bring justice about. Other questions are *normative*. For example, of those agents capable of bringing about justice, which ought to? Which agents are responsible for justice, such that by not bringing it about they would be failing in their duties? And which kinds of agents are subject to basic principles of justice?[1] These are distinct questions which are often conflated in the literature. Both conceptual and empirical considerations bear on them.

The most widely held answers to these questions generate a conception of the agency of justice that is a kind of institutionalism which we can call *statism*. Statism holds that the state, via its institutions, is the primary agent of justice. David Miller puts forward this view, writing that theories of justice require some agency capable of changing the elements of society that have an "impact on the life chances of different individuals" and that "the main agency here is *obviously the state*: theories of social justice propose legislative and policy changes that a well-intentioned state is supposed to introduce" (Miller 1999, 5–6, emphasis mine). Here Miller is arguing that the state (or something state-like) is the only kind of agent capable of doing one of the things that is required of an agent of justice, namely have an impact on people's life chances. Like this argument, most of the arguments for statism focus largely on the descriptive question. This makes sense. If the state and its institutions were the only agents of justice that in principle or in fact could bring justice about, then the normative questions would be beside the point. There are a wide range of arguments in favor of statism—some relying on conceptual relationships between justice and the state, others relying on consequentialist arguments about the capacities of different kinds of agents to bring about different goods, and still others based on respect, accountability, and the 'will of the people'. In my view, the case for statism must be made on empirical grounds, and the relevant empirical information is not ready at hand for most political philosophers.[2] I do not believe this view is widely shared, as statism often functions as an *a priori* assumption in theories of justice. Indeed, the idea of the state as an agent of justice may seem so familiar that it could be difficult to conceive of alternatives to statism.

One alternative is *cosmopolitan* institutionalism. In recent years, we have seen arguments for the agency of justice to expand beyond the state, to international forms of governance and interstate cooperation,[3] and we have forms of international quasi-governing bodies such as the United Nations, the World Trade Organization, and the International Criminal Court. While this is an alternative to statism, it is still a form of institutionalism.

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[1] On this last question quite a literature has developed. See, for starters, Cohen 1997; Murphy 1998; and Pogge 2000.

[2] The argument that the case for statism must be made on empirical grounds is in Weinberg (unpublished).

[3] See, for example, Cohen/Sabel 2006.

The alternative to institutionalism that I am interested in here is *pluralism*. Pluralism holds that in principle and in fact, there is a variety of proper agents of justice. The state and its institutions may be agents of justice, as may be international or multi-state organizations such as the EU or UN. But pluralism allows us to move beyond—or rather, within—institutional structures to consider private individuals and groups of individuals, voluntarily working independently of government, as agents of justice.[4]

According to pluralism, there are potentially multiple and diverse agents of justice. My primary examples of such agents will be independent justice-serving associations, or JSAs. Our world contains many examples of such associations. They differ in their aims, scope, effectiveness, and operations. Some may be member-benefiting, that is, set up like a mutual aid society. Others may be other-benefiting, like charitable organizations. They are not state institutions, nor are they set up to work for or in contract with such institutions. Membership and interaction with them is voluntary; they are not coercive. By way of example, consider the non-governmental organization known as the Cornerstone Foundation, located in San Ignacio, Belize.[5] Cornerstone provides education and training to local women to help them overcome problems associated with financial dependency, develops projects for discouraging domestic violence, assists the elderly and disabled with everyday needs, runs various clinics and distributes educational materials, feeds the hungry, coordinates pharmaceutical and medical donations, and so on. Cornerstone describes some of its work as supplementing the inadequate poverty relief, medical care, and educational system provided by the government. It takes sex equality, human dignity, and material relief of the most needy among its goals. These goals are not idiosyncratic—many theories of justice identify them as their own. Insofar as Cornerstone is providing what it takes to achieve these goals, it could be said to be providing the *goods of justice*. According to pluralism, then, Cornerstone, like countless organizations across the world providing similar goods, could be a JSA, an agent of justice.

While most theories of justice are statist, statism does not necessarily follow from these theories' central ideas. We could 'pluralize' any theory of justice. To do so, first identify the conception of justice at the core of a theory of justice. Then identify the goods of justice at work in that theory. The 'goods of justice' can be conceived as broadly as a theory of justice requires them to be, to include not just income and material resources but social goods like liberties, opportunities, and relative status. Together, the conception of justice and the goods it concerns give us the aims of the theory, or a picture of the just society as conceived by that theory. Next, separate this picture of the just society from the means (the agency) by which it is achieved. This will leave the theory open to a range of possible agents of justice that may contribute to the realization of that theory's picture of the just society.[6]

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[4] While pluralism has many meanings in political philosophy, my use of it is similar to that of Paul Hirst. See Hirst 1990; 1997.

[5] Information about the Cornerstone Foundation can be found at http://www.cornerstonefoundationbelize.org.

[6] The process of 'pluralizing' a theory is more complicated than this brief description

Why do this? The short answer is that justice is important. Different agents under different circumstances will differ in their capacity for providing for the goods of justice. The question that motivates pluralism is: *why hold justice hostage to the state*? Pluralism holds that we should not. Under some circumstances and for some goods, non-state agents of justice are more effective or otherwise more preferable. Determining precisely for which circumstances and goods of justice this is true requires an empirical investigation beyond the scope of this paper. Yet the basic idea is supported by the existence of so many organizations like Cornerstone, which provide Constitutionally-endorsed goods and services in states whose governments are unable to provide them themselves.[7] Statist theories may by their own lights do worse at achieving justice than they would were they to take a pluralist approach.[8]

To be clear, pluralism is not merely the view that individuals and associations working in contract with, or at the behest of, government institutions, could be agents of justice.[9] If that is all that pluralism said, it would not be very interesting, as most statist theories of justice are compatible with such public-private partnerships (since the state would be at the top of the chain of command). Rather, pluralism goes further in holding that private individuals and associations, working on their own initiative, and without direction or assistance from the government or funding from public resources, could be legitimate agents of justice, and that their activity and its results should count in assessing the justness of a society.[10]

Whether a group or individual is an agent of justice depends on a number of factors. These include not only what the agent is doing (e.g., providing vocational training to poor members of a racial minority) and how (e.g., respectfully or insultingly, reliably or intermittently), but also the context against which the agent's activity takes place. An organization that provides help of some kind may in some contexts merely be acting beneficently. But if the social context

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lets on. For one thing, principles of justice that are appropriate for institutions of the basic structure may be inappropriate for individuals and associations, as Rawls says. So pluralizing would require in such a case either a reformulation of the principles of justice, or some scope conditions, and/or some account of how an agent could be 'justice-serving' without being subject to the principles of justice.

[7] The Constitution of Belize declares that the people of Belize "*respect* the principles of social justice and therefore believe that the operation of the economic system must result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity, that equal protection should be given to children regardless of their social status, and that a just system should be ensured to provide for education and health on the basis of equality" (Section b of the preamble).

[8] It may be asked whether this is true under 'ideal theory'. This question is addressed in Weinberg (unpublished).

[9] In other words, according to pluralism they are not "secondary agents of justice" in relation to the state as "primary agent of justice". See O'Neill 2001.

[10] There is some ambiguity about what counts as an institution, or what exactly the institutions of the basic structure are. Private individuals acting in their capacities as private citizens clearly are not part of the basic structure. For an argument that the associations of civil society ought to be considered part of the basic structure, see Fischer 1997.

in which the help is offered is one in which, for example, the beneficiary would otherwise suffer from abuse or a failure to have one's just entitlements satisfied, then that speaks in favor of deeming the agent an agent of justice.[11] The agent would be helping to make sure that people get what, as a matter of justice, they ought to.

I suspect that what I have written so far yields more questions than converts, but a full-fledged defense of pluralism would take us far off course. For those skeptical of pluralism, the paper could be understood as asking a conditional question: if pluralism, then what? Or more specifically, how would an acceptance of pluralism alter what political philosophers take to be the subject matter of justice?[12]

2. Justice, Societies, and Theories

If we accept pluralism, then agents that are not part of the institutional structure count as agents of justice, and their existence and some of their activities in the proper context will count as contributing to the justness of society. How, then, should we go about determining whether society is just? Suppose we accept some conception of justice. It will tell us what the goods of justice are and who is to have how much of them. According to institutionalism, we would look at the set of institutions that organize and bear on a society, particularly its state institutions, to see whether they are arranged to provide the goods in accordance with the accepted conception of justice. With institutionalism we have the epistemic advantage of knowing where, exactly, to look. The relatively centralized coordination of justice-serving efforts on the institutional approach makes assessment of the justness of a society fairly easy, given a conception of justice. On the pluralist view, however, since nearly each part of society is potentially a justice-maker, in order to tell whether a society is just we may have to look at a much wider selection of its parts.

That is quite a formidable undertaking. It might be thought that there is some kind of shortcut we could take. On the institutional view, we have in place various institutions the express *purpose* of which is to bring about justice, or some component of a just society. Could we, with pluralism, also look only at those parts of society which *aim* to achieve social justice? Unfortunately, no, for pluralism introduces a further complication, namely, that among the possible justice-serving agents are those whose express purpose is something besides justice.

Consider, for example, the United Order of the True Reformers (UOTR). This fraternal organization, in operation during the late 1800s and early 1900s, aimed at improving the financial lot of blacks in the U.S. It provided health and life insurance benefits, created banking opportunities, offered financial and

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[11] I thank Michael Baurmann for convincing me that it is necessary to include, here and elsewhere in the paper, *context* in an account of what makes an agent an agent of justice.

[12] For an example of political philosophy that takes seriously the work of voluntary organizations, see David Schmidtz's contribution to Schmidtz/Goodin 1998.

character education, and encouraged self-respect among its members (Beito 2000, 36–39). It would be incorrect to think that what the UOTR members were aiming at was social justice. Instead, it had a narrower aim: the promotion of the interests of those southern blacks who were its members, in what were highly adverse circumstances. Nonetheless, on many conceptions of justice (including a pluralist version of Rawls's), UOTR's activities would be justice-serving. After all, it provided a means for some of the least well-off in society to acquire a greater share of some social primary goods. This means that for an agent to count as justice-serving, it need not intend that its actions bring about justice.[13]

Pluralism implies, then, that two elements in our assessment of the justness of a society that are typically taken for granted should not be: agency and intention. There is no predetermined answer to *who* contributes to the justness of a society, and there is no predetermined answer to what the agents who contribute to the justness of a society must *intend* when they do so.

If this sounds far-fetched, consider the widely accepted point that unintended consequences may *detract* from the justness of a society. A famous example of this way of thinking is Rawls's observation that individual transactions may be perfectly fair, and intended as so, but over time may nonetheless result in an unfair and unjust distribution (Rawls 1993, 266; 1999, 62). Another example is used in arguing for affirmative action programs: that even in the absence of intentional discrimination, members of certain groups may nonetheless be disadvantaged in a discriminatory way. Or look at the classic argument against minimum wage laws—though intended to help the worst-off, by raising the cost of labor, minimum wage laws reduce demand for laborers, and the resultant layoffs or hiring reductions hurt the worst off (who are likely unskilled and thus most expendable) the most.

What I am claiming is just the flip side of this common point about unintended consequences. If we accept the idea that unintended consequences may make a society *less* just, we should similarly accept that unintended consequences may make a society *more* just.

Pluralism tells us that non-institutional parts of society may legitimately contribute to the justness of a society, even though they are not required to do so. Further, they may end up so contributing unintentionally. Perhaps by enthusiastically pursuing their private aims, they bring about results that help achieve the aims of justice. Insofar as we are interested in what contributes to justice, we should be attentive to a broader range of agents and motivations. We should also pay attention to the broader set of causes and conditions that sustain these agents and motivations.

In light of this wider view about what contributes to the justness of a society, the question may then arise as to how we should go about evaluating theories of justice. Suppose a theory gives us its conception of justice, arguments for it, implications of it, and some institutional recommendations. A typical assessment of a theory of justice includes focusing on what the theory explicitly provides or guarantees, what rights, restrictions, and requirements it sets out (usually via its institutional structure), to whom, and how, and then accepting, rejecting, or

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[13] It need not even intend whatever effect it is that leads us to say that it is justice-serving.

modifying the theory based on these findings. But this now seems inadequate. For if we accept pluralism then we have come to understand that we can no longer take for granted the identity and intention of justice-serving social entities and we realize that we need to widen our focus to society as a whole, as it would be under that theory, to see whether justice would be achieved. We need to look at not merely what the theory says it will do, and how (since that is likely to be mainly or exclusively about institutions) but also at what may arise or happen elsewhere in society that affects the production of social justice. This inquiry may yield surprising results. It is in principle possible that two very different-looking societies with different kinds of justice-serving agents are equally just.

To evaluate theories of justice, then, we need to have quite a bit of information about what a society would be like were the theory implemented. It is useful to distinguish this information from that available in Rawls's conception of a 'well-ordered society'. In a well-ordered society, "(1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles" (Rawls 1999, 4). That is not what I mean when I refer to what 'society would be like were the theory implemented'. What is important is what society would *actually*, not ideally, be like. We should not assume that all people would accept the principles of justice. Instead, we need to find out who would accept the principles of justice, and what persons would do in light of their acceptance or rejection of them. Further, we should not assume that our *institutions* will satisfy the principles of justice. Instead, we would need to see the extent to which such institutions satisfy the principles, as well as what else happens in society as a result.

3. Norms and Justice-Serving Associations (JSAs)

To briefly recap, if we take pluralism seriously, then we recognize that there may be non-institutional agents of justice. If there are such agents of justice, we could not tell how just a society is merely by looking at its state institutions. We would have to look at what the other social entities that are potential agents of justice are doing. If our theories of justice are going to give us criteria by which to evaluate societies in terms of justice, then, those theories must be about more than just state institutions. They must speak to the possibility, characteristics, and work of these other agents of justice, such as JSAs, and the conditions that make them possible.

The creation and continued existence of JSAs depends on a number of factors. One of these is opportunity. If there is a government or market failure to provide a certain needed good, an association might emerge to provide it. Market activity is constrained by profitability. Government activity is often constrained by limits, stemming from, for example, majoritarianism and equal treatment. So an unprofitable service for delivering a non-subsistence good to a small minority may not be provided by government nor market agents. This gap leaves open an opportunity for a JSA to fill. An example of this is radio reading services

for the blind, which are typically provided by charitable organizations (Fischer 1997, 34).[14] A second factor is the availability of resources and talent. Were people not available to staff JSAs, or sufficiently talented to make them effective organizations, or if these organizations lacked the resources to sustain their effectiveness, they would not exist, or would only do so in rather attenuated form. A third factor is freedom of association. For independent associations to exist people must be free to organize and cooperate in ways not directed by or recommended by the state.

This third factor shows that the government could have a role to play in the development of JSAs. A certain legal context will be conducive to their formation. This legal context could include policies or tax codes that encourage participation in JSAs. It may set forth in legal documents (like constitutions) aims that JSAs can take on as their own goals. It may limit the range of actions available to groups of people in ways that promote, rather than detract from, their justice-serving functions. (Consider a group that would have furthered the interest of its members through an extortionist protection racket, but is prevented from this by a well-enforced laws against extortion, and thus must resort to alternative, peaceful methods.) The maintenance of certain background liberties (besides freedom of association) may also enhance the justice-serving capabilities of associations. For example, freedom of movement strengthens people's power of exit and makes people less susceptible to exploitation by particular associations on which they may rely. Additionally, depending on our theory of justice and empirical circumstances (including the possibility of crowding-out effects), it may be that the government provision of a basic safety net for those unable to take advantage of JSAs is needed in order to keep the assistance JSAs provide to their beneficiaries from being unfair.

Opportunity, resources, freedom, and the proper legal context may be in place, but no JSAs will emerge if no individuals are moved to bring them into existence. People have to take themselves to have a reason for taking advantage of the opportunities, resources, freedom, and contexts that make JSAs possible. There are undoubtedly multiple sources for these reasons. The source I will be discussing here are the norms people believe are incumbent on them. Norms are claims about what people ought to do or value or be like. People have desires related to these concerns, but norms are not identical to desires, though they may cause or be the object of desires; nor are norms identical to laws, though they may be instrumental in the creation and support of laws. A person who recognizes a norm takes that norm as authoritative or reason-giving for her,[15] while a person may have a desire but not see that desire as reason-giving. And what marks norms out as distinct social phenomenon is that norms have an authority independent of their possible formalization in law or enforcement through coercion.

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[14] For an example of a provider of this service, see http://www.readingresource.org.

[15] "We obey [social norms] because we believe that we *ought* to", Anderson 2000, 191.

Iredell Jenkins once wrote:

> "Law is very much like an iceberg: only one-tenth of its substance appears above the social surface in the explicit form of documents, institutions, and professions, while nine-tenths of its substance that supports its visible fragment leads a subaquatic existence, living in the habits, attitudes, emotions, and aspirations of men." (Jenkins 1980, xi)

We could say of the just society what Jenkins says about law. And to habits, attitudes and emotions, we can add norms. In what follows I discuss three kinds of norms: norms of justice, norms of partiality, and norms of morality. The aim is to show how the operation of these norms is conducive to a just society. Furthermore, I make clear how JSAs help produce these norms, and are in turn sustained by them, which promotes their stability.[16]

3.1 Norms of Justice

Norms of justice are norms regarding how the benefits and burdens in society ought to be distributed. They may be norms to act in specific ways or support specific policies, or they may simply be norms to care that one live in a just society. The 'sense of justice' that Rawls discusses is one way of cashing out the acceptance of certain norms of justice: to endorse the principles of justice that organize society and to believe one should do one's part in maintaining just institutional arrangements, or to create such institutions when they are absent (Rawls 1993, 19; 1999, 430).

Some associations are set up explicitly to promote a conception of justice. Consider, for example, the Southern Poverty Law Center (SPLC), an organization dedicated to fighting racism in the U.S. through litigation and education. The SPLC was founded in 1967 by Alabama lawyer Morris Dees. Despite the passage of the Voting Rights Act of 1965, Dees writes, "Little had changed in the South. Whites held the power and had no intention of voluntarily sharing it" (SPLC website).[17] Dees, a white man, was struck by the extreme racial injustices that persisted in the face of the law and formed his organization to fight back. Part of what explains the creation of the SPLC would have to be Dees' sense of justice, his commitment to a specific norm of justice that is incompatible with racial discrimination. The SPLC would not have come into existence absent this norm of justice, or one similar to it. And furthermore, the SPLC promotes this norm. Through litigation, education, and advertising, it informs society at large of continuing injustices, identifying them as injustices about which people should be outraged, and encourages people to help the SPLC in its efforts.

Norms of justice, unlike other norms, have received recognition as worthy of study by political philosophers, owing largely to Rawls's discussion of a sense

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[16] For a contrasting case, consider the Shakers. They produce a norm of celibacy but appear on the cusp of being destroyed by it rather than sustained. See Chase 2006.

[17] SPLC Website. http://www.splcenter.org/centerinfo/ci-index.html.

of justice and its contribution to social stability.[18] It is interesting to reflect on how Rawls thought we acquired a sense of justice.

Rawls says that people come to acquire a sense of justice gradually, and typically move through three stages of moral development toward that end (Rawls 1999, 405–419). The first is the morality of authority, in which moral behavior is largely the result of a person seeking to please and emulate those who have authority over her, like parents (Rawls 1999, 406–07). In the second stage, the "morality of association", one looks to the role one occupies in various collectivities, from groups of friends, to professional organizations, up to the "national community". By participating appropriately in shared forms of life, one comes to live up to the appropriate moral standards. And this is contagious:

> "When the moral ideals belonging to the various roles of a just association are lived up to with evident intention by attractive and admirable persons, these ideals are likely to be adopted by those who witness their realization. These conceptions are perceived as a form of good will and the activity in which they are exemplified is shown to be a human excellence that others likewise can appreciate."
> (Rawls 1999, 413)

Again, as in the morality of authority, exemplars of morality play a role in its propagation.

What changes at the third stage, the "morality of principles", is that the chief motivation for correct action is no longer based in "friendship and fellow feeling for others". It is no longer tied to being liked or approved of, or to being "a good sport". Rather, the motivation is "to be a just person" (Rawls 1999, 414). At this third stage, we appreciate and are moved by "the ideal of just human cooperation" (Rawls 1999, 414–15). Rawls believes that this third stage follows naturally from the previous stages. Though our inclinations to satisfy other persons are still important and have a role in proper behavior—as they did in those earlier stages—a sense of justice is attained when a person has "the desire to act from a conception of right and justice" (Rawls 1999, 416).

Whether Rawls's account of moral development is entirely accurate I will leave to others to assess.[19] What I want to draw attention to is a thread that runs through that account: the idea that moral development cannot occur in a vacuum. A sense of justice is not self-generating. That third stage of moral development requires for its realization in one person the presence of others whom one can observe and learn from. In the first stage, these others are parents and societal authority figures who display the appropriate concern for what is right and just. In the second stage, these others are one's fellow associates, be

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[18] "One conception of justice is more stable than another if the sense of justice that it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions it allows foster weaker impulses and temptations to act unjustly. The stability of a conception depends upon a balance of motives: the sense of justice that it cultivates and the aims that it encourages must normally win out against propensities toward injustice." (Rawls 1999, 398)

[19] For a detailed analysis of a sense of justice, see Ci 2006. For a helpful resource on the development of a 'justice motive' see Lerner 1981.

they schoolmates, colleagues, neighbors, etc., who act rightly in their assorted collective practices. In short, the development of one's sense of justice depends in part on others displaying their sense of justice—i.e., on others acting justly.

How can one act justly? As we will see, this is where JSAs come in. But first, recall Rawls's answer. One way, says Rawls, is by accepting "the just instituti-ons that apply to us and from which we and our associates have benefited". We display our sense of justice when we do what is required to maintain just institu-tions and obey just laws. Another way is to work to install new just institutions, or reform unjust institutions, when justice calls for it (Rawls 1999, 415).

Undoubtedly Rawls is correct in identifying these two ways of acting just-ly. Though these are the only two he mentions, he does imply that there are other ways to act justly. Why did he choose to write about those two? It is a peculiar choice, since both describe *indirect* relationships between a person and justice. The relationships are mediated by institutions.[20] This is akin to sugge-sting that a way to display a sense of etiquette is by popularizing the writings of Miss Manners. Perhaps this would work, but it is rather indirect compared to simply acting with the proper social graces. What Rawls cites as examples of displaying a sense of justice are essentially *institutional* activities—supporting or reforming political institutions. I would cast some doubt as to the effectiveness of such political activity as a mode of exemplifying a sense of justice, especially in comparison to more direct forms of justice-serving activity. Who more effectively displays a sense of justice: the person who lobbies for government assistance for the poor, or the person who himself directly provides assistance to the poor? What Rawls is missing from his account is the most obvious form of displaying a sense of justice: doing the work of justice.

One way to do the work of justice, of course, is with a JSA. A group might run a soup kitchen for the poor in a church basement. A citizen's association might start a tutoring program for neighborhood underprivileged youths. Like-minded people might pool their resources to purchase some land, conserving it for future generations. Others might form an organization that publicizes civil rights abuses. These are just a few possibilities. In a kind of Rawlsian society, people may be committed to the two principles of justice, and the work of the associations they form or join may move society closer to realizing the aims of those principles. Imagine a society with a multitude of such JSAs. This society offers myriad opportunities for people to display their sense of justice, to act in furtherance of the principles of justice they are committed to, to act as moral exemplars for those on the way to attaining a sense of justice. JSAs offer a way for people to truly "act from the moral point of view" (Rawls 1999, 430) or even to exemplify the "egalitarian ethos" that G.A. Cohen argues for.[21] Insofar as JSAs are a means by which people can display their sense of justice they assist by example with the development of a sense of justice in others, including the next generation. JSAs thereby contribute to the stability of a society. In general, people tend to care more about things in which they are involved than things they are not involved in. JSAs are a way for people to be personally involved

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[20] On this point see Murphy 1999, 280.
[21] In various works. See Cohen 2000; 2008.

in the production of a just society, and thus to care more about how just their society is. So it may be that JSAs are especially effective in cultivating a sense of justice.

Are they more effective than state institutions? That is an empirical question that would be interesting to test. In the meanwhile, we can engage in some speculation on the matter. The relative differences in the effectiveness of agents in cultivating in us a commitment to the norms of justice may depend on how much we conceive of ourselves as, or as part of, the agent. Are the state's actions, insofar as the state in some way represents me, *my* actions? There is one view that answers Yes, that there is a sense in which when the state does X, *we*—and since I am part of that 'we'—*I*, do X. On another view, though, it is the state which is doing X, not I. On the former view, the state is an *inclusive* agent. The agency of the state is shared by its subjects. On the latter view, the state is an *exclusive* agent. The state is conceived of as an agent independent of the agency of its particular subjects. The latter view is more plausible.

There are some states to which it makes obvious sense to attribute exclusive agency. Examples of this include Saddam Hussein's Iraq, Stalin's Soviet Union, Pol Pot's Cambodia, Kim's North Korea, to name a few. There is no plausible way for the actions of these regimes to be seen as the actions of their subjects. But it is not merely dictatorial regimes that can be conceived of as exclusive agents. Democratic regimes, too, can fall under this description, for a number of reasons. There are ways in which democratic governments have autonomy from their subjects, and are capable of acting in ways that disregard or even contravene the intentions, desires, and goods, of their subjects (Nordlinger 1981). And the problem of voter ignorance, which explains how subjects may be unaware of government policies, actions, structures, and office holders, seems to support a conception of the state as an exclusive agent (Somin 1998). The actions of the state could hardly be said to be mine if I am ignorant of them, or too poorly informed to participate adequately in the processes which led to them. Mere differences in political opinions between democratic winners and losers supports the exclusive conception, too. For when the state is run by those whose views I oppose, I will not identify with their decisions and actions.

Even when the problems of undemocratic regimes, state autonomy, voter ignorance, and disagreement are not present—that is, when the state responds to my will and intentionally acts in ways I approve of—the state is still in a sense an exclusive agent. This is the sense in which it is the state, not me, that is actually performing the action. Thus, in a well-functioning democracy, when the state, say, provides assistance to the elderly through a system of public social security, it is the state that is providing such assistance, not I. The contrast is when I am personally and voluntarily providing aid to the elderly, for example by helping at a nursing home, or sending a check to support Meals on Wheels. In these latter examples, and through participation in JSAs, I am clearly the agent in a way that I am not when the state takes some of my earnings and transfers them to the elderly, even if I approve of the transfer. People tend to have this 'personal' conception of action, which supports the conception of the

state as an exclusive agent, and suggests that state activity may not be activity through which persons display much of a sense of justice.

3.2 Norms of Partiality

If individuals and associations can be agents of justice in virtue of producing the goods of justice or bringing about their proper distribution, and the norms of justice are not necessarily the norms that motivate these agents to act, then the norms of justice are not the only norms relevant to the production of social justice. Rather, whichever norms motivate people to act in justice-serving ways will be relevant. Among those norms are what I call 'norms of partiality'. The norms of partiality are ideas about how one should act in respect to those with whom one has (what has come to be called) 'special relations', such as one's family, friends, co-religionists, ethnic community members, colleagues, partners, and collaborators. These norms differ depending on the type of relation, but they generally favor loyalty, care, and preferential treatment amongst those in the relations, as well as a commitment in favor of the persistence of the relation.

It may seem strange to say that part of the proper subject matter of political philosophy are these norms of partiality, and that the justness of society may depend on the health of such norms. After all, justice itself has often been cast as demanding impartiality. But this would be a false conflict. For what the latter claim most plausibly means is that in assessing whether a society (or a part or process of society) is just, we must take all of the relevant parties' interests into account in some equal way (Barry 1995). To say that the justness of a society may depend on people being motivated by the norms of partiality is a comment about what it is appropriate for agents to be motivated by. While the first claim is about the perspective of someone making a judgment about a society, the second is a claim about the perspective of an agent in a society, and there is no reason to think that these perspectives must be identical.

Many associations arose from and promote these norms. Consider El Círculo Mutualist Mexicano, a voluntary association formed in Detroit by Mexican immigrants to the U.S. Midwest during the early years of the 20th Century (García 1996). Identifying with each other through their common background and current plight, and viewed as outsiders by the locals, the immigrants had to help themselves, and so El Círculo was formed. This association collected dues from its members and used those dues to aid the infirm and the homeless and to sponsor and encourage educational, social, and cultural events, which further strengthened the relations among its members. The norms of partiality among those specially related to one another in virtue of their common Mexican background (immigrants from other countries were not included) led to El Círculo's creation, and we might speculate that these same norms led to its flourishing, as members were motivated to participate not simply because of the aid they would receive, but because they were concerned about their fellow Mexican immigrants. The norms of partiality may give rise to ethnic pride or solidarity, which seems to be a stronger motivator of human action than a cosmopolitan ethic of justice.

Since El Círculo was run by members of the immigrant community, it was familiar with the unfavorable circumstances facing those it helped, and provided a network of economic opportunities for those who would have otherwise suffered from discrimination and disadvantage (García 1996, 174-5). No law compelled the members of El Círculo to do these things. No one made them start their association and run it as they did. Nonetheless, El Círculo was working on providing the very things that many contemporary political philosophers think are important for justice, including: an enhanced and thus fairer value of the liberties enjoyed by recent immigrants, material assistance to the worst-off among them, and an increased range of opportunities available to those in its relatively poor community. In short, it was a JSA.

If we believe that JSAs have a substantial role to play in the provision of justice, we may want to encourage them by doing what we can to strengthen the norms of partiality that motivate their creation and success. At least we may want to be on guard not to weaken such norms. Even if we are cosmopolitans, it might behoove us to be self-effacing cosmopolitans, if it were the case that justice for all could be achieved by people less motivated by their concern for global citizenry or people as such, and more motivated by the norms of partiality.[22]

This is not a blanket endorsement of all norms of partiality, of course, which no doubt can be manifested in pernicious attitudes and practices, such as racism. Some variants of norm expression in some contexts may be evil. Yet others may be instrumental to the achievement of important aims of justice, and it would be a mistake to think them irrelevant or to leave them out of our toolbox.

3.3 Norms of Morality

While it may be unusual to suggest we might promote the norms of partiality as a means of securing justice, it is easy to see people being motivated by such norms. The norms of justice, in contrast, are obviously relevant to theories of justice; and though we have examples of associations that sprung from considerations of justice, we may think that in general these norms are, sadly, motivationally weak. Perhaps occupying a middle ground here are the *norms of morality*. The norms of morality are those norms that encourage personal moral behavior, that ask us to perform the right acts or be a good person. People want to see themselves as moral.[23] Indeed, it is because the norms of morality begin with concern about the agent—whether she is acting rightly or living a good life—that I suspect they are more motivationally powerful than the norms of justice, which are about political and social organization and people in general. Yet because they are about morality, rather than the promotion of partial interests, they seem more clearly connected to considerations of justice.

What one takes to be the specific norms of morality will depend on which moral theory one accepts. On most theories, though, beneficence has some role,

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[22] This may have implications for views about civic education, which tends to include efforts to overcome people's embrace of the norms of partiality.

[23] On why people might see themselves as more moral than they actually are, see Tenbrunsel et al. 2007.

and people often think of the idea of being a good person as connected to helping others. Many associations are expressly set up to assist others, and are thus means by which people can be beneficent. Through them people volunteer to tutor, donate food and clothes, help build homes, clean up parks, patrol neighborhoods, drive people to the doctor's office, and so on. Insofar as we move closer to our picture of the just society through such activities—by making sure people are educated, clothed, fed, healthy, and safe—the norms of morality (or at least of beneficence) that motivate such acts are instrumental to justice.

There is evidence that volunteering to help others makes one happier (Oman/ Thoresen 1999; Harbaugh et al. 2007), and people are generally more motivated to do what makes them happy. So by providing opportunities for people to be beneficent, JSAs help cultivate in people the motivation to be beneficent, and if people are more beneficent, they are more likely to work with and support JSAs. So again we have JSAs relying on a kind of norm that they help produce. As agents of justice, they have the potential to be fairly stable, in the Rawlsian sense.

Personal moral norms have not played a large role in contemporary political philosophy. (Even recent turns in political philosophy towards the activities and motivations of individuals, like the work of G. A. Cohen and Liam Murphy, are better understood as emphasizing the norms of justice, not the norms of morality.) This strikes me as somewhat strange, considering that so much work on theories of justice has concerned the relationship between justice and the good life. Different authors have argued that justice requires providing people with the "all-purpose means" to a good life (Rawls 2001, 57), or encouraging practices and institutions "conducive to good lives" (Kekes 1997, 351), or maximizing the presence of the conditions necessary for a good life (for example, Pettit 1997, 99ff.). For the purposes of political philosophy, though, what is the good life?

I think many people would agree with some version of the following claim:

M: Acting morally is a part of the good life.

Now of course there are many questions that need to be answered in order to specify and defend M. I will leave aside these questions here and leave M in its widely accepted, admittedly vague, but nonetheless meaningful form.

When it comes to the good life, the dominant themes in contemporary political philosophy have not referred to personal moral activity. Instead, they involve people having the liberty or autonomy to do what they choose, having the resources to do what they choose, and being treated in some way as an equal. Look at Rawls's primary goods for an example of this. If M is true, we might ask, why is it not the case that 'acting morally' is present—or more prominent—in the accounts of justice and the good life one comes across in political philosophy?

By posing this question I do not mean to suggest that in fact most political philosophers deny M. I think most accept it. And they accept it *not* with the understanding that 'acting morally' means merely 'acting within the constraints of the law'. They accept that one can act within the law yet still be immoral (since the law governs only a fraction of human interaction). But if they accept M, and do so in more than a legalistic manner, then we need an explanation

for M's absence in contemporary theories of justice. One possible explanation is that in light of widespread acceptance of the fact of moral disagreement, it has become impractical, undesirable, and perhaps wrong to emphasize moral behavior. But I think that this disagreement does not speak against M. Some amount of disagreement and M are compatible, so long as M's 'acting morally' is understood broadly enough.

The real culprit may be institutionalism. Institutionalism as a way of thinking has been very useful in political philosophy, but one key point in this paper is that to embrace institutionalism may mean to not see the trees for the forest. By widening the scope of possible agents of justice, and thus the scope of political philosophy, pluralism directs us to pay attention to what persons do, can do, and should do—within, beyond, and around institutional structures—and to the norms that motivate this activity.

While earlier I said that I think most philosophers agree with M, this is sometimes hard to reconcile with their words. For example, Liam Murphy writes, "The idea that people must constantly think about how well-off other people are and adjust their behavior accordingly is morally unappealing" (Murphy 1999, 258).[24] To me this does not seem morally unappealing at all. Because of the word, 'constantly', it seems burdensome, but I attribute that to my failure to be sufficiently motivated to act as morally as I think I should, or to my akratic attraction to things that I would have to sacrifice. Acting as Murphy describes— thinking about how well-off others are and adjusting my behavior to help them out—is a way to act on moral norms. If we accept M, these acts are therefore means to having a good life. Up to now I have talked about the advantages of a pluralistic approach in terms of the achievement of justice. But here we see a more direct connection between the agency of justice and the good life. If our picture of the ideal society is informed by institutionalist assumptions, then non-state agents of justice that provide opportunities for acting morally will be absent, and, other things equal, our lives may be worse for it.

4. Compulsoriness and Norms

State institutions and compulsoriness go hand in hand, especially in large scale modern societies. Whether this follows as a matter of necessity based on a Weberian conception of the state or just as an empirical fact that such institutions could not exist or function without coercive backing, I will not address here. What I hope to have accomplished with this paper up to this point is to (a) explain the problem of the agency of justice, (b) present pluralism as an alternative to institutional accounts of the agency of justice, (c) show how taking pluralism seriously would require political philosophers to pay attention to something besides the rights, requirements, and restrictions that tend to be their focus, namely, norms, (d) discuss three families of norms which, once we adopt pluralism, can be seen as contributing to the justness of a society, and (e) show

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[24] Rawls (1993, 269) and Nagel (1991, 53–4) seem to share this view.

how one kind of non-state agent of justice, the JSA, makes use of and promotes these norms to an extent and in ways state institutions do not.

At the start of the paper I quoted Barry, our representative for compulsoriness, as saying that political philosophy is about what people can be 'made to do'. Yet, by definition, people cannot be made to volunteer. Nor can people be made to act on the basis of certain norms.[25] They could be made to perform acts compatible with such norms, but that is different. JSAs are voluntary. If they are part of our picture of the just society, and if political philosophy is about drawing that picture, then there is a part of political philosophy that is not about making people do things.

Barry might reply that if people were not voluntarily providing for justice on their own or through JSAs, we could force them to. So in that sense, he might say, at a foundational level, political philosophy *is* about what people can be forced to do. But this is not necessarily the case. Political philosophy is about, among other things, social justice. We can sensibly talk about *how just* a society is. This means that social justice is a degreed or scalar concept. So let us imagine two possible substantially different futures for a society that is not currently just. In possible future F1, the society becomes minimally just. In possible future F2, the society becomes nearly perfectly just. Now let us suppose that the only way to achieve F2 would be if society had a large and active network of JSAs. In that case, there is some degree of justice that a society could attain, but only if force is *not* used to attain it. (This might be the case because, owing to limited funds, the costs of coercing people to act in ways that would bring about some necessary component of F2 could only be paid by sacrificing some other more substantial just-making component of F2.[26]) It would be strange to say that getting society to have certain characteristics would be a matter of justice if force were required to do so, but not a matter of justice if force were ineffectual at doing so. Thus, philosophizing about the just society is not necessarily a matter of thinking about what people could be forced to do.

We come to this conclusion without yet taking a further step that may be available to us: arguing that justice is not a property of societies that can be ascertained without looking at what people believe they should do for the sake of society as a whole, those they care about, and their own moral well-being—that is, which particular norms people take as authoritative. To defend such a claim would require the defense of a particular substantive conception of justice, and that would be an argument for another time.

Finally, it is worth noting that even if one does not accept pluralism as the appropriate response to the agency of justice problem, there is still a reason for disagreeing with the idea that, at a fundamental level, political philosophy is about what people can be forced to do. That reason is that there cannot be force 'all the way down'. In other words, if at one level political philosophy is about what people can be forced to do, it is, at a more fundamental level, about deciding whether and why to use force to get people to do these things. Now it is possible that people could be forced to use force to get people to do certain

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[25] As Locke taught us with his *Letter Concerning Toleration*.
[26] On bringing the costs of justice into political philosophy, see Farrelly 2007.

things, and that this coercive chain could have several links. However, there must at some point be some decision about the forging of this coercive chain, that is, some point at which what brings about a decision to employ force is not force but *justification*. Among the various elements at work in such a justification would be norms. So an attempt to reject pluralism because one wanted to reject the idea that norms are properly the subject matter of political philosophy would fail. While pluralism gives a greater role to norms and their motivational power, even if we reject pluralism there is no avoiding norms at a more fundamental level.

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