

Reparative Justice and the Moral Limits of Discretionary Philanthropy

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In recent years, many affluent democracies have faced increasing cuts to the public funding of important goods and services, such as primary education, health care, and even policing.¹ The reduction in direct public funding for these goods is often accompanied by an attempt, on the part of governments, to encourage private giving as an alternative way of financing their production. To illustrate, in the United States, public officials plead to philanthropic foundations: “now more than ever, we need to build cross-sector partnerships to transform our schools, improve the health of Americans, and employ more people” (White House 2009). This happens in a country where the annual amount of private giving is already striking: \$330 billion (Giving Institute 2012). Likewise, in the United Kingdom, government is repeatedly calling for “a stronger culture of giving time and money” (HM Government 2011) and has expressed a clear intention to “take a range of measures to encourage charitable giving and philanthropy” (Cabinet Office 2010). There as well the importance of private giving proportionately increases as state funding declines (National Council for Voluntary Organisations 2012).

Despite the critical role that governments expect private giving to play in current democracies, little attention has been paid to the normative questions that surround this practice at the domestic level.² Whereas some of the contributions in this volume fill this gap by questioning both the compatibility of philanthropy and democratic values (Beerbohm [chapter 8], Pevnick [chapter 9], Powell and Horvath [chapter 4], and Reich [chapter 3]), as well as the social responsibility and accountability of corporate philanthropic actors (Brest [chapter 5] and Reich [chapter 3]), my aim is to address two further ethical questions that, I believe, have great practical and political relevance. The first question concerns the nature of the moral requirement to give. What kind of duty, if any, do the citizens of affluent democracies have to

make donations domestically? Call it *the question of kind*. A second question concerns how individuals (or foundations) should make these donations. Should donors be morally permitted to exercise personal discretion in deciding how much to give and to whom, given the sociopolitical context within which their giving takes place? Call it *the question of discretion*.

By "personal discretion" here I mean the moral prerogative to appeal to agent-relative reasons when making a decision. Agent-relative reasons are reasons that are nonshared, for they make essential reference to a particular agent's identity, life history, or personal projects. The question of discretion, thus, is the question of whether donors should be permitted to make their donative choices about how much to give and to whom, by appealing to these nonpublic reasons.

It is a widespread assumption, both in commonsense morality and in political discourse, that citizens should enjoy wide discretion in deciding how to direct charitable donations. For example, the British government (HM Government 2011), while advocating for the institutionalization of a system of philanthropy able to support the critical role of voluntary organizations in an era of government withdrawal, has argued that this system must be designed so as "to fit with people's lifestyles and interests" and that giving should happen "on the back of free decisions by individuals to give to causes around them" that "they care about." I call this *the discretionary view*.

Besides politicians, philosophers tend to support the discretionary view, at least to some extent. For instance, Richard Miller (2004) holds the view that it is in part up to the individual to decide how to discharge her duty to give, according to her "personal policies." He argues that one is permitted to donate resources to, say, help the blind rather than to fight infectious diseases—despite the fact that the second choice more effectively helps those in direst peril—if "one's vision or life history" makes the first plight especially important to her (374).

Even philosophers who, by contrast, oppose the discretionary view do so on the basis of arguments that, while arguably sound at the international level, lose their traction when applied to domestic affluent societies. For example, to the question of how should donors give, Peter Singer (2004, 11) answers that only two considerations should count: "the degree of certainty that our assistance will get to the right person, and will really help that person," and the relative extent of the person in question's need. No personal discretion is permitted in deciding the cause or destination of our giving. However, Singer's (1972) famous argument rests on a highly controversial analogy between the duty to give money away and a duty of easy rescue. Even if we assume that this analogy is sound at the international level, it

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is not clear that it has the same intuitive force in the domestic context of affluent societies. For in these societies cases of *dire* poverty are limited and citizens' *minimal* level of subsistence—the level below which we could appropriately speak of duties of *rescue*—is usually taken care of by the government. Therefore, even those who agree with Singer that individuals should enjoy no discretion when discharging their duties of rescue abroad, through international private aid, may still believe that individuals should be permitted to exercise discretion when giving money away at home, through domestic philanthropy.³

In this chapter, my ultimate aim is to prove that the prevailing answer to the question of discretion is wrong. But let me first explain why we should care about this question. In societies where the practice of giving is usual and the aggregate amount of total giving is significant, the discretionary view has important distributive consequences. It can make a significant difference for society at large whether donors feel entitled to direct their donations to causes they “care about,” causes that often include churches or private universities, or whether they take themselves to be under a duty to support causes that are less close to their personal identity but that can have positive redistributive effects—for example, supporting primary education or aging health care infrastructures. This question becomes all the more relevant in circumstances where basic goods are underfunded by government.

Further, the discretionary view has the power to affect the shaping of expensive public policies. For example, in the United States, incentives to charitable giving—that is, charitable tax deductions—are designed so as to leave donors with wide personal discretion in selecting the addressee of their tax-exempted charitable gifts. Deductions do not match specific causes and are not structured according to redistributive principles (Reich 2006). It is no surprise that American religious charities receive the most tax-exempted charitable donations, capturing \$95.88 billion—32 percent of total donations (Giving Institute 2012). Therefore, an assessment of the moral justifiability of the discretionary view can help us assess the legitimacy of these tax policies, which have significant costs—for example, the U.S. Treasury loses more than \$50 billion per year to charitable deductions (Reich 2006).

In order to assess the moral justifiability of the discretionary view, I will first argue that we cannot establish donors' legitimate discretion without first establishing what *kind* of duty, if any, individuals have to make philanthropic donations at all. I will then show that citizens' duty to give should be understood neither as a discretionary duty of beneficence nor as a duty of distributive justice directed at securing and maintaining distributive equity over time. I will, instead, argue that, given relevant political facts character-

something that is rightfully yours. Because of this I do not get to decide how to discharge my duty, for I do not get to decide how to use your property. In the second case, I may well have a moral duty of gratitude toward you. But this duty does not point at any specific entitlement of yours, it rather points toward a general end—expressing my gratitude. Yet I can pursue that very same end, and thus discharge my duty, in many different ways. This leaves me with a certain space for discretion.

The view that a duty to give resources away can be of different kinds and thus allow for different scopes of discretion finds theoretical support in the Kantian tradition. Within this tradition, a duty to give can be born, broadly speaking, on grounds of either justice or beneficence. *Principles of justice* establish what resources, property, or goods people are rightfully entitled to (Barry 1989; see also Valentini 2011). Duties of justice are therefore duties to give or to return to others what is rightfully their own, as established by those principles—they are *entitlements-centered duties*. *Principles of beneficence*, by contrast, direct the spending of resources to which people are rightfully entitled (on grounds of justice) toward morally valuable ends. Duties of beneficence are therefore duties to adopt and thereby promote a moral end, whether this is other people's happiness or the alleviation of their distress, through the use of resources that are rightfully one's own—they are *ends-oriented duties*.

Because of its different normative structure, a duty of beneficence entitles the duty-bearer to a kind of discretion in deciding how and when to discharge the duty that is not allowed when a duty of justice is at stake.⁶ In Kant's own terms, we would say that duties of beneficence are *wide*. This means that the duty-bearer (the donor) is entitled to appeal to his own "sensibilities" when deciding by which means to discharge the duty in question (Kant 1797, 6:393). The reason that justifies this wideness, note, is not the fact that duties of beneficence are less important than duties of justice or that they are generally left unenforced. It is rather the fact that duties of beneficence have an ends-oriented nature. Since there is a variety of means through which an end can be promoted, the agent retains discretion in selecting the appropriate means to realize the end at stake. Wide duties also allow for discretion in deciding the particular direction and circumstances of action—these duties are not owed to particular individuals and need not be acted on at all times. By contrast, since duties of justice are correlative to specific entitlements, they are *narrow* duties—the duty-bearer has no or very little discretion in deciding by which means to discharge them and toward whom.

Much more could be said about the distinction between justice and beneficence. However, for the purpose of this chapter, all that matters is to

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agree that donors in contemporary societies can be entitled to the personal discretion they currently enjoy in deciding how to give and to whom—discretion that their governments encourage—if and only if we assume that their duty to give is not a duty of justice. If it turns out that a citizen's duty to give is a duty to return to others what is rightfully their own, then that discretion would be unwarranted.

The Question of Kind

How do we know whether the citizens of contemporary democracies have a duty to give money away on grounds of justice or out of beneficence? We must first know whether the money these citizens have at their disposal is rightfully theirs or, rather, owed to someone else. We cannot know this without first knowing whether these citizens have already and completely discharged the obligations of justice they owe to each other.

From the perspective of a liberal-egalitarian theory of justice—the perspective assumed in this chapter—it is quite uncontroversial to say that citizens bear duties of *distributive* justice toward their fellow citizens. These duties often take the form of obligations to both politically and financially support, by paying one's fair share of taxes, those just political and economic institutions that establish entitlements to scarce resources—the benefits of social cooperation—and distribute resources according to those entitlements (Rawls 1971).

Justice-based entitlements are not reducible to cash resources. They also include access to some in-kind goods (D. Miller 2004). It is quite easy to see why liberal-egalitarian justice mandates the public provision of goods such as police protection, basic education, and even health care, at least up to a certain threshold. These goods are necessary for the protection of individuals' equal liberties, for equality of opportunities, and for preserving the social bases of self-respect. Even libertarians who deny individuals' entitlements to most "public" goods would include goods such as policing, and perhaps even basic education, among goods that should be collectively provided on grounds of justice.⁸

It is thus common to identify the institutions of distributive justice with two branches of government: the redistributive branch and the public provision branch (Rawls 1971, 245–46). The first branch redistributes cash resources from the rich to the poor through institutions such as income taxation. The second branch is responsible for collecting revenue to then secure an adequate provision of justice-required goods, whether health care, basic education, or other goods. Duties of distributive

justice are thus duties to contribute one's fair share of resources to both these institutions, so as to enable them to provide others with what they are entitled to.

Importantly, just institutions, including a just tax system, should not be understood as subtracting from people a part of what they already (preinstitutionally) own. They rather *determine* what people own. Property rights are not natural rights. They are the product of a set of institutions, of which the tax system is a central component (Murphy and Nagel 2002). Therefore, people rightfully own what remains in their pockets *after* they have discharged their distributive duties by paying their fair share of taxes to the redistributive branch and the public provision branch. Once citizens have appropriately discharged their distributive duties in this way, they can use the resources that are rightfully their own to discharge their *residual* duties of beneficence, for example, by donating money to nongovernmental charitable associations (or they may decide to support the production of discretionary public goods, including culture goods—see Pevnick, chapter 9 in this volume). This is, broadly speaking, how the *institutional* division of labor between justice and beneficence is often understood, within the context of ideal theory.

However, once we move to the real world things become much more complicated. Most current societies are not organized around a radical division of institutional labor between (distributive) governmental and (nondistributive) nongovernmental institutions of the kinds just described. To illustrate, consider the case of affluent liberal democracies such as the United States and the United Kingdom. Here government is clearly not the only funder of justice-required goods and, in some cases, it is not even a *sufficient* funder. In the United States, for example, many justice-required goods are financed and produced through a hybrid system of public and private funding. Primary and secondary public schools often must create (tax-exempt) private foundations in order to function properly (Merz and Frankel 1997; Reich 2005). These foundations provide critical resources, including instructional materials and services, that the districts' operational and capital budgets cannot accommodate. Sometimes they even supplement teachers' salaries. Similar considerations apply to health care. Philanthropic giving is emerging as a significant means by which health systems fund the renovation of aging infrastructure and cope with staffing shortages (McGinly 2008). Similar considerations also apply to policing. Britain's Metropolitan Police Service is increasingly relying on private donations—£23 million in 2012—as well as replacing members of police staff with volunteers (Rawlinson 2012).

In brief, private giving and volunteering play an ever more *necessary*, rather than *supplementary*, role in the financing of justice-required goods (see also

Powell and Horvath, chapter 4 in this volume). The question of kind therefore must be situated in a context where the division of labor between systems of taxation and systems of voluntary donation is blurred. Within a social system where the government does not fully fund justice-required goods, what kind of duty do donors have to voluntarily give their money away? In such a system, it becomes unclear whether the money philanthropists give away can be regarded as fully their own. In what follows I analyze, and show the limits of, what I take to be a common, and seemingly intuitive, answer to the question of kind.

The Distributive Account of the Duty to Give

It is tempting to argue that, unlike in the ideal case, in the real-world case, wealthy individuals have a duty of *distributive justice* to make voluntary donations, so as to support the distribution of justice-required goods. Indeed, the fact that in this society individual donors and foundations, rather than government alone, are expected to fund certain goods does not change the fact that these goods should be provided as a matter of justice. If in the ideal society citizens had a duty of distributive justice to support a fully just distribution of these goods through *taxation*, in the real-world society they must have a duty of the same kind to support a just distribution of these same goods through *donation*.

To see how this argument has normative support, consider the following example, introduced by Robert Goodin (1988, 680) in a different context but helpful for our purposes.⁹ On a beach there are many people watching a drowning man. None is strong enough to save the man. There is one person who is "socially picked out" as the person who should perform the rescue: the appointed lifeguard. "In such case," Goodin argues, "it is clearly that person upon whom the general duty of rescue devolves as a special duty." Goodin further clarifies that "it is not a matter of indifference whom we choose to vest with special responsibility for discharging our general moral duties" but "their special responsibility in the matter derives wholly from the fact that they are appointed" (ibid.) and not from their natural capacity.

By analogy, it could be argued that the fact that a society "socially picks" individual donors and foundations, rather than government alone, as "lifeguards"—as the agents responsible for discharging the society's general duty to provide all citizens with certain justice-required goods—makes it clear that those are the agents to whom the general duty of securing the conditions of justice devolves as a special duty. It might not be "a matter of indifference" whether, say, philanthropic foundations are more or less capable

than governments to discharge that duty, but their special responsibility in the matter wholly derives from the fact that they have been "socially picked" to perform that task.

Note that here I am assuming that official authorization is not the only means through which institutions can delegate social responsibility to non-governmental agents. By giving special incentives to individual donors and foundations, by conferring on them special public recognition, and by repeatedly appealing to their help through public discourse, a society can be said to "socially pick" these agents as legitimate "lifeguards."

If this argument is correct, then we would have a sound reason to argue that individual donors' and foundations' duty to give is first and foremost a duty of distributive justice in kind—a duty to secure a fair provision of basic goods (as government substitutes). If that were the case, we would have found an easy way to argue that the "discretionary view" is mistaken. In this scenario, what philanthropists would be doing is exercising political power qua partners in government. As such, they could be reasonably expected to act according to the very same public principles and reasons that guide governmental action. In the same way in which governments cannot appeal to private, nonshared reasons when deciding how to spend public money, in a similar way philanthropists should not be allowed to exercise that discretion, if and when they act in the place of government. Indeed, they would be required to direct their money so as to secure and maintain the same distributive pattern that government should secure. However, in what follows I present some reasons to resist a distributive account of the duty to give.

The Limits of the Distributive Account

Recall that in the lifeguard example the claim was that the responsibility of appointed lifeguards derives wholly from the fact that they are appointed and not from their capacity. Even if we accept the claim that an agent's capacity cannot be the ultimate source of her special responsibility, we must nevertheless consider that the capacity of an agent A to do X directly bears on whether a duty to do X can be attributed or transferred to A. For if we pick a dysfunctional A who lacks the capacity to do X, the simple fact that we socially picked A is not sufficient to transfer to A a duty to do X. As Onora O'Neill (2004) notes, "lack of capability always counts against an ascription of obligations, except where the lack is chosen."

Therefore, in order to assess whether individuals and foundations can have a duty of distributive justice to "take up the slack" when they are socially picked to act as necessary complements to government, we must first

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assess whether these agents have the capacity to realize the conditions of distributive justice.

The notion of "capacity" is a contested one. If we assume what John Rawls (1993, 281) calls "the limits of altruism"—the fact that "individuals and groups put forward competing claims, and while they are willing to act justly, they are not prepared to abandon their interest"—as a fundamental limit of human nature, we easily arrive at the conclusion that a social system based on voluntary contributions would lack the relevant "capacity" to secure and maintain background conditions of justice over time.

However, it may be argued that the limits of altruism should be regarded as a form of chosen incapacity and thus should not be understood as a form of incapacity that counts against an ascription of obligations. Are there other forms of *unchosen* incapacity that would make individuals and foundations unsuitable agents of distributive justice? It seems that there are.

Distributive justice, as understood by most liberal-egalitarians, is essentially about *equality* in relative shares, as established according to some kind of pattern—to each according to X. So understood, distributive justice thus demands continuous adjustment of relative shares, according to a relevant patterned principle (Rawls 1971). In order to perform this adjustment, just arrangements must have certain distinctive capacities. Now it is generally (although not universally) agreed that individuals and associations, however powerful and well intentioned, lack, unlike government, the capacity for adjustment (Rawls 1993). This is because, as Rawls (1993, 242) puts it, they "cannot comprehend the ramifications of their particular actions viewed collectively, nor can they be expected to foresee future circumstances." Note that this does not imply that there is nothing individuals or associations can and should do to make the worst-off better off. For example, it seems plausible to argue that private actors may have the capacity to fulfill other people's needs or to bring them above a threshold of sufficiency. What this implies is simply that even a system of independent and voluntary organizations supported by completely committed and altruistic philanthropists cannot, at least in the world as we know it, be a suitable means of egalitarian distributive justice, since this kind of justice requires continuous adjustment of relative shares over time. If this empirical premise holds, and if we endorse an egalitarian conception of distributive justice, it follows that it would be self-defeating to ascribe to individuals a duty of distributive justice to support (financially contribute to) a "privatized" system of distribution, for this system is likely to be distributively unjust.

However, assume that private actors could be as capable as, or even more capable than, government in securing and maintaining an egalitarian

distributive pattern of resources and material goods. We may still have reasons to regard as *distributively* unjust a system that relies on private donations to fund justice-required goods. One reason has to do with the fact that such a system is likely to threaten democratic equality among citizens—the ability of citizens to stand with respect to each other as equals. Note that democratic equality can be easily understood as a requirement of *distributive* (not only relational) justice itself. This is because, even from the perspective of distributive justice, distribution of material resources is not all that matters. People must also have adequate access to “the social bases of self-respect” (Rawls 1971, 386), that is, those social conditions necessary for them to maintain confidence in their equal social standing with respect to others. Therefore, a threat to democratic equality is a threat to the social bases of self-respect, which arguably figure among the relevant objects of social distribution.

How does a system that heavily relies on private donations threaten democratic equality? First, it does so by allowing people who control more economic resources to convert their economic power into political power (Pevnick 2013). Only individuals who can afford to make donations, or larger donations than their fellow citizens, have the power to shape the quantity and way in which justice-required goods are produced and delivered in society. This means, in turn, that those with more economic resources acquire a privileged vehicle for imposing their conceptions of the good on others. This fact, in and of itself, compromises the ability of citizens to relate as equals.

Further, such a system is likely to lead to relations of domination among citizens—relations that are, by definition, incompatible with maintaining the social bases of self-respect. Note that for relations of domination to arise, the actual presence of relations of servility is not necessary. It is sufficient that the social conditions that make servility *possible* are in place or that the conditions that protect people from the threat of servility are absent. The degree to which a person is subject to relations of domination depends, in part, on the *possibility* with which he or she will be subjected to arbitrary power (Pettit 1997). This means that in order for relations of domination to be absent, and thus for democratic equality to hold, a *guarantee* against servility must be in place—a guarantee that only a coercive public system of taxation can provide. In a society where private donations are *necessary* to support an adequate provision of justice-required goods, this guarantee is missing (for further reasons against the privatization of public responsibilities, see Beerbohm, chapter 8 in this volume).

If the argument developed so far is sound, private agents cannot have a duty of distributive justice to make independent voluntary donations so as

to complement government in securing the conditions of distributive justice. Because these agents lack the relevant capacity to secure these conditions, this duty would amount to an oxymoronic duty of distributive justice to contribute to a distributively unjust system. What distributive justice requires is that citizens do whatever is in their power to bring about more just political institutions. This may demand, for example, that they donate money to political advocacy organizations, if this is the most effective available means of discharging that duty. However, beyond that, citizens would seem to have, at most, an imperfect duty of beneficence to give their money away. Yet, in the next section I argue that this view is incomplete.

The Grounds of Reparation: Benefits, Contribution, and Relations

When government fails, even if only partially, to fully fund the provision of justice-required goods (to whatever threshold required to fulfill the conditions necessary for individuals to live autonomous lives), wealthy citizens may (and often do) benefit from this failure, while the poor are harmed. The wealthy benefit at least when they (1) pay less in taxes than they would have to pay to support a government-run system of public provision and, at the same time (2) they are not themselves damaged by the cuts for they can afford access to, say, education and health care through the market—something they would often do regardless of whether public alternatives are available.

When wealthy citizens benefit from a system that harms the worst-off and deprives them of what they can claim as an entitlement against the state, there is a prima facie case for arguing that these citizens have a duty of reparative justice toward the worst-off. They ought to compensate for the damage this system unfairly inflicts upon the worst-off, so as to return the victims as close as possible to the pre-harm baseline.¹⁰

Before continuing, a clarification is in order. By a duty of reparative justice I mean a person P's duty to fairly compensate P1 for harm for which P can be held liable (although not necessarily blameworthy)—“harm” meaning a setback to P1's interests. Importantly, unlike duties of distributive justice, duties of reparative justice are not necessarily concerned with equitable shares. What matters, from the perspective of reparative justice, is that a harm is compensated for rather than how people comparatively fare with respect to their bundle of particular resources (Thompson 2002, xi). Of course, this harm can be defined as a “deficit” in access to goods one ought to have access to on grounds of egalitarian justice, in which case a duty of reparative justice

would collapse into a duty of distributive justice (as defined in the previous section). But this need not necessarily be the case. When the state deprives some of my fellow citizens of access to health care or education, the state can be regarded as harming them in more than one way. On the one hand, it is depriving them of their *fair share* of goods, as calculated relative to the share to which other citizens are entitled. This is a distributive harm in kind. On the other hand, it is also harming them in *absolute* terms. It is bringing them below a threshold of need satisfaction or depriving them of the conditions necessary to live an autonomous life, to which they are individually entitled. The latter harm qualifies as such independently of considerations of relative inequality. This is what I shall call an *absolute kind of harm*. Whereas distributive harms can only be repaired by restoring a pattern of relative equality, however exactly defined, absolute harms can be repaired by simply bringing the harmed person closer to the relevant threshold (the pre-harm baseline). Reparative justice in the second case does not require the kind of continuous adjustment that would be instead necessary to repair distributive harms.

I can now return to the question of whether wealthy citizens have a duty of reparative justice to compensate for harm inflicted by their state on their fellow citizens, when and because they benefit from this system. I will start by clarifying that the mere fact that a person benefits from a system that harms others is not always sufficient to impose upon him or her a duty of compensation, even if the benefit is voluntarily sought (Fullinwider 1980). For example, many academics benefit from writing books on harmful social injustices, yet it would be odd to say that it is wrong for them to do so or that they owe compensation to the victims of those injustices for the simple fact of benefiting from them (Anwander 2005). What grounds a duty of reparation, it seems, cannot be the simple fact that we benefit from a harmful injustice but only the fact that *we causally contribute* to it in some relevant sense, either by causing or by perpetrating it.

However, it should be noted that *certain forms of benefiting* are themselves actual contributions to injustice (Anwander 2005). Following this observation, one may argue that benefiting from injustice is sufficient (although perhaps not necessary) to ground a duty of reparation, at least when this benefiting amounts to a form of contribution to that injustice. For example, even if young white men did not originally contribute to a social system that treats women as inferior in the labor market, they perpetrate the injustice by continuing to benefit from what they should instead return to the victims. Benefiting constitutes a more serious form of contribution to injustice when it happens at the cost of making the victim even worse off

than she is. When wealthy individuals send their children to private schools while paying less in taxes than what is required to support an adequate system of public schooling, not only might they benefit from the injustice but also further enlarge the competitive gap between their children and the poor. Following this line of thought, I would argue that within societies where the wealthy benefit from public cuts to public services, the wealthy can be reasonably said to have a duty to repair the injustice, at least to the extent that their benefiting from it can be regarded as a form of contribution to or perpetration of that injustice.

However, the conditions under which we can reasonably affirm that wealthy citizens benefit from an unjust system may not always apply (or may not apply to *all* wealthy citizens). This is because the fact that basic services are underprovided by government does not necessarily mean that the wealthy are paying less in taxes than they would have to pay to support a government-run provision system. Indeed, their taxes might simply have been diverted to other, futile expenditures. Further, the wealthy themselves might be damaged by the cuts (although not as damaged as the already worst-off). Many of the relatively wealthy may well be better off if they lived in a just society that fully funds a broad range of justice-required goods. Therefore, we should not assume that the wealthy always benefit from public cuts to these goods.

But that is the nature of unjust societies.

Yet, this does not let the wealthy off the hook. Individuals may acquire reparative duties even without benefiting at all from injustice. Benefiting from an injustice (at least when benefiting amounts to contributing) might be sufficient to ground reparative duties, but it is not necessary. For example, I can certainly have a duty to compensate others for an injury that I negligently inflicted on them, regardless of whether I benefit from it or not. In those circumstances where the wealthy do *not* benefit from a system that underprovides basic goods and services, the wealthy may still acquire duties of reparative justice if they can be held causally responsible or liable, in a relevant sense, for the policies that harm the poor.

To answer the question of liability thoroughly, we would need a theory of individual responsibility for collective wrongs. I cannot develop a full theory here. I will, however, rely on a long tradition of democratic theory that argues that citizens of legitimate, democratic states are complicit in their states' injustice. Kantians, for example, would argue that as long as a state acts as a legitimately authorized body, according to a constitution of essentials, in respect of the rule of law, and in line with basic principles of equality, it can plausibly be regarded as acting *in the name and on behalf of* its citizens (Stilz 2011; see also Nagel 2005). Note that this is regardless of

whether or not citizens actually support each and every state policy. Individuals have stringent moral reasons to transfer to a set of state institutions the right and discretion to “manage” their own rights according to public rules. This transfer implies that a state that fulfills basic conditions of legitimacy acquires the authority to act in the name of its citizens even if they do not agree with each and every one of its policies. “Because they ‘own’ the rights their state interprets and enforces, citizens must also take responsibility for what their state does” (Stilz 2011, 203). If we accept this idea of democratic complicity, as a significant number of democratic theorists do, we must also accept that citizens retain liability for the policies of their states, even if they did not directly vote for those policies, for as long as the state acts legitimately, its actions can be regarded as authorized by its citizens.” An exception can arguably be made for those citizens who have actively campaigned against those policies—it may be argued that these citizens’ injustice-offsetting actions cancel their liability (Beerbohm 2012). Leaving these cases aside, what matters for our purpose is that, as long as a state’s actions can be regarded as collectively authorized by its citizens, citizens can be regarded as liable for those actions.

If we agree that citizens of democratic, legitimate states are complicit with their state’s unjust policies, we must also agree that a citizen of a legitimate state may acquire a duty of reparative justice when her cocitizens are harmed by their state’s policies.¹² Now, it could be argued that this liability for compensation should fall on rich and poor alike, as both count as authorizing citizens, and that reparative duties cannot only be assigned to the wealthy. However, as Eric Beerbohm (2012, 11) points out: “Inequalities in political power alter our liability for democratically sponsored unjust policies. In a seriously imperfect democracy, where power is distributed in a way that tracks income or wealth, the moral liability of citizenship can track these inequalities.”

That poverty constrains citizens’ opportunities for political influence and that the poor are more harmed by the enacted policies than the wealthy provide good reasons to attribute the higher burden of reparation to the wealthy.

So far I have argued that both those individuals who benefit (in a qualified sense) from injustice and those who can be reasonably regarded as complicit with it (even if they do not benefit from it) have, for different reasons, a duty of reparative justice to compensate the victims of that injustice. Now I turn to argue that, even in cases in which wealthy individuals do not benefit from injustice and cannot be regarded, in any meaningful sense, as being complicit with their unjust domestic system, they may still owe a duty of reparation to the victims of that system. This is because one can have a remedial

responsibility for X (assuming one has the capacity to discharge it), without being morally responsible, in the complicity sense, for X, and regardless of benefiting from X or not.

Suppose that I find out that your violin is actually mine.¹³ My cousin stole it from my mother and then gave it to you as a present. You did not know that the violin was stolen when you accepted it, so you violated no moral duty and cannot be blamed for it. Also, since you detest the sound of a violin, you have not benefited from it. Also suppose you cannot even sell or rent the violin so as to profit from it. Yet it seems that you have a remedial responsibility to return the violin to me as soon as you find out, and perhaps even to apologize on behalf of your relative. The reason why the agent would have a remedial responsibility in this case, even in the absence of direct contribution to and benefit from the harm caused, is that only by discharging this responsibility would the agent be able to restore a moral relationship with the victim (Satz 2007; see also Minow 1998).

Similarly, the fact that a citizen did not vote for a reduced form of public provision that deprives the worst-off of what is rightfully their own, as well as the fact that he may not even benefit from that policy, may be sufficient reasons not to blame him. However, as a member of a collective that de facto deprives the poor of access to what is rightfully their own, he may still have a remedial responsibility for compensating the victim of that injustice. Only in this way can the moral relationship of political equality among citizens be, at least partially, restored.

Therefore, even those wealthy members of society (W) who do not benefit from or contribute to policies that underprovide justice-required goods may still bear toward the poor (P) at least some of the costs of compensation for those policies. The central question then becomes, how should W pay those costs to P? In the next section I argue that forms of organized private giving provide the (morally) best means.

The Reparative Account of the Duty to Give

Compensation for harm can be paid in cash or by returning to the victim the specific object she has been deprived of. How do we know which modality of compensation is more appropriate? As Debra Satz (2007, 183) argues, in order to be fair a compensation needs to satisfy at least two conditions:

- (1) it must be "targeted (where possible) to the wrong it is meant to redress" and
- (2) it must be aimed at restoring (as far as possible) the victim to the pre-harm baseline, while doing so in a way sensitive to the specific kind of harm suffered by the victim.

If we follow this principle, when imposing upon W a duty to pay to P the cost of an unjust system of public provision, we have reasons to choose the object-specific option. This is because the system in question harms P, with respect to P's access to certain in-kind goods and services to which P has a rightful claim against the state. Therefore, W can be reasonably required to secure that P has access to these specific goods. Yet, she might not be reasonably required to pay cash to P, in that P could then spend this money for items other than these specific goods, if he wished (Satz 2010, chap. 3; Scanlon 1975). I will call this the principle of object-specific compensation.

Now, until a more just system of public provision is brought about, W cannot pay those costs by supporting, through taxes, a government-run system, for this system is temporarily unavailable and may take time before it is brought about. Until that moment, the best way for W to pay these costs is by supporting, through direct donations, those service-providing agencies (often nonprofit organizations) that are most suited to compensate for government failure, when the provision of justice-required goods is at stake.¹⁴ The principle of object-specific compensation provides a first reason to regard charitable donations as the best available means through which W can discharge duties of reparation.

In addition, the morally best way to make reparation for an unjust system is by preventing that system from having its most devastating effects on its victims. Lack of access to some goods today may have effects that cannot be repaired by securing access to that same good tomorrow. A child needs access to good public schools in her early childhood. A mother needs access to childcare right after pregnancy if she wants to keep her job. Spending time and money in political advocacy so as to support the provision of more and better services in five years' time cannot compensate damages caused by cuts to these services here and now. Compensation must happen before more just institutions can be brought about. I will call this the principle of damage limitation. This principle provides a second moral reason for regarding voluntary donations as an appropriate means of reparative justice. While doing whatever is in their power to bring about just institutions, by donating to charitable associations, the wealthy compensate for the damage, here understood in absolute rather than relative terms, that an unjust system of public provision inflicts on the worst-off.

At this point it could be objected that, if individuals cannot discharge duties of distributive justice through donations to particular associations because these associations are not capable of securing and preserving overall just patterns, then for the same reason they cannot discharge duties of

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reparative justice in this way. This objection, however, misses the difference between reparative and distributive justice that I have previously drawn. Whereas I here understand distributive justice as being concerned with equity and thus with maintaining a specific scheme of relative shares, I understand reparative justice as being concerned with compensation for harm done. Although claims of reparation might also involve claims of distributive justice, the damage to be repaired in the case of a government withdrawing from providing certain basic services is not exclusively a violation of equity. It is also about absolute deprivation. Some citizens, when government withdraws, are deprived of the opportunity to access an adequate threshold of in-kind goods that are necessary (although not sufficient) for living an autonomous life. Therefore, even if we agree that private giving cannot be a suitable means of distributive justice, contributing to an organized system of philanthropy might still be the morally best means of discharging more modest duties of reparative justice, so understood.

The Question of Discretion

Assuming that wealthy donors' duty to give, *at least up to a threshold*, is a duty of reparative justice, what discretion should donors enjoy in determining the means and ends of their giving? I added "at least up to a threshold" because, once donors have satisfied their duty of reparative justice, they may still have a supplementary, imperfect duty of beneficence to give extra or an obligation of good citizenship to contribute to those "civilizational" projects that aim to create new collective capacities or public benefits, which go beyond the requirements of justice¹⁵

To the extent that it can be regarded as an instrument of reparation, the duty to give no longer flows from the adoption of an end that each individual has a duty to promote according to her sensibilities. It is rather a duty to return to others what they have been deprived of and what they have a rightful claim to. It is a duty to pay a debt. As such, it is a narrow duty. This means that agent-relative reasons appealing to what donors "care about" or their "life history" should not matter *at all* in the process of deciding how to give. All that should guide wealthy donors' reasoning is a concern about the level of deprivation the worst-off are subject to as a consequence of an unjust system. Victims who have suffered or are at risk of suffering the greatest harm—defined as deprivation from time-sensitive, justice-required goods—should be served first. Donors should therefore give priority to associations that (1) operate in deprived areas to provide (2) time-sensitive, justice-required goods that are

(3) underprovided by government over associations that operate in wealthier areas or that provide other kinds of goods (recreational activities, religious endeavors, art galleries, private universities, etc.).

An obvious problem with this view is that donors cannot know how much each owes to each victim of injustice, unless and before a system of philanthropic giving becomes fully perfected and institutionalized. How can they then discharge their duties? The objection points at an important epistemic limit. However, from a moral perspective, we can still say that individuals are, as a matter of general principle, required to contribute to the philanthropic system at least what they would have to pay in taxes, were government itself to secure (directly finance) the level of in-kind goods necessary to bring individuals above a threshold of sufficiency. I say "government itself" because it may turn out that the best way for individual citizens to provide their fraction of a good *G* that they failed to provide collectively is dramatically more costly to them than if their government had provided *G* in an efficient way and simply charged them for their share of the costs. In my view, citizens would not necessarily be required to pay the exorbitant fee. What they should give on ground of justice corresponds (at a minimum) to what their fair share would have been in the case where the government discharged its sufficientarian obligations correctly and proportioned the costs justly.

In practice, even if donors cannot know exactly what their due is without having an institutionalized system of philanthropy in place, they still have a duty to approximate this principle as best as they can in their daily life. Note that the fact that this duty necessarily remains indeterminate doesn't make it any less a duty of justice. Indeed, justice remains the grounds for that duty. Further, that the duty is indeterminate does not entail that it is not action-guiding. Indeed, if donors started to take seriously the idea that they have a duty to give domestically on grounds of reparative justice, this would certainly change the way they give. Donations to already wealthy religious congregations or elite universities that contributed to their personal success could no longer have priority in their giving decisions. Neither would we have a situation, as is currently the case, in which poor households give, proportionally to their income and wealth, more than rich households.

However, someone could insist that, as long as a system of donation is not fully perfected and publicly enforced, citizens cannot be under a duty of justice to give. Citizens must be sure that other people will also comply with the same duties in order to be bound by those duties in the first place. In the absence of enforcement mechanisms, this assurance will be missing.

My response to this objection is threefold. **First**, we must reject the claim that only duties that are *already* enforced are duties of justice. Otherwise, we would be committed to the absurd claim that in a state where the coercive apparatus was temporarily disabled by, say, a terroristic attack, the duty not to kill would cease to be a duty of justice. Citizens may have a duty of justice to give even if this duty is not fully enforced here and now.

Second, although the problem of free riding is a serious one and provides us with reasons to perfect and collectively enforce the duty to give, we must also acknowledge, following Rawls (1971, 192), that we are not released from our duties of justice "whenever others are disposed to act unjustly. A more stringent condition is required: there must be some considerable risks to our own legitimate interests." The noncompliance of others legitimizes our noncompliance only when complying would significantly imperil our own safety or fundamental projects. My duty to comply with the rule of driving on the right collapses at the moment people regularly start to drive on the left. Yet asking wealthy donors to give to voluntary associations what should otherwise return to the state would not seem to have any comparable risk or compromise any of their fundamental interests even in the case of other people's noncompliance.

But what if no one else is paying the fee and the good we need to collectively produce is of a kind that, if nobody else contributes, my contribution will be not only costly but also completely futile? Before suggesting an answer to the problem of futility, let me clarify that this problem does not seem to apply to many of the situations that arise in our societies and that are the direct concern of this chapter. When a government cuts public spending to education or policing, we, as citizens, do not face a situation in which we must produce a public good from scratch. Public schools and police stations are still in place. Yet they are underfunded. In this kind of situations, *any* contribution, quite independently from the contributions of others, has the potential to improve the provision of those services. Having said this, in cases where our contributions would be completely futile, we have strong moral reasons to divert those contributions to public advocacy so as to persuade others to contribute to the point at which our contributions would cease to be futile.

Third, let us assume, just for the sake of the argument, that it is morally indefensible, according to ideal principles, to require wealthy donors to compensate the victims of current injustice, unless we can coerce each of them to give exactly their due (in which case private giving would collapse de facto into taxation). We can still agree that the status quo—the worst-off

being badly harmed by public cuts—is even less morally defensible. In which case, we must conclude that uncoerced giving should be regarded as, at least, a rough (second-best) form of reparative justice (Vermeule 2012). As long as this is the case, my argument that donors should not be entitled, let alone encouraged, to appeal to their personal projects or other agent-relative reasons when deciding how to give still stands.

Concluding Remarks

I want to conclude by spelling out the practical implications of my view for both donor-citizens (individuals and foundations) and political institutions. With regard to the former, far from having only duties of beneficence to donate money or time, wealthy citizens also have (1) a duty of *distributive justice* to give to effective advocacy organizations, to the extent that this is the most effective way to bring about institutions that are able to secure and maintain egalitarian patterns of distribution over time. They also have (2) a duty of *reparative justice* to give to private organizations that provide underfunded time-sensitive, justice-required goods, to the extent that this is the most effective way to bring the disadvantaged above the threshold of sufficiency and to limit the damage inflicted to them. Duty 2 applies to all wealthy donors unless (2a) they have actively campaigned against government underfunding those goods, or (2b) their contribution would be completely futile. When 2b applies, however, individuals still have a duty of reparative justice to divert their money to advocacy instead, so as to persuade other people or institutions to support the collective provision of those goods. Regardless of whether they should donate to advocacy groups or to service-providing organizations, as long as they have a duty of justice to give, donors should enjoy no *personal* discretion in determining the causes of their giving. Donors should arrive at their giving decisions by appealing to *public* rather than agent-relative reasons, for what they are giving is not rightfully their own. Of course, some level of discretion will inevitably remain. Indeed, the same exact results (e.g., bring about just institutions or limit the damage inflicted on the worst-off) could be achieved by donating to more than one type of organizations or through more than one form of giving. Within this range, what particular organization or form of giving the donor picks is morally indifferent. My point, however, is that donors should give as if what they donate is not their own. This, in turn, means that the kind of *reasons* donors should appeal to when deciding how to direct their money away cannot make essential reference to their own personal sensibilities and life history. They should rather spring from considerations of justice.

With regard to institutional action, my argument provides political institutions with a justice-based justification for limiting donors' personal discretion. This not only means that government should refrain from encouraging personal discretion through political discourse. It also means that it should restructure incentives to giving so as to reduce this discretion. More precisely, assuming that tax deductions for charitable contributions are at least sometimes justifiable (Reich 2006), when designing or reforming the system of tax deductions for charitable donations, policy makers have reasons to match those deductions to specific causes. This matching exercise should follow the very same moral principles that should guide individual donations. To illustrate, consider the case of the \$96 billion annually directed to religious associations in the United States. If my analysis is correct, among these donations, only donations directed to religious associations (1) operating in deprived areas that (2) provide time-sensitive, justice-required goods that (3) are underprovided by government should be (and arguably so) entitled to charitable deductions. By contrast, donations directed to religious associations that fail to meet these requirements should not.

Before concluding, I should clarify that the argument developed in this chapter says nothing about what the role and limits of philanthropic giving should be in a society where government fully succeeds in providing the range and amount of public goods and services necessary to fulfill individuals' needs, as well as to secure and maintain the conditions of egalitarian justice. Even in this "ideal" society, it might be the case that the discretion of donors, as well as the amount of money that donors should be allowed to give away, ought to be limited by considerations appealing to public values (see Pevnick, chapter 9 in this volume). For example, even in this ideal society there would be a need to restrict donations directed to political campaigns in order to prevent the colonization of politics by private money, or a need to prevent people from altruistically giving away certain goods—for example, their child's labor or their votes. However, in this ideal society there would be larger scope for what might be called "expressive philanthropy"—philanthropy aimed at expressing one's own idiosyncratic sensibilities. By this I mean that, in an ideal society, people would be legitimately entitled to a wider discretionary space. They would enjoy wider liberty to make donations according to what they care about, in the knowledge that justice and other public values are taken care of by their common institutions. State withdrawal should thus be regarded as more a curse than a blessing for philanthropy.