

Governance for Whom? Human Rights, Special Relations and Corresponding Obligations

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1. Introduction

The governance approach conceives of an institutionalized mode of social coordination “to produce and implement collectively binding rules, or to provide [other] collective goods.”¹ Governance thus entails that every governance actor A must have at least an implicit awareness of the collective entity C for which it provides some “collective” goods G. In order to produce collectively binding rules, for instance, A needs some idea about the C for which it produces these rules. Very often, however, the scope of C remains vague and unclear.

One way of framing the question “Governance for whom?” is to analyze empirically for whom an actor A provides or produces some good G.² In this paper, however, we tackle the question from the perspective of normative political theory, asking for whom A *should* provide or produce G, where G is highly relevant or even indispensable for the protection and promotion of basic human rights. In other words, we discuss how to define the scope of the governance collective (Benecke et al 2008: 19-22) from a moral perspective. And we follow the idea that the answer to this question internally refers to the answer to a second question: “governance by whom?” We hold both answers to be two sides of one coin. Neither the scope of C nor the role of A as a governance actor should be taken for granted. We want to know instead which types of social relations, or which forms of connectedness, generate duties of a particular A towards a particular C. Under certain conditions, then, A should adopt and regularly perform the role of a governance actor towards C which thereby qualifies as a governance collective.

1 In this paper, we use the terms “governance” and “areas of limited statehood” as understood in the context of the collaborative research center “SFB 700 – Governance in Areas of Limited Statehood”. For a comprehensive discussion of these terms and the underlying concepts see Tanja Börzel and Thomas Risse (2010) and also the paper presented by Thomas Risse at this conference.

2 See the paper presented by Jana Hönke and Esther Thomas at this conference

There is a well-known paradigm how to answer both questions at once. By using the concept of a modern state, we presuppose that a government is responsible for, and accountable to, all of its citizens.³ “State” and “citizen” are complementary concepts. This is true at least in ideal theory and with regard to the core responsibility of a state. To be sure, states bear some responsibility towards all the people, citizens as well as foreigners, under their jurisdiction. Under non-ideal conditions they also participate in the subsidiary responsibility of the international community to secure basic human rights in foreign countries. But nonetheless, being a citizen of a state X normally is a sufficient condition for being entitled to some of the goods and services the government of X has to provide, at least entailing diplomatic protection.

In areas of limited statehood, however, things get more complicated. Instead of one central actor with clearly specified duties, a myriad of actors operate alongside each other in addition to, and at times competing with, the remains of the state. Of particular importance for our purpose are humanitarian aid organizations, transnational companies (TNCs), and organized identity groups.⁴ Even if *de jure* the ultimate responsibility remains by the state, its government often lacks the capacity to fulfill even its most elementary duties to protect and promote basic human rights. But can we simply suppose that any actor who partly replaces a government in a domain which is relevant for the realization of human rights is automatically undertaking the state’s responsibility towards all of its citizens in that domain as well?

The more specific question addressed in this paper, then, is how to specify the moral duties non-state actors have concerning basic human rights, and in particular, towards whom they have these duties. Is a TNC only responsible for its employees, or also for the larger society in which it operates? Is it entirely up to humanitarian aid organizations whom they want to help? For instance, should they be allowed to decide only to help those who share their religious beliefs? And can it be legitimate for an organized identity group to protect only its own members?

We will give a sketch of an answer within the framework of moral cosmopolitanism which, however, requires as “moral division of labor”. Assigning specific responsibility to particular agents (the governance actors) which therefore are accountable to particular patients (the members of a governance collective) is a necessary task in order to overcome the problem of

³ It should be noted, though, that the notion of citizenship itself is the subject of a growing philosophical debate, see Will Kymlicka (1995), David Miller (2000), and Jürgen Habermas (1990).

⁴ Many of the more empirically oriented research projects at the SFB 700 focus on these non-state governance actors; see, for instance, Marco Schäferhoff et al (2009), Jana Hönke et al (2008).

underdetermination posed by the idea of a natural duty of justice.

2. A Natural Duty of Justice

We presuppose that all human beings everywhere in the world have the same moral status and should be granted the same basic rights. Following Henry Shue (1980), and going beyond the suggestions of human rights minimalists such as Michael Ignatieff (2001) or John Rawls (2002), we understand these rights to include rights to physical security, the right to subsistence and also rights to political participation – coming as close to real democratic participation as possible under current circumstances. Notwithstanding potential further requirements of justice, basic human rights trigger what some philosophers call a “natural duty of justice.” Drawing on earlier work by John Rawls, Allen Buchanan defines it as “the limited moral obligation to contribute to ensuring that all persons have access to just institutions, where this means primarily institutions that protect basic human rights” (Buchanan 2004: 86).⁵ As Buchanan further explains, this “natural” duty does not depend on any kind of interaction, such as a prolonged cooperation or an explicit promise, but is owed to every person *qua* being a person whose equal moral status must be respected by all others (Buchanan 2004: 85).

By stressing the importance of institutions, Buchanan takes some stance in the moral debate about an institutionalist and an interactional understanding of human rights (see Pogge 2002: 44f.). But why should we conceive the natural duty of justice primarily in institutionalist terms? Isn't the most important question how to guarantee that any human being has secure and non-discriminatory access to all the basic goods necessary for leading a decent life in dignity? It then seems to be a purely pragmatic question whether this can best be realized under the umbrella of – coercive – institutions. But we can easily see that a purely interactionist account would leave the natural duty of justice underdetermined. It also lacks adequate answers to collective-action-problems such as possible free-riding and an exploitation of the willing – with the consequence that the natural duty of justice would turn out to be heavily overdemanding.

But even in its institutionalist version the notion of a natural duty of justice as such is not determinate enough. It needs to be specified in the form of specific institutional arrangements that assign particular obligations to particular actors (Buchanan 2004: 105). Here the idea of a

⁵ See also John Rawls (1971: 115) and Jeremy Waldron (1993).

moral division of labor (Shue 1988) comes into play. Its most important example in modern times is the state system. It assigns responsibility for the protection of basic human rights to individual states and, through the assumption that every individual is a citizen of at least one minimally just state, guarantees that all individuals have access to minimally just institutions. According to this view, in order to be legitimate states must at least respect basic human rights and also try their best to protect and fulfill them.⁶

The special relation between the state and its citizens (the governance collective), as well as the corresponding obligations, thus stem directly from the rationale that justifies the legitimacy of states in the first place. In other words, a functioning state that protects its citizens' basic human rights is one well-established way to fulfill the natural duty of justice. In areas of limited statehood, however, this option often does not function properly: The remains of the state are either unwilling or incapable of securing basic human rights. When the specific institutionalization of the natural duty of justice in the form of a state fails, the natural duty of justice again turns into a universal duty. Ideally, it is undertaken by international organizations which fulfill a subsidiary responsibility of the 'international community'. But very often, these organizations lack the proper capacities for the enforcement of basic human rights.

Are there any other actors that could fill the gap? And could their activities serve as starting points for finding institutional solutions for the problem of securing inclusive and non-discriminatory access to basic human rights? In principle, everyone capable of making a difference could be conceived as bearing human rights obligations towards all the people living in areas of limited statehood, at least as long as he does not risk something of comparable moral weight (pace Singer 1972). But once again, this would lead the natural duty of justice hopelessly underdetermined and also raise massive collective-action problems.

Another way might be to rely on institutional capacities already given, yet not necessarily in the hands of governments. Almost all areas of limited statehood are neither *tabula rasa* nor total anarchy. Instead, we can observe various activities by other actors in addition to, and even in replacement of, the remains of the state. Some TNCs and NGOs, for example, take part in formulation rules and in providing goods for at least parts of the territory and the population of a weak state. Others, although not formally engaged in governance, nonetheless are powerful players which heavily influence the distribution of benefits and burdens in the society. They take part in shaping what we might call the basic structure of society –

⁶ See Buchanan (2004: chapter 5) and Waldron (1993).

although, to be sure, the society is neither well-ordered nor functioning to the mutual advantage of all its members.

We now want to ask whether the roles influential non-state-actors already play in a society can help us to identify special responsibilities of those actors with regard to the basic human rights of members of that very same society when states alone are unable to protect and fulfill these rights. More specifically, we might expect influential non-state actors to do at least one of two things. The first thing is to contribute to the (re-)building or strengthening of governmental institutions, e.g. by paying taxes, fighting corruption, providing capital and knowledge. Ideally, a society of – democratic – states provide the best conditions for organizing a moral division of labor that would fulfill the natural duty of justice. But because our world already is not ideal, and areas of limited statehood here and now require alternative forms of a moral division of labor, we might morally expect that actors such as NGOs or TNCs directly provide an aid in most efficient forms. To be sure, there might be a trade-off between both demands. Directly undertaking responsibilities that ideally belong to governments might itself contribute to a further weakening of the latter actors. But sometimes we have to weigh between the pressing need to provide a relief and the medium-term-need to (re-)build proper institutions we could then hold fully accountable for doing their share in a moral division of labor.

We therefore argue that it is possible to determine the specific human rights obligations of these actors (which go beyond the general obligations we all have towards people in need) by taking a closer look at the special relations they have towards their social environment.⁷ Of course, any actor of any type is obliged to refrain from violating human rights. They all are under the duties to respect. No NGO, for example, has a right to kill some employers in order to provide a medicine for all the needy. No TNC has a right to engage small children for a work in the colomines. In that sense, duties based upon human rights are surely universal, and owed to everybody, and the only question is how to enforce them in cases when states are unwilling or unable to do so. Lawyers should find ways of holding formally private actors directly accountable for violations of duties to respect basis human rights under conditions of seriously limited statehood. But what about duties to protect and to fulfill basic human rights when no proper mechanisms for assigning responsibility seem to exist? Can the role an influential actor plays in his social environment help us to determine his particular

⁷ For a somewhat similar proposal, yet with regard to states or nations as the relevant actors and without reference to the particular problems in areas of limited statehood, see Miller (2007: 98-104).

responsibility in at least one of these regards – and if so, towards whom? Can he legitimately be held accountable – and if so, by whom?

We will try to give an answer by taking a detour. In theories of global justice, institutionalists have discussed several forms of social connectedness that might trigger duties of – egalitarian distributive – justice. Referring to that slightly different discussion, we gain four criteria that can be used to determine the kind of relation actors have towards their social environment: membership, cooperation, impact, and relations of power.

In an abstract sense there is one basic similarity between governance in areas of limited statehood and governance in the global realm. In both cases it is under-determined which governance actor has which obligations to which recipients. The main difference, however, between the original role the four criteria play in debates about global distributive justice and the way we want to use them here is the following: Institutionalists argue that some sorts of special relations, or some forms of association, are needed to trigger genuine duties of distributive justice. Their argument is directed against moral cosmopolitans who infer from the principle of our equal moral worth that the scope of our duties of distributive justice is global. In our paper, we remain agnostic on this point except that we presuppose that there is at least one *natural* duty of justice which does not depend upon any kind of interaction or association. We hold the scope of this duty to be global although it calls for a moral division of labor which will then lead to some graduation. Not every actor is directly responsible for the protection and promotion of the human rights of everybody else, and some of our most important duties are mediated through institutional roles such as citizenship.

Now, citizenship is a rather encompassing way of mediating duties which does not rely on particular forms of association apart from membership in a state. But we want to know which other ways are conceivable when citizenship is insufficient due to the weakness of a state. We therefore try to transfer the four criteria originally developed in an institutionalist framework in order to determine who might have a special responsibility with regard to whom due to the natural duty of justice where the usual mechanisms for assigning such a responsibility do not work.

3. Four Criteria

It is important to clarify at the beginning that the four criteria are analytical distinctions. They may all apply to one empirical case. The basic structure of a nation-state is the prime example

for this type of overlap: (1) *Membership* in a nation-state might cover all individuals exposed to a basic structure comprising the institutions that (2) regulate the fundamental terms of their *cooperation*; (3) have pervasive and enduring *impact* upon their well-being; and (4) subject them under *relations of power* (cp. Abizadeh 2007: 319). To be sure, this is already an idealization of consolidated states. By definition, it does not hold true for areas of limited statehood. Here, either the state's capacities or its will to regulate the basic structure does not suffice. This is the central empirical reason to apply our four criteria separately. Even though the criteria might still overlap to some degree, it should be possible in most cases to identify the most relevant criterion. Yet, we will not try to show that generally one criterion should be given priority over others. This will be clearer with illustrative and fictional examples of the three actors we aim to tackle: humanitarian aid agencies, TNCs, and organized identity groups.

Membership

Our first criterion is membership. Apart from the rather unfamiliar possibility of talking of "membership in the moral community of mankind", it is the most exclusive one. While the other three criteria could in principle be applied to the global population as a whole, membership is per definition confined to groups, discriminating somehow between members and non-members. In the debate on global justice, the common forms of groups are nations and states. With regard to *states*, common citizenship is bound to an institutionalized relation of authority between the central power and its subjects. In areas of limited statehood this relation does not function properly due to the limited enforcement of state rule. In this paper we will try to grasp the equivalent of state membership separately through the criterion of relations of power, which we see as the pivotal concept underlying authority.

Membership in a nation is more easily applicable to areas of limited statehood than citizenship. The moral importance of this sort of special relationship is vigorously defended by David Miller (Miller 1995; 2007). As he has argued in *On Nationality*, one defining criterion of nationality is the mutual recognition of special obligations of distributive justice among its members. These obligations are restricted to compatriots (Miller 1995: 49-80). As he has pointed out in his later work, *National Responsibility and Global Justice*, obligations to the protection of human rights are global in scope. But even in the case of human rights, nations are responsible first for the protection of their own members. Obligations to outsiders are only a matter of justice if one nation bears some sort of outcome-responsibility for the violation of human rights in other nations. Otherwise we have primarily humanitarian duties

and duties of justice at most in a very moderate sense (2007; Miller 1995: 73-80). But be this as it may, we would accept that some preferential treatment for compatriots might be compatible even with a natural duty of justice. The question is then: under what conditions? The first condition is scarcity of resources. Only if resources are restricted in a way that one must choose whether to protect the human rights of a member or of a non-member, is one justified in choosing the member simply because of membership. Otherwise the non-discriminating natural duty trumps all attempts to privilege co-members. But why is preferential treatment of co-members justified under conditions of scarcity? The assumption must reflect some kind of common identity. In contrast to Miller's conception of nationality we do not think that this common identity has to be bound to the intrinsic worth of shared cultural values. The corporate identity of a TNC might suffice as well. We agree with Miller, however, that the idea of special obligations must be integral to that identity (cp. Miller 2007: 34-50).

One promising way of grasping this intuition might be the idea that implicit in relations of membership is a promise to help each other. If such an implicit promise is thought to exist, it seems reasonable to see members at liberty to preferential treatment towards each other and probably also under some special duties for such a treatment. This can be formulated into a second condition: Special obligations regarding the fulfillment of the human rights of group members exist insofar as the group identity is based on an implicit promise to help each other. Such a promise is desirable, because it leads to generalized forms of reciprocity, where a helping member can count on help when he needs it himself. As this reciprocity is generalized to the whole group, it holds even for group members who actually might never be able to help others. Additionally, the special obligation might well be institutionalized. This is then a particular advantage, since the special obligation is even further determined (cp. Miller 1995: 65-73). In any case, the group must be organized in at least a loose sense in order to coordinate the actions of its members. The justification of special obligations just sketched is not restricted to groups sharing cultural characteristics. If it works, it might apply to all types of solidary groups. Nevertheless, cultural characteristics may be especially influential in producing a sense of belonging to such a group as will become clear in the following illustration concerning an ethnically defined clan.

Kathleen Collins describes a clan as "an informal organization comprising a network of individuals linked by kin-based bonds" (Collins 2004: 231). It is quite likely that a clan thus shares the necessary common identity and is sufficiently organized to coordinate the actions

of its members. As a fictional example, imagine now two families who have lost their shelters in a heavy storm. One of them lives in village A belonging to clan p. The other family lives in village B, part of clan q. In village C some construction material is available. The oldest daughters of both families hear about this and drive to village C. However, there is only enough material to build one house. The people in village C belong to clan p. Therefore, they decide to give the material to the daughter from village A. Although the hostility between the two clans ended centuries ago, both clans still have a strong separate identities. These include an implicit agreement to help each other. Thus the daughter from village B has to agree that village C has made the right choice, acknowledging that she would count on the same form of group solidarity if the situation arose in village D, belonging to her own clan q.

Such an underlying promise to help each other is not confined to groups sharing a cultural identity. It can also apply to formal organizations established for the sake of cooperation. For-profit corporations are a prime example. They are organizations based on the purpose of gaining profit through the cooperative practices of their members (cp. Miller 2007: 118-120). Insofar as the corporation conveys a commonly accepted corporate identity, our membership criterion applies. However, with regards to TNC's empirically more important are obligations derived from the cooperative practices as such. These obligations might well reach beyond the formal border of the organization to include all cooperative relations, whether they are internal to the organization or not. Therefore, cooperation should be examined as a criterion on its own.

Cooperation

At first glance, cooperation seems to be a rather ambitious concept in areas of limited statehood. Cooperation can be defined as a voluntary collaboration of at least two partners for the sake of mutual advantage. For David Hume, this leads to obligations of justice only insofar as this mutual dependence includes a mutual capability to harm. If such a capability does not exist, one can only hope to be treated mercifully but is not able to make claims of justice. According to Buchanan, Hume is drawing here on a thesis by Epicurus, stating, "that justice is founded solely on mutual gain and that for this reason animals, as beings from whom one can benefit without reciprocating, are not within the scope of justice" (Buchanan 1990: 227). This, however, when strictly applied would be perverse. For example, one could no longer criticize an exploitative relationship between a TNC and a child forced into working by her families circumstances. The child is not able to harm the TNC, as the TNC could just as well hire somebody else. According to Hume, she would therefore not be

allowed to make claims to the TNC to fulfill her human rights, e.g. by paying her parents a better salary so that she can go to school instead.

For reasons like this Charles Beitz, a well known proponent of the cooperative approach, proposes in his classical work, *Political Theory and International Relations*, “that the requirements of justice apply to institutions and practices (whether or not they are genuinely cooperative) in which social activity produces relative or absolute benefits or burdens that would not exist if the social activity did not take place” (Beitz 1979: 131). What is needed, then, is not genuine social cooperation, but social interaction.

However, not every interaction leads to cooperative obligations. Single voluntary market transactions do not pose any such obligations, since they have only a marginal effect on the welfare of the participating parties. Therefore Beitz defines a threshold measure of cooperation, according to which interaction must have ongoing pervasive effects on the welfare of the cooperators (Beitz 1979: 166-167). Only then do the crucial demands of the cooperative theory arise: the cumulative benefits and burdens have to be distributed on fair terms, in order to make the interaction a just cooperation. In our case, this means that the TNC, presumably benefiting from its ongoing interactions with its employees, must at least secure their basic human rights, meaning *inter alia* an obligation to pay their employees enough money that their children do not have to work, too.

Impact

Every cooperative approach is limited in one important respect: Obligations are restricted to actual (or at least possible) cooperators (cp. Buchanan 1990; Nussbaum 2006: 14-22). These, however, might not be the only ones affected by cooperation. Every ongoing social interaction might have a pervasive impact on others not participating in the interactive process itself. As Abizadeh has pointed out, this happens because cooperative schemes of social interaction have externalities. The participants are not necessarily the same as the persons affected (Abizadeh 2007: 342). Here we adapt a hypothetical example originally given by Henry Shue (1980: 40-46):

Suppose a local peasant owns a relatively large piece of land, providing not only his family with sufficient means of subsistence, but also producing a surplus she can sell on the market. Her profits make it possible for her to hire six workers, who depend on their salaries for their own pieces of land, which are rather small. Meanwhile, a TNC finds out that there is a very valuable resource to be extracted from the successful peasant land. It buys the land from her,

paying her a good price and giving her and her six workers decent jobs in the company. Due to the additional money in town and the sharp decline in supply, however, this results in soaring crop prices on the local market. All of the locals who could not find work with the TNC cannot afford these prices. As a consequence, they are left in deprivation. As they have never participated in the cooperative process, they cannot make any claims based on the cooperative approach. Nevertheless, they are severely harmed by the cooperative process, even though this might not have been intended.

At this point, the impact criterion seems to yield more plausible results. It holds that all those negatively affected by the actions of an actor can demand that the actor stop its actions or at least compensate them for the harm they have suffered. While the question remains controversial of what it means to harm another person (cp. Feinberg 1984), we have agreed on a definition in the context of this paper: Sufficient for harming another individual is disregarding his or her claims to human rights. With regards to global justice Thomas Pogge (2008) has argued for this at length. Returning to our fictional example, the negative externalities of the TNC's involvement can be construed as such a violation if they lead to a situation where locals no longer have access to means of subsistence. The cooperating parties are obligated to secure the human rights of all affected by their interactions.

Power

While the impact approach relies on the "all affected" principle, theories focusing on relations of power are based on the "all subjected" principle: All those subjected to relations of power can make legitimate claims of justice. Michael Blake and Thomas Nagel restrict this claim to the subjection under a centralized state authority. According to them, the scope of justice is confined to states, because their characteristic form of subjection can only be justified if it is combined with some scheme of distributive justice (Blake 2001; Nagel 2005). In areas of limited statehood, such an approach seems to be of limited use. However, there is no good reason why subjection only needs justification if it is under state authority. This can be explained best through Blake's approach.

Blake bases his account on the well-entrenched liberal principle that all forms of coercion have to be justified because they violate the autonomy of the individual coerced. Of course, coercion limits the range of available options from which a person can choose. However, Blake focuses on the reasons why the set of options is as constrained as it is: "Coercion is an intentional action, designed to replace the chosen option with the choice of another. Coercion, we might therefore say, expresses a relationship of domination, violating the

autonomy of the individual by replacing that individual's chosen plans and pursuits with those of another. Let us say, therefore, that coercive proposals violate the autonomy of those against whom they are employed; they act so as to replace our own agency with the agency of another" (Blake 2001: 272).

The question arises as to why justification should be restricted to replacing the autonomy of an agent with the autonomy of another through coercion. If autonomy is the value that ultimately matters and not freedom from coercion as such, then serious onesided dependencies might be at least as problematic as milder forms of coercion. More generally, we conceive state coercion as an exceptionally overt form of political power over others, and argue that every form of such political power stands in need of justification. But for that purpose power-over does not have to be exercised through an institutionalized hierarchy of centralized coercion. Relations of power usually entail or produce social asymmetries.

Drawing on the debates on power in political science of the 1960s and 1970s we define social asymmetries as the unequal distribution of the chance to achieve a goal against the will or the actual interests of other persons (Bachrach/Baratz 1962; Lukes 1974). Therefore, the concept of asymmetry includes but goes beyond hierarchic institutions and capabilities to coerce. We hold that all such asymmetries, at least when they are institutionalized or rooted in the basic structure of a society, are in need of justification due to the basic moral equality of all human beings (Ladwig 2009: 367).

This is highly relevant for the protection of human rights by governance actors. Partially following Rainer Forst (2001), we believe that a theory of justice should not be restricted to the distribution of consumable goods such as bread or water, but should also keep in mind the relations of power resulting from an unequal distribution of basic goods such as voting rights, access to offices or to the means of production. If such basic goods are distributed unequally from the beginning, they all too easily give rise to social interactions which will result in a further deepening of the initial inequalities and therefore leading to stable relations of domination.

With regard to a humanitarian aid organization, the following example might be useful. Imagine such an aid organization fulfills all social rights of people living in a specific area of a highly indebted poor country. The people receive food stamps as well as health protection and live in housing projects provided for by the aid organization. These considerable services, however, come at a price. The aid organization interferes in many areas in the lives of its recipients, leaving them no choice but to follow all of the organization's rules or to

leave and return to a considerably lower standard of living. The underlying stance might be formulated as follows: the more active an actor is in the field of governance, the more power it exercises that must be justified.

Conclusion

The natural duty of justice is underdetermined, especially in areas of limited statehood. Where the usual mechanisms of assigning responsibility to particular agents do not work, the question “Governance to whom?” remains open. We have sketched an alternative way of answering this question. It goes along with assigning specific responsibility to particular agents due to the roles these agents play in their social environment. Some agents interact under conditions of shared membership; some stand in cooperative relations towards each other; some actor’s behavior has a large impact on the living-conditions of particular others; and some are able to dominate others in asymmetric relations of power.

Among the most powerful and influential actors, some already undertake responsibility within arrangements of governance (with or without governments). But they do not automatically address, and are accountable to, all those to whom they have special duties, based on particular forms of interaction or of interdependence, to protect and to fulfill basic human rights. Others could use their influence, stemming from such relations, either to enter responsive forms of governance where sufficiently strong state authorities are lacking; or do the best they can to promote the (re-)construction of those authorities. In any case, we have to weigh between the sometimes pressing need to help and the need for institutional improvements in order to get down to the root of the trouble. The legitimacy of the established forms of a moral division of labor, first and foremost of the state system, depends upon our ability to protect and promote the basic rights of people who nowadays fall outside the scope of minimal justice – not because they would not be entitled to it but because they lack the appropriate institutional structures they could effectively be held accountable.

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