The Philosophical Quarterly Vol. 60 No. 241 *October 2010*
ISSN 0031–8094 doi: 10.1111/j.1467-9213.2009.653.x

The Philosophical Quarterly
The Scots Philosophical Association and the University of St Andrews

SHOULD INSTITUTIONS PRIORITIZE RECTIFICATION OVER AID?

By Thomas Douglas

Should an institutional scheme prioritize the rectification or compensation of harms it has wrongfully caused over provision of aid to persons it has not harmed? Some who think so rely on an analogy with the view that persons should give higher priority to rectification than to aid. Inference from the personal view to the institutional view would be warranted if either (i) the correct moral principles for institutional assessment are nearest possible equivalents of the correct personal moral principles, or (ii) the moral principles which ground the personal view also ground the institutional view. Neither claim can be justified. I briefly assess some alternative ways of defending the view that institutions should prioritize rectification over aid.

Suppose I have wrongfully harmed someone, but am now in a position to rectify that harm. Perhaps I can treat someone I have injured, reimburse someone whose property I have damaged, or restore the reputation of someone I have slighted. However, I am also in a position to aid some third party *B* whose circumstances are similar to those of my victim *A* except that I have not harmed *B* (perhaps *B* has been harmed by someone else, or encountered some natural misfortune). Suppose, moreover, that *B* would benefit from my aid to the same degree as my victim *A* would benefit from my efforts at rectification. Many people would, I think, judge that if I can *either* rectify the harm I have wrongfully caused to *A or* aid *B*, I should rectify the harm. Moreover, it might be thought that I should rectify the harm in preference to providing the aid even if there is some countervailing reason to do the opposite – say, because in rectifying the harm I would also inflict a further minor harm on some other person. On the other hand, there are clearly cases in which I should refrain from rectifying a harm in order to aid a third party. Thus, suppose I have wrongfully caused a small amount of damage to a billionaire's yacht when I notice a child drowning in the marina. Surely I should aid the child before – or if necessary instead of – reimbursing the yacht owner.

This set of judgements might be explained by the following *personal principle of rectification*:

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PPR. In the absence of countervailing considerations reaching some threshold of significance, an individual *A* should prioritize the rectification of harms *A* has wrongfully caused over the provision of aid to similarly placed third parties whom *A* has not harmed

or, as I shall sometimes paraphrase this,

A person should prioritize rectification over aid.

(I henceforth use 'rectification' and 'aid' as mutually exclusive terms: if I rectify, I respond to some harm I previously wrongfully imposed, whereas if I aid, I am not responding to a harm I imposed, whether wrongfully or otherwise.) In saying that *A* should *prioritize* rectification over aid, I mean that *A* should, whenever faced with a choice between rectifying and aiding, either rectify before aiding, or devote greater resources (including effort) to the rectification than to the aid.

I call (PPR) a 'personal' principle because it directs the conduct of individual persons. But a variant of it, the *institutional principle of rectification*, applies instead to a society's institutional scheme, i.e., the full set of institutions that exists in the society in question:

IPR. In the absence of countervailing considerations reaching some threshold for significance, an institutional scheme should prioritize the rectification of harms it has wrongfully caused over the provision of aid to similarly placed third parties whom it has not harmed

or

An institutional scheme should prioritize rectification over aid.

I simply assume that institutional schemes can wrongfully cause harm, though this could be questioned. I also allow that the conditions for wrongful causation by an institutional scheme may differ from the conditions for wrongful causation by an individual person. For example, the latter may entail moral responsibility while the former does not.

Thomas Pogge is, as far as I am aware, the only author to embrace (IPR) explicitly.[1] However, several other authors seem committed to it by their views about justice, as Thomas Nagel, for instance, appears to be:

> Some people suffer from congenital handicaps, mental and physical, which are not only burdens in themselves, but affect the capacity to gain benefits through social

[1] See T.W. Pogge, 'Relational Conceptions of Justice: Responsibilities for Health Outcomes', in S. Anand, F. Peter and A. Sen (eds), *Public Health, Ethics and Equity* (Oxford: Clarendon Press, 2004), pp. 135–61, and 'Three Problems with Contractarian-Consequentialist Ways of Assessing Social Institutions', *Social Philosophy and Policy*, 12 (1995), pp. 241–66. Pogge omits the 'unjustifiable', but I shall charitably take it to be implicit.

> interaction. Others suffer from diseases, like kidney failure, that require expensive treatment. I do not think that society has the same kind of responsibility, under justice, with respect to those inequalities that it has with respect to others that are socially caused. Straightforward humanitarian concern for the welfare of those afflicted will not be undermined by the fact that nature is responsible for their disadvantage, but the kinds of deontological judgements of justice that *take precedence* over the general welfare may well be.[2]

If we take 'society' to be shorthand for 'a society's institutional scheme', we can read this passage as suggesting that justice requires institutional schemes to rectify harms they have caused more stringently than it requires them to aid victims of natural misfortune. Robert Nozick defends an even stronger version of this view, claiming that justice requires positive intervention in the distribution of goods *only* where this is an attempt to rectify a past injustice.[3]

Since considerations of justice are normally thought to be the dominant moral considerations regulating institutional schemes, it would plausibly follow from either of these views that institutional schemes should prioritize rectification over aid – at least in cases when the prospective aid recipient is the victim of natural misfortune rather than someone who has been harmed by others.

I

The institutional principle of rectification (IPR) has some important implications. At present, public healthcare systems typically allocate healthcare resources so as to prioritize those with the greatest ability to benefit from them, or those in greatest need. But if (IPR) is correct, they should perhaps also prioritize the treatment of those with certain institutionally caused conditions.[4] Similar thoughts apply to social security systems. These systems often treat equally disadvantaged people (roughly) equally. But if (IPR) is correct, they should favour the victims of unjustifiable institutional harms, unless the institutionally harmed are already favoured by other elements of the institutional scheme.

In healthcare and social security, (IPR) may militate in favour of significant reform, but in other areas, it vindicates existing policy. It may, for example, justify programmes which compensate those disadvantaged

[2] T. Nagel, 'Justice and Nature', *Oxford Journal of Legal Studies*, 17 (1997), pp. 303–21, at p. 315.

[3] See, for example, R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), esp. pp. 150–1. Some would distinguish aid from rectification: the latter is a response to some previous harm or wrong, whereas the former is not. I shall understand aid simply as the bestowing of benefits on another person, this allowing rectification to qualify as a kind of aid.

[4] See Pogge, 'Relational Conceptions of Justice', p. 135.

through past institutional injustices even when no equivalent aid is available to equally disadvantaged persons who were not the victims of injustices. If (IPR) were incorrect, it would not follow that the victims of institutional injustices should receive no compensation. But what might follow is that they should receive no more favourable institutional treatment, overall, than other equally disadvantaged persons. Some institutions might rectify institutional harms, while others distribute aid so as to ensure that the victims of other harms are, overall, treated no less favourably by the full institutional scheme.

(IPR) also has important implications for the ethics of development aid. Whether and to what extent a rich state should, through its institutional apparatus, seek to alleviate developing world poverty depends, if (IPR) is correct, on whether its institutional apparatus wrongfully caused that poverty – hence Pogge's concern to show that the institutions of the developed world are indeed causally implicated in much developing-world poverty.[5] Whether they are thus implicated may, on the other hand, be regarded as irrelevant by those who reject (IPR).

The implications of (IPR) are not only significant: there is also a plausible case for regarding them as morally problematic. To the extent that institutional schemes favoured rectification over aid, those disadvantaged through non-institutional means (for example, as a result of natural misfortune) would be systematically disfavoured in comparison with the victims of unjustified institutional harms. But this might seem unfair, for whether people bear institutional or non-institutional burdens is not normally within their control.

Here is an example:

> Smith and Jones are both members of a minority racial group that was, until recently, subject to systematic institutional discrimination in the country where they both live. One manifestation of this discrimination was that members of the minority group were excluded from the ordinary property market, and as a result of this exclusion, Smith was forced, some years ago, to live on land contaminated with a toxin. As a result, he has developed a condition which causes him to suffer recurrent headaches. On the other hand, Jones, though also forced to live on substandard land, was never exposed to any harmful contaminants. Nevertheless, for several years he has suffered from the same headache-causing condition as Smith; in his case the condition is due to an inherited genetic mutation. Both Smith and Jones have recently been receiving treatment that mitigates, but does not entirely prevent, their headaches.

[5] See, e.g., Pogge, 'Recognized and Violated by International Law: the Human Rights of the Global Poor', *Leiden Journal of International Law*, 18 (2005), pp. 717–45; 'World Poverty and Human Rights' and 'Severe Poverty as a Violation of Negative Duties', both in *Ethics and International Affairs*, 19 (2005), pp. 1–7, 55–83.

> However, impressed by (IPR), the government now decides to rearrange the healthcare system so that victims of unjustified institutional harms receive priority access to health care. As a result, Smith now becomes eligible for a fully curative treatment, while Jones is deprived of any treatment.

Plausibly, it is unfair that Jones is now treated less favourably than Smith. After all, both Smith and Jones are suffering from the same symptoms, which appear in both cases to be entirely undeserved. Moreover, because the underlying condition is the same, both could benefit equally from treatment. The only ground that could be given for treating Jones less favourably than Smith is that Jones' ailment was not institutionally caused. But this fact was not within Jones' control. The fact that he is disfavoured as a result is therefore unfair given at least one popular conception of fairness, according to which it is unfair if *A* is treated less favourably than *B* because of some factor beyond *A*'s control.

Many proponents of (IPR) would, of course, reject this conception of fairness, and I shall not defend it here. Nevertheless, the fact that compliance with (IPR) does have problematic implications according to one popular conception of fairness provides a reason for seeking a positive justification for (IPR). My aim, in the remainder of this article, will be to consider whether any such positive justification can be found. I shall remain silent on the question of whether any positive justification is *required*: perhaps the proponents of (IPR) could claim that there is a presumption in its favour, so that in the absence of any good argument against it, it should be accepted. This paper addresses itself to those who doubt that there is any such presumption.

II

Since those who accept (IPR) typically do so implicitly, it is difficult to find much in the way of argument for it. Even in Pogge's work, where (IPR) is made explicit, it normally functions as a premise rather than as a conclusion. However, Pogge does go to some lengths to render (IPR) plausible. His most prominent strategy is to make use of the plausibility of its personal equivalent (PPR). For example, introducing a discussion of (IPR), he writes

> your moral reason to help an accident victim is stronger if you were materially involved in causing her accident. I assert an analogous point also in regard to any social institutions that agents are materially involved in upholding ... we should design any institutional order so that it prioritizes the mitigation of medical conditions whose incidence it substantially contributes to. In institutional contexts as well [as individual contexts], moral assessment must then consider not merely the distribution of health

> outcomes as such, but also whether and how social factors contribute to their incidence ('Relational Conceptions of Justice', p. 135).

Frances Kamm also connects her views about institutional rectification, which come close to (IPR), with her analogous views about personal rectification. Indeed, she mentions institutional rectification only as an aside to a detailed discussion of the morality of personal conduct.[6] Though neither Pogge nor Kamm offers an explicit argument from (PPR) to (IPR), both appear to have one in mind.

In the remainder of this paper I shall argue that the plausibility of (PPR) in fact yields no support for (IPR), since there is no good argument from (PPR) to (IPR). I assume throughout that (PPR) is itself correct. In fact, I am unsure whether this is so.[7] But (PPR) certainly does have strong intuitive appeal. It may also be invulnerable to the fairness-related concerns I raised earlier regarding (IPR). It seems quite plausible that redistributive institutions could be designed so as to ensure that even if individuals widely prioritized rectification over aid, the victims of natural misfortune would do just as well as the victims of unjustified harms. Institutions could, that is, be designed to offset the distributive effects of personal compliance with (PPR). On the other hand, it seems much less likely that individuals would be able to offset the effects of an institutional scheme that prioritized rectification over aid. Thus personal compliance with (PPR) would be less likely to produce the sorts of unfairness which I suggested might result from institutional compliance with (IPR). Moreover, even if individual compliance with (PPR) would systematically disadvantage those bearing natural burdens, this might be thought less ethically troubling than the equivalent problem at the institutional level. This is because it is not at all clear that individual persons are *responsible* for ensuring that burdens or disadvantages are distributed fairly. Institutional schemes, on the other hand, are often thought to have strong responsibilities in this regard.

III

Before considering how (PPR) might figure in an argument for (IPR), I should mention one way in which (PPR) in fact seems to undermine (IPR). (PPR) governs personal conduct rather than institutional behaviour. But there is an obvious way in which personal conduct and individual behaviour

[6] See F.M. Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (Oxford UP, 2007), pp. 295–6.

[7] I raise some doubts about it in T. Douglas, 'Medical Injury Compensation: Beyond "No-Fault"', *Medical Law Review*, 17 (2009), pp. 30–51, esp. pp. 46–50.

are related to one another: *people* design institutional schemes. To the extent that it is influenced by the actions of individual persons, then, institutional behaviour may fall under the jurisdiction of (PPR). In particular, (PPR) appears to entail

PPR*. In designing or upholding institutional schemes a person *A* should prioritize the rectification of harms *A* has wrongfully caused over the aiding of third parties whom *A* has not harmed.

However, there is a sense in which (PPR*) could conflict with (IPR). Suppose, for example, you have imposed, through your influence on some institutional scheme H, a burden on some group of people, the H-citizens. Another institutional scheme K has imposed a comparable burden on another group, the K-citizens, but you were not at all implicated in causing this burden. You are now in a position to reverse, by reforming institutional scheme K, either the losses suffered by the H-citizens or the K-citizens. You want to know which losses to reverse. (PPR*) and (IPR) give you conflicting guidance in this case. According to (IPR), institutional scheme K should rectify the harms it has imposed on the K-citizens, and presumably you should bring it about that the institutional scheme K does what it should – that is, you should bring it about that K favours the K-citizens. On the other hand, according to (PPR*) you should redesign K so as to rectify the harms *you* have previously imposed on the H-citizens.

It would be oversimplifying things to say that what we have here is a direct conflict between (PPR*) and (IPR). Rather the problem seems to be that we cannot accept all of (PPR*), (IPR), and a third principle, that people should, at least under certain circumstances, bring it about that an institutional scheme does what it should. Nevertheless, it seems fair to say that (PPR*) to some extent undermines (IPR). Once we have accepted (PPR*), then we are committed to rejecting either (IPR) or the third principle, but the third principle is very plausible, so we have at least a *prima facie* reason to reject (IPR).

To avoid this difficulty, however, we can simply restrict the scope of (PPR) so that it no longer entails (PPR*). That is to say, we can restrict (PPR) to individual conduct that does not involve the designing or upholding of institutional schemes. This is what I shall do.

IV

I have dealt with the suggestion that (PPR) undermines (IPR). I now turn to consider whether (PPR) yields any positive support for its institutional

analogue. Here is one way in which (PPR) might figure in an argument for (IPR):

1. (PPR) is correct
2. The closest institutional analogue of any correct personal principle is also correct
3. (IPR) is the closest institutional equivalent of (PPR)
4. Therefore (IPR) is correct.

This argument is valid, and I have already said that I am granting its first premise. However, it is difficult to see why the second premise should hold. Items of personal conduct and institutional schemes are rather different kinds of entity, so it would perhaps be surprising if they were governed by equivalent moral principles. Some authors have also thought that there are good positive reasons to think that the set of correct personal moral principles differs substantially from the set of correct institutional principles. The most prominent exponent of this view is John Rawls, who argued that accepting different moral principles at the personal and institutional levels allows for an efficient division of moral labour between persons and institutions:[8]

> What we look for is an institutional division of labour between the basic structure and the rules applying directly to individuals and associations and to be followed by them in particular transactions. If this division of labour can be established, individuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made ('The Basic Structure as Subject', pp. 268–9).

Thus, for example, though Rawls maintains that an institutional scheme should, subject to certain constraints, maximize the prospects of the worst off members of society, he does not maintain that individual persons are subject to a similar requirement – he would presumably find any such requirement excessively demanding. The important elements of Rawls' view, for my purposes, are his observation that the demandingness of morality can be reduced by accepting different moral principles at the individual and institutional levels, and his suggestion that this provides good reason to accept different principles at the two levels. It would follow from these views that there are good reasons to reject premise (2), which rules out any such asymmetry between individual and institutional principles.

[8] See esp. J. Rawls, 'The Basic Structure as Subject', in his *Political Liberalism* (Columbia UP, 1993), pp. 257–88, esp. pp. 268–9, 283. For some objections to Rawls' arguments see L.B. Murphy, 'Institutions and the Demands of Justice', *Philosophy and Public Affairs*, 27 (1999), pp. 251–91.

V

Even if Rawls' views are incorrect, I see no positive reason to accept (2). Suppose, then, it is false – the correct moral principles for assessing institutional behaviour need not be 'closest equivalents' of the correct moral principles for assessing personal conduct. It may still be that both sets of principles derive from some common set of more fundamental moral considerations.[9] These fundamental considerations would serve as the justifying grounds for both personal and institutional moral principles.

This possibility suggests an alternative way of arguing from (PPR) to (IPR). One could hold that the fundamental moral considerations which would make (PPR) correct, if it is correct, also make (IPR) correct. To spell out the argument in full,

1. (PPR) is correct
5. The fundamental considerations which would make (PPR) correct, if it is correct, would also make (IPR) correct
4. Therefore (IPR) is correct.

Again I shall grant that (1) is true and that the argument is valid. I thus focus my attention on (5).

I shall say that when some set of fundamental moral considerations makes a moral principle correct, it *grounds* (and constitutes the ground for) that principle. If (5) were true, then we might expect to be able to identify some set of considerations that grounds both (PPR) and (IPR). That is to say, we might expect to find some putative ground for (PPR) which both (i) succeeds in grounding (PPR), and (ii) also grounds (IPR). In the remainder of this section, I shall consider in turn what I take to be the six most promising putative grounds for (PPR), asking whether any satisfy both (i) and (ii).

V.1. *Bad attitudes*

Cyclist I. Anne is cycling in her usual reckless fashion one day when she collides with Ben, a pedestrian, knocking him to the ground. She considers stopping to help him up, but elects not to.

It is plausible, in this case, that Anne's failure to aid Ben is wrong. One natural way of explaining its wrongness adverts to Anne's attitude towards

[9] Liam Murphy has argued persuasively that this must be the case. See his 'Institutions and the Demands of Justice', pp. 251–91.

her earlier unjustifiable harmdoing. Anne's failure to aid Ben might be taken to express an objectionable indifference to, or even a re-assertion of, that harmful act.

These thoughts suggest that (PPR) might be correct for the following reason: when people fail to rectify harm they have wrongfully caused, they express the wrong sort of attitude towards their earlier harmful actions (or towards the resulting harm, or towards the harm's victim); on the other hand, when they fail to aid some person whom they have not harmed, they express no similarly objectionable attitude.

There is, however, an obvious problem with this putative ground for (PPR): it is not clear that a failure to favour one's victim need express indifference, or any other objectionable attitude. Here is a variant of *Cyclist I*:

Cyclist II. All is as in *Cyclist I* except that this time, while Anne knocks Ben to the ground, Claire, a nearby pedestrian, is felled by a strong gust of wind. Anne is equally well placed to help both Ben and Claire, but she can help only one. Suppose further that Claire's injuries are pretty much the same as Ben's. Anne decides to help Claire.

In this case, as in *Cyclist I*, Anne presumably fails to comply with (PPR). Thus the proponent of (PPR) will judge that she has acted wrongly. But it is not clear that the wrongness of Anne's action is attributable to some objectionable attitude of hers. In this case, it is *possible* that Anne is indifferent to Ben's plight. But it is also possible that she is simply equally concerned about Claire's situation. If this is her reaction, it is hard to see how it expresses indifference to Ben's situation (there may be no such indifference to express).

It might be objected that even if Anne's action does not express an objectionable attitude, it nevertheless fails to express some good attitude, such as an attitude of remorse or regret for her earlier harmdoing. Perhaps this is so. But here is a further example:

Cyclist III. All is as in *Cyclist II* except that now, as well as aiding Claire, Anne issues a profuse apology to Ben.

Now it is clear that Anne does express remorse and regret. Nevertheless, she fails to comply with (PPR), and the advocate of that principle must therefore say that she acts wrongly. But the wrongness of her action cannot be grounded on the fact that it fails to express regret or remorse.

Admittedly, there is a different kind of attitude which could be at issue here. It could be argued that even in *Cyclist III*, Anne's action expresses disrespect for Ben's special moral claims on her. However, Anne's action expresses disrespect only if Ben has a special claim on Anne which Claire lacks. But if we are in a position to assert this, then, plausibly, we are already in a position to assert (PPR). There is no need to advert to the attitudes of

the harmdoer. So can (PPR) be grounded directly on the special claims of those who have suffered unjustifiable harms?

V.2. *Special claims and rights violations*

Here is the suggestion: when *A* is wrongfully harmed by *B*, *A* acquires a special claim to rectification, whereas when *A* suffers a natural misfortune, *A* acquires no special claim to aid. Perhaps others have some *reason* to provide aid. But the victims of natural misfortune have no claim, or no special claim, to the aid.

In seeking grounds for (PPR), this seems a promising start. However, the question now arises why the victims of unjustifiable harms should acquire a special claim to rectification while the victims of natural misfortune acquire no similar claim to aid. Perhaps the most obvious answer would be that the victims of unjustifiable harms have had their *rights violated*, whereas the victims of natural misfortune have not; nature is not the sort of thing that can violate someone's rights. Perhaps it is having one's rights violated that generates the special claim to rectification. Again, however, this response simply defers the problem, for it is surely legitimate to ask why rights violations should generate special claims while natural misfortunes do not. To ground (PPR) it seems necessary to identify some consideration which establishes the special link between rights violations and special claims to rectification without also establishing a similar link between natural misfortunes and special claims to aid. I am not aware of any consideration capable of doing this which does not also *directly* support (PPR) – that is, support (PPR) without requiring the mediation of rights or rights violations. Consequently I shall not consider further the question of whether victims of unjustifiable harms have had their rights violated.[10] Instead, I turn to consider alternative means of directly grounding (PPR).

V.3. *Nullifying past actions*

One such alternative means is based on the widely held principle that it is more important not to harm than to aid. This principle of non-harm might be formulated as follows:

PNH. If *A* can either avoid inflicting *x* degree of harm, or provide aid that would result in *x* degree of comparable benefit, *A* should avoid inflicting the harm.

This principle is sometimes discussed in close proximity to (PPR); both principles are often grouped together under the banner of non-consequentialism,

[10] It may be that the rights violation enters the scene at an earlier stage, explaining why the initial harm was unjustified.

since both assert that what agents should do depends not just on what outcomes will result, but also on *how* the agents contribute to those outcomes.[11] However, we should not allow (PPR) to bathe in (PNH)'s reflected glory. It seems quite possible to reject (PPR) while accepting that it is more important not to harm than to aid. (PPR) simply has nothing direct to say about the relative moral importance of not-harming and aiding. It governs only responses to pre-existing harms, including harms one has previously caused.

Nevertheless, (PNH) may, in combination with other considerations, ground (PPR). It might be held that if you harm another, imposing some loss with disvalue *x*, and then you rectify this harm by providing your victim with benefits of value *x*, then you have effectively done nothing. Your rectification nullifies the act of harm. On the other hand, if you impose a loss of disvalue *x* on one person, and give some benefit of value *x* to *another* person, you have not nullified your initial act. Instead, you have performed two distinct acts, one morally bad act of harming, and another morally good act of aiding. Moreover, if we accept (PNH), then the act of harm will be more morally bad than the act of aid is good. Thus it will be morally worse to harm one person and aid another than to do nothing. So starting from the position of having caused harm, you should rectify the harm you have caused, rather than aiding some third party. In rectifying the harm you have caused you would make it the case that you have effectively done nothing, whereas in aiding the third party you would not.

Even leaving aside doubts about (PNH), this attempt to ground (PPR) on it seems dubious. To harm someone and then offset the resulting loss is not, of course, literally to do nothing. Rather, the thought is that it is *morally on a par with* doing nothing. But is this true? Suppose I have recklessly caused a minor injury to someone who as a result loses £100 in income and suffers incapacity and inconvenience which he values at negative £150. Plausibly, I offset this loss if I pay my victim £250 in compensation. But it is not at all clear that my causing this injury, then compensating to the tune of £250, is morally equivalent to my not causing the injury. I can think of only one reason for supposing that it is: my victim's well-being is the same, following my provision of compensation, as it would have been if I had not injured him in the first place. But no one who grounds (PPR) on (PNH) can assume this. In affirming (PNH), one rejects the view that the morality of an action is to be determined only by its effects on well-being: its nature or its relation to changes in well-being is also relevant.

Anyone who accepts (PNH) presumably does so in the belief that acts of harming have some *pro tanto* wrongness in addition to that which they have

[11] See Pogge, 'Relational Conceptions of Justice', pp. 155–8.

in virtue of their consequences for the victim (this non-instrumental wrongness may derive from the fact that they constitute rights violations). One need not suppose that this non-instrumental wrongness is offset by negating the act's consequences. It seems possible, then, that someone who inflicts a harm and then negates its consequences acts just as badly as someone who inflicts a harm and then negates some other equally bad consequence. Both persons have committed acts whose non-instrumental wrongness may remain unmitigated, though both have also performed a series of acts that is morally neutral in consequentialist terms.

There may be some cases in which rectifying a harm does nullify the non-instrumental wrongness of the initial harmful act, as, for example, in cases of theft in which the thieves subsequently return what they have stolen to its owners. In such cases at least some of the non-instrumental wrongness of the original act may be captured by the fact that it alienates someone's property. It seems possible that this wrongness is at least partially negated by the act of restoring the property, since we can then say that assessing the perpetrators' actions together, they have committed no rights violation. This may, however, be a special case. Not all acts of harm rectification can be construed merely as attempts to restore someone's alienated property. Often the rectification instead amounts to an attempt to compensate others for irrevocable damage to their property (including their persons) by providing some other form of valuable property, as in the reckless injury case in the previous paragraph. In cases like this, it is much less clear that the act of rectification does anything to negate the non-instrumental wrongness of the original harmful act; plausibly, that is a kind of wrongness about which nothing can subsequently be done. Even in these cases, an act of rectification does, of course, do some good: it lifts a burden borne by another through misfortune. But so too would providing aid to a victim of natural misfortune.

V.4. *Reducing the compliance costs of morality*

An alternative attempt to ground (PPR) treats that principle as a means of appropriately limiting the compliance costs of morality. Whenever we accept a moral requirement to lift burdens borne by others, we thereby accept potential costs to our future selves. One way of limiting these costs would, of course, be to restrict the circumstances in which we are required (or strongly required) to lift such burdens, and (PPR) could be seen as the result of an attempt to restrict the compliance costs of morality in precisely this way: it maintains that we are required to lift burdens only when in doing so we rectify a harm we previously wrongfully caused. Perhaps morality would simply be too demanding if there were (strong) requirements to lift burdens we had not wrongfully imposed.

We should consider, however, whether there is any good argument for regarding (PPR) as capturing an *appropriate* restriction of the compliance costs of morality. At first sight, it seems idiosyncratic and possibly unfair to limit the requirement to lift burdens borne by others to cases in which doing so also counts as an instance of rectification. If a (strong) requirement to lift the burdens borne by all disadvantaged persons would be too demanding, then why not simply weaken that requirement so that it is acceptably demanding? This strategy would avoid the need to treat persons bearing similar disadvantages differently.

Proponents of (PPR) can avoid this difficulty by adopting an approach sometimes taken by proponents of (PNH). It has been argued that we should accept this principle because though the expected benefits of accepting a requirement not to harm and of accepting a requirement to aid would be similar, the compliance costs of a requirement to aid would be much greater. Hence, it is claimed, to balance the compliance costs of morality with its benefits, we should accept a stronger requirement not to harm and a weaker requirement to aid.[12] Perhaps similar considerations ground (PPR). If it could be shown that it is generally less costly to rectify than to aid, then one could run an argument for (PPR) which parallels precisely the above-mentioned argument for (PNH).

There are, I think, at least two reasons for thinking that it will generally be less costly for people to rectify harm they have wrongfully caused than to provide similar benefits in the form of aid to a third party. First, those whom they have harmed will typically be physically close to them. It is true that technology and international markets now enable us to harm distant persons. But we still harm those who are near to us with disproportionate frequency. Secondly, in rectifying harm they have caused – especially wrongfully caused – harmdoers are likely to be aided by feelings of regret and remorse. Thus relatively little psychological effort may be required to rectify the harm. In aiding persons whom one has not harmed, however, feelings of regret and remorse are likely to be either absent or greatly attenuated. Providing aid may therefore require greater psychological effort.

However, merely showing that rectifying harms is, on average, less costly than providing aid does not establish (PPR). Suppose rectification is, on average, less costly than aid, but the average cost is lower only because in some cases the harm-rectifier will be motivated by feelings of remorse. Why not, then, accept the following *remorse principle* as a way of constraining compliance costs?

[12] See, e.g., B. Hooker, *Ideal Code, Real World: a Rule-Consequentialist Theory of Morality* (Oxford: Clarendon Press, 2001), pp. 93–9, 126–36, 159–74.

RP. An individual person *A* should prioritize the lifting of burdens *A* is motivated to lift by feelings of remorse over the lifting of burdens *A* is not thus motivated to lift.

Alternatively, suppose it is on average less costly to rectify than to aid because the beneficiaries of rectification are frequently nearby. This suggests the following *proximity principle*:

PP. *A* should prioritize the lifting of burdens borne by those who are physically proximal to *A* over the lifting of burdens borne by those who are physically far away.

Of course, there may be some cases in which a person is motivated by remorse to lift some burden, or is physically proximal to the person bearing the burden, but it would nevertheless be costly to lift that burden. We could focus directly on the costs of aid, adopting the following *low cost principle*:

LCP. *A* should prioritize the lifting of burdens *A* can lift at lower cost to *A* over the lifting of burdens *A* can lift only at higher cost.

(RP), (PP) and (LCP) all appear to be more efficient ways of limiting the compliance costs of morality than (PPR). Perhaps one could object to (LCP) on the ground that it is generally difficult for individual persons to determine in advance the costs of lifting a burden, whereas it is relatively easy to determine whether one has wrongfully harmed the bearer of a burden. However, no similar objection could be made to (RP) or (PP). It is typically at least as easy for me to determine whether I am motivated by remorse to lift a burden, or whether I am physically proximal to the burden-bearer, as to determine whether I have previously wrongfully harmed that burden-bearer.

V.5. *Deterrence*

I now turn to consider the possibility that (PPR) might be grounded on considerations of deterrence. A moral requirement on individual persons to rectify harms they have wrongfully caused would, if widely known, and if known to be backed by moral sanctions such as blame, deter people from wrongfully harming others. On the other hand, no similar benefit would derive from a general requirement to aid the disadvantaged, since there is usually nothing the prospective aid-provider could have done to prevent the disadvantage suffered by the aid-recipient. Thus, it might be argued, we should accept a (strong) requirement to rectify wrongful harms, but no (similarly strong) requirement to aid the disadvantaged in general. It would plausibly follow that people should prioritize rectification over aid.

One could challenge this attempt to ground (IPR) by questioning whether moral principles, as opposed to legal principles, can ever be grounded on considerations of deterrence. But even leaving aside such concerns, the attempt remains problematic, for it is not clear that a requirement to rectify harms one has wrongfully caused would be more effective at deterring harm than would a less directive requirement. Suppose anyone who wrongfully harmed another person came each time under a moral requirement either to rectify that harm or to aid some other similarly placed person. This moral requirement might seem strange. But it would deter the imposition of unjustifiable harm to precisely the same extent as a straightforward requirement of rectification, provided that supplying the aid is precisely as burdensome as rectifying the harm. From the point of view of harm-deterrence, what is important is that moral sanctions are imposed on harmdoers. The precise nature of those moral sanctions is unimportant.[13]

V.6. *Preserving agency*

A final putative ground for (PPR) is suggested by the work of the legal theorists Tony Honoré and Stephen Perry.[14] Honoré and Perry are interested in the grounds of the moral (and, ultimately, legal) obligation which those who harm others may have to rectify those harms. For both, a concept of responsibility plays a central role.

If I harm another, I am causally responsible for the resulting disadvantage suffered by my victim. I may also be morally responsible for it, either in the sense that I am blameworthy for having imposed it, or in the sense that morality requires me to rectify it. But Honoré and Perry focus on a further possibility: that I am *outcome-responsible* for the disadvantage. Though neither author gives a clear account of what outcome-responsibility consists in, the thought seems to be that to be outcome-responsible for some state of affairs is to be regarded as owning it: it is to be attributed or allocated to the agent. If I am outcome-responsible for some outcome, then it is *my* outcome.

Being outcome-responsible for a harm does not, for either Honoré or Perry, amount to the same thing as being under a requirement to rectify that harm. Nor is it alone sufficient to establish the presence of such a requirement.[15] Nevertheless, both authors do claim that whether you are morally required to rectify some harm depends, in part, on whether you

[13] Stephen Perry advances this objection in his 'The Moral Foundations of Tort Law', *Iowa Law Review*, 77 (1992), pp. 449–514, at p. 495.

[14] T. Honoré, 'Responsibility and Luck: the Moral Basis of Strict Liability', *Law Quarterly Review*, 104 (1988), pp. 530–53; Perry, 'The Moral Foundations of Tort Law', pp. 488ff.

[15] Honoré, 'Responsibility and Luck', pp. 541–2; Perry, 'The Moral Foundations of Tort Law', p. 493.

are outcome-responsible for imposing it. Outcome-responsibility is an element in the ground of this requirement, but a further element is required. (Both authors hold that the ground is completed by the addition of fault. You are required to rectify a harm if you are outcome-responsible for it, and also caused it *wrongfully*.[16])

Moreover, both Honoré and Perry claim that people ought generally to be assigned outcome-responsibility for their own actions, and for the consequences of those actions. This claim is grounded on a concern to protect agency: we must, they claim, be assigned outcome-responsibility for our actions and the outcomes they produce, for if we were not, we would cease to be agents and, perhaps, persons. Honoré puts it as follows:

> outcome-allocation is crucial to our identity as persons.... If actions and outcomes were not ascribed to us on the basis of our bodily movements and their mental accompaniments, we could have no continuing history or character. There would indeed be bodies and, associated with them, minds. Each would possess a certain continuity. They could be labelled A, B, C. But having decided nothing and done nothing these entities would hardly be people.[17]

If we are indeed outcome-responsible for the consequences of our actions, then *a fortiori* we are outcome-responsible for harms we impose on others. If we also imposed those harms wrongfully, then we are, according to Honoré and Perry, morally required to rectify them.

On the other hand, it seems doubtful whether we are outcome-responsible for harms or burdens we did not cause. Certainly, considerations of agency would not support such attributions of outcome-responsibility. People need not be assigned outcome-responsibility for burdens they did not impose in order to protect their agency. Indeed, if anything, assigning outcome-responsibility in this way would threaten our agency – or at least, our self-identity as agents. Holding us outcome-responsible for burdens we did not impose might undermine our ability to see ourselves as acting upon the world, causing some events and not others.

It appears, then, that the considerations invoked by Honoré and Perry cannot ground a requirement to aid those we have not harmed. On the other hand, they may ground a requirement to rectify harms we have wrongfully caused. (Whether they succeed in doing this is not something I can adequately assess here.) Perhaps, then, there is a requirement of rectification, but no requirement to aid persons we have not harmed. It would follow that people should prioritize rectification over aid.

[16] Honoré, 'Responsibility and Luck', pp. 541–4; Perry, 'The Moral Foundations of Tort Law', pp. 488–9, 497ff.

[17] Honoré, 'Responsibility and Luck', p. 543. See also Perry, 'The Moral Foundations of Tort Law', pp. 490–2.

The considerations invoked by Honoré and Perry may thus ground (PPR). But it seems doubtful whether they could also ground (IPR). The reason for assigning outcome responsibility to persons was that doing so is (allegedly) necessary to protect the agency of those persons. But it is not clear that institutional schemes possess the sort of agency that Honoré and Perry have in mind here. Arguably, for an entity to qualify as an agent it must be capable of engaging in intentional action, rather than merely unintentional behaviour, but it is not clear that institutional schemes possess the required intentionality. Perhaps this is why we tend to use the word 'behaviour' in preference to 'action' when describing institutional events.

The difficulty I am raising here can be decomposed into two parts. First, it is not clear that individual institutions, as opposed to individual persons, can act intentionally. Some might argue that a government or a company, say, can act intentionally, but such claims would be controversial. Secondly, and more problematically, it is not clear that *institutional schemes*, which are *collectives* of institutions, can act intentionally. Here there are questions about whether collectives of agents themselves constitute agents (questions that also arise in relation to the question of whether groups of persons can be agents). But there is also the problem that not all of the elements in an institutional scheme can plausibly be described as agents. Perhaps governments and companies possess agency, but it is much less clear that laws or democratic procedures do.

Finally, even if institutional schemes are agents, it remains obscure why any value should be assigned to their agency.[18] One of the main reasons for thinking that *personal* agency is valuable is precisely that almost everyone values it. Another reason is that it allows us to achieve other ends which we take to be valuable – like happiness, completion of our projects, and meaningful relationships. Perhaps it is even true to say that we cannot conceive of ourselves as anything other than agents. But it is doubtful whether any of these reasons applies at the institutional level: most of us would attach no value to the (possible) agency of institutional schemes; whether institutional schemes possess agency seems irrelevant to how successful they will be in bringing about further goods (such as the goods that follow from regulated co-operation); and it is certainly quite possible for us to conceive of institutional schemes as non-agents. It thus remains obscure why we should assign outcome-responsibility to institutional schemes. Even if Honoré and Perry's argument succeeds in grounding (PPR), it appears unable to ground (IPR).

[18] David Enoch makes a more general point, claiming that institutional mental states are not plausible candidates for possessing any significant normative status. See his 'Luck Between Morality, Law, and Justice', *Theoretical Inquiries in Law*, 9 (2007), pp. 23–59, at pp. 46–8.

VI

I have considered six attempts to ground (PPR). One of these, the argument from outcome-responsibility, may, I have granted, succeed in grounding (PPR). But outcome-responsibility appears incapable of grounding (IPR).

It is possible, of course, that I have neglected some other moral consideration which does ground both (PPR) and (IPR). However, until such a consideration can be identified, I see no reason to suppose that any must exist. It is also possible that (IPR) is grounded on considerations independent of those which ground (PPR). If that were the case, there would be no need to use (PPR) in arguing for (IPR), whereas I have considered only arguments for (IPR) that start from (PPR). Again, however, I am unsure what these considerations would be, and the relevant literature provides no assistance.

A final possibility is that (IPR) is correct, even though it has no grounds – even though, that is, there is nothing which makes it correct. This is quite possible. (IPR) could simply be a moral principle of the most basic sort. The interesting question is, of course, why anyone should believe (IPR) to be such a principle.

The standard means for defending allegedly rock-bottom moral principles is to allege that we have reflective intuitions that they are correct, or to note that they seem able to explain reflective intuitions about particular cases. These do strike me as the most promising ways of defending (IPR). It is worth noting, however, that few philosophers are prepared to rely as heavily on moral intuitions when defending institutional moral principles as they might be when defending either personal principles or the more fundamental principles sometimes taken to underpin both personal and institutional morality. For example, though Frances Kamm, Jeff McMahan and others have popularized the strategy of appealing directly to intuition in seeking to justify personal and fundamental moral principles, there has been no comparable movement at the institutional level. Moreover, there may be good reasons for this. It is plausible to think that people's intuitions about personal conduct are reliable because there are so many opportunities, in formative years, to hone these responses to exposure to different kinds of personal conduct and parental and other reactions to that conduct. There is a plausible mechanism via which children *learn* personal morality. It seems less plausible, however, that people have reliable moral intuitions about institutions and their behaviour, for typically there are fewer opportunities to learn institutional morality. Childhood experience with different kinds of institutions, and different reactions to them, is quite limited. It is also rather

difficult to see why humans should ever have evolved the ability to form reliable moral intuitions about complex social institutions, since our Palaeolithic ancestors had few such institutions. It seems possible, then, that intuitions regarding the correctness of institutional moral principles are quite unreliable. If they are, then the inability to find any positive argument for (IPR) which does not use moral intuitions as premises gives cause to doubt whether any sound positive argument for that principle can be given. Unless there is a presumption in favour of (IPR), this will, in turn, give cause to doubt whether (IPR) is in fact correct.[19]

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[19] I thank, for their helpful comments on earlier versions, Seth Lazar, Roger Crisp, Ingmar Persson, Tienmu Ma, Julian Savulescu, Adam Swift, an audience at the Society for Applied Philosophy Annual Conference 2008, and members of the Oxford Applied Ethics Graduate Discussion Group. I thank the Wellcome Trust [grant number WT077879] and Christ Church, Oxford, for their financial support.