

SLACK TAKING AND BURDEN DUMPING

FAIR COST SHARING IN DUTIES TO RESCUE

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GLOBALLY, millions of individuals need rescue from disease, natural disaster, poverty, and violence. If everyone in a position to perform rescues did her fair share, no one's share would be large. But when some individuals fail to do their part, how much slack must others take up? Peter Singer, Peter Unger, and others have argued that we have very stringent duties to do more when others do less.¹ Many, including J. L. Cohen, Liam Murphy, and David Miller, have argued in response that principles requiring one to take up slack are objectionably unfair. These principles, they argue, demand too much from conscientious individuals by requiring them to do not only their share but also the shares of those who neglect to do their part. Even worse, the principles seem to let the morally negligent off the hook by making their burdens the responsibility of others.

I agree that contributing more than one's fair share to a rescue effort is unfair but disagree that principles are the source of the unfairness. Instead, by shirking their responsibilities, noncontributors unfairly dump part of the burdens they should have borne onto others. Thus, the conduct of burden dumpers, far from being permissible, constitutes a double wrong—they wrong those they fail to rescue, and they wrong those on whom their burdens fall. On this approach, those who do their part have an obligation to take up at least some slack, and burden dumpers remain responsible for failing to do their part.

Importantly, I do not defend the act-consequentialist position that those who do their part must take up *all* the slack left by others. The view I defend here is consistent with deontological views that posit a duty to perform rescues so long as they are not too costly. So long as my fair share of the burdens under

1 Singer, "Famine, Affluence and Morality"; Unger, *Living High and Letting Die*. Singer defends both a strong and a weak principle of beneficence and argues that both are very demanding. In this article, I set aside questions about the demandingness of our duties. Thus, I will usually mention the strong version of Singer's principle, not because I take it to be most plausible, but because it most sharply highlights the contours of the debate.

full compliance is less than the maximum this duty could require of me, others failing to do their share increases my burdens. This article does not address the quantity of slack that must be taken up, arguing instead that those who leave slack treat slack takers unfairly.

Because my central focus is on fairness rather than demandingness, I aim to describe cases in which our natural duty to rescue is clear. Singer's famous drowning-child example will therefore be central. Sadly, however, children drown in the real world as well. In 2013, a vessel left Libya carrying around five hundred migrants. En route, it caught fire and sank off the coast of Lampedusa, a small Italian island in the Mediterranean. Upwards of three hundred of those on board died. The incident attracted international attention, and Italy used its navy to begin a search and rescue program called *Mare Nostrum*, credited with rescuing some two hundred thousand people during the year it operated. However, due to the cost of the program, Italy appealed to the rest of the European Union for help. In response, Frontex, the EU's border and coast guard agency, was tasked with replacing Italy's program with a new one—Operation Triton. Triton has received criticism for focusing primarily on border control rather than search and rescue, which has left a serious humanitarian crisis in the Mediterranean as thousands of people die or go missing each year attempting to cross from northern Africa to Europe.

The crisis in the Mediterranean provides a vivid example of the kind of large-scale, ongoing rescue efforts we face. Italy recognized a duty to perform at least some rescues, and other EU member states seemingly recognized an obligation toward Italy to share the burdens of performing those rescues. Italy claimed it would be unfair for it to bear the burden of performing all the rescues alone, and others in the EU apparently agreed. It is this intuitive connection between natural duties and fairness obligations that I develop here. I argue that when duties to rescue require someone to do more than her fair share (the amount she would have to do under full compliance), she is being treated unfairly by the people who fail to do their part. This argument draws on features of the literature on group causation and moral responsibility. In particular, I combine Alvin Goldman's vector theory of causation with David Brink and Dana Nelkin's fair-opportunity theory of responsibility. I argue that noncontributors treat contributors unfairly by failing to do their part when (a) the failure derives from a blameworthy lack of responsiveness to features of a situation (such as drowning children or overly burdened rescuers) that give one moral reasons to act, and (b) the failure imposes burdens by leaving slack that contributors must take up.

I lay the groundwork for addressing questions of responsibility under partial compliance in section 1 by articulating an account of the content of our duty to rescue. In section 2, I address a puzzle related to the following question: On

whom exactly do burdens fall when noncontributors fail to do their part? After elucidating the puzzle, I defend a solution in the context of nondiscretionary duties to rescue.² In section 3, I expand on the arguments developed in sections 1 and 2 and show that they cover discretionary duties to rescue. More specifically, I argue that when one culpably fails to do one's part, one is implicated in generating the burdens one's failure, together with the similar failures of others, produces. This means that when one's duty to rescue is discretionary, one treats all contributors unfairly by failing to do one's part. In section 4, I consider some objections, and in section 5, I consider further applications of the theory focusing on voting and climate change.

1. THE NO-BURDEN-DUMPING INTUITION

In his landmark paper "Famine, Affluence and Morality," Peter Singer argues that we are obligated to use our resources to rescue those dying from lack of food, shelter, and medical care up to the point of marginal utility—the point at which further sacrifice would make us worse off than those we are helping.³ He then considers a series of objections, one of which concerns fairness: if each affluent person contributed to ending this kind of suffering, no one would have to donate more than a few dollars.⁴ We are all morally required to contribute, so is it not grossly unfair that I, the conscientious person, must donate to the point of marginal utility simply because others are not doing their part? In response, Singer says it is unfortunate that others are not contributing, but that does not change the fact that we have a duty to rescue as many as we can even if others

- 2 A nondiscretionary duty is a duty with only one means of fulfillment. If I promise to do *X*, I do not keep my promise unless I do *X*. A discretionary duty is one that I may fulfill as I see fit. If I have a duty to help the badly off, I could work at a local homeless shelter, donate to Oxfam, dig wells, and so on. The contrast between the two types of duties is not deep. A nondiscretionary duty is just a discretionary duty with only one fulfillment option. However, the distinction is useful because nondiscretionary duties are an important subclass of duties and are easier to analyze than discretionary duties.

Some theorists identify non-discretionary duties with Kantian imperfect duties. Murphy briefly discusses this view in *Moral Demands in Nonideal Theory*, 71–72; and Ignieski, "Perfect and Imperfect Duties to Aid," analyzes duties to aid in terms of Kantian perfect and imperfect duties. For further discussion of imperfect duties as such, see Baron, "Kantian Ethics and Supererogation"; and Hope, "Kantian Imperfect Duties and Debates over Human Rights."

- 3 Singer, "Famine, Affluence and Morality," 507. This is the strong version of Singer's argument. The weak version says only that we must give until doing so would force us to sacrifice something morally important. Since both the weak and strong versions are very demanding, one can raise the fairness objection to both.
- 4 Pogge, "Are We Violating the Human Rights of the World's Poor?"

are not. For Singer, the decisive consideration is that “by giving more than £5 [what I would give under full compliance] I will prevent more suffering.”⁵

I will assume that we do have a duty to rescue and that this duty does require us to do more when others do less. However, I set aside the question of how much more we are required to do.⁶ What I want to draw out is the intuition that those who do not contribute to the rescue effort wrong not only those they fail to rescue but also those who take up the slack. I will refer to those who do not do their part, and thereby leave more work for others, as *burden dumpers*. The claim I defend is not about how much can be demanded of us but about who or what is at fault when that demand is unfair. Cohen, Murphy, and Miller all argue that the principle making the demand is the source of the unfairness, but I argue that it is not. Rather, the unfairness originates in the people who neglect their duties.

Throughout the discussion we must carefully separate the wrong of neglecting one’s duty to rescue from the wrong of burden dumping. Consider a variation of Singer’s drowning-child example. I and another person are near a pond in which two children are drowning. The other person and I could easily save one child each. However, I see that if I do nothing, the other person will be able to save both children, though just barely. I decide to do nothing, and the other person saves both children. I will say that the child has a *deontic* complaint against me because she had a duty to her that I failed to fulfill. In general, deontic complaints arise when one fails to fulfill an individual duty to another agent that is not generated by a maldistribution of resources.⁷ I will say that the other rescuer has a *fairness* complaint against me because she had to do more

5 Singer, “Famine, Affluence and Morality,” 507.

6 For a book-length discussion of demandingness in the context of taking up slack, see Murphy, *Moral Demands in Nonideal Theory*. There (and in Murphy, “The Demands of Beneficence”), he argues that we are never required to do more than we would be if everyone were doing her part, even in drowning-child cases. I do not have the space to take up his arguments here, but for concise and forceful replies, see Horton, “International Aid”; and Horton, “Fairness and Fair Shares.” Horton argues that one’s objection to doing more than one’s fair share becomes increasingly weighty the more slack one must take up. Horton suggests that this unfairness, in addition to the extra costs one bears, weighs against one’s duty to take up slack past a certain level of sacrifice. However, I am inclined to agree with Karnein, “Putting Fairness in Its Place,” that this kind of unfairness does not weigh against one’s duty to take up slack. Instead, it should be counted against noncontributors in determining, for example, what kind of compensation they might owe to those who took up their slack.

7 Ridge, “Fairness and Non-Compliance,” suggests that when I fail to perform a rescue and no one takes up my slack, I treat the unrescued person unfairly. This claim is sensible since my failure produces a maldistribution of burdens. Because I failed to bear the burden of performing the rescue, the person in need of rescue must bear the consequences of

than her fair share because of my culpable failure to do my part.⁸ This case raises questions that I will briefly address before turning to a puzzle about collective burden dumping.

Imagine that the other rescuer and I are positioned such that it is initially unclear which child I should save. When I perform no rescues, have I wronged both children or neither? Do either of the children have a deontic complaint against me? A detailed discussion is beyond the scope of this paper, so here I suggest that my duty only becomes particular once it is clear which child the other rescuer is going to save. We might think that neither child has a right against me that I save *her*, though, plausibly, each has a right that I “save as many of them as [I] could without unreasonable risk to [myself].”⁹ Whatever rights the children might have held against me, it is clear that I had a duty to rescue at least one of them and that I wrong both children by simply ignoring it.

What if the burden I shirk is too heavy for the other person to carry, but she can still shoulder some of it? Suppose there are three children drowning and that I could save two children as easily as the other swimmer could save one. Other things equal, my duty is to save two, while the duty of the other is to save one. However, I save none. Through tremendous exertion, the other rescuer saves two children, but the third child still drowns. Clearly the third child has been wronged, but by whom? Given the language of burden dumping, one might think that I dumped my duty to save my two children onto the other rescuer, so that only she wrongs the third child by failing to rescue her. If nothing else, the ought-implies-can principle entails that the second rescuer is not obligated to save all three children. But we can be more precise about each rescuer’s obligations: each must perform as many rescues as she can given (1) her relevant abilities (for example, how strong a swimmer she is), (2) the scope of the need, (3) the total costs she can reasonably be required to bear, and (4) the portion of the need others can be expected to satisfy.¹⁰

remaining unrescued. This observation raises questions about the proper delineation of duties by kind that I do not have space to address here.

- 8 Perhaps the other rescuer has a right against me that I not impose undue burdens on her. Even so, the complaint is about fairness because it concerns a maldistribution of resources. I forced her to use her resources to perform a rescue when my resources should have been expended.
- 9 Feinberg, “The Moral and Legal Responsibility of the Bad Samaritan,” 61. For Feinberg, the sign that this right exists is our sense of moral indignation at potential rescuers when they do nothing (64). See Agnafors, “On Disjunctive Rights,” for a further defense of disjunctive rights; and Wolterstorff, *Justice*, ch. 11, for a general discussion of correlativity between rights and duties.
- 10 Even Singer’s strong principle would endorse condition 3. I might be able to give past the point of marginal utility, but Singer thinks I am not morally required to.

Condition 4 becomes important in cases in which burdens must be fairly distributed. If fairness does not demand that others share my burdens, I cannot expect them to contribute anything and conditions 1–3 determine what I am obligated to do. However, once fairness comes into the picture, we might worry that 4 gives noncontributors a free pass to dump their burdens so long as others are willing to take up the slack. If I am in the presence of several conscientious individuals, I might know that if I do nothing, all the drowning children will be rescued. Given this, 4 seems to let me off the hook. Because others can be expected to do everything, I have no obligation to do anything. What is more, as L.J. Cohen worries, if everyone knows there is a duty to take up slack left by noncontributors, even one who is inclined to contribute “could legitimately infer that, if he failed to do so, those with tenderer consciences than himself would make good the deficiency. So any temptation that he might have to withhold his own contribution would be reinforced by the belief that . . . the ultimate outcome would be the same.”¹¹

This objection highlights an ambiguity in the notion of expectation employed in condition 4. On the one hand, according to a fair distribution, others can be expected—in the sense of being normatively required—to contribute their initial fair share. On the other, according to their actual attitudes, they can be expected—in the sense of being predicted—to contribute whatever they are willing to contribute, which may be as little as nothing. Both notions of expectation are relevant here, and both generate obligations. According to fairness, one is responsible for one’s initial fair share of the burdens even if one contributes nothing. But if some can be expected to contribute less than their fair share (according to their actual attitudes), the rest of us are obligated to take up their slack. One person’s unwillingness to do her part affects the scope of the need facing others—condition 2—without changing the portion of the need she is normatively required to address. In this way, those of us who contribute become responsible for the burdens of noncontributors, even though the noncontributors remain responsible for their share of the rescues.¹²

What follows is that in the case in which I, in fairness, ought to save two of the three drowning children but save none while another rescuer does her best and saves two, only I wrong the third child. However, I also wrong the second

11 Cohen, “Who Is Starving Whom?” 73–74.

12 What I say here may not fully address Cohen’s worry about temptation. On one level, since condition 4 does not let noncontributors morally off the hook when others take up their slack, no one can be tempted by the possibility of avoiding wrongdoing while also failing to do her part. But if Cohen’s point is merely psychological, I have nothing to say one way or another. See Ridge, “Fairness and Non-Compliance,” for an argument against Cohen’s claim about perverse incentives.

child by failing to fulfill my duty to her. What is more, if the other rescuer saved only one child, both of us would wrong both of the other children. I obviously wrong both since I could have saved both, and the other rescuer wrongs both since she could have saved either. She is guilty of a deontic failing toward them by violating her duty to save as many as she can without unreasonable risk to herself. So, my culpable failure to rescue makes a similar culpable failure possible for the other rescuer. As the number of potential rescuers grows, there is no upper bound to the amount of morally culpable wrongdoing a single problem can produce so long as we are all duty bound to solve it.¹³

2. COLLECTIVE BURDEN DUMPING

At this point, a puzzle might seem to arise. Suppose that six children are drowning; Jones, Smith, and I are the only potential rescuers; and each of us has a nondiscretionary duty to rescue the children. We are all on a par as swimmers, and each of us can save two children easily but cannot save more than three. In this case, each of us ought to save two children—that is a fair distribution of rescue-related burdens. I immediately rescue two children. By the time this is done, I see that Smith and Jones intend to save no children. So, my obligation to take up slack kicks in, and I save a third child, after which it is too late for the other children.

Intuitively, I have a fairness complaint against Smith and Jones for imposing the burden of performing a third rescue. Both fail to contribute to the rescue effort, so both play a role in the extra burdens I bear.¹⁴ But Jones might say, “Smith was unwilling to help, so if I had helped, you and I would have saved three children each. You were already saving three children, so *I* dumped no burdens on you.” And Smith could say the same. (Call this case *partial help*.)

Smith and Jones’s argument seems sensible because it appeals to an intuitively plausible characterization of what it means to play a role in someone’s burdens. According to Jones and Smith, one plays a role in another’s burdens only when one’s contribution would alone be sufficient to reduce the burdens borne by contributors. The complication in this case is that Smith and Jones impose burdens jointly, not individually. So, is there a defensible sense in which each plays a role in my burdens even though neither, acting alone, could reduce

13 See Karnein, “Putting Fairness in Its Place,” for an argument that comes to similar conclusions on this point.

14 I use the admittedly awkward phrase “play a role” to avoid using the word “contribute” to refer to opposite phenomena—contributing to rescue efforts and contributing to burdens by failing to contribute to rescue efforts.

them—a defensible sense in which I can still properly raise a fairness complaint against each?¹⁵

Alvin Goldman defends a potential answer to this question in his analysis of the obligation to vote. Those who vote or refrain from voting almost never cast or withhold a decisive ballot. Thus, those who do not vote, or who vote for a bad candidate, can run an argument parallel to Jones and Smith's. Each person can say that *her* vote or abstention did not affect the outcome of the election, so *she* should not be held responsible.

Goldman responds to this objection by developing what he calls a vector-system analysis of causal contributions. He explains:

[A vector is a sum] computed from three kinds of forces: (1) forces that are positive in the direction of movement, (2) forces that are negative in the direction of movement, and (3) forces that are zero in the direction of movement. Finally, when thinking about the causation of a given movement, we think of each positive force as a *contributing factor* in the production of the movement, each negative force as a *counteracting*, or *resisting*, factor in the production of the movement, and each zero force as a *neutral factor* vis-à-vis the production of the movement.¹⁶

Each person who casts a vote for the winning candidate is a causal contributor to—or, in my terms, plays a role in—that person's victory. Similarly, in the case of Jones and Smith, each plays a role in the extra burdens I bear since the inaction of each is a contributing factor in them.¹⁷ But if Jones helps rescue while Smith does not, Jones's action counts as a force in the direction of distributing burdens fairly. Thus, even though Jones's action does not reduce the burdens I bear, his change in behavior changes the direction of his vector contribution.

15 By "each" I mean each individually, not both of them collectively. For a discussion of similar cases in the context of collective responsibility, see Björnsson, "Collective Responsibility and Collective Obligations without Collective Moral Agents."

16 Goldman, "Why Citizens Should Vote," 210–11, original emphasis.

17 Goldman's vector account is best interpreted as an extension and smoothing out of J.L. Mackie's insufficient but necessary part of an unnecessary but sufficient (INUS) condition for causation in "Causes and Conditions." For instance, an INUS analysis of voting is different for even- and odd-numbered electorates in ways that seem to reflect theoretical machinery rather than the ethics of voting (Goldman, "Why Citizens Should Vote," 206–10). The vector account does not face similar technical complications. Still, if a candidate won in a landslide, why did my vote count as a causal contributor when the outcome we care about is not the scalar "force" of the votes, but the binary of victory and defeat? In my view, something like Mackie's INUS analysis is still needed to answer this question. My vote contributed to the victory because in some subset of votes for the candidate, mine was necessary for her victory. Thus, Goldman's theory is best seen as extending or reformulating Mackie's.

The vector analysis, however, is incomplete as an account of responsibility. Suppose I arrive at the polls intending to vote for the best candidate, but as I put pen to paper, an unforeseeable muscle spasm causes me to vote for the worst candidate, after which a strong gust of wind blows my ballot into the counting machine. My vote is a contributing force in the direction of the bad candidate, but I am clearly not responsible for the contribution. We might similarly wonder about those who lack reliable transportation or who are misinformed about the candidates, anxious in crowded places, forgetful, and so on.¹⁸ What we need is a systematic way to distinguish between those who are responsible for the role they play in dumping burdens and those who are not.¹⁹

David Brink and Dana Nelkin defend a reasons-responsive account of responsibility on which blameworthiness requires a fair opportunity to avoid wrongdoing.²⁰ This fair opportunity has three parts: a cognitive component, a volitional component, and a situational component. Briefly, the cognitive component involves the “capacity to make suitable normative discriminations, in particular, to recognize wrongdoing.”²¹ The volitional component involves “the capacity to regulate one’s actions in accordance with this normative knowledge [one’s recognition of right and wrong].”²² Finally, the situational component involves “*external or situational factors* . . . [such as] *coercion and duress* [which] may lead the agent into wrongdoing in a way that nonetheless provides an excuse, whether full or partial.”²³

In the case of voting, failure to vote (or voting for someone other than the best candidate) is blameworthy when the three conditions listed above are satisfied. Cognitively, this requires, for instance, that information about the candidates’ policy stances and qualifications is readily available and intelligible. Volitionally, one must be able to vote according to one’s considered convictions rather than peer pressure, a candidate’s charisma, or other irrelevancies.

18 See Goldman, “Why Citizens Should Vote,” 210, for some discussion of misinformed voters.

19 Because those who vote are not required to vote more when others vote less, failing to vote does not dump burdens. I discuss the relevance of my arguments to voting in sec. 5.

20 See Brink and Nelkin, “Fairness and the Architecture of Responsibility”; and Brink, “Situationism, Responsibility, and Fair Opportunity,” especially sec. 4. Modern theories of responsibility fall into two broad categories: reasons-responsive theories and attributionist theories. I employ a reasons-responsive theory of responsibility as one I take to be plausible, though not uncontroversial. For recent defenses of attributionism, see Sher, *Who Knew?*; and Smith, “Control, Responsibility, and Moral Assessment.” For an overview of the debate, see Talbert, *Moral Responsibility*.

21 Brink, “Situationism, Responsibility, and Fair Opportunity,” 132.

22 Brink, “Situationism, Responsibility, and Fair Opportunity,” 132–33.

23 Brink, “Situationism, Responsibility, and Fair Opportunity,” 134, original emphasis.

Situationally, voting must not jeopardize one's employment, expose one to undue risks, or be otherwise inaccessible. So long as these conditions are met and so long as one lives in a legitimate democracy, one can be blamed for failing to vote.

A similar analysis can be given for the duty to rescue, though the analysis is complicated by the fact that failing to rescue can cause two distinct wrongs—the deontic wrong to those one is duty bound to rescue and the fairness wrong to others involved in the rescue effort. I will consider the cognitive and volitional components first. Cognitively, duties to rescue are usually easy to understand, and information about rescue efforts is widely distributed and easy to find. Volitionally, fulfilling these duties often requires no more than donating to effective organizations. Similarly, the distributional implications of partial compliance are widely understood. At some point, bearing extra burdens will strain one's volitional capacities, but even if this excuses one from bearing the full weight of one's obligations, one must still work as close as possible to the point of critical volitional stress. Plausibly, most individuals satisfy the cognitive and volitional requirements for responsibility in relation to their duties to rescue and their obligations to distribute the burdens of those rescues fairly. Henceforth, I set aside cognition and volition, and focus on the situational component of responsibility.

Within this reasons-responsive framework, Jones might run the following argument against the claim that she is responsible for dumping burdens. First, she might acknowledge that she is responsible for failing to perform rescues, and that in some mechanical sense, this failure “contributed” a vector force pushing in the direction of burden dumping. Still, she should not be held responsible for those burdens because she did not have a fair opportunity to prevent them. Everyone knew that Smith was not going to do his part, and Jones's contribution alone could not make a difference in the burdens I bear. It is therefore unfair to hold her responsible, even partly, for dumping burdens since she had no opportunity to do otherwise. We might reply by noting that Jones could still have done her part, in which case her vector contribution would have changed and she would no longer count as a burden dumper. But this does not quite capture the spirit of Jones's reply. Her claim is that she could perform rescues, so she had reason to, but she could not lighten my burdens, so she had no reason to. If Jones was faced with no distribution-related reasons, I cannot blame her for taking no distribution-related action. To evaluate this objection, it will be helpful to consider a case in which Jones is unable to act unless Smith acts.

Suppose I have been poisoned and will soon be dead if no antidote is administered. The antidote consists of two ingredients each of which is ineffective if

administered alone. As it happens, Jones and Smith have one ingredient each, and both are present. Unfortunately for me, Smith refuses to give up his ingredient for morally indefensible reasons (he likes the look of its color). Jones, however, rushes to my side to do what she can for me, entreating Smith to do the same. But without Smith, Jones cannot help me, and I die. Intuitively, and I think rightly, Smith is responsible for my death and Jones is not. One possible explanation is that Smith, unlike Jones, had a fair opportunity to make a difference to the outcome. Whatever Jones did, she could not prevent my death. On this line of reasoning, she did not have the relevant situational control, so she cannot be held responsible. If this were right, Jones might argue that the same line of reasoning applies in the partial help case. There too she cannot be held responsible for any “vector contribution” she makes to dumping burdens because she did not have the situational control necessary to prevent extra burdens from falling on me.

Jones’s argument that the poison and partial help cases are relevantly similar conflates reasons to change outcomes with reasons to be *willing* to change outcomes. In the poison case, Jones displays concern for my condition and attempts to convince Smith to act. This shows that she is responsive to the available moral reasons. Contrast this with a case in which, for indefensible reasons, neither Smith nor Jones is willing to give up their ingredients. Now, it seems, *both* are responsible for my death even though neither, acting alone, can avert it. Neither displays any willingness to do their part, which is precisely what the situation calls for. If they were appropriately responsive to the available moral reasons, each would show willingness to contribute an antidote ingredient. They would then administer the antidote, and I would be saved. In the partial help case, appropriate responsiveness to the available moral reasons means performing one’s share of the rescues. This is something Jones can do even if she cannot reduce the burdens I bear, so she does have the situational control needed to be appropriately reasons responsive. Thus, her failure to perform any rescues marks her as a blameworthy causal contributor in the direction of burden dumping.²⁴

24 What if Jones displays willingness to distribute burdens fairly but no independent willingness to rescue the drowning children? Do I still have a fairness complaint against her? I propose that the answer is yes. Jones ought to respond to the full set of moral reasons available to her, and partial responsiveness does not imply partial blameworthiness. Imagine that I love slashing tires, which is both *expensive* and *upsetting* for my victims, and that these are the only relevant moral reasons in the situation. If I were responsive to both reasons, I would not slash tires. But I only care about upsetting people (I am fully responsive to this reason), which alone does not outweigh my enjoyment. It seems to me that when I slash tires, I am blameworthy for upsetting my victims even though I am fully responsive to the moral reasons that their distress gives me to refrain.

Given the preceding arguments, I propose the following characterization of what it means to play a role in dumping burdens: one plays a role in (makes a vector contribution to) unfair burdens borne by contributors when one's failure to be sufficiently reasons responsive in a context of fair opportunity, together with similar failures on the part of others (the number of others may be zero), is sufficient to impose on contributors more than their fair share of the costs to be distributed.²⁵

I have argued that when one fails to do one's part in a rescue effort, one treats other rescuers unfairly, at least in nondiscretionary cases. What remains to be seen is whether the arguments I have laid out extend to discretionary duties to rescue. If I only have the resources to contribute to one rescue scheme but there are five equally good schemes to choose from, who is treated unfairly when I do nothing?

3. THE PARTICULARITY PROBLEM

So far, I have focused on rescue scenarios that, by hypothesis, impose a nondiscretionary duty to rescue, which in turn means that any fairness obligations are owed to other rescuers on the scene. I have a nondiscretionary duty to rescue *that child* (or these children), which means that I have a duty to help *these* people perform the rescue. However, some will reject the claim that this duty is nondiscretionary. Singer, for instance, argues that because our duty to rescue does not take distance into account, saving a child right in front of me is morally on a par with saving a child on the other side of the world (other things equal). In the same way that I may choose which drowning children to save when I cannot save them all, I may choose which rescue efforts to participate in when I can only participate in some.

There is controversy over whether the duty to rescue those who are close is more stringent than the duty to rescue those who are far away and whether I have the discretion to contribute to rescue efforts other than the most efficient one.²⁶ I do not attempt to address these questions here, and I assume for the

25 Ridge, "Fairness and Non-Compliance," offers an alternative solution to collective burden-dumping cases. He argues that the burdens left by noncontributors ought to be shared among rescuers and rescuees alike. Thus, partial help cases will not arise since any additional contribution will reduce my burdens at least marginally. This line of reasoning is mistaken because it incorrectly classifies obligees as obligors. If those to whom obligations are owed are not responsible for bearing a share of those obligations initially, it is unclear why they would become responsible when some obligors fail to contribute.

26 For representative arguments, see Ignieski, "Perfect and Imperfect Duties to Aid"; Feinberg, "The Moral and Legal Responsibility of the Bad Samaritan"; Smith, "Control, Responsibility, and Moral Assessment"; and Kamm, "Famine Ethics."

sake of argument that distance does not matter and that one has at least limited discretion to choose rescue options that are not maximally efficient. That said, questions about discretion arise regardless. I might be equidistant from two drowning children, each of whom has a rescue effort dedicated to her; and, of course, I am confronted with a wide range of organizations to contribute to that carry out rescues all over the world. So, even if there is controversy over the degree to which duties to rescue are discretionary, there is widespread agreement that they allow for at least some discretion.

Duties to rescue being discretionary raises a potential problem for the account of burden dumping I have defended. The claim that by failing to contribute, I dump burdens on other rescuers seems to require a particular rescue effort to which I am bound to contribute—I must have a reason to contribute to *that effort* in particular. If there are no particularizing reasons, then there are no particular burdens I am required to help bear, and thus no answer to the question of who is unfairly burdened when I do nothing. Burden dumping appears incompatible with discretionary duties to rescue. Call this the *particularity problem*.²⁷

To flesh out the problem, consider again the case of migrants attempting to cross the Mediterranean, and suppose Italy is doing all it can to rescue vessels in distress. Suppose also that France and Spain have a similar duty to rescue distressed vessels. However, the need is so great that if France or Spain (not both) does all it can, there will be no less for Italy to do. But if both France and Spain helped, each of the three would carry significantly lighter burdens than it would working alone or in conjunction with only one other country. Even so, neither France nor Spain helps, and each rebuts Italy's fairness complaints by saying that it is not imposing burdens on Italy because the other is also unwilling to contribute. This, of course, is just the partial help case. As I argued above, because both France and Spain fail to show proper regard for what is morally important (the migrants' lives), and since these failures are sufficient to impose extra burdens on Italy, each plays a role in dumping the burdens Italy picks up. On these grounds, Italy has a fairness complaint against each country.

27 The particularity problem has parallels in the literature on political obligation. There, the problem applies to theories grounded in the natural duty of justice. Political obligation seems to be owed primarily or exclusively to the institutions that apply to me, while the natural duty of justice seems to allow discretion regarding which institutions I support. For a defense of natural-duty theories, see Waldron, "Special Ties and Natural Duties." For a statement of the particularity problem, see Simmons, "The Natural Duty of Justice"; and for a reply to Waldron, see Simmons, "Natural Duties and the Duty to Obey the Law," 170–79.

At this point, the discretionary nature of duties to rescue leaves open a further possible response for France and Spain. Suppose everyone knows that if Spain contributes to any rescue effort, it will be to one run by Bulgaria, not Italy. Thus, even if both France and Spain contribute their fair share to rescue efforts, Italy's burdens will not be lightened. In this way, France argues that it does not treat Italy unfairly because France's and Spain's failures to respond appropriately to the relevant reasons do not lead them to withhold contributions that would be sufficient to reduce Italy's burdens.²⁸ Since Spain has the discretionary freedom to choose which rescue effort to contribute to, neither it nor France counts as contributing to Italy's burdens. If this is the end of the story, there are simply more burdens to go around than can be borne. Full compliance with the duty to rescue would require maximum sacrifice from everyone required to make any sacrifice. In that case, France's argument goes through, and neither it nor Spain dump any burdens on Italy. However, assuming that full compliance will not require maximal sacrifices from everyone, Italy's argument can take a further step to match the step taken by France's argument.

So far, I have presented the case as though Spain and France are the only (relevant) actors not doing their part. But this is an artifact of thinking of duties as nondiscretionary. Now that we are thinking of a discretionary duty to rescue, the relevant pool of burdens is all the burdens associated with all the rescues that need to be performed and that require collective action.²⁹ Given this, the pool of potential contributors includes every agent—natural or artificial—who is bearing less than her fair share of the overall burdens. If we now imagine that no one fails to do her part through a blameworthy failure to be reasons responsive, we will imagine a scenario in which all these agents bear their fair share of the total pool of rescue-related burdens. If we have good reason to think that Italy's burdens would be reduced in *this* situation, then Italy has a fairness complaint not only against France and Spain, but against everyone who is not contributing her fair share to rescue efforts around the world. This is the partial help argument writ large.

So, even though it seems right to say that the duty to rescue allows for significant discretion on the part of those bound by it, those already rescuing almost certainly have legitimate fairness complaints against most noncontributors. Because they fail to be appropriately reasons responsive, they play a role

28 See Feinberg, "The Moral and Legal Responsibility of the Bad Samaritan," 60–64, for a discussion of similar cases in the context of imperfect duties (duties that lack a prescribed time or place of fulfillment; these are precisely discretionary duties in my sense).

29 See Ostrom, "Beyond Markets and States," for a detailed analysis of collective action problems and the contexts in which they often arise.

in (make a vector contribution to) the unfair imposition of burdens by failing to bear their portion of the total pool of rescue-related burdens.

4. OMISSION AND COLLECTIVE ACTION

One might worry that the partial help argument has been writ too large. Consider the following case. Italy is rescuing migrants crossing the Mediterranean, Bulgaria is rescuing migrants crossing the land border from Turkey, and both efforts are on a par in all relevant respects. France, however, is rescuing no one. Italy knows that if everyone were doing her fair share of rescues, its burdens would be lighter than they currently are. Unfortunately, Italy can only influence France. Thus, Italy begins making fairness complaints against France, and France, exercising its discretion, begins contributing to Bulgaria's scheme. Nothing has changed for Italy, but since France is now doing its part, Italy no longer has a fairness complaint against it. This seems odd. Italy claims to be treated unfairly by France because France plays a role in Italy's excessively heavy burdens. Yet France successfully satisfies its fairness obligation to Italy without reducing Italy's burdens. One might take this to show that the partial help argument is not ultimately concerned with fairness. If it were, it would argue that Italy's claim against France removes France's discretion so that it must contribute to Italy's rescue effort.

This line of objection can be interpreted as asserting one of two underlying thoughts. First, the objection might be another way of claiming that *X* treats *Y* unfairly by failing to contribute just in case *X*'s contribution alone would be sufficient to reduce *Y*'s burdens. My main argument up to this point has been aimed at rejecting this intuition, so I will set this interpretation aside. Alternatively, one could take the objection as expressing something like the following: if *X* treats *Y* unfairly by not contributing to any rescue effort, then it is also the case that *X* treats *Y* unfairly by contributing to any rescue effort other than *Y*'s. So, in the EU example, since France could lighten Italy's burdens, France treats Italy unfairly when it contributes to Bulgaria's rescue scheme instead of Italy's.

To see where this second suggestion leads, suppose for the sake of argument that France imposes burdens on Italy when it performs no rescues *and* when it performs its fair share of rescues in Bulgaria's rescue effort. Granting this, it might seem to follow automatically that France treats Italy unfairly by contributing to Bulgaria's scheme.³⁰ But how can this be? Recall that France's duty to

30 If this were right (and the ought-implies-can principle were true), it would be a serious problem for my view. If, for instance, Italy and Bulgaria announced fairness complaints against France at the same time on the same day, France would be forced to treat one of them unfairly (assuming it can only feasibly contribute to one scheme).

rescue is supposed to be discretionary, and it seems clearly right to say that before Italy makes its complaint against France, France is free to contribute to either scheme. So, what changes when Italy makes its claim? Sarah McGrath gives us a potential answer in her theory of causation by omission. She argues that omission “*o* causes [event] *e* iff *o* occurs, *e* occurs, and [commission of the act of which *o* is an omission] *C_o* is a normal would-be preventer of *e*.”³¹ A would-be preventer of *e* is something that would prevent *e* if it occurred. A would-be preventer is normal if it is *supposed* to prevent *e* according to some *actual standard*.³² The thought is that Italy’s act of making an unfairness claim against France establishes a standard according to which France is supposed to help Italy and that this standard dissolves France’s discretion about which rescue efforts it may contribute to.

This proposal fails for several reasons. For one, it is not enough to simply establish a standard; the standard that is established must be shown to be important. McGrath’s notion of a standard is “of very general application,” covering “chess moves, dance steps, quiz answers, beliefs, baseball pitches, ways of beating eggs and stitching hemlines.”³³ Each involves a standard of correctness that can be used to judge good and bad chess moves, dance steps, and so on. In that sense, all the standards are normative. However, they do not all have moral force. In fact, morality can be conceived as another standard according to which actions can be judged to be appropriate or not. Since, according to the duty to rescue, France has moral discretion to contribute to whatever rescue effort it chooses, the standard established by Italy’s complaint will be ineffectual unless it can be shown to have overriding moral significance. Since the mere statement of the complaint does nothing to change the facts of the situation, it is unclear where this significance could come from.

Even if this difficulty could be overcome, problems still arise. Suppose France can only contribute to one scheme and Italy and Bulgaria make simultaneous fairness complaints against it, each demanding that France contribute to their rescue effort. To whose scheme should it contribute? The most natural take on the situation is that France is free to choose which scheme to contribute to. In this case, its discretion persists. The only apparent alternative is to say that even when France entirely fulfills its duty to rescue, by helping Italy for instance, it is still guilty of unfairly dumping burdens on Bulgaria. Surely this

31 McGrath, “Causation by Omission,” 142. McGrath offers a more precise formulation of the same principle, but this will do for my purposes here.

32 McGrath, “Causation by Omission,” 138.

33 McGrath, “Causation by Omission,” 139.

is a principle that *should* be rejected for imposing unfair burdens, though here the unfair burdens are placed on burden dumpers rather than slack takers.³⁴

Additionally, it is not clear why Italy's articulation of its fairness complaint should *create* a standard for France. Italy's speech act appears descriptive, not performative. It reports reasons to which France ought to respond; it does not create them. Thus, the standard according to which France treats Italy unfairly unless it contributes to Italy's rescue efforts applies whether Italy makes a declaration or not. But then, since Bulgaria is in the same position as Italy relative to France, it too must have an identical claim to France's contribution. So, France will have just as much reason to contribute to Bulgaria's scheme as to Italy's whether or not Bulgaria or Italy or anyone else makes a fairness complaint against it. France once again finds itself unfairly bound to shoulder more burdens than it can bear.

The initial objection was that something has gone wrong with the partial help argument since Italy's unfairness complaint against France, grounded in its unfairly heavy burdens, does not obligate France to contribute to Italy's rescue effort. Intuitively, we might think that if France treats Italy unfairly, it ought to contribute to Italy's scheme. But this intuition is misguided because its focus is too narrow. France is not the only noncontributor, and Italy's scheme is not the only one around. Still, one might try to vindicate the intuition by arguing that once Italy makes its claim on France, France counts as causing Italy's extra burdens by omission. As we have seen, however, this argument does not look promising.

5. FURTHER APPLICATIONS

In this paper, I have argued that when we fail to contribute our fair share in a rescue effort and others must take up the slack, we treat those others unfairly. Problems we have a duty to solve and that require collective action to address are subject to distributive norms that generate fairness obligations between rescuers in addition to the natural-duty obligations owed to those in need of rescue. The central objection to which I respond argues that one only dumps

34 One might attempt to run a similar omissions argument by appealing to a Lewisian view on which *o* causes *e* iff *C_o* would have prevented *e* (see Lewis, "Causation as Influence"). By this standard, every agent in the world whose contribution to Italy's scheme would reduce its burdens, if it so contributed, counts as causing Italy's burdens by omission. But if this is right, we clearly have not landed on a normatively significant sense of omission. Suppose Bulgaria begins its scheme before Italy. The fact that Bulgaria causes by omission Italy's excessive burdens clearly does not mean that Bulgaria treats Italy unfairly or that Bulgaria ought to terminate its own scheme to contribute to Italy's.

burdens when one's contribution alone would be sufficient to lighten the burdens of current contributors. I argue that this claim is mistaken. By failing to do one's part in the absence of excusing conditions, one fails to be appropriately reasons responsive. This failure makes one a blameworthy member of the vector group whose actions or omissions push in the direction of burden dumping. Thus, those who fail to do their part are implicated in the resulting unfair distribution of burdens.

This argument appears problematic in the context of discretionary duties. When I am not obligated to contribute to any particular rescue effort, it is not clear who is treated unfairly when I do less than my fair share. I argue that this worry can be dispelled by broadening the scope of the argument. The argument I develop in response to the partial help case shows that one can play a role in the unfair burdens borne by individuals performing rescues even if one's contributions alone would not reduce their burdens. Thus, no matter how much discretion I have in fulfilling my duty to rescue, I unfairly dump burdens on those who do their part when I fail to do mine.

It is worth considering how the arguments presented here apply in other contexts. Very briefly, I discuss voting and climate change. In the context of burden dumping, voting and rescuing are fundamentally different because one cannot dump one's duty to vote on others. I should not vote twice in an election because someone else did not vote at all. This does not mean, however, that the arguments I have developed are inapplicable.

In its most general terms, the view I defend identifies responsible causal contributors to the outcomes of collective actions or omissions. This was the payoff of combining Goldman's vector theory of causation with Brink and Nelkin's theory of moral responsibility. For any case in which we can identify the reasons to which individuals ought to respond, we can, in principle, identify those who are blameworthy (or praiseworthy) for the outcomes of their actions or omissions. In the case of voting, bad outcomes of elections or referendums can be very destructive even though no burden dumping is involved. The account I have defended allows us to identify those who are blameworthy for pushing toward these negative outcomes even when, for instance, the better candidate wins. Burden dumping can therefore be seen as a special case focusing on situations in which partial compliance affects the distribution of burdens. Many collective action problems are plagued by partial compliance, and in these cases, it is worth understanding how to assign blame and responsibility for unfair distributions.

Climate change is structurally much closer than voting to rescue cases and so raises similar distributive questions. Our responses to climate change, whether in the form of mitigation (preventing future climate change),

adaptation (responding to unavoidable change), or compensation (to those unjustly affected), require collective action and allow burden dumping. Climate change raises additional complex questions about the initial fair distribution of burdens, intergenerational justice, cosmopolitanism versus nationalism, and so on.³⁵ However we answer these questions, the analysis presented here can help us respond appropriately to actors who fail to do their part.

Some duties are quite stringent, and this stringency can obscure distributive concerns. In rescue cases, for example, complaining that I must do more than my fair share of rescues when those being rescued are in dire need might seem melodramatic. It is worth remembering, however, that burden dumping can impose very heavy burdens, especially when the duties involved are stringent. Additionally, those on whom the burdens fall may be better positioned to hold accountable those who refuse to do their part. This last point is especially relevant in the case of climate change.

There is widespread agreement that individuals acting independently cannot respond adequately to climate change.³⁶ Individuals, corporations, governments, and supranational organizations must act in concert if we are to minimize the damage of climate change to human wellbeing. But many actors are, and have been, unwilling to do their part; the US government, for instance, has consistently failed to pursue meaningful emissions-reduction policies.³⁷ While people outside the United States often feel the effects of these failures most strongly, it is US citizens that can act most effectively to change the trajectory of US policy. One strategy for pressuring the government is to voice complaints that the failure of the government (and others) to adequately respond to climate change has imposed unfair burdens on individual members of the population, requiring them to unilaterally reduce their private emissions or attempt to organize their own emissions-reduction schemes. Even the need to voice complaints is an avoidable and unfair burden. If we focus exclusively on the harmful effects of climate change, these grievances will go unnoticed. Not only does this let blameworthy actors partially off the hook, but it also

35 For discussion of who should pay for the costs of mitigation, adaptation, and compensation, see Caney, "Cosmopolitan Justice, Responsibility, and Global Climate Change." For discussions of intergenerational ethics related to climate change, see Gardiner, "A Perfect Moral Storm"; and Gosseries, "Historical Emissions and Free-Riding."

36 Whether individuals acting independently can adequately respond to climate change is separate from the question of whether individuals have a duty to reduce their own emissions when others fail to act. For discussion, see Sinnott-Armstrong, "It's Not My Fault"; Schwenkenbecher, "Is There an Obligation to Reduce One's Individual Carbon Footprint?"; and Hourdequin, "Climate, Collective Action and Endividual Ethical Obligations."

37 See Jamieson, *Reason in a Dark Time*, for an overview of the history of climate change.

robs those seeking change of a potentially important means of pressuring those who neglect their duties.

I have here only scratched the surface of the various ways in which the ethics of slack taking and burden dumping might be applied. My hope is that this discussion will help promote further applications by illuminating not just the structure of our duties to rescue but a more general relationship between natural duties and fairness obligations.

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