

EXERCISING JUST ENTITLEMENTS IN APPARENTLY UNJUST WAYS

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Just practices permit people to act in ways that nonetheless seem, on reflection, to be unjust. Unlike cases in which such practices allow us to violate other kinds of moral duties, such as exercising our constitutional right to free speech by using hurtful or offensive language, justice itself apparently favors practices that permit us to act in ways that it also opposes. My aim is to describe one kind of apparent conflict between the justice of practices and the justice of individual conduct and to suggest a way of resolving conflicts of this kind by appealing to ideals of justice that we should aspire to incorporate into our lives.

My plan is as follows. I first present several cases in which an apparently just practice permits actions that seem to be unjust. After discussing some initial reactions to these examples, I next argue that the relevant practices are just even though parts of them overgeneralize in ways that permit apparently unjust actions. Third, I consider various moral duties that justice imposes on the conduct of individuals and argue that, in my examples, none of them forbids the actions that seem to be unjust. Fourth, I explain how ideals of justice can nonetheless give us moral reasons not to perform actions that are permitted by just practices. Fifth, I consider whether these ideals of justice can also provide sufficient reasons to violate just practices. I end with a few remarks about another strategy for resolving some apparent conflicts between what just practices permit and how individuals should or should aspire to act as a matter of justice.

1. Three Examples

Consider the following examples:

The state where I live allows me and other legally blind people to acquire a disability parking placard, which entitles those who transport us to park in designated disability spaces without getting ticketed or towed. Using my placard has made it significantly easier for me to navigate unsafe parking lots and city streets. On one rainy early-morning trip, however, the parking lot of my local grocery store was completely empty, so I was at no greater risk walking from a normal space than from a disability one. All of the disability spaces were available, so my wife and I would not be taking a spot that other disabled people might need. We wondered whether, in these circumstances, it is just for us to park there merely to avoid getting drenched.

When I was in school, I was entitled to disability accommodations that included extra time on tests, which helped to offset the effects of my slow reading and poor handwriting. In many cases, the additional time was essential for me to compete on an equal footing with my classmates. One exam, however, consisted of essay questions that were handed out in advance. I had already arranged to complete it on my laptop, but I also had the option of taking twice the amount of time other students were given. I was an excellent typist and my laptop had the latest screen-reading and zooming software. I worried that, combined with these other accommodations, taking the extra time would give me an unfair advantage over others who were writing their exams by hand.

My son loves to watch college basketball games, but good tickets are often hard to come by. He recently suggested that I “play the disability card” so that we could get good seats for an upcoming game. I knew that, because of my visual impairment, I would not see or enjoy the game any better from the disability seating than if we sat in our usual “nose-bleed” section. But I also knew that the disability seats would not all be used and that Carson would be thrilled to sit close to the action. I was not sure whether it is just for me to rely on my disability simply to show my son a good time.

Is it unjust for me to park in the disability space, take extra time on the exam or secure good basketball tickets in these contexts if the law justly entitles me to do so? Is it sometimes wrong, as a matter of justice, for disabled people to use accommodations we are justly owed? More generally, does justice sometimes require or recommend that people not exercise rights, claim entitlements, or accept benefits that it guarantees?¹

My examples concern exercising or claiming special entitlements to disability accommodations. I have framed them in this way in part because many disabled people face moral quandaries of this sort; providing accommodations to disabled people is a relatively uncontroversial feature of just practices; and illustrating the kind of conflict I am trying to highlight between individual and institutional justice often depends on contextual features that are especially familiar to me in the context of disability. Conflicts of this sort can also arise in other contexts in which people who are, for example, justly entitled to healthcare, to unemployment benefits, to government assistance, to affirmative action, or to set their own

¹ I have come across only a few brief mentions of this specific issue in, for example, (Rawls 1999c, 312, 1999a, 60-63, 1999b, 210-214, Kant 1996a, 419 [Ak: 28:1088-89], 1996b, 390-1 [Ak: 6:234-5]) . For discussions of exercising entitlements in potentially unjust ways, see (Cohen 1995, 2009, 2008).

prices on goods they sell would in some circumstances seem to act unjustly by claiming, exercising, or accepting them.

Raising these issues about the potential injustice of claiming just entitlements, especially in the context of disability, also carries some practical dangers that we should aim to mitigate or avoid. Establishing and enforcing just laws for disabled people is arguably more important, politically and morally, than quibbling about whether we should use the accommodations that they afford us. Many disabled people are already disadvantaged and oppressed in many ways, so we also risk “blaming the victims” by focusing on our supposed moral failings rather than the far more pressing need to reform social, economic and political institutions (Boxill and Boxill 2015). And excessive scrupulousness and pedantry on the part of disabled people may lead to a kind of ambivalence, or even servility, in which we do not use or press for accommodations we need and should demand (Cureton 2018, 2016). Despite these dangers, reflecting on how disabled people should or should aspire to act also shows us a kind of respect, particularly because of the long and dark history of mistakenly regarding many disabled people as incapable of full moral agency. If we keep in mind the importance of giving disabled people accommodations we are justly owed and recognize that any moral failings we may exhibit in accepting them rarely, if ever, excuse injustice on the part of others or our institutions, we can respectfully examine whether a just person with a disability would sometimes forgo legitimate accommodations for the sake of her commitment to justice itself.

2. Initial Reactions

There are several initial reactions we might have to my three examples.

First, we might think that it is unjust of me to use the accommodations because doing so would deny them to other disabled people who are more deserving or because doing so would diminish trust and confidence among non-disabled people in our systems for provisioning accommodations. These are often important considerations, but they are not clearly applicable to my cases because there were enough disability parking spaces, proctors, and seating to go around and almost no one knew that I did not need the accommodations on these occasions.

Second, we might think that I am not justly entitled to the accommodations in the first place because I would not qualify for them under laws that are fully just. Such laws, it may seem, would be more fine-grained than our current laws, which often make gross generalizations about the needs and interests of disabled people in specific circumstances. I give some reasons

in Section 3 for thinking, however, that I am justly entitled to the accommodations despite the fact that the relevant legal provisions “round some edges”, “cut some corners” and otherwise allow for “loopholes” of the sort I considered exploiting.

Third, we might agree that I am justly entitled to the accommodations but think that having a just entitlement entails that exercising it is not unjust. Perhaps it is never unjust to act within our just legal rights. Yet the moral compunction I had about using accommodations I was justly entitled to suggests that this is at least not a conceptual truth but rather a substantive moral claim that can be doubted.

Finally, we might think that it is not unjust of me to use the accommodations because I actually need them, because failing to take them would make it more difficult for me or others to secure accommodations we may need in the future, or because the accommodations are, in part, forms of charity, economic redistribution, or affirmative action for disabled people that I am thus permitted to accept as a matter of justice. In my examples, however, I knew that my disability did not warrant using the special privileges in those circumstances and that exercising them would not affect anyone’s access to them in the future. I will return to the last point in Section 6 where I will raise some doubts about justifying accommodations for disabled people on grounds of making up for past injustices.

These initial reactions raise many interesting moral issues, but I want to focus on cases in which we are justly entitled to something, exercising or claiming this entitlement or not on a particular occasion will not interfere with others doing so or otherwise affect the nature, enforcement or support of our society’s institutions, but exercising the entitlement in those circumstances nonetheless seems unjust.

3. Entitlements of Justice

Major pieces of disability legislation in the US, such as the Americans with Disabilities Act and the Individuals with Disabilities Education Act, prohibit discrimination and exclusion of various kinds against disabled people and require schools, businesses and others to provide reasonable accommodations for our disabilities. These laws, along with accompanying regulations, policies, procedures and court cases, determine the nature and scope of the legal entitlements that disabled people have to such accommodations. In my examples, having met the necessary legal qualifications, I had the legal right to park in a disability space, take extra time on my exam, and receive special basketball tickets.

Whether affording me these special legal privileges in the circumstances I described is just depends on whether the laws and other rules that define them are themselves just. To simplify somewhat, let's focus on the value of equal opportunity, which is one of the basic values that most theories of justice include, although they interpret and justify it in different ways. Let's assume that securing equality of opportunity is a fundamental concern of justice and that this value implies that everyone should, to the greatest extent possible, have equal opportunity to fully participate in all major aspects of society, including education, employment, culture, leisure, public accommodations, transportation, government services and politics.

Disabled people face barriers and difficulties of various kinds to full inclusion as a result of our disabilities, so equal opportunity to, as far as possible, fully participate in all aspects of society provides strong reasons to give us legal rights to use certain accommodations of the sort that the ADA, IDEA and other parts of current US law afford us. And because of the specific challenges that legally blind people face moving safely from place to place, accessing educational and cultural resources, securing employment, engaging in leisure activities, and otherwise participating actively in social life, ensuring equal opportunity for us seems to justify affording me the more specific legal entitlements I had to park in safe environments, take additional time on tests, and sit close to sporting events. The ADA and IDEA, along with their accompanying regulations, might not be perfectly just, but the parts of them that afford these particular rights to visually impaired people are, it seems, clearly required by the concern of justice to ensure equal opportunity.

My examples, however, appear to challenge this argument because, while *in general* affording special parking, testing, and seating privileges to visually impaired people enhances our equal opportunity to fully participate in society, affording me these prerogatives in the scenarios I described was not necessary to secure my equal opportunity to do so *in those particular contexts*. I could just as easily and safely walk from a normal parking space as I could from a disability one; I already knew the test questions and my laptop was loaded with accessible software; and I am no better at seeing and enjoying a basketball game up close than far back in the stands. The barriers and difficulties that often undermine the equal opportunity of disabled people and so justify affording us legal entitlements to special accommodations did not exist for me in these particular cases, so the value of equal opportunity does not seem to justify allowing me to park in the disabled space, take twice as long on the exam, and sit in the disability section.

Although justice requires affording special legal privileges to visually impaired people to correct for barriers to our equal opportunity, why should the law also afford me these privileges when I do not face such barriers? Entitling me to a motorized wheelchair or a sign-language interpreter is clearly not required to secure my equal opportunity because I do not have a mobility or hearing impairment, so why should we think that the value of equal opportunity justifies allowing me to park close to the front of my grocery store when the parking lot is completely empty, to take additional testing accommodations beyond what is needed to correct for my visual impairment, or to get better basketball tickets that will make no difference to how I experience the game? Affording these entitlements to visually impaired people is usually or generally just, but perhaps these entitlements are not just in rare cases when they are not needed to secure someone's equal opportunity to fully participate in society. And if I am not justly entitled to the accommodations in the cases I described then it may, for that reason, not be just of me to nonetheless use them.

Anyone who has attempted to formulate policies, regulations or laws, however, will recognize that workable rules are rarely able to cover all possible cases to which they might apply. Rules must often make generalizations, rely on approximations, include vague terms or artificially precise ones, and exclude certain exceptions and qualifications in order to serve their intended roles. Suppose we attempted to formulate more specific laws and regulations regarding parking, testing, and seating accommodations for visually impaired people that more closely matched the requirements of equal opportunity than our current laws and regulations. We might propose, for example, that visually impaired people are legally entitled to such accommodations only in circumstances in which they are necessary to secure our equal opportunity to, as far as possible, fully participate in all aspects of society. Such a law, without further specification, would be unfeasible: It provides little guidance about what equal opportunity of this sort means or what is 'necessary' to secure it, allowing widely divergent interpretations of these terms; it is usually difficult to determine what accommodations a particular disabled person needs in particular circumstances in order to overcome impediments to her equal opportunity; gathering relevant personal information about disabled people would threaten to infringe on our privacy; and the people charged with gathering it would have an onerous and potentially impossible task. Enforcing such a law would also be difficult or impossible: Police, government lawyers, and judges cannot watch over all or most disability parking spaces, testing procedures or disability

seating; nor are they likely accurately to determine in many individual cases whether these accommodations are being afforded to, and only to, those who are entitled to and request them. And a law of this sort is especially liable to abuse by those who do not need the accommodations or who do not want to provide them.

We could try to supplement this proposed law by specifying exactly what accommodations are owed to what people in what circumstances in order to secure their equal opportunity. Doing so, however, would make the law so complex and unwieldy that few, if any, people could fully understand, apply and enforce it. And, despite our best efforts, the law would likely still be an imperfect approximation of what is required by equal opportunity because our available evidence about disabled people and the obstacles we face to equal opportunity is often generalized rather than specific to individual people and the many contexts we might face.

Our current disability laws obviously face these same difficulties, but legislators and policy-makers attempted to formulate workable systems for implementing the value of equal opportunity for people with disabilities. They knew that some of these provisions would entail some “false-negatives”, in which a disabled person is not legally entitled to an accommodation needed to secure her equal opportunity, as well as some “false-positives”, in which a disabled person is legally entitled to an accommodation that is not needed to secure her equal opportunity, but they presumably regarded both kinds of cases as rare and, in any case, unavoidable in any feasible piece of disability legislation they could implement.

Legislators, policy-makers, and others attempted to devise a system for providing accommodations to disabled people that strikes the right balance between full equality of opportunity and workability. Whether or not they did so in the best possible way, the constraints of practicability will inevitably create loopholes in laws governing disability accommodations. Are the legal entitlements I had in my examples just if they arose from laws that were fashioned, in part, to be feasible ways of implementing equality of opportunity rather than perfect expressions of that value?

Justice, it may seem, requires that everyone be afforded equal opportunity, while laws that have to “round some edges”, “cut some corners”, and otherwise make concessions to concerns of feasibility are, at best, merely approximations of what justice requires and so not themselves fully just. On this view, a legal system that denies a disabled person an accommodation she needs to secure her equal opportunity thereby treats her unjustly even if hers

is one of the cases that had to be sacrificed for the sake of making the system workable. On this way of thinking, laws that are adjusted for the sake of feasibility are not fully just laws but rather heuristics or rules of thumb that may be the best we can do even though they do not fully conform to the requirements of justice. By analogy, a law requiring drivers of non-emergency vehicles to stop at functioning red lights may be the most feasible law for those occasions, in light of the cognitive abilities of most people and the information that tends to be available to them, but true justice might favor a more complicated principle allowing us, for example, to run a red light at night, on an old country road, after we have stopped, and when no one is around for miles. Justice, on this view, is one thing and its practical implementation another, so we should not confuse the two by pretending that, for example, the legal entitlements I had in my examples were just when they are not actually required to ensure my equal opportunity but are instead afforded to me as grudging concessions to concerns about instituting that value in feasible ways.²

Thinking of laws and rules as simply useful but imperfect means for achieving an independent goal, such as equality of opportunity, does not fully capture the value that many of us think laws and rules can have. Laws and rules can, and often do, become part of morally valuable relationships of friendship, solidarity, community, and humanity. Laws and rules that we accept tend to regulate our behavior and our interactions with others; they provide a basis for mutual-expectations about our actions and attitudes; they are part of our shared activities, projects and goals; they often allow us to show respect to others; and they provide a way for us to communicate our moral commitments to one another.³ Laws and rules that meet certain moral standards are an essential part of the valuable relationships we should or should aspire to have with our fellow citizens who do not simply see them as devices of social control but instead as helping to structure relationships and activities that they value for their own sakes.

For laws and rules to serve these morally important social functions, they have to be practicable in various ways: For example, they must be publicly known or knowable, which limits how complicated the rules can be; they must be able to regulate our deliberations and behavior, which limits how difficult they can be to follow and apply to particular cases; they must be enforceable, which implies that we are generally able to tell when they are violated; and

² (Cohen 2008, 259,265–268, and ch.7) argues in this way. For other discussions of institutional justice and feasibility, see (Cohen 2001, Mason 2012, Freeman 2007, Pogge 2000, Valentini 2012, Gilibert 2012, Chahboun 2017).

³ See (Cureton 2012, 2015, Scanlon 1998, Rawls 1999c).

they cannot be so broadly written as to invite too much abuse. Tailoring laws about disability accommodations so that they can serve as the basis of morally worthwhile relationships among people is not, on this view, sacrificing justice to mere expediency but rather expressing the value of these relationships as a part of justice itself. Equal opportunity and the solidary relationships based on shared laws of certain kinds are both basic concerns of justice that, combined with other relevant aspects of justice, determine what laws are just or unjust. Although equal opportunity, on its own, does not justify affording me an entitlement to park in the disability space, take the extra time, or sit in the disability section, that value combined with the value of workable laws that enhance and make possible morally valuable relationships among citizens together provide a strong case that my legal entitlements are just.

4. Duties of Justice

Let's suppose that my legal entitlements to park in the disability space, take the extra time on the exam, and sit in the disability section are not required to ensure equality of opportunity for me in those particular cases but that they are all nonetheless justly afforded to me as part of a feasible legal system for implementing equality of opportunity. My cases are merely among the relatively rare "false-positives" that justice countenances in order to establish and maintain workable laws and rules that help to bind people together in morally valuable relationships of solidarity. How, then, should we think about the morality of exercising or claiming these just legal entitlements?

Simply having a just legal right does not always protect us from legitimate charges that exercising it is morally wrong. For example, lobbing offensive insults at others is often immoral even when we our right to free speech legally permits us to do so; and refusing to donate any of our significant wealth that we are justly entitled to is arguably wrong. Exercising my just legal rights to accommodations would be morally wrong if doing so is incompatible with the moral duties I have as an individual. In my cases, however, making use of the accommodations does not seem to violate widely accepted moral duties about, for example, respect, beneficence, harm, or lying.

The moral qualms we may have about exercising my entitlements in those circumstances instead seem to arise from the value of justice itself because of the apparent injustice of using these special privileges when they are not necessary to secure my equal opportunity. Yet if my legal entitlements are just then how could I be unjustly exploiting the rules, taking unfair

advantage of them, or otherwise acting unjustly by exercising those entitlements? Justice specifies how to arrange a legal system fairly, so can we legitimately accuse someone of acting unjustly when she is acting within the rights afforded to her by that system?

Let's consider what sorts of duties that justice imposes on the conduct of individuals. One widely accepted duty of justice is to comply with just laws and perhaps also with ones that are nearly just. In my examples, however, compliance with the law is not relevant to what I should do because I would not be breaking any law by using or not using the accommodations. We also arguably have a duty of justice to take due care in applying just laws to particular cases, which we can assume I did because I knew the relevant laws entitle me to the accommodations. Justice arguably requires us to understand and appreciate just laws and the positions they define by, for example, standing up for our just legal rights. I understood and deeply valued my legal rights to accommodations so my reluctance to press them did not arise from a failure to do so, a willingness to allow others to trample on them, or a misplaced reluctance to accept assistance from others.

These apparent duties of justice do not prohibit me from using the accommodations or from not doing so, but we arguably also have a duty of justice to support, not undermine, and further just institutions. Mutual trust and confidence among citizens is an especially important ingredient in establishing and maintaining just institutions, yet these attitudes tend to be undermined when we think others are taking advantage of inevitable loopholes in the law for the sake of their own interests. The long-term stability of just institutions tends to be threatened when citizens are aware that others are exploiting just legal entitlements that arise from the need to make laws (Rawls 1999c, 312). If people generally knew that disabled people were demanding and receiving accommodations far beyond what is needed to ensure our equal opportunity then this might lead to widespread distrust and suspicion toward disabled people and erode support for the kinds of just institutions that protect our basic rights, prohibit discrimination against us, and provide us with accommodations.

We might wonder, however, whether it is morally appropriate to have diminished trust and confidence in others for using accommodations that they are justly entitled to? Once we understand the values of justice that underlie those entitlements, including the importance of formulating workable laws that can serve as a basis for moral valuable relationships, then it seems we should not regard others as "gaming the system", see them as "unfairly exploiting

loopholes” or otherwise become distrustful of them simply for playing within the rules of just institutions. The duty to support, further, and not undermine such institutions should generally favor counteracting mistaken and illegitimate attitudes directly over diminishing the occasions that tend to encourage them.

The duty to support, not undermine, and further just institutions may sometimes give disabled people reasons not to exercise our just legal rights because of the effects that doing so might have on those institutions. But if we continue to suppose in my examples that using the accommodations will not affect mutual trust and confidence, give rise to envy and jealousy, or otherwise affect the existence or viability of just institutions then this duty does not determine whether or not justice prohibits me from exercising my entitlements. After all, no one outside my family would know that the accommodations are not needed to secure my equal opportunity; few people will know that I am using an accommodation in the first place; and those who are aware I am doing so will likely assume that I am not acting unjustly in claiming, accepting, or using them.

The basic moral duties that justice imposes on the conduct of individuals determine how we should, at a minimum, act with regard to the basic economic, political and social institutions of society. These duties are necessary for the existence and maintenance of just institutions; they provide a shared standpoint for assessing the conduct of one another; they are needed to make a society’s basic arrangements into a morally valuable shared activity; and they form part of the basis of morally worthwhile kinds of solidarity among members of society. None of these aims is necessarily thwarted or undermined by simply taking advantage of just entitlements when we have them in a particular case. Other moral duties of justice, such as the duty not to undermine just institutions, may sometimes require us not to exercise our just entitlements, but not in the cases I described.

Even if this argument is basically correct, there may be a lingering suspicion that it is still somehow unfair or unjust of me to use the accommodations when they are not needed to secure my equal opportunity. Is there another way to explain this unease while also accepting that justice does not morally require me to forgo the accommodations in those circumstances? I think there is if we distinguish between our basic moral duties of justice, which are morally wrong to violate, and ideals of justice, which we should aspire to satisfy and bring about even though we do not in most cases act wrongly by failing to do so.

5. Ideals of Justice

Duties and principles of right and wrong are not the only standards by which we can morally evaluate our actions; how we act can also be, for example, base and sleazy as well as admirable and supererogatory. On a Kantian way of thinking, for example, although we may not be morally required to give most of our money to charity, our commitment to a moral ideal of general wellbeing may lead some of us to do so. We tend to admire those who promote do far more to promote the wellbeing of others than any of us is morally required to do. The rest of us do not necessarily violate our duty of beneficence by choosing to spend a large portion of our money in other ways, including on ourselves.

Moral ideals can play significant roles in our moral lives. They can define goals to work towards and standards for reform; they can give us hope for a better future while diminishing cynicism and despair; they can motivate us to go above and beyond the call of duty; our shared commitment to them can bind us in morally valuable relationships of love, friendship and solidarity; and moral ideals can provide a basis for integrity and self-respect when we strive to live out in our own lives the moral ideals that we are most firmly committed to.⁴

Moral ideals are not merely personal ideals, such as ideals of art or sport, because they are defined and justified by moral values, such as those of human dignity, wellbeing, respect and justice. Some moral ideals may come into conflict with one another, which requires further moral reflection on their nature and scope. As long as we do not violate our moral duties, we can favor some moral ideals over others and freely decide how to incorporate them into our lives. Some people have deep commitments to environmental causes while are committed to diminishing racism or sexism; some people focus on promoting their own moral perfection while others focus on morally educating others; but in each case these people are motivated and guided by a morally ideal state of affairs, such as a harmonious natural environment or a world without sexism or racism, that they are attempting to promote or live out in their own lives. These moral ideals may not be possible or likely to come about, and they may need to be adjusted by other moral ideals into an overall ideal of a morally perfect world, but they nonetheless provide morally important goals that are worth striving for.

The value of justice gives us several moral ideals. One ideal of justice is that of a perfectly just society in which our basic institutions perfectly conform to the requirements of

⁴ For discussions of moral ideals, see (Hill 2000, Forthcoming, Strawson 1961, Brownlee 2010, Stohr 2019)

justice and everyone accepts and complies with them. This ideal is realizable because the workable principles, laws, and rules that partially constitute it are adjusted to facts about human nature and the natural world, including our limited cognitive abilities, our psychological tendencies, and other features that allow them to bind members of society together in morally valuable relationships. A society of this sort is the best we could achieve as a matter of justice, taking people as they are and society as it can. Our commitment to this practicable ideal of justice might lead us to go beyond our duties of justice by, for example, working tirelessly to make our institutions just or following these ideal rules in our own lives even when they are not currently embodied in our institutional structures.

We can imagine another ideal of justice in which each of its constituent values are fully realized without any conflicts among them arising from facts about their workability for human beings in the natural world. This ideal abstracts from such facts and defines a state of affairs in which justice is fully and completely realized apart from any difficulties human beings might have in understanding, applying, enforcing, or following them. We imagine that people in such a world are, for instance, omniscient, morally perfect, and otherwise not subject to the limitations and deficiencies that require us to ensure that principles, laws and rules are simple, knowable, enforceable or otherwise workable for human beings in the natural world. In this ideal, everyone knows the principles, laws, and rules that make up their basic institutions and their duties with regard to them; they are also bound together in solidary relationships by these institutions and duties; so there is no need for the principles, laws and rules to “round edges”, “cut corners” or otherwise incorporate concerns about their feasibility. They will serve their practical social functions in such a world no matter how complex and intricate they may be.

Unlike the practicable ideal of justice, this ideal is not realizable for human beings in the natural world, so it is unsuitable as a goal for us to strive to bring about. But there are other valuable roles that such an ideal can play in our lives.

Consider again the value of equal opportunity. We can describe an unrealizable ideal of justice as a world in which everyone has an equal opportunity to fully participate in all aspects of society. Assuming this ideal is consistent with other ideals of justice, such as everyone having their full gambit of basic rights and liberties, we can imagine that there are still disabled people in such a world and that each of them is guaranteed only those entitlements that are needed to secure her equal opportunity. There are thus no “false-positives” or “false-negatives” because

everyone has the entitlements that she needs for her equal opportunity and no one has entitlements that she does not need for her equal opportunity. The institutions of such a society perfectly implement the value of equal opportunity on the basis of relevant facts that are often difficult or impossible for us to know, such as ones concerning what disability accommodations which people need in what circumstances.

It is easy to describe a world of this sort in the abstract but much more difficult to define what equality of opportunity of this sort requires when we are freed of concerns about implementing it in feasible ways. We can say that I would not be legally entitled to use the accommodations in the cases I described if, as I assume, they are not needed to secure my equal opportunity in those particular circumstances. However, I would be afforded these accommodations in the most just world that we can attain because of the need to make laws and rules workable. But if we set aside such concerns of feasibility then our moral reflections lead us to the idea of an unrealizable world in which I would not be given the option to use them. What, if any, implications could this unrealizable ideal have for my moral deliberations about whether to park in the disability space, take the extra exam time, or sit in the disability seating?

Although, as I have argued, I would not have violated a duty of justice by taking the accommodations, my commitment to justice and, in particular, to the ideal of equal opportunity gives me moral reasons to incorporate that ideal into my life by attempting to act as I and others would in the unrealizable ideal world. I might reason, in particular, that I would not take the accommodations in an unrealizable world of perfect equality of opportunity because I would not be entitled to them in that world, so I will not take them in this world either when I know that I do not need them to secure my equal opportunity. If I were a fully just person, I would affirm the following claims on the basis of my commitment to justice itself: I am justly entitled to park in the disability space, take the extra time on the exam, and sit in the disability seating because these entitlements are part of the most just institutions that are possible for human beings in the natural world; I am under no duty of justice not to exercise my entitlements because there are not sufficient reasons of justice to prohibit me from doing so; yet I will not exercise these entitlements in these circumstances because I would not have them in a perfectly just, but unrealizable, world of full equality of opportunity.

Few, if any, of us are fully just; there are many other moral ideals that we can pursue in our lives; and we always retain the freedom to fill our lives with more pedestrian goals and

projects as long as we stay within the bounds of our moral duties. I have suggested one way of nonetheless explaining some of the moral compunction I had about exercising my entitlements, which is that they involved failing to fully realize an ideal that I am deeply committed to. Guilt is not the appropriate attitude for me to have for times I took accommodations I did not need when I did nothing wrong in those cases; self-reproach, internal conflict, and shame are closer to what I felt for missing opportunities to live out ideals that I and others share.

Complicated moral questions remain about what the various ideals of justice imply for situations in which, for example, we are not sure whether we need disability accommodations, we are somewhat biased in these assessments, or our entitlements are not fully just, but rather than pursue these issues, let's turn to consider what the partial moral framework I have sketched implies about those who are legally required to provide the accommodations that disabled people are justly entitled to. We might worry, in particular, that if a fully just person would not use the accommodations I was entitled to in the circumstances I described then a fully just person might not provide those accommodations in those circumstances either. Perhaps a police-officer, teacher, and box-office official who is deeply committed to justice might write me a parking ticket, deny me the extra time, and refuse to give me special seating if they knew that giving me these accommodations is not needed to secure my equal opportunity in an unrealizably ideal world.

6. Fulfilling Just Entitlements

People who have just legal entitlements to something are in a fundamentally different moral situation than those who are legally required to fulfill those entitlements. The relevant laws and rules legally permit someone with an entitlement to exercise it or not but they legally require others to satisfy the entitlement if it is claimed or exercised. The moral duty to comply with just laws requires people in the latter group to fulfill their just legal obligations, but it does not require those in the former group to forgo exercising their entitlements. Police officers, teachers, and box-office officials thus had a moral duty of justice to provide and not interfere with the accommodations I was entitled to if I requested them whereas I am arguably under no duty of justice to request or forgo them. If we could be sure that the duty to comply with just laws takes absolute precedence over all other considerations of justice then we could conclude that justice, all things considered, requires them to satisfy my entitlements even when I do not need them to secure my equal opportunity.

It is not obvious, however, that the duty to comply with just laws always takes priority over other concerns of justice. If breaking a just law in an open and non-violent way is necessary to reform unjust segments of the law or to prevent the destruction of just institutions then it is not always clear what justice requires us to do. It is not even apparent in all cases that fulfilling duties of justice is more important than supporting ideals of justice. In my cases, suppose that I and the police officers, teachers, and box-office officials affirm the unrealizable ideal of justice, know that I do not need special parking, testing or seating to secure my equal opportunity in the circumstances I described, and so agree that I would not be entitled to them in a world of perfect equality of opportunity. Our common commitment to this ideal gives them reasons not to afford me the accommodations and it gives me reasons not to use them. Because I am under no duty of justice to exercise my entitlements or not, I am free to act on my ideals by choosing not to do so, but the police-officer, teacher, and box-office official face a conflict between their duty of justice to provide the accommodation and their accepted ideal of justice, which gives them putative moral reasons not to do so.

Although the duty to comply with just laws could incorporate exceptions allowing us to break them for the sake of certain ideals, no such exception should be included for my three cases. The duty to comply with just laws is supported, in significant part, by the value of creating and maintaining morally valuable ties of solidarity among members of society, which not only justifies making laws and rules workable, but also justifies making our corresponding duties of justice feasible as well so that we can understand, apply, and enforce them in ways that bind us together as a community. Although we can recognize the importance of ideals of justice, including ones that are unrealizable for us, relationships of civic friendship and solidarity give the police officer, teachers, and box-office officials sufficient reason to fulfill their moral duty to comply with just laws and so to provide me accommodations I am justly entitled to and ask for. The unrealizable ideal of perfect equality of opportunity does not take account of real-world conditions that affect the valuable social functions of just institutions and moral duties of justice, so that ideal rarely, if ever, justifies breaking laws that are performing those functions well. Refusing to exercise just entitlements on the basis of this ideal, on the other hand, does not undermine these social functions of just institutions and moral duties and so does not prevent a just person from forgoing accommodations she is justly owed.

There are other ways that their commitment to an unrealizable ideal of equal opportunity

might permissibly affect how the police-officer, teachers, and box-office officials act. They might, for example, attempt to persuade me not to use the accommodations while nonetheless emphasizing that they stand ready to provide them if requested. Their duty to comply with just laws, however, extends to not interfering with my just legal rights through pressure and undue influence, and the line between goading and guiding people is often blurry or hard to define, so they must take special care not to infringe on my just legal rights in even subtle ways. Often our friends, family, and loved-ones are in the best positions to discuss these matters with us, so a favorite teacher might carefully broach the issue of whether the extra time on the test is appropriate in these circumstances, whereas it would usually be unjustly intrusive for a police-officer or box-office official I have never met to disapprovingly question me about whether I really need the parking space or special seating.

Shared commitments to ideals of justice, including ones that are unrealizable, can provide the basis for bonds of community and solidarity among small groups of people who know one another well, but in large-scale societies, morally valuable relationships of justice can only be grounded on principles, laws and rules that we can all understand, apply and enforce. The duty to comply with just laws is a very great moral duty that we should rarely, if ever, violate for the sake of our commitment to ideals of justice, but such ideals can nonetheless play important roles in our lives by, in particular, sometimes leading us not to exercise our just entitlements.

7. Final Remarks

I have been assessing my legal entitlements to the parking space, the extra testing time, and the disability seating, as well as whether or not I should or should aspire to exercise them, by the value of equal opportunity and by the need to implement that value in workable ways. Doing so allowed me to illustrate a puzzle about whether those values of justice can both justify legal entitlements to the accommodations as well as give me reasons not to use them when they are not necessary to secure my equality of opportunity. Real-world cases, likely including the ones my examples were drawn from, tend to be more complicated than I have assumed here by incorporating other values of justice than the two I have focused on or by calling on more nuanced interpretations of those values than I have given.

We might think, in particular, that my entitlements to park in the disability space, take the extra time, or sit in the disability seating are just in the circumstances I described because, even though these accommodations are not needed to overcome obstacles to my equal opportunity on

those specific occasions, affording them to me helps to make up for past injustices I have most likely suffered as a result of my disability. I and other disabled people have been discriminated against; our basic rights have been violated; and we have been denied accommodations, all on the basis of our disabilities, so it may seem that the value of equality of opportunity favors measures that correct for these past infringements, ensures equality of opportunity in the long term, publicly acknowledge past wrongs, and express a collective commitment to do better in the future. Although I did not face barriers to my equal opportunity in the cases I described, I faced barriers on other occasions that diminished my equality of opportunity and so justify affording me legal entitlements to the disability parking space, extra testing time, and disability seating.⁵ If my entitlements to the accommodations are justified on these grounds of affirmative action then my commitment to an unrealizable ideal of equal opportunity may still give me reasons not to use them because in a world of perfect equality of opportunity no infringements of that value have ever occurred. We could, however, define other ideals of justice in which, for example, a society is in the process of achieving equality of opportunity after a history of violating it, so my commitment to that ideal might give me reasons to accept the accommodations.

The nature of affirmative action, whether or how it is justified, and its implications for the conduct of individuals are all important and controversial moral issues, particularly in the context of disability, but I want to end by cautioning against regarding disability accommodations as wholly or mostly justified on grounds of affirmative action. Large print forms, sign-language interpreters, wheelchair ramps, and other accommodations are often needed to secure a basic level of equal opportunity for disabled people. They are usually responses to particular social or physical barriers we face to such participation. Justice arguably gives precedence to correcting such barriers over ones we face that do not significantly interfere with securing our equal opportunity. Justice also arguably favors eliminating barriers to full equality of opportunity over making up for them with greater than equal opportunities in other areas of life. Justifying these claims depends on a broader theory of justice than I have given here, likely one that emphasizes the importance of respect, self-respect and the messages that laws and rules can send, but it intuitively seems less than fully just, for example, to afford special parking privileges to African Americans because of educational discrimination they have suffered or to allow special basketball seating to women rather than address the gender wage gap directly.

⁵ For discussions of affirmative action, see (Hill 1991, Taylor 2009, Boxill 1984, Dworkin 1977, 223-39, Sher 1979)

Affirmative action for disabled people may sometimes be justified, but we should take care to separate these considerations from ones that are more central to the value of equality of opportunity. Many disabled people need various kinds of accommodations to have any chance at participating as full and equal members of society. Although it is not always wise for us to use them, it is rarely wrong to do so, which suggests that all of us should aspire to be the sort of person who refuses just entitlements on grounds of justice itself.

Works cited

- Boxill, Bernard. 1984. *Blacks and Social Justice*. New York: Rowman & Littlefield Publishers.
- Boxill, Bernard, and Jan Boxill. 2015. "Servility and Self-Respect: An African-American and Feminist Critique." In *Reason, Value, and Respect: Kantian Themes from the Philosophy of Thomas E. Hill, Jr.*, edited by Mark Timmons and Robert N. Johnson, 19-41. Oxford: Oxford University Press.
- Brownlee, Kimberley. 2010. "Reasons and Ideals." *Philosophical Studies* 151 (3):433-444.
- Chahboun, Naima. 2017. "Three Feasibility Constraints on the Concept of Justice." *Res Publica* 23 (4):431-452.
- Cohen, G. A. 1995. *Self-Ownership, Freedom, and Equality, Studies in Marxism and Social Theory*. Cambridge: Cambridge University Press.
- Cohen, G. A. 2008. *Rescuing Justice and Equality*. Cambridge, MA: Harvard University Press.
- Cohen, G. A. 2009. *Why Not Socialism?* Princeton, NJ: Princeton University Press.
- Cohen, Joshua. 2001. "Taking People as They Are?" *Philosophy & Public Affairs* 30 (4):363-386.
- Cureton, Adam. 2012. "Solidarity and Social Moral Rules." *Ethical Theory and Moral Practice* 15 (5):691-706.
- Cureton, Adam. 2015. "Making Room for Rules." *Philosophical Studies* 172 (3):737-759.
- Cureton, Adam. 2016. "Offensive Beneficence." *Journal of the American Philosophical Association* 2 (1):74-90.
- Cureton, Adam. 2018. "Hiding a Disability and Passing as Non-Disabled." In *Disability in Practice: Attitudes, Policies, and Relationships*, edited by Adam Cureton and Thomas E. Hill, Jr., 15-32. Oxford: Oxford University Press.
- Dworkin, Ronald. 1977. *Taking Rights Seriously*. Cambridge, MA: Harvard University Press.
- Freeman, Samuel. 2007. *Rawls*. New York: Routledge.
- Gilabert, Pablo. 2012. "Comparative Assessments of Justice, Political Feasibility, and Ideal Theory." *Ethical Theory and Moral Practice* 15 (1):39-56.
- Hill, Thomas E., Jr. 1991. "The Message of Affirmative Action." In *Autonomy and Self-Respect*. Cambridge: Cambridge University Press.
- Hill, Thomas E., Jr. 2000. "A Kantian Perspective on Political Violence." In *Respect, Pluralism, and Justice: Kantian Perspectives*, 200-236. Oxford: Oxford University Press.
- Hill, Thomas E., Jr. Forthcoming. "Ideals of Appreciation and Expressions of Respect." In *Oxford Handbook of Philosophy and Disability*, edited by Adam Cureton and David Wasserman. Oxford: Oxford University Press.
- Kant, Immanuel. 1996a. "Lectures on the Philosophical Doctrine of Religion." In *Religion and*

- Rational Theology*, edited by Allen W. Wood and George di Giovanni, 335-452. Cambridge: Cambridge University Press.
- Kant, Immanuel. 1996b. "The Metaphysics of Morals." In *Practical Philosophy*, edited by Mary J. Gregor, 353-604. Cambridge: Cambridge University Press.
- Mason, Andrew. 2012. "What Is the Point of Justice?" *Utilitas* 24 (4):525-547.
- Pogge, Thomas W. 2000. "On the Site of Distributive Justice: Reflections on Cohen and Murphy." *Philosophy & Public Affairs* 29 (2):137-169.
- Rawls, John. 1999a. "Justice as Fairness." In *Collected Papers*, edited by Samuel Freeman, 47-72. Cambridge, MA: Harvard University Press.
- Rawls, John. 1999b. "Justice as Reciprocity." In *Collected Papers*, edited by Samuel Freeman, 190-224. Cambridge, MA: Harvard University Press.
- Rawls, John. 1999c. *A Theory of Justice*. Edited by Rev. Cambridge, MA: Belknap Press of Harvard University Press.
- Scanlon, T.M. 1998. *What We Owe to Each Other*. Cambridge, MA: Belknap Press of Harvard University Press.
- Sher, George. 1979. "Reverse Discrimination, the Future, and the Past." *Ethics* 90 (1):81-87.
- Stohr, Karen. 2019. *Minding the Gap: Moral Ideals and Moral Improvement*. Oxford: Oxford University Press.
- Strawson, P. F. 1961. "Social Morality and Individual Ideal." *Philosophy* 36 (136):1-17.
- Taylor, Robert S. 2009. "Rawlsian Affirmative Action." *Ethics* 119 (3):476-506.
- Valentini, Laura. 2012. *Justice in a Globalized World: A Normative Framework*. Oxford: Oxford University Press.