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# Doing More Than One's Fair Share<sup>i</sup>

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## 1. Introduction

Global injustices require collective solutions. But when some parties fail to do their fair share, does this land the others with a duty to take up the slack? I have in mind here situations in which a group of people is under a duty to help others who find themselves in dire need. Assuming that some of the agents in the first group refuse to do their fair share of helping, and assuming that taking up the slack they leave behind would not impose unreasonable costs on those who might take it up, is there a duty of justice to take up the slack? Or does justice require only that everyone does his or her fair share?

This question of slack taking is usually posed in global justice debates from the perspective of the citizens of affluent states: are such agents under a duty of justice to take up the slack left behind by others for the sake of helping poor foreigners? This gives the debate an air of unreality: There is very little prospect that slack taking may become a mass phenomenon. But once we shift our focus to the developing world, we see plenty of slack taking around. Consider the case of refugees.<sup>ii</sup> The states that shoulder most of the burden of accommodating refugees (call them ‘host states’) are developing states.<sup>iii</sup> These host states take up much of the slack left behind by affluent states. They do so not merely because of their geographical location near the zones that ‘create’ refugees. The fact that the refugees flee to and stay in the poor states is in part the result of the restrictive visa policies and other border control measures adopted by the affluent states.<sup>iv</sup> Assuming - as I think we have good reason to - that the affluent states could accommodate more refugees without bearing undue costs, and assuming that refugees have the right to adequate protection, the host states appear to be taking up the slack left behind by the affluent ones, on a large scale.

The main aim of this paper is to defend the duty to take up the slack when slack taking is necessary to assist those in dire need. This duty has been criticized by J. L. Cohen, Liam Murphy and, more recently, David Miller.<sup>v</sup> Section 2 outlines the duty and the remaining sections explain why objections to it remain unpersuasive. Section 3 reviews Murphy’s key conceptual argument. Section 4 shows that concern with fair shares can never outweigh the concern with dire need. Section 5 examines Miller’s and Cohen’s counterintuitiveness argument; section 6, Cohen’s perverse consequences argument; section 7, Murphy’s and Miller’s responsibility argument. Section 8 considers the potentially counterintuitive implications of the duty. I conclude in section 9 by considering the duty of states to take up slack.

In what follows I reserve the word ‘victims’ to refer to those in dire need. I call them victims to emphasise their dire situation and because, for simplicity, I focus on persons whose need is not of their own making. ‘Duty to aid’ refers to the (collective as well as the correlate individual) duty to assist someone in dire need whether or not it involves slack taking. When one’s aiding involves fulfilling one’s fair share of the collective duty to aid, I refer to it as fulfilling one’s ‘fair duty to aid’; when it involves doing more than one’s fair share, I refer to it as fulfilling one’s ‘duty to take up slack’. I do not mean to suggest thereby that the fair duty to aid and the duty to take up slack must be understood as distinct duties. If they are best conceived as the same duty to aid, then the question that I pose is whether the boundaries of the duty to aid are set by fair shares. The agents who do less than their fair share of fulfilling duties to aid are ‘noncompliers’ or ‘slackers’, while those who do at least their fair share are ‘compliers’ even if they do not to take up the slack in the presence of duty to do so. If they do take up slack, they are ‘slack takers’. ‘Slack taking’ refers to the action of contributing at least some of the equivalent of a noncomplier’s fair share. Slack taking involves substantive unfairness between the compliers and noncompliers, that is, the unfairness is comparative and concerns tangible burdens that people are asked to bear relative to one another. A distribution is substantively unfair in this sense when the burden that each person is asked to bear is disproportionate in relation to what another person is asked to bear.<sup>vi</sup>

My question, then, concerns whether there is a duty to do more than one’s fair share of aiding in circumstances in which others shirk their responsibilities and the potential slack takers cannot - physically or permissibly - force the noncompliers to comply, or whether the duty to aid runs out once one has fulfilled one’s fair share. To focus only on the question of whether the duty to aid is limited to one’s fair share of aiding, I will make a number of assumptions. I will assume that there is a fair duty to aid,<sup>vii</sup> which is enforceable in the sense that the duty-bearer would not be wronged if appropriate coercion was used to enforce compliance with the duty.<sup>viii</sup> To be precise, I assume that such an enforceable duty exists when we can aid those in dire need at a reasonable cost to ourselves. I assume that the ‘reasonable cost’ condition has always already been met and so does not bear on whether there is a duty in any given case.<sup>ix</sup> The enforceable duty to aid is a *positive* duty in the specific sense that it binds people even if they are not themselves responsible for forcing victims into dire need. I assume that, at least in principle, we can be bound by enforceable duties of aid to foreigners and I put aside the problem of special obligations, assuming that the

duty bearers have no special relationship with those in dire need. That is, the duty that concerns me arises simply on account of the right all humans have not to suffer dire need. Given the shape of the postulated fair duty to aid, my main question becomes whether there is an enforceable duty to take up slack, up to a reasonable cost to oneself, or whether the duty to aid always runs out once one has fulfilled one's fair share, even if some dire need would go unmet.

## **2. The Duty to Take Up the Slack**

If we start with the thought that simply being in a position to aid those in dire need at a reasonable cost to oneself can generate an enforceable duty to do so, then the general and simple idea behind the further thought that there is also a duty to take up the slack is this: If we are under an enforceable duty to help those in dire need at a reasonable cost to ourselves, we remain under such a duty even if helping involves slack taking. It is hard to believe that what gives rise to our duties to aid is not the *dire need* itself but the *dire need in the absence of slacking*.<sup>x</sup> If dire need gives rise to the duty when eliminating it comes at a reasonable cost, then the duty persists while the dire need persists even if its persistence is due to noncompliance. On this account, the duty to aid is sensitive to the presence of noncompliance. Noncompliance can affect what the compliers must do in a range of ways. For example, it can trigger a duty to aid for the complier where previously there was none. This is the case if the conduct of the noncomplier is reasonably seen by the victim as a slap in the face (I am in need and he laughs at it!), making the victim's plight worse than it would otherwise have been. It can change the content of the action that the complier is under a duty to perform (while the costs to the complier stay the same). For example, if instead of helping A, as she should, the non-complier helps B, the complier may now need to help A rather than B. It can reduce how much the complier is required to do, even eliminating the duty to aid altogether, when the noncomplier's actions affect the burden of aiding that would fall on the complier, pushing it beyond the reasonable limit, or when the noncomplier's actions render assistance ineffective. In what follows, I focus on cases where noncompliance can increase how much aiding is required from the compliers.

## **3. The Appeal to the Structure of the Duty to Aid**

One concern with the duty to take up slack is that it allows noncompliers, through their actions, to increase the burdens that fall on those who are willing to comply with moral demands. However, the duty to take up slack is not unique in this respect. Any plausible duty to aid must already accept that noncompliers's conduct can increase the burden that falls on compliers. Otherwise there

could never be a duty to aid in the face of dire need generated by noncomplying actions, such as killings, theft, aggression or exploitation. But this is implausible: the duty to aid is not meant to be triggered only by dire need arising out of the operation of the natural world or innocent human conduct. And since noncompliance involving violations of negative duties can trigger the duty to step in and help its victims, why should noncompliance that takes the specific form of withholding one's fair share of aiding not trigger the duty to step in and take up the slack?

Liam Murphy has attempted to explain this difference with reference to the structure of the duty to aid (or the duty of beneficence).<sup>xi</sup> Specifically, as he correctly observed, the duty to aid falls on everyone in a position to help; hence the duty to aid is a collective duty. However, since it is ultimately individuals who act, any collective duty needs to be parceled out among the relevant agents and this division must be done fairly. Murphy does not supply precise criteria for a fair distribution of the collective duty but the core idea is that the burdens of effective reasonable action in pursuit of the collective duty do not advantage some at the expense of others. Thus, he is concerned with what I called substantively fair distribution. Following a fair division, each person is then individually responsible for what has been allocated to her and not for what has been allocated to someone else. But if it is not her responsibility to carry a burden assigned to someone else, then, in other words, it is not her duty to carry it. Hence, there is no duty to take up the slack. All in all, it is because each individual duty is a fair derivative of the collective duty that individuals are not under a duty to do more than their fair share each. And this is why, on Murphy's account, violations of negative duties may trigger the duty to aid even when this involves absorbing costs of the noncompliance of others, while the non-fulfillment of the individually parceled out derivative duties to aid cannot affect what costs others must bear: one's individually parceled out derivative duty to aid must be a fair share of the collective duty (and no more).

But Murphy's account is ultimately unpersuasive. First, Murphy's view has some very odd implications. Suppose the complier C and the noncomplier N, who are both very well-off, are collectively under a duty to the victim V to feed him with C and N each under a duty to contribute 50% of the food that is minimally necessary to keep V healthy. And suppose that N not only fails to contribute his 50% but, in addition, steals V's textbooks before disappearing off the scene. If we assume that the theft of textbooks is grave enough to trigger a duty for C to aid with their replacement, then on Murphy's account C now has a duty to help replace the textbooks but no duty

to supply the missing food necessary to keep V healthy. Assuming that health is more important than textbooks, this is a very odd result.

To see a further odd implication of the idea that what an individual must do is defined by one's fair share, consider a variant of the Singerian pond scenarios. Assume that a fair share for one of ten adults by a lake is to save one of ten children drowning in it. Imagine that one person unilaterally saves all ten children at no detectable cost to herself. But if, as Murphy holds, what one is under a duty to do does not depend on what others in the group do, the remaining nine people seem to remain under a duty to save a child each. This should strike us as bizarre.<sup>xii</sup> It might be objected that the strange conclusion does not arise: the duty disappears because it is no longer possible to fulfill it (just as it would be had the children climbed out themselves). But this defence already concedes the main point: one's duty is not defined simply with reference to one's initial fair share but with reference to what remains to be done in light of the actions of others.

In response Murphy could argue that what we might call 'over-compliance' – the persistence of duties even once a problem has been solved by someone doing more than her fair share – does not pose the same problem for Murphy's view as non-compliance. After all, 'over-compliance', while odd (people remain under a duty when it is no longer possible to fulfill it), is compatible with respecting a fair distribution of the collective duty in the sense that no one is burdened with more than her fair share. Notice, however, that this way of defending 'over-compliance' brings to the fore that Murphy's conceptual move – that the content of the individual duty is fixed at time T1 when the collective duty is fairly parceled out – is motivated by the normative concern to protect duty bearers from unfairness. If this is the motivation, it makes the account vulnerable to the following challenge. True, fairness among duty bearers is a value, but why must this value take lexical priority over the value of securing effective help for those whose plight triggers the duty of beneficence in the first place? After all, as Murphy himself admits, the notion of fairness at stake here – the fairness among those under the collective duty of beneficence – is 'limited'.<sup>xiii</sup> It is not obvious why we must see protecting it as more important than ensuring, say, that no one suffers from dire need.

That is, we may agree with Murphy that it is desirable to distribute responsibility for fulfilling the collective duty in a way that minimizes *intra*-group unfairness. But we may hold that it is also desirable to distribute responsibility for fulfilling the collective duty in a way that minimizes dire

need. And so we may hold that it is better, at least sometimes, to distribute responsibility for the pursuit of a moral aim among agents in a way that minimizes dire need even at the expense of intra-group unfairness.

To resist the above challenge, Murphy might respond that fixing the content of individual duties at time T1 and thus making them insensitive to the amount of compliance is a conceptual necessity that is not motivated simply (or at all) by the desire to prioritise substantive fairness among duty bearers. He may insist that duties of beneficence fall on individuals as group members only, never as individuals *simpliciter*, and they fall on group members only as fair share derivations of the collective duty.

Ultimately, however, it is unclear why we should accept this. The idea of individual, non-derivative duties of beneficence makes sense. Murphy may respond that his account deals well with cases where the best way for an individual to fulfill the duty to aid is not by aiding herself but by encouraging others to aid or not preventing them from offering even more aid: it is because individual duties derive from the collective duty that they can have such variable content.<sup>xiv</sup> But individual, non-derivative duties can deal with such cases too simply by being sensitive to what others do. In other words, they can be focused on outcomes – asking individuals to advance them – thus accommodating the insight that sometimes the best way of fulfilling one’s individual duty to aid is to stay at home and let others do the work. Furthermore, even if individual duties were irreducibly derivative, it is unclear why the individual derivative duties must represent a fair share of the collective duty rather than a fair share of whatever actually needs to be done to fulfill the duty? In other words, why must the constraint for the derivation of individual duties be that of fairness rather than, in lexical priority, effectiveness and fairness?<sup>xv</sup> After all, when we are deriving specific prohibitions from, say, the individual negative duty not to kill, such prohibitions change depending on what will effectively deliver the duty: e.g. where there is poison in the water, a doctor should not give water to her thirsty patient. We should think of the derivation of the individual derivative duties from the collective duty along the same lines: the individual duties must effectively deliver the objectives of the collective duty. In sum, Murphy’s strategy to conceptualize the duty to aid as insensitive to the presence of noncompliance is either without foundations or the foundations are normatively unappealing.

#### **4. The Appeal to the Weight of Substantive Unfairness**

We may accept that there is no conceptual reason why the duty to aid could not involve slack taking, and reject the view that substantive fairness between compliers and noncompliers is lexically prior to eliminating dire need, but still think that at least sometimes concern with fairness will trump reasons in favour of the duty to take up slack. Let me, then, explain why unfairness alone is never sufficient to invalidate enforceable duties to aid.

Consider the worst case scenario for the duty to take up slack. Suppose that even in the absence of noncompliers, one would only barely be under an enforceable duty to aid those in dire need (say, because the burden of helping only just falls under the ‘reasonable burden’ threshold) and, moreover, that, when noncompliers appear, slack taking would generate severe unfairness (without, however, generating unreasonable burden).<sup>xvi</sup> On the one hand, then, weighing in favour of the duty to take up slack is the fact that there are people in dire need. Their need is grave enough to generate, at least in the absence of noncompliers, an enforceable duty to aid them. On the other hand, weighing against the duty to take up slack are two considerations. First, sacrificing intra-group fairness, between compliers and slackers, might bring about distributive inequality between them: the burdens on the slack takers will, by assumption, remain reasonable but this does not mean that they are negligible. Second, sacrificing intra-group fairness means that people are required to act morally even when others do not do so. Might not the considerations against the duty win the day?

Take the concern with inequality first. It is dubious that considerations of inequality would outweigh or otherwise block concern with dire need. On the contrary, it is usually accepted that, at the bar of all-things-considered justice, eliminating dire need (for which the victim is not responsible) should take priority over the elimination of inequality. True, people may have all sorts of associative, nationalist goals that require equality between all group members, and so we must consider not just the value of equality *tout court* but its instrumental role in securing other things of value. But note in response that associations persist despite large inequalities so it is unlikely that allowing slack taking as an extra source of inequality would jeopardize anything that is more important than is helping those in dire need.<sup>xvii</sup> In the end, if someone’s need is great enough to trigger an enforceable duty to aid, then accepting that the duty can be shaken off, even though the cost of bearing it remains reasonable, appears not to take seriously the gravity of the need faced by the victims.<sup>xviii</sup>

Consider next the problem of requiring some to act morally even when others do not do so. I concede that being the ‘sucker’ who observes moral requirements when others ignore them can have high psychological costs. It is frustrating when others slack while we toil in meeting our moral duties. But, of course, the mere fact that others slack would not make it appropriate for us to demand that our duties be lessened or that what is reasonable to require of us be changed. Is there something particular about unfairness, then, that might have such an effect? True, the fact of the unfairness of being left alone to shoulder the burdens that many ought to share may weigh heavily in the mind of the compliers, but such burdens should be irrelevant. To a racist, needing to rescue a child of a different ethnicity might appear to be a heavy burden; however, if she only needs to ruin her suit to save the child, she is under a duty to do so. Admittedly, being put off by the skin colour of the victim is different to being put off by unfairness, since the latter consideration tracks something of genuine normative significance. Nonetheless, it is a fact about duties that they are not lifted off our shoulders simply because we may weigh wrongly the relevant moral weights on each side and therefore conclude that the duties are too heavy for us to bear. Ultimately, therefore, if the costs remain otherwise reasonable, then the mere fact of unfairness cannot determine whether a consideration is or is not an enforceable duty.

### **5. The Appeal to Straightforward Counterintuitiveness**

Launching a more direct attack on the duty to take up slack, David Miller has recently attempted to expose such a duty as straightforwardly counterintuitive.<sup>xix</sup> To be clear, Miller does not deny that there may sometimes be what he calls a *humanitarian obligation* to take up the slack. A humanitarian obligation is a duty the non-performance of which triggers blame and ‘a legitimate complaint’ by the victims.<sup>xx</sup> What Miller does reject is that there may be a *duty of justice* to take up the slack, where duties of justice are understood to be enforceable duties.<sup>xxi</sup> He argues that ‘[a]s a general matter, we are not required as a matter of justice to correct the injustices that others perpetrate, although we may have a reason to do so’ and he appeals to intuitions to back this up:

‘If Bert steals Anne’s money, justice does not require Charles to right this wrong, although if Charles happens to be so placed that he can direct the money back to Anne, this would very likely be the right thing for him to do.’<sup>xxii</sup>

A similar scenario has been offered by J. L. Cohen for the same purpose. He points out that if two drivers are responsible for destroying another's car, it does not follow that one must step in and repay the entire cost if the other one shirks his duty.<sup>xxiii</sup>

Cohen's and Miller's intuitions seem uncontroversial. But the robbery and car crash examples fail to test the existence of the duty in all relevant contexts. The intuitions suggest merely that there are some wrongs such that there is no positive duty of justice for third parties to correct them (i.e. step in to aid the victim). What they obviously cannot show is that there are no such wrongs at all. We can simply distinguish between two different types of wrongs: wrongs that generate remedial duties for the wrongdoers to right the wrongs but no positive duties to aid the victims, and wrongs that generate not just remedial duties that fall on the wrongdoers but also positive duties of assistance that fall on third parties. The simple reason why positive duties are not triggered in the standard robbery example *à la* Miller is that the standard example would be conceived to take place against the background of welfare states where the rich can aid those in dire need by paying their taxes rather than helping them directly. Imagine, however, a robbery that occurs in an isolated ancient village that leaves the victim in dire need. I think that we would willingly conclude that, under more readily imaginable circumstances, the rich of the village have a duty to aid the victim. Similarly, a person beaten to the brink of life and left to die by the side road is owed not just a remedial duty by the initial wrongdoer but also a positive duty by a passerby that she calls for an ambulance. Or recall the tragic case of the Jewish refugees unsuccessfully escaping Germany in 1939 on the St Louis ship:<sup>xxiv</sup> when they reached the shores of the Americas, the American countries had a duty to take them in, even though they played no part in creating the wrong. There are plenty of intuitions at our disposal indicating the existence of duties to aid that fall on third parties in response to the wrongs committed by others. Miller's (and Cohen's) intuitive case undermines a duty to correct all wrongs that could be rejected while still insisting on a (narrower) intuitive duty to take up slack in some cases.

Miller could, in principle, concede that there are two such types of wrongs – wrongs that do and do not generate positive duties for third parties to aid the victims – and insist that the former generate only 'humanitarian obligations' rather than enforceable duties. But this view would commit him to the conclusion that justice could not demand general taxation for a range of welfare or police services. For example, men could not be taxed to provide police and medical assistance to female rape victims and nor should the state use general taxation to support children who are or-

phaned because their parents were murdered. Miller, however, as a liberal egalitarian supports broad-range general taxation. So while my rejection of Miller's argument here appeals merely to intuitions – just as his argument from counterintuitiveness does – it has powerful and widely-accepted intuitions on its side.

## **6. The Appeal to Perverse Consequences**

Both Miller and Murphy refer in passing to an earlier argument of J. L. Cohen, which I call the consequences argument. Cohen denies that there is any duty - let alone an enforceable one - to take up the slack left behind by others. He tries to invalidate such a duty by an appeal to the 'disastrous results' of accepting it.<sup>xxv</sup>

'If we were to assign any share of moral responsibility [for the plight of the victims] to those who gave their tithe [fair share] we should implicitly be proposing a code of ethics that would undermine the motivation to make any kind of contribution. The code implied would include the principle that even after a person had given his tithe he still had a duty to make good the deficiencies of others, up to some appropriate cut-off point.....But, if this were the acknowledged code, each....even if he was 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, even if he himself did withhold it, the ultimate outcome would be the same. But others might think along these lines also, and if a large number of people succumbed to such a temptation the conscientious remainder might not have sufficient resources between them to make good the overall deficiency. It follows that the temptation, which will exist in any case, certainly ought not to be reinforced in any way. So the community's code of ethics should not include any principle requiring a person, after giving his own tithe, to do what he can to make up for those who have not given *their* tithe.<sup>xxvi</sup>

Cohen's point is that accepting the duty to take up the slack will tempt people to contribute less than their fair share, perhaps even nothing, to the common aim of helping the needy. The overall consequences of accepting the duty will be disastrous for those in need.

Cohen's case against the existence of the duty to take up the slack rests on an empirical prediction about the dire consequences of accepting the duty to take up the slack. But no such general prediction can be made. The actual outcome of a wide-spread belief that the duty to take up the slack exists will depend on a number of factors, including (a) the strength and reach of the initial temptation to do less than one's fair share; (b) the presence or absence of formal or informal mechanisms for sanctioning compliers who do not take up the slack (which is a distinct problem from sanctioning noncompliers); (c) the resources at the disposal of those who remain willing to take up the slack; and (d) whether those who feel the temptation to free ride can plausibly assume that slack taking would absolve them of contributing or that the needs of the victims can even be met by the slack takers.

Consideration (d) is perhaps the most important. Cohen seems to assume that anticipation of slack taking would give the slackers a valid reason to conclude that it is *their* - the slackers' - contribution that the slack takers compensate for when they respond to the duty. If there are many victims, however, and the resources of the slack takers are relatively limited, then there are two considerations that militate against this conclusion. First, the compliers might predictably be unable to take up *all* the slack at a reasonable cost to themselves. Thus, when there are many victims with great needs, and the compliers' resources are fairly limited, it will sometimes be clear that the duty to take up the slack will run out before the problem is solved. Second, when the magnitude of the problem is greater than that of a reasonable slack taking, slack taking should not be seen to eliminate the need for the slackers to contribute.

In light of the above, we should re-formulate Cohen's gloomy prediction. Widespread belief in the duty to take up the slack would logically lead to disastrous effects only if (i) the duty was advertised among agents who were prepared to free ride on others, and (ii) the problem that triggered the duty to aid was small enough that it would be sensible to suppose that slack taking by those willing to do so would eliminate it. So instead of identifying a general problem with the duty Cohen's argument only warns us that popularizing and implementing the duty in some spe-

cific circumstances might be ill-advised. The biggest problems of global justice, for one, are simply too vast to qualify.

But Cohen's objection does identify something troubling about the consequences of the duty to take up slack in situations where dire need could be eliminated fully either by everyone doing their fair share or by the compliers taking up the slack. This is the case if, as many people believe, the moral assessment of actions should take into account the agent's reasonable expectations regarding the outcomes. Thus, say, a person who withholds food in the knowledge that the victim will thereby die of hunger is guilty of a greater moral crime than a person who withholds food knowing that the victim will be fed by someone else. Therefore, thanks to slack taking by others, noncompliers may be guilty of lesser wrongs and be less blameworthy. This leaves us with three options. First, we can deny that expectations of outcomes should be part of the moral assessment of actions and agents. I think this view is implausible. Second, we can deny the existence of the duty to take up slack - as Cohen suggests - in order to make sure that noncompliers do not get, morally, off the hook for their actions. But this move is also unacceptable and it seems to get the moral urgency backward in re-drawing victim's rights and correlative duties in order to fine tune our moral assessment of noncompliers. This leaves us with the third, least bad option of accepting that slack taking affects the moral character of the actions of noncompliers. This final point links up with a related argument against the duty to take up slack, to which I turn next.

### **7. The Appeal to Responsibility**

There is a final key conceptual argument advanced by Murphy and Miller. It concerns the thought that attributing responsibility to someone to take up the slack amounts to mistreating the noncompliers as not proper moral agents. Thus Miller argues that to take up the slack left by the noncompliers would be to treat them otherwise than 'as responsible moral agents', while Murphy insists that they should be seen as 'agents, not forces of nature'.<sup>xxvii</sup>

Miller offers an analogy to drum up support for this view. He compares a person who sees it as her duty to take up the slack to '...a mother with small children who asks for their help in clearing up the dinner table, and is pleasantly surprised when they do so, but who knows that *because* they are only children all the responsibility finally rests with her. In contrast', he continues, compliers deal not with children but with responsible moral agents and 'one who is left to do all the work as the others decamp can justifiably feel anger and resentment at the way she has been

treated.<sup>xxviii</sup> In essence, the thought is this: Since accepting the duty to take up the slack entails not seeing the slackers as responsible moral agents, and since they are responsible moral agents, therefore accepting the duty to take up the slack rests on a conceptual mistake.

But we should reject the suggestion that anticipating non-compliance and accepting the duty to take up the slack means not seeing the slacker as a responsible moral agent but as a child or a force of nature. We need to avoid conflating two senses of responsibility: anticipating failure means that we are not seeing agents as responsible in the sense of well-behaved, but we could still recognize them as responsible in the sense of having the capacity to act responsibly and fulfill their duties. Consider another family analogy. Imagine a couple with little children where one of the partners acts as the stereotype of the absent father: he prefers to hang out with his mates rather than help his partner with the housework and child rearing. Surely the dutiful adult can continue viewing the partner as a moral agent capable of doing his fair share of the chores, while also prudently planning to step in when the partner again forgets to pick up the kids from the nursery. The dutiful adult can also surely feel justified resentment even if the partner's failure was anticipated. Speaking more generally, if resentment was only justified in cases when moral failure came as a surprise – as Miller implies – it would be far too easy to avoid being the target of resentment (and, by implication, blame): all one would need to do is announce in advance one's planned failure. We should therefore also reject the responsibility argument.

### **8. The Appeal to Counterintuitive Implications**

There are two implications of the enforceable duty to take up slack that might seem particularly troubling. Consider first the implication that slack taking should be prioritized over the enforcement of compliance. I have in mind here a case of the following kind. Suppose that the complier C and the noncomplier N owe the victim V aid that is worth 10 units in total, where each unit would help the victim, delivering each unit takes similar effort by whoever does the aiding, and 10 units of effort is the maximum reasonable burden that can be placed on anyone. And suppose that at time T1 we decide that C is under duty to take up slack and deliver the missing 5 units of aid, in addition to the other 5 units, since N is not going to do it and cannot be made to. But at time T2 an additional option becomes available for C: she could, at a negligible cost to herself, coerce N to deliver 4 units of aid to V though, if she does so, she won't be able to deliver the missing one unit to V. On my view, C must choose to deliver all the aid herself rather than choose the enforcement option if receiving merely the 4 units still leaves her in dire need.

It could be objected that V's missing out just one unit of aid is not sufficiently grave to require C to do the aiding rather than the enforcing. But notice that the case in question is one in which all 10 units are needed to eliminate dire need (if fewer units were needed to eliminate dire need then dire need could justify placing people under a duty to deliver that lower number). That is, we can distinguish such a case from a case in which the delivery of 10 units is meant to both meet dire need and some further desideratum – efficiency, equality, etc. For example, we can imagine a case where 9 units would eliminate dire need (one would gain, say, access to a minimally decent shelter) while 10 units would eliminate dire need and secure comfort (with the mere extra unit, one would gain access to a comfortable accommodation). There may be instances where people are under a duty to deliver 10 units even then, but the source of such a duty goes beyond dire need. I am not here addressing this type of case, but a case in which the shortfall in the units equals the persistence of dire need, even if the provision of each individual unit alleviates it to some extent. Thus, going back to the scenario above, if C was under a duty to deliver the 10 units at T1 in order to address V's dire need then the delivery of 10 units - rather than merely 9 - was deemed sufficiently important then to trigger the duty to do so; nothing at T2 makes the delivery of 10 to V less important. And since, as I argued above, concern with substantive fairness does not outweigh or block concern with dire need, C should prioritise slack taking over the enforcement of compliance. Notice, though, that I am not suggesting that C deliver aid without concern for her and others future capacity to aid. Rather, if a given action will eliminate the optimal amount of dire need - whatever that is given the future objectives - then the only consideration that relieves C from delivering the additional unit of aid is that it is unreasonably costly to do so. In this case, the cost of delivering 10 remains reasonable at T2 and so C must prioritise slack taking.<sup>xxix</sup>

Second, consider the implications of the enforceable duty to take up slack regarding who can force slack takers to comply. It would appear that if there is an enforceable duty to take up the slack, then the complier cannot claim that she has been wronged when she is forced to take up the slack, even if she is forced to do so by a noncomplier. She has no right against not taking up the slack and no right not to be (appropriately) forced to do so. This result might not seem too odd if the noncomplier is no longer able to comply: in forcing the complier to take up the slack he may be guilty of a number of charges, including that he acts on double-standards, but he is not wronging the complier when he coerces her to deliver aid. Although he has created the situation in

which slack taking is now required - and in doing so, he *did* wrong both the victim and the complier - he is now permitted to enforce slack taking since the victim retains the right to be aided and forcing the complier to take up slack is necessary to meet this right.

But consider situations in which the noncomplier remains able to choose whether to comply himself or to force the complier to take up the slack. On the one hand, the noncomplier has no justification for coercing C to take up slack, since it is him (the noncomplier) who makes it the case that it is now necessary for C to take up slack. So from N's perspective it can never be necessary to coerce since it is, by assumption, up to N to choose to aid the victim himself. On the other hand, if the noncomplier is not going to do his fair share (which, by assumption, he is not and suppose that he knows this), the complier has an enforceable duty to aid the victim.

The way out of this predicament is to accept that C cannot resist coercion (unless he could instead enforce N's compliance with his initial duty instead, leaving V no worse off) but that C is nevertheless wronged by it when it is administered by N. In other words, C has a right against N that N does not coerce him but in the specified case this right cannot be permissibly enforced, given C's duties towards V. We are all familiar with rights that cannot be permissibly enforced in a given situation: this is what I have against you when in order to prevent you from stealing my car, I'd need to shoot a bystander in the leg. All in all we should say that the complier retains two complaints – and claims to compensation - against the slackers: for needing to take up the slack and for being coerced to do so by N.

### **9. The State's Duty to Take Up the Slack**

The above arguments focused on the duties of individuals. But, if we return to the problem of refugees, it is states who shelter them. For states to have the duty to take up the slack, they must have the permission to impose extra burdens on their citizens. In light of the argument so far, they may, since individuals have, under the right conditions, an enforceable duty to take up the slack and thus lack the general right against being coerced to perform it. It does not follow, of course, that any type of coercion can be used or that the coercion can be used by anyone: just because I have an enforceable duty to save a drowning child, it does not follow that you can put me on a leash and whip me until I step into the water and perform my duty.<sup>xxx</sup> The coercion states are likely to employ for refugees would most readily take the form of increased taxation, a reduction in the level of provision of state goods to divert resources to the needs of the refugees or the re-

quirement to share space and institutions such as schools with the refugees. Can such and similar measures be justified for the sake of taking up the slack and accommodating those in dire need? Would the state of which a given person is a resident have the right to coerce her through taxation and the enforced sharing of public space to perform her duty? Let me answer not by elucidating the conditions under which enforcement by a given agent is permissible, but by pointing out that if any agent is likely to enjoy such a right to enforce - if the category of enforceable duties is to be a non-empty one - then it will be the state to which a given person belongs, at least if the state is legitimate or legitimate with respect to the policies in question. Regarding the permissible means, we should again expect that the forms of coercion that any, even the least coercive state, must retain - such as taxation and control over public space - would classify as permissible if any means are to classify as such. Clearly many states will fail to meet the requirement of legitimacy. Cruel, dictatorial regimes may well have no rights at all to coerce their own citizens, even when they use coercion for just purposes. But we should also avoid casting the net of legitimacy too narrowly: although it remains a topic too vast to discuss here, it is likely that not only democratic regimes should be considered legitimate, but also regimes that are undemocratic but benign or that remain a superior alternative to the very real possibility of state-less chaos.

The state's duty to take up the slack, however, is not just the aggregate duty of its members to *individually* take up the slack that the state can permissibly enforce. This is because states are not just enforcers but also coordinators that have an independent duty of fairness towards their members. The state has an independent duty to distribute fairly the burdens necessitated by its members' enforceable duties. Doing so, in turn, influences the capacity of states to take up the slack left behind by other states. This is because treating one's residents fairly means the burdens of aiding do not pile up on the wrong shoulders in an unreasonably burdensome way. In a nutshell, then, the state's duty to take up the slack is the upshot of individual duties to take up the slack that have been coordinated in a way that is likely to increase the state's overall capacity to take up the slack.

Returning, once more, to the case of refugee protection, it is plausible that all developed states could take on some extra costs here, given that some of their resistance to do so is dictated by unreasonably hostile public opinion. If so, then even countries that are already doing more than other advanced democracies, such as, say, the US or Sweden, cannot permissibly reduce their contribution on the grounds that other countries are doing less. It is also plausible to suppose that

a number of host states currently do more than their duty to take up the slack: they impose extremely heavy costs on their members and do so in large part out of their inability to stop the flow of refugees across their borders. These states, then, are permitted by justice to invest in and employ technology that will allow them to limit the flow of refugees. Other host states, however, should not employ it. But even they would be entitled to compensation with regard to the reasonable costs they bear on account of slack taking. In so far as such compensation is withheld, the host states may have the right to impose remedial costs on the slackers. For example, it is possible that a genuinely just global refugee policy would allow them exemptions from some WTO anti-protectionist rules if these were to benefit the compliers at the expense of the slackers. But whether this is so remains a topic for another paper. My main point is that such policy debates should recognize above all that those in a position to assist those in dire need have a duty of justice to step in and take up the slack left behind by others, even if they are themselves victims of noncompliance.

#### **Notes**

<sup>i</sup> I wrote the first version of this paper so long ago (in 2010) that I fear I may have forgotten all the debts I have incurred along the way. I am indebted to David Miller's conceptualisation of the problem of slack taking; for details, see D. Miller (2011) and to Miles Unterreiner for research assistance. I am grateful for written comments to Matthew Clayton, Ben Jackson, Matthew Kramer, Seth Lazar, Patti Lenard, Avia Pasternak, Jonathan Quong, Victor Tadros, Alexa Zellentin. I benefited from discussion with the audiences at CELPA, Warwick; Cambridge Political Theory Workshop; Aarhus workshop; and the CSSJ, Oxford. I am also grateful to Carl Knight and the anonymous reviewers.

<sup>ii</sup> I take 'refugee' to refer to any person in dire need on account of justifiably fleeing his or her state. My argument applies also on the narrower definition of the 1951 Convention Relating to the Status of Refugees; see Secretariat of the United Nations (1954, p. 150) and Cf. Schacknove (1985).

<sup>iii</sup> Developing countries hosted over 80% of the world's refugees in 2012. United Nations High Commissioner for Refugees, *Global Trends 2012*, p. 2.

<sup>iv</sup> See Hathaway and Neve (1997, p. 119-211); Cook (2004, p. 343); Gibney (2006).

<sup>v</sup> See Cohen (1981) and Murphy (2000) - esp. ch. 5 - and D. Miller (2011). Their arguments are meant to apply to the full range of duties to aid, not just the duty to aid those in dire need that is my focus here.

<sup>vi</sup> This can be contrasted with (un)fairness that is merely deflationary. A distribution is fair in a deflationary sense when everyone carries their just burden, even when the problem of substantive fairness does not arise in a given context.

<sup>vii</sup> See Singer (2002) and Unger (1996). Fulfilling the duty includes empowering those in need to help themselves.

<sup>viii</sup> I focus on enforceable duties since this is Miller's focus and because an enforceable duty to take up slack has more teeth than one that is not.

<sup>ix</sup> I will not try to establish what would count as a reasonable cost to bear for saving someone from dire need and my argument is meant to be compatible with a range of answers. This means that I side-step the problem, if it is a problem, of extreme demandingness. On what might count as reasonable costs, see, for example, Fabre (2006, pp. 44-46) and R. Miller (2004).

<sup>x</sup> As Garrett Cullity has elegantly put it in his insightful book, 'The grounds for thinking that beneficence requires me to ...[take up the slack and save the extra person left behind by the non-complier] are plain. They are just the same as they would be in a situation in which I also could easily rescue one person: he desperately needs it, and I could easily help' (2006, p. 75).

<sup>xi</sup> Murphy's duty is not constrained by reasonable cost and to that extent he attempts to solve a different problem than I do here. As Paul Hurley has pointed out (2003, p. 841), Murphy's argument is an ingenious attempt to build a limit into our duties to aid without invoking the claim that such duties are limited in their demandingness.

<sup>xii</sup> I am grateful to Victor Tadros for this point. For further arguments against Murphy's position here see Arneson (2004, pp. 35-39).

<sup>xiii</sup> Murphy (2000, p. 92).

<sup>xiv</sup> Cullity (2006, pp. 75-76 and 242 n15).

<sup>xv</sup> See also Cullity (2006, pp. 75-76).

<sup>xvi</sup> This is possible because the increase in burdens need not be monotonic. The initial duty to aid may require, say, a (reasonable) sacrifice of friendship, while aiding even more through taking up the slack may not impose any further burdens of this type.

<sup>xvii</sup> This is compatible with associative duties trumping the duty to aid foreigners.

<sup>xviii</sup> I think that only important needs would trigger positive enforceable duties. If even unimportant needs can trigger enforceable duties, then we should not expect people to have much of a claim in any case against being made the bearers of enforceable duties.

<sup>xix</sup> Miller (2011, pp. 239-245). Cf. Cohen (1981).

- <sup>xx</sup> Miller (2011, p. 243). Miller acknowledges also that the victims' plight amounts to a human right violation; see both "Taking up the slack" (2011) and his *National responsibility and global justice* (2007, ch. 7).
- <sup>xxi</sup> Miller (2011, pp. 242-243).
- <sup>xxii</sup> *Ibid.*, p. 239.
- <sup>xxiii</sup> Cohen (1981, p. 76).
- <sup>xxiv</sup> See Ogilvie and Miller (2006).
- <sup>xxv</sup> Cohen (1981, p. 80).
- <sup>xxvi</sup> *Ibid.*, pp. 73-4.
- <sup>xxvii</sup> Miller (2011, p. 241); Murphy (2000, p. 113).
- <sup>xxviii</sup> Miller (2011, p. 241).
- <sup>xxix</sup> Michael Ridge (2010) has suggested that the duty to take up slack (on which he, ultimately, does not take a stance) can be thought of as something that creates unfairness among the duty bearers for the sake of eliminating unfairness in the distribution of the burdens of non-compliance between the compliers and the victims. I think this view may have some purchase in cases other than those of dire need. In cases of dire need, however, it is not our concern with fairness that leads us, in my view, to place all of the burden on the complier. After all, instead of calculating how much C should bear *in comparison with* how much V should bear, we need only notice that V is in dire need and C can assist V at a reasonable cost to herself. It might be that the designators 'dire need' and 'reasonably able to assist' already smuggle in all the relevant information about proportionality of burdens, but these are not straightforwardly comparative categories, so it is not direct concern with fairness that guides us here.
- <sup>xxx</sup> Although 'it does not follow', I leave open the possibility that such whipping is permissible if necessary.

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