

## FILLING COLLECTIVE DUTY GAPS\*

In 1979, an Air New Zealand passenger jet crashed into the side of Mount Erebus in Antarctica, killing 257 people. The resulting Royal Commission of Inquiry found that the aircraft was on an incorrect flight path. It was a “mistake ... directly attributable, not so much to the persons who made it, but to the incompetent administrative airline procedures which made the mistake possible.”<sup>1</sup>

Today, millions of individuals drive, fly, and eat in ways that, individually, make a miniscule difference to climate change—if that, given the thresholds involved in causing a flight to take off or a cow to be farmed.<sup>2</sup> These minuscule bad effects are

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<sup>1</sup> Royal Commission, *Report of the Royal Commission to Inquire into the Crash on Mount Erebus, Antarctica, of a DC10 Aircraft Operated by Air New Zealand Limited* (Wellington: P.D. Hasselberg Government Printer: 1981), at p. 159.

<sup>2</sup> Shelly Kagan, “Do I Make a Difference?,” *Philosophy and Public Affairs*, XXXIX, 2 (Spring 2011): 105–41; Julia Nefsky, “Consequentialism and the Problem of Collective

plausibly outweighed by the joy and convenience of driving, flying, and eating on any occasion—so, each individual polluting action seems permissible.<sup>3</sup> These individual actions will combine to harm millions of the world’s current children, who will grow up to inherit an Earth that is far more damaged than it would have been had no polluting actions had occurred.<sup>4</sup>

These two cases are different in many respects, which will become important later (§III and §V). What they have in common is that each gives rise to a ‘collective duty gap’: a group caused (or will cause) harm that requires remedying, but no member did harm serious enough to impose a remedial duty on them. In other words: intuitively, there exists a duty to remedy the group-level harm, but there is a ‘gap’ between this apparent

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Harm: A Reply to Kagan,” *Philosophy and Public Affairs*, XXXIX, 4 (Fall 2011): 364–95.

<sup>3</sup> Walter Sinnott-Armstrong, “It’s not *My* Fault: Global Warming and Individual Moral Obligations,” in Walter Sinnott-Armstrong and Richard B. Howarth, eds., *Perspectives on Climate Change: Science, Economics, Politics, Ethics* (Bingley: JAI Press, 2005), pp. 293-315.

<sup>4</sup> I do not assert that driving, flying, or buying meat makes no difference to how damaged the planet is. (On how it makes a difference, see John Broom, *Climate Matters* (New York: W.W. Norton, 2012); Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984), at pp. 67–86.) Rather, the idea is that the harm of any one such action is so small as to be rendered permissible by the cost to the agent of avoiding the harm.

group-level remedial duty, and a lack of justification for individual-level remedial duties for the group members.

This article addresses the question: how might we fill collective duty gaps? That is: how might we justify duties for individuals to help remedy harms caused by groups of which they are a member, even when the individuals did no (or utterly negligible) harm themselves?<sup>5</sup>

§I outlines two initially plausible methods for filling collective duty gaps. Each method ultimately asserts that group members are obliged to remedy harms done in part by others. §II considers two possible objections to this assertion: the unfairness objection and the demandingness objection. Drawing on the ongoing debate over duties to ‘take up the slack,’ I argue that these objections are not fatal to gap-filling duties.

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<sup>5</sup> Collective duty gaps differ from collective responsibility gaps. The latter are gaps in backwards-looking blame, control, agency, or causation; the former, gaps in forward-looking duty or obligation. Collective responsibility gaps are discussed (not always with that term) by, amongst others, Frank Jackson, “Group Morality,” in J.C.C. Smart, Philip Pettit, Richard Sylvan, and Jean Norman, eds., *Metaphysics and Morality: Essays in Honour of J.J.C. Smart* (Oxford: Blackwell, 1987); David Copp, “The Collective Moral Autonomy Thesis,” *Journal of Social Philosophy*, XXXVIII, 3 (Fall 2007): 369–88; Philip Pettit, “Responsibility Incorporated,” *Ethics*, CXVII, 2 (January 2001): 171–201; Matthew Braham and Martin van Hees, “Responsibility Voids,” *The Philosophical Quarterly*, LXI, 242 (January 2011): 6–15. Duty gaps arise out of responsibility gaps, yet duty gaps are more morally tractable: as I will argue, we can fill duty gaps with something other than individual-level blame, control, agency, or causation over the harm.

However, this defence is not enough to fill the gaps, for two reasons. The first reason is explained in §III: the idea of ‘taking on costs that should be borne by others’ (that is, slack-taking) is a category error in groups that are not agents. Such groups include ‘the affluent,’ ‘polluters,’ and ‘the international community’. Many duty gaps arise in such non-agent groups. But slack-taking is not a category error in groups that are agents, such as states and corporations. Thus, if there are any duties to fill collective duty gaps, then they are different in group agents, as compared with non-agent groups. In the former, gap-filling duties are individual duties to take on costs that should be borne by others (slack-take); in the latter, gap-filling duties are simply demanding individual duties. We should see slack-taking reparative duties as a species of the genus of gap-filling duties. So, the concept of slack-taking cannot do all the work we need.

§IV turns to the second, and deeper, problem for gap-filling duties: we need a positive justification for the entire genus of these duties. §IV provides such a justification. In brief, in both agent and non-agent groups, gap-filling duties are justified by the normative force of commitments individuals make to others to positively respond to harm-generating ends. §V sketches how commitments can be used to fill the gaps found in the Erebus and climate change cases. As we shall see, commitments will not fill these two gaps entirely: under my proposal, not all the individuals involved will have duties—though many of them will—and the duties that are generated may not aggregate to fully remedy the harm—though they will get partway there.<sup>6</sup>

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<sup>6</sup> We could try to get the rest of the way there by pointing to individuals’ capacity to help or the fact that they benefited from the harm (Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011); Holly Lawford-Smith, “Benefiting from

## I. Two Proposals to Fill Gaps

How might we fill collective duty gaps? I will detail two proposals. Both naturally fit gaps within group agents, yet both extend to non-agent groups. To briefly characterise this distinction: the hallmark of a group agent is a group-level rational decision-making procedure, which uses inputs and methods of decision-making that are distinct from the inputs and methods used in the respective decision-making procedures of the group's

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Failures to Address Climate Change," *Journal of Applied Philosophy*, XXXI, 4 (November 2014): 392–404; Robert Huseby, "Should the Beneficiaries Pay?," *Politics, Philosophy and Economics*, XIV, 2 (May 2015): 209–25). However, such duty bases will not reliably pick out only members of the harm-creating group. That is, these bases will not reliably pick out Air New Zealand members in the Erebus case, or polluters in the climate change case. Instead, these bases are liable to assign duties to outsiders. To illustrate, suppose Qantas Airline has far more money than Air New Zealand and benefitted greatly from the crash (because the crash caused would-be Air New Zealand passengers to switch airlines). Should we therefore say that Qantas has a remedial duty to financially support the crash victims' families? No. We want a justification for individual remedial duties that, by and large, picks out members of the harm-creating group, not non-members. To foreshadow: my proposed justification will not pick out *all and only* members of the harm-creating group. But it will much more closely approximate that ideal than do capacity or benefit.

members.<sup>7</sup> The group's decision-making procedure determines, among other things, who these members are. Group agents operate their procedures from, and to maintain, a rational point of view: the group updates its beliefs, goals, and so on to maintain integration amongst its various beliefs, goals, and so on.<sup>8</sup> Non-agent groups lack distinct decision-making procedures and rational points of view. In short: airlines are group agents; 'polluters' is not a group agent.

### *1.1 First Proposal: Individual Wrongs*

The first proposal—Individual Wrongs—posits that collective duty gaps can be filled with duties grounded in individual wrongs. This does not require asserting that individuals wrongfully caused the harm, which ex hypothesi they might not have. It just requires that they, in some way perhaps non-causally connected to the harm, did wrong.

There are multiple places at which to locate these individual wrongs. I will describe three, using Erebus to illustrate. As will become clear, there is a general problem, which is extendable to other possible locations.

First, perhaps each member reneged on duties regarding their individual inputs into the group-level harm. Perhaps some individual inputs were produced with an

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<sup>7</sup> Peter French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984); Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011).

<sup>8</sup> Carol Rovane, *Bounds of Agency: An Essay in Revisionary Metaphysics* (Princeton: Princeton University Press, 1998).

unreasonable lack of thought,<sup>9</sup> for example in the design of the airline’s software. Or perhaps the members ought to have acted strategically,<sup>10</sup> for example by covertly supervising their colleagues’ actions. If so, the relevant individuals are blameworthy, and we can use this blameworthiness to justify individual duties that fill the gap. However, we can imagine that the individual inputs were reasonable given the evidence (and gathering alternative evidence would have been impossible or unduly demanding),<sup>11</sup> or that the airline’s procedures forbade paternalistic treatment of colleagues. If so, a different pattern of inputs was not feasible for any given member, so the actual pattern of inputs was not wrong, and the duty gap remains.

There is a second place where we might try to locate the individual wrongs. Perhaps the group has “steering members” to whom the group’s duties directly apply, such that, for example, the group’s duty to require in-depth pre-input evidence-gathering translates into a duty for the steering member(s) to require such evidence-gathering from all members, prior to the harm. If so, steering members are straightforwardly on the hook for the group’s harm.<sup>12</sup> Plainly, there will not always be steering members (regarding climate change, the lack of an international authority is notorious). And even if there are steering members—as in Air New Zealand’s Board of Directors—we need some way of

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<sup>9</sup> Frank Hindriks, “Corporate Responsibility and Judgment Aggregation,” *Economics and Philosophy*, XXV, 2 (July 2009): 161–77.

<sup>10</sup> Braham and van Hees, “Responsibility Voids,” *op. cit.*, p. 2012.

<sup>11</sup> Copp, “The Collective Moral Autonomy Thesis,” *op. cit.*, p. 380.

<sup>12</sup> David J. Zoller, “Distributing Collective Moral Responsibility to Group Members,” *Journal of Social Philosophy*, XLIV, 4 (Winter 2014): 478–97, at p. 490.

justifying the costs the steerers will likely impose on non-steering members, when fulfilling the group's remedial duty that, *ex hypothesi*, arose out of the steerers' failure. Non-steerers may face pay-cuts, or longer hours, or public shame, or tedious re-organisation of the group. The steering approach will often need to be supplemented with an approach that can justify these costs on those lower down the hierarchy.

Third, one could go "meta": perhaps individuals are blameworthy not just for their individual reasoning about inputs, nor just for being unresponsive to the reasons that bear on the group, but for the very fact that group-level harms can create remedial duties when individual inputs are excusable. That is, perhaps individuals control for the fact that duty gaps are possible within their group.<sup>13</sup> If this control is wrongfully exercised, then individual wrongdoing justifies duties that fill the gap. However, in group agents at least, there are good reasons to think the group itself (not the individual members) controls for the fact that collective duty gaps can arise.<sup>14</sup> Even if one balks at group-level control, any group with a division of powers will be one in which no individual member controls for the group's gap-producing tendencies. Instead, any individual member controls only her own individual contributions to that tendency. Maybe she can influence other members to some extent, but rarely will this amount to full-blown control.

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<sup>13</sup> Pekka Mäkelä, "Collective Agents and Moral Responsibility," *Journal of Social Philosophy*, XXXVIII, 3 (Fall 2007): 456–68, esp. p. 463.

<sup>14</sup> Pettit, "Responsibility Incorporated," *op. cit.*; Anders Strand, "Group Agency, Responsibility, and Control." *Philosophy of the Social Sciences*, XLIII, 2 (June 2013): 201–24.



In short, these three variations on Individual Wrongs leave us with unfilled gaps (even when employed disjunctively—there will be cases when none of these variations gets a hold). The general problem is this: individuals do not control the broader context within which they act (for example, they do not control the evidence they reason from in choosing their inputs, or the existence and cost-bearing capacity of steerers, or the way powers are dispersed in the group). If this broader context forces the individual actions that contribute to the group harm, those actions do not look like wrongs.<sup>15</sup> This was, in essence, the finding of the Erebus inquiry.

Both Individual Wrongs and its limitations extend to non-agent groups. Consider anthropogenic climate change. In seeking to apply Individual Wrongs, we might investigate the reasons why each individual pollutes, or ask who (if anyone) steers the polluting, or ask who allows individual-level polluting to be negligible even while group-level polluting is significant. If individuals pollute for bad reasons, or if someone steers the polluting, or if someone causes the duty gap, then Individual Wrongs holds them blameworthy and uses this to justify duties for them, where these duties fill the gap.

However, as with group agents, there are sometimes no (or not enough) individuals who do wrong in non-agent groups, so we cannot fill duty gaps to the brim.<sup>16</sup>

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<sup>15</sup> Felix Pinkert, “What If I Cannot Make a Difference (and Know It),” *Ethics*, CXXV, 4 (July 2015): 971–98 tries to locate individual wrongs in counterfactuals about the individuals. I cannot fully treat this solution, but it looks unlikely to pick out group members in particular, as per fn. 6.

<sup>16</sup> On the near-impossibility of finding enough wrongful individuals involved in the harms of the global apparel industry, see Young, *Responsibility for Justice*, *op. cit.*.

Many people reasonably believe that their polluting will make negligible difference; no one steering agent (or group agent) can be expected to respond to a group-level reason to make the global economy non-reliant on fossil fuels (because no one agent can do that); and the duty gap is not anyone's doing. Thus, the limitations of Individual Wrongs extend to non-agent groups.

In light of this, advocates of Individual Wrongs have two options. First, they can insist that in cases where we jettison judgments of individual wrongdoing, we also jettison judgments of individual remedial duties.<sup>17</sup> This leaves duty gaps unfilled. Second, they can insist that members have remedial duties justified by something other than (ex hypothesi, non-existent) individual wrongs.<sup>18</sup> This fills duty gaps by baldly asserting that members can be obliged to remedy harms caused by a combination of permissible actions, of which each individual's action was just one. This raises the question of whether such duties face objections. I address this question in §II.

### *1.2 Second Proposal: Joint Wrongs*

A second proposal for filling collective duty gaps relies not on wrongs done by individuals severally, but on wrongs individuals do together or jointly. Call this view Joint Wrongs. It likewise has variations, including equivalents of those I outlined under

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<sup>17</sup> Zoller ("Distributing Collective Moral Responsibility to Group Members," *op. cit.*) is focused on responsibility, not duties, but I suspect he might take this option. Mäkelä ("Collective Agents and Moral Responsibility," *op. cit.*) moves to joint wrongdoing, discussed in the next sub-section.

<sup>18</sup> Hindriks, "Collective Responsibility and Judgment Aggregation," *op. cit.*, at p. 175.

Individual Wrongs: perhaps Air New Zealand employees are jointly responsible for bad reasoning, or for steerers' failings, or for the company's tendency toward duty gaps.<sup>19</sup>

The question for this proposal is how a joint wrong can justify individual remedial duties, where the latter fill the gap. This is no less mysterious than our original question of how the group's harm can justify such individual duties. One might think that joint wrongs entail joint duties, which conceptually entail individual duties. However, the inference from joint duties to individual duties commits an inverse compositional fallacy, akin to saying that each of a number of bricks must be 10m tall because the wall they constitute is 10m tall. We need justification for such an inference. We also need clarification on the very notion of a joint wrong and, subsequently, a joint duty.<sup>20</sup>

Here we could draw on Christopher Kutz's "Complicity Principle." This parsimoniously moves from joint wrong to individual remedial duties, bypassing the notion of joint duties:

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<sup>19</sup> Mäkelä claims members "jointly" control the group's procedures and structure ("Collective Agents and Moral Responsibility," *op. cit.*, at p. 465).

<sup>20</sup> Gunnar Björnsson develops the notion of a shared duty ("Essentially Shared Obligations," *Midwest Studies in Philosophy*, XXXVIII, 1 (September 2014): 103–20); Anne Schwenkenbecher develops the notion of a joint duty ("Joint Duties and Global Moral Obligations," *Ratio*, XXVI, 3 (2013): 310–28). Neither of these, however, builds on the notion of a joint wrong, which is prior in the Joint Wrongs approach. If I am right that joint wrongs and joint duties do not generate individual duties, then, even if there is a sound notion of a joint or shared duty, this will not help the Joint Wrongs approach.

The Complicity Principle: (Basis) I am accountable for what others do when I intentionally participate in the wrong they do or the harm they cause. (Object) I am accountable for the harm or wrong we do together, independently of the actual difference I make.<sup>21</sup>

Kutz's primary argument for the Complicity Principle is this: "If a set of agents' participatory intentions overlap, then the will of each is represented in what each other does qua group member, as well as what they do together. The logical overlap permits us to say they manifest their attitudes through one another's actions... The coincidence of our intentions grounds my accountability for your actions."<sup>22</sup> Participatory intentions triple the objects of individual authorship: I author what I do, what you do, and what we do; you author what you, what I do, and what we do.<sup>23</sup> Thus, the move is from individual intentional participation in joint activities, to joint authorship of those activities, to individual remedial duties.

The main problem here is the shift from separate individual intentions to authorship for what others do, if we suppose (with Kutz) that authorship implies

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<sup>21</sup> Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000), at p. 122.

<sup>22</sup> Kutz, *Complicity, op. cit.*, 140–41.

<sup>23</sup> Kutz, *Complicity, op. cit.*, 138. A similar conception of joint authorship is used by Avia Pasternak to (in my terminology) justify citizens' duties to fill gaps that result from states' harms (Avia Pasternak, "Limiting States' Corporate Responsibility," *Journal of Political Philosophy*, XXI, 4 (December 2013): 361–81).

individual remedial duties.<sup>24</sup> If each of A, ..., N intends to 'φ together,' then there are N intentions, each held by a different individual. Nothing is implied about any of the individuals having any significant relation to any of the others or their intentions, such as a relation of control or influence or emulation between the intentions. So authorship for what the others do—if this is understood as implying individual remedial duties for what the others do—receives insufficient justification. To illustrate: we can imagine two people on opposite sides of Earth, each of whom intends to 'enact a socialist revolution together with whoever else intends to enact a socialist revolution.' If one of them causes harm in their attempt to enact revolution, it would be inaccurate to say the other authored the harm (in a way that implies a duty to remedy the harm). The same goes for harms caused by people within a large group agent, each individually acting on an individual intention such as 'operate flights to Antarctica together.' A morally loaded conception of authorship—that is, a conception that implies individual remedial moral duties—bears a high justificatory burden. Perhaps such a burden can be met in small-scale and intimate groups (like two people painting a house together), but it cannot be met in the collective duty gaps that worry us the most: those that arise in large companies or in aggregations of

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<sup>24</sup> The latter supposition is why I discuss Kutz, rather than, say, Michael Bratman, *Shared Agency: A Planning Theory of Acting Together* (Oxford: Oxford University Press, 2014); Margaret Gilbert, *On Social Facts* (Princeton: Princeton University Press, 1989); or Raimo Tuomela, *The Philosophy of Sociality: The Shared Point of View* (Oxford: Oxford University Press, 2007). These authors have sophisticated accounts of joint action/authorship, but none suppose that joint action or authorship implies remedial moral duties for individuals. I believe these authors are right to demur on that implication.

people spread all over Earth. (§IV's proposal will rely on commitments, not authorship, and will apply across a range of cases.)

As with Individual Wrongs, Joint Wrongs and its problems extend to non-agent groups. Again, consider climate change. Kutz implies that all emitters intend to participate in the collective project of "private transportation",<sup>25</sup> and thus are on the hook for the harms caused by aggregating each person's pursuit of this project. Joint Wrongs thus purports to apply. There are two problems here. The first is that many gaps in non-agent groups aren't the result of any joint activity: to suggest that you and I (who have likely never met) intend to have private transportation *together* is to stretch the notion of togetherness to breaking point. The second problem was highlighted above: even if we each had the individual intention of doing this together, more would be required to generate my normatively-implicating authorship of your emissions (for example, that I control your emissions).

Considering this, if we are to hold that an individual has gap-filling duties, this will mean imputing to her duties to remedy effects that she did not wrongfully author (in a morally-implicating sense of authorship). This is just as it was for Individual Wrongs. The question arises of whether we can refute objections to these duties.

## **II. Objections to Gap-filling Duties**

There is a growing debate about slack-taking duties, that is, duties to take on others' shares of collective burdens when those others fail to comply by taking on their share. This debate has arisen around collective duties of beneficence, rather than collective

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<sup>25</sup> Kutz, *Complicity, op. cit.*, 188.

duties of remedy. Notwithstanding the potential disanalogies between remedial and beneficence duties, the debate on slack-taking deserves consideration here. This is because two broad objections have been targeted at slack-taking duties, both of which (and the replies to them) naturally extend to the gap-filling duties that, we found, had to be simply asserted under Individual Wrongs and Joint Wrongs. I will explain how these objections extend, and how they can be refuted.

### *II.1 Unfair*

This objection is strongest if someone, somewhere, sometime is culpable for the collective duty gap, but is unable to fill that gap themselves (for example, because they are dead or have shallow pockets). To motivate the objection, return to Erebus. Assume the airline's founders were culpable for the incompetent administrative airline procedures. Suppose these founders died long ago, such that they cannot now have a gap-filling duty. It might look unfair that present-day employees are required to take on costs in remedying the founders' bad decisions. We could perhaps argue that present-day members of the Board of Directors consented to such costs when taking up their jobs—but remedial costs will likely fall on non-Directors as well, which looks unfair. Likewise for the pollution case: suppose powerful individuals (leaders of key states and international organisations, for example) were culpably inactive when anthropogenic climate change first came to light. But these individuals are now off the scene or deceased. It might look unfair that their share of the collective duty somehow shifts to present day individuals who are (by stipulation) insufficiently blameworthy to justify the full cost of the duty.

David Miller gives the following toy case to motivate the unfairness objection: If Bert steals Anne's money and then runs away, it seems bizarre to say that Charles is required to compensate Anne. Miller explains: "the injustice that remains, because of partial compliance [that is, because past people culpably didn't do what they ought], is the responsibility of the noncompliers, and only theirs."<sup>26</sup> Liam Murphy likewise argues: "[t]hat I know that you will not do [or, presumably, have not done] what you are supposed to do does not alter the fact that you are responsible for what you are responsible for, and I am responsible for what I am responsible for. ... [Y]our responsibility remains your responsibility, it does not become mine."<sup>27</sup>

For this objection to block gap-filling duties, it would have to be that upholding fairness between actors (for example, between company members or polluters across time) is more important than remedying harm done to others (for example, families of disaster victims or Earth-inheriting children). Thus Anja Karnein points out that we need to distinguish (a) a non-complier's duty to fellow actors from (b) a fellow actor's duty to third parties.<sup>28</sup> These are two different duties, held by two different agents, to two different (collections of) agents. What's the connection between them? To help Miller's

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<sup>26</sup> David, Miller, "Taking Up the Slack? Responsibility and Justice in Situations of Partial Compliance," in Carl Knight and Zofia Stemplowska, (eds), *Responsibility and Distributive Justice* (Oxford: Oxford University Press, 2011), pp. 238–39.

<sup>27</sup> Liam Murphy, *Moral Demands in Nonideal Theory* (Oxford: Oxford University Press, 2000), at p. 115.

<sup>28</sup> Anja Karnein, "Putting Fairness in its Place: Why there is a Duty to Take Up the Slack," *The Journal of Philosophy*, CXI, 11 (November 2014): 593–607, at p. 594.



and Murphy's cases, let us suppose the airline's founders unfairly reneged on a duty to create sound administrative procedures, where that duty was owed, at least in part, to future company members. Likewise, suppose global leaders in the 1980s unfairly reneged on an emission-reducing duty, which was owed, at least in part, to present-day polluters (because it would make present-day polluters better off, by removing the duty gap conundrum). These non-compliers have unfairly reneged on (a) their duty to fellow actors. When and why should this intra-group unfairness have any bearing at all on (b) what those present-day actors owe third parties?

Presumably, the answer will depend on the severity of the intra-group unfairness, as against the severity of the harm to third parties, as against the cost of remedying that harm. The present-day Air New Zealand members should not have to, say, become utterly destitute by compensating the victims' families. But it does not seem unfair for them to forgo a pay rise. If the latter is at issue, then acknowledging the unfairness done to present members is not more important than remedying the harm done to the crash victims (by compensating their families). Thus, the unfairness objection to gap-filling duties does not stick in every case.

There is a second, and more generalisable, reply to this unfairness objection. This is that imposing costs on present-day individuals does not preclude acknowledging the unfairness done to them. This second reply thus also addresses Murphy's complaint about the gap-fillers "taking on" the responsibility of the gap-creators. The gap-creators' reneging on their duty is done and remains, no matter whether the gap is filled or not. The

gap-creators retain their moral agency and are fully morally blameworthy for not doing their duty.<sup>29</sup>

Thus, drawing on the slack-taking debate, we can see that gap-filling duties (like slack-taking duties) are not necessarily objectionably unfair—even if someone is blameworthy for the gap’s existence.

### *II.2 Demanding*

A second objection to slack-taking duties is that they permit slackers to increase morality’s demands on slack-takers. As applied to collective duty gaps, the objection is that, if gap-filling duties existed, then by creating poor administrative procedures (Erebus), or by polluting (climate change), some individuals could increase morality’s demands on others. There is an easy reply: we cannot rule out all duties whose demands are created by others’ actions. This would rule out duties to come to others’ aid when they have been oppressed, exploited, or placed in dire need by third parties.<sup>30</sup> This would be to throw much of ordinary morality out the window.

This objection points to what may be at the heart of the debate about slack-taking, which is a debate about morality’s demandingness. That is, the objection is that slack-taking increases morality’s demands on slack-takers, such that slack-taking might cause

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<sup>29</sup> Simon Caney, “Cosmopolitan Justice, Responsibility, and Climate Change,” *Leiden Journal of International Law*, 2005, XVIII, 4 (December 2005): 747–75, at p. 772;

Karnein, “Putting Fairness in its Place,” *op. cit.*, p. 605.

<sup>30</sup> Zofia Stemplowska, “Doing More than One’s Fair Share,” *Critical Review of International Social and Political Philosophy*, XIX, 5 (2015), at p. 594.

slack-takers to step over some threshold of demandingness, which morality cannot demand agents to cross. *Mutatis mutandis* for gap-filling and gap-fillers.

However, if general over-demandingness is the objection, then again this is not unique to slack-taking or gap-filling. Keeping one's promises or saving drowning toddlers is over-demanding in some contexts. But that isn't an objection to there being duties, in other contexts, to keep your promises or save drowning toddlers. Likewise, agents do not have slack-taking or gap-filling duties if this would exceed the demands that morality can make on the agent for the sake of the value at stake. But the objection does not speak against duties to slack-take or gap-fill in other cases. Thus, slack-taking and gap-filling obligations are not necessarily objectionably demanding.

### **III. Gap-Filling Duties in Agent vs Non-agent Groups**

It might now appear that we can freely assert gap-filling duties out of thin air. But there are two more issues. The first, addressed in this section, regards how we should conceptualise gap-filling duties in group agents as against non-agent groups. The second, addressed in §IV, is that we need some positive justification for asserting the duties.

To explain the conceptualisation problem, consider again the slack-taking debate. Participants in that debate assume that groups like 'polluters' or 'the affluent' can have duties, whose constitutive parts can be (or have been) divided amongst all members of the group. Without such an assumption, the question of whether I must do more than *my share* of that duty, by taking up *your slack*, seems unable to arise. There is a problem with this assumption, which will shed new light on gap-filling duties.

The problem is that it is false that non-agent groups can properly be described as having duties, whose components have been or can be parcelled out, fairly or otherwise.

If a duty is a duty to perform some action (like ‘compensate crash victims’ families,’ or ‘prevent catastrophic climate change’), and if only agents can perform actions (which looks plausible), then a non-agent group cannot have a duty to perform an action. Non-agent groups—groups like polluters, but not groups like airlines—do not have the unified rational point of view and the distinct decision-making procedures characteristic of agency. So, they cannot act. This means they cannot have duties to act. Any duties ascribed to them, then, will be woefully poor normative guides.<sup>31</sup>

What does this mean for filling collective duty gaps? It means that if a duty gap arises in a non-agent group, then the question about whether we can fill the gap is simply the question of how demanding individual duties are or can be. With the ‘fair shares of the group duty’ baseline removed, the issue of ‘remedying harms that should be remedied by others, as their share of the group duty’ never arises. Instead, in non-agent groups, if some action is within your personal demandingness threshold, then, if it would be valuable enough, you ought to perform the action. This is the most defenders of gap-filling (and, indeed, slack-taking) can defend.

By contrast, within group agents, it does make sense to talk about shares of the group duty, and about filling gaps that arise from others not doing their share. Even if no one created the duty gap, it makes sense to talk about a member’s share of the group’s reparative burden: that share will be determined largely by the member’s role within the

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<sup>31</sup> Holly Lawford-Smith, “‘What ‘We’?,” *Journal of Social Ontology*, I, 2 (September 2015): 225–49, at pp. 226–27.

group.<sup>32</sup> All group agents have roles. These roles can be understood as guiding members' shares, about which we can sensibly ask the gap-filling question in terms of 'doing more than your share of remedying the group's harm' or 'taking up the slack.' Of course, the group might not have distributed these roles fairly.<sup>33</sup> But in that case, it still makes sense (in fact, is more urgent) to ask about whether individuals should take on others' shares.

To summarise, to the extent we can fill collective duty gaps, we should use different conceptual tools to do so in group agents as compared with non-agent groups: in group agents, we should use the concept of slack-taking duties (since roles delineate the shares in that context), while, in non-agent groups, we should use the concept of individual reparative duties (since roles and shares do not apply). There are, then, two species of the genus 'gap filling duties': reparative slack-taking duties and reparative duties simpliciter.

This matters because it implies that any positive justification for slack-taking duties will likely not extend to gap-filling more generally. So, we need once more to step back from the slack-taking debate, and discuss gap-filling more generally. The aim is to find a justification for gap-filling duties, of both the slack-taking and straightforwardly reparative varieties. In §II, I replied to two objections to imposing costs on group

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<sup>32</sup> Stephanie Collins, "Duties of Group Agents and Group Members," *Journal of Social Philosophy*, XLVII, 1 (Spring 2017): 38–57, at pp. 40–43..

<sup>33</sup> On what a *fair* distribution of specifically cost-related roles might look like, see Stephanie Collins, "Distributing States' Duties," *Journal of Political Philosophy*, XXIV, 3 (September 2016): 344–66.

members in the pursuit of filling collective duty gaps. But I have not yet given a positive case for doing so.

#### **IV. Commitments to Ends as a Justification for Gap-filling Duties**

In short, my proposal is this:

If:

(i) two or more individuals have exchanged commitments to one another to positively respond to a permissible end, and

(ii) harm arises from any (including aggregations) of those individuals' reasonable positive responses to that end (including the responses of realising, pursuing, endorsing, maintaining), and

(iii) individual duties to remedy the harm cannot be justified on the basis of individual harms or wrongs,

then:

(iv) each of the individuals has a duty (owed in part to those with whom she exchanged commitments) to take on costs in remedying the harm.

There is a separate question about how to conceptualise these duties—as slack-taking duties, or as individual duties simpliciter. The duty in (iv) can be construed as slack-taking in all cases—that is, in both agent and non-agent groups—if one remains unconvinced by §III.

The key concept here is commitment to another to (positively respond to<sup>34</sup>) a permissible end. This is a three-place relation: an agent, A, commits to another agent, B, to an end, E. Commitments to another to an end are ‘exchanged’ when A commits to B to E and B commits to A to E. This does not mean that A and B have committed to respond positively to the end together, or with we-intentions,<sup>35</sup> or as a plural subject,<sup>36</sup> or as a joint action,<sup>37</sup> or with participatory intentions<sup>38</sup>—though they might have. It also does not mean that either A or B cause the other to respond positively to the end. Each agent’s committing need not even cause the end itself.

So much for what committing is not. What is it? If A commits to B to E, then (constitutively) A has assured B that, or pledged to B that, or promised to B that, or invited B to rely on or trust in the fact that, she is disposed to respond positively to the end. This is neutral on the relation between such notions as promising, relying, assuring, raising expectations, and trust.<sup>39</sup> Such debates notwithstanding, the crucial point is that, in committing, A gives B standing to hold A to account if A does not respond positively to E under certain conditions (again, the conditions for triggering the disposition will vary depending on A, B, E, and their context).

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<sup>34</sup> I will drop this parenthetical clause for simplicity.

<sup>35</sup> Tuomela, *The Philosophy of Sociality*, *op. cit.*

<sup>36</sup> Gilbert, *On Social Facts*, *op. cit.*.

<sup>37</sup> Bratman, *Shared Agency*, *op. cit.*.

<sup>38</sup> Kutz, *Complicity*, *op. cit.*.

<sup>39</sup> On this, see, for example, T.M. Scanlon, *What We Owe to Each Other* (Cambridge, Mass.: Belknap Press, 1998), pp. 295–327.

What it means to ‘respond positively’ will vary depending on the end: some ends are to be realised, others pursued, others endorsed, others (for example, impossible ends) merely desired, and so on. For some ends, any such response is appropriate and the nature of the positive response may be a matter of discretion. By committing, the agent may ‘sign up’ to one or more of these responses (perhaps without determining which). When A and B have exchanged commitments to one another to E, then they are each permitted to rely on, or trust that, or consider themselves assured (as appropriate) that each is disposed to respond positively to E.

I use the notion of ‘commitment’ rather than ‘promise’ to keep open the range of ways in which one might commit to another to an end. The exchanged commitment need not be as explicit as promises typically are. Depending on context, a commitment might arise with a mere glance or might arise gradually over time.<sup>40</sup> It might arise by cheering on, or expressing solidarity with, a cause. In some contexts, we can commit simply by doing precisely the things that committing commits us to do in the future.

To motivate this proposal, take a small-scale example. Suppose I commit to you to cutting carbon emissions, and you commit to me to cutting carbon emissions. I say to you, firmly, “I’m going to aim at cutting emissions this year. That’s a commitment.” You

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<sup>40</sup> Here I follow Gilbert (*On Social Facts*, *op. cit.*; Margaret Gilbert, *A Theory of Political Obligation* (Oxford: Oxford University Press, 2006)). My proposal differs from Gilbert’s notion of joint commitment, in that if A and B each commit to the other to E, then (in my view) there are two commitments. In contrast, for Gilbert, if A and B jointly commit to E, then there is just one commitment, held by the plural subject, to do something as a plural subject. My account is thus thinner and perhaps easier to satisfy.



say the same to me. We have now exchanged commitments. Given our exchanged commitments, I may rely on you to pursue emissions reduction as and when you become able (since, let us assume, pursuit is the appropriate positive response to this end). I may hold you to account if you fail to do so. You are in a state of accountability to me. You are in my pocket and I am in yours. We are on the hook to each other.

An attractive flipside of this mutual vulnerability-to-reproach is mutual claim-to-support. If you take up cycling as a way of reducing emissions, but then get a tyre puncture, then I should help you repair it insofar as I can. If I must decide how to limit my attendance at overseas conferences, in order to fly less, then you should offer to help me decide which conferences to forgo. If you find vegetarianism horrible, then I should listen sympathetically and make suggestions where I can. The prospect of such support is one reason why we exchange commitments to others to ends in the first place. If I don't offer such support, then you can question whether my commitment to emissions reduction was genuine in the first place (and you can beret me for it not being).

My suggestion is that filling collective duty gaps is simply another type of such support: if you cause harm while (reasonably) responding positively to the end, then I am (pro tanto) on the hook. The word 'reasonably' (and 'reasonable' in clause (ii) above) is important: I have a duty to fill in this gap only if your positive response to the end was reasonable. I assume that one is not being reasonable in one's response to an end if one does not do one's general epistemic duties, does not try to reason rationally from premises to conclusions, and so on. For example, if you recklessly run over a child while cycling to work as part of your pursuit of reduced emissions, then your pursuit of that the emissions-reduction end was not reasonable. In that circumstance, I would not acquire a

duty to fill the gap. Additionally, the reciprocity of the commitment—the fact that it has been made in both directions, from me to you and from you to me—is crucial. It means that we can see this as a form of insurance or cost-pooling, which one opts into when one engages in an exchange of commitments.

Ontologically, we can view the exchange of commitments as creating an *end-oriented group* (though this is probably not the only way of creating such a group). Members of an end-oriented group each hold a certain end, and are each disposed to rely upon and reinforce each other's positive responses to that end. Again, end-oriented groups are not necessarily group agents or plural subjects, where the former have clear decision-making procedures and where the latter commit to do things as a body. Members of end-oriented groups need not even have meshing sub-plans<sup>41</sup> or intend that the members together achieve the end,<sup>42</sup> or have common knowledge that the end is held by each.<sup>43</sup>

Nonetheless, when a group is end-oriented, outcomes are often possible that would not be possible if the group were not end-oriented. This is because members of end-oriented groups can (more reliably than non-end-oriented groups) predict, rely upon, and reinforce one another's end-related actions and attitudes. This allows them to better

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<sup>41</sup> Bratman, *Shared Agency, op. cit.*, at pp. 53–5.

<sup>42</sup> Philip Pettit and David Schweikard, "Joint Actions and Group Agents," *Philosophy of the Social Sciences*, XXXVI, 1 (March 2006): 18–39, at p. 23.

<sup>43</sup> Common knowledge may not even be necessary in thicker kinds of joint agency (Olle Blomberg, "Common Knowledge and Reductionism about Shared Agency," *Australasian Journal of Philosophy*, XCIV, 2 (March 2016): 315–26).

solve coordination problems, particularly if the problem relates to the end. Also, members can (more rationally than in non-end-oriented groups) ‘we-reason’ when choosing their own individual actions that relate to the end. When someone we-reasons, he “considers which *combination* of actions by members of the team would best promote the team’s objective, and then performs his part of that combination.”<sup>44</sup> End-oriented groups thus hold a weak type of proto- shared agency, deriving from their common aim, common dispositions to predict, rely upon, and reinforce each other’s actions, and common rational availability of we-reasoning decision-making processes. The combination of weak proto- shared agency, mutual vulnerability-to-reproach, and mutual claim-to-support (including gap-filling remedial duties), provides a normative architecture for (at least partly) redressing moral collective action problems.

To further illustrate, consider again Miller’s briefly described example: Bert steals Anne’s money then runs away. Charles is around. How can we move from Charles’ lack of fault to a duty for him to compensate Anne? Miller asserts that it is unfair to say Charles is required to compensate Anne. We are here intended to assume, I surmise, that Bert and Charles are unassociated.

Let us alter the case. Imagine Bert and Charles have each committed to the other to the end of putting on free concerts in the town square.<sup>45</sup> Bert performs in the square.

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<sup>44</sup> Robert Sugden, “The Logic of Team Reasoning,” *Philosophical Explorations*, VI, 3 (2003): 165–81, at p. 167, emphasis original. Note that this does not entail ‘we-intentions’ or the other more demanding properties mentioned above.

<sup>45</sup> This is a permissible, but not morally required, end. So the worth of the end itself is not doing any work.

As Bert wheels his piano out of the square, taking reasonable care, he accidentally drops his piano, breaking Anne's foot. Bert has no money to pay Anne's hospital bills. Anne ought not to foot her bill, but upon whom can we place the duty?

My suggestion is this: Charles has a duty, owed in part to Bert, to help pay Anne's bill. At the very least, Charles has more of a duty here than some unconnected fourth party. Charles' duty to compensate Anne arises out of his and Bert's exchanged commitments to the end, which generates a duty to support one another in the reasonable pursuit of that end. If Bert and Charles form a group agent (which is neither entailed, nor ruled out, by their having exchanged commitments), and if remedying Bert's harms is not part of Charles's group-defined role but is part of Bert's group-defined role (which Bert is currently unable to fulfil), then we can conceive of Charles' duty as a duty to 'take up the slack' for Bert. If they do not form a group agent, then slack-taking does not apply, and the duty is simply one Charles incurs as an individual moral agent (as opposed to as a role bearer within a group agent). Whether or not Bert and Charles are a group agent, Charles's duty fills the gap created by Bert's clumsiness.

This explanation of why there is no gap-filling duty in Miller's original theft case is superior to Zofia Stemplowska's explanation of it. Stemplowska suggests that Charles would have the duty when, only when, and because Anne is in grave need.<sup>46</sup> Perhaps grave need is sufficient for a duty. But it is not necessary. Collective duty gaps will also trouble us in cases where the victims are not in grave need, such as that of the piano. Finally, notice that this account does not rely on the idea that the commitment exchangers

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<sup>46</sup> Stemplowska, "Doing More than One's Fair Share," *op. cit.*, at p. 598–99.

have done anything wrong, either together or jointly. It thus avoids the pitfalls of the two approaches considered in §I.

## **V. The Range of the Account**

There are limits. One relates to the way in which ends are specified. Consider Erebus: a large company like an airline has numerous ends, many of which conflict, and many of which it has exchanged commitments to with only some of its staff. For example, it has the ends of maximising profits and of keeping passengers safe. Someone who cleans the plane cabins might have committed to neither of these ends. A safety engineer might have committed to only the safety end, and be vehemently opposed to the profit end (except as it is necessarily to maintain the safety end). An executive board member might treat safety as purely instrumental to the end of maximising profits. In the case of the Erebus crash, are all these individuals liable to gap-filling duties?

Not necessarily. Exactly what it takes to exchange commitments is a highly context-dependent and contestable matter. Roughly, we should judge whether commitments have been exchanged by asking whether (i) a culturally-informed reasonable person, or an ideal observer, or an idealised intersubjective deliberation process, would reach the conclusion that commitment-exchange has occurred; and (ii) if the agents were to honestly and coldly reflect (assuming this were possible), they would acknowledge the end as one to which they have exchanged commitments. Using this guideline, we do not necessarily distribute costs to plane cleaners when remedying the Erebus crash; to anti-war protesters when remedying the harms caused by the US-led invasion of Iraq; or to BP's social responsibility officer when remedying the harms

caused by the Deepwater Horizon oil spill.<sup>47</sup> The exchanged commitments approach preserves the value of giving individuals some control over the duties they incur, while still filling the gaps.

What about the pollution example? Different people have exchanged commitments to different things, but some of our contemporaries are on the hook. The relevant end, for many people, is something like ‘keeping this company in profit over the next few years.’ Many people have committed to their employers to this end, through their everyday work practices.<sup>48</sup> Many employers have committed to that end in exchange, by making explicit its business goals. Pollution is an effect of the reasonable pursuit of such ends. So, those who have exchanged such commitments have duties to fill the collective duty gaps (that is, duties to alleviate harm to Earth-inheriting children) that arise from their company’s pursuit of that end. The individuals can have duties to fill this gap even if their individual actions in the pursuit of that end are not harmful, because they and their commitment-exchangers do harm in aggregate.

## **6. Conclusion**

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<sup>47</sup> Whether BP’s social responsibility officer has exchanged commitments might depend, for example, on how many options she had when she took up her job: if she would have been otherwise without a job, then it’s not obvious she has exchanged commitments to all of BP’s nefarious ends, at least not in the duty-creating conception of commitment at issue here.

<sup>48</sup> Though see fn. 47.

In sum, we can—often, though not always—fill collective duty gaps by acknowledging the existence of commitment-based duties. I say ‘not always’ because there will remain cases where there are no exchanged commitments, and yet there is a collective duty gap. The question remains of how to fill these. Other questions remain too, such as how the costs of filling collective duty gaps should be apportioned amongst the gap-fillers. Exchanged commitments are an important and overlooked tool in our gap-filling armoury, but they are not the only tool we will ever need.