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## **ABSTRACT**

Although it is widely accepted that a theory of justice ought to be action-guiding, we lack a persuasive account of what this role entails. This omission has allowed a number of misleading narratives to emerge, including the realist claim that justice is of little relevance to citizens in practice because it is not action-guiding in circumstances of non-compliance. This paper seeks to correct this omission in the literature by providing a general account of the action-guiding role of justice. In so doing it makes three contributions to the literature on justice. Firstly, it explains what kind of guidance we should expect a theory of justice to offer citizens. Secondly, it specifies the criteria that a particular theory of justice needs to satisfy to qualify as action-guiding. And thirdly, it demonstrates that, contrary to realist criticisms, justice is action-guiding in circumstances of non-compliance and so is of practical use to citizens.

**Keywords:** Justice, Realism, Politics, Action-guidance, Non-compliance, Non-ideal theory.

## I. INTRODUCTION

Political theorists have usually assumed that theories of justice are of practical use and interest to citizens and political leaders because they are action-guiding. Yet despite this common assumption (or perhaps because of it) few have sought to explain how a theory of justice can guide the actions of citizens and political leaders.

Given this notable omission it is not surprising that many political actors operate under the assumption that justice is largely irrelevant to political practice. After all it is not obvious that the kind of abstract moral theorizing that comprises many theories of justice has much to offer those who are required to make decisions within the complex and difficult confines of political practice. What is perhaps more surprising, however, is that this view of justice has recently gained currency among political theorists.

Drawing on the work of Machiavelli, Hobbes and Nietzsche, a number of political theorists have questioned the belief that justice is action-guiding.<sup>1</sup> Their argument, targeted primarily at Rawls's theory of justice, but more widely applicable to ideal theory in general, is that justice is not capable of guiding the actions of political actors because it is unsuited to the practical circumstances of real politics. Underlying this claim is the belief that theories of justice of the kind typified by Rawls are designed for an idealized society in which all citizens comply fully with the demands of justice. Realists argue that this assumption of full-compliance renders a theory of justice incapable of guiding action because real world politics is characterized by non-compliance and this affects what citizens and political leaders ought to do. A theory of justice cannot provide useful guidance because its failure to take account

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<sup>1</sup> See for example: Farrelly (2007); Galston (2010); Geuss (2008); Horton (2010); Mills (2005); Phillips (1985); Rossi & Sleat (2014); Schmidtz (2011); Sen (2006); Sen (2009); Wiens (2012); Wiens (2015).

of non-compliance means that any recommendations it offers are at best useless and at worst dangerously misleading.

In this paper I aim to show that the realist criticism of the action-guiding role of justice is mistaken. I do not engage directly with the realist critics of Rawls and ideal theory,<sup>2</sup> but rather seek to establish that their criticisms are mistaken by demonstrating that justice is action-guiding for citizens even in the circumstances of non-compliance that typically characterise real world politics. In so doing I hope not only to demonstrate that realist concerns are misplaced, but also to provide the account of action-guidance that is currently missing from the literature on justice.

The argument of this paper proceeds as follows. I begin by explaining how a theory of justice guides action by showing that principles of justice function as decision-making procedures that citizens can use to help them decide what to do in matters relating to the design of their social and political institutions (section II). Secondly, I set out the criteria that a particular theory of justice must satisfy to qualify as action-guiding. I argue that a theory counts as action-guiding when its principles are capable of delivering coherent, consistent and determinate verdicts on the justness or unjustness of actions and citizens have the ability to use those principles to derive a prescription for action that they are able to comply with (sections III-V). Thirdly, I demonstrate that principles of justice are normally action-guiding in circumstances of non-compliance because the refusal of some citizens to do as they ought does not usually prevent others from using a principle as a decision-making procedure (sections VI-IX). I do, however, note one partial set of exceptions to that claim (duty-cancelling cases), but point out that in such cases a principle of justice remains action-guiding

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<sup>2</sup> Those who have provided convincing defences of ideal theory against realist criticisms include: Erman and Möller (2013); Estlund (2011); Stemploska (2008); Swift (2008);

for at least some agents and that such cases are not the norm in moderately just and nearly just societies (section X). I then, fourthly, outline two implications that my account of the action-guiding role of justice has for how we should think about politics (section XI). Here I draw attention to the central role that justice should play in political decision-making and the incompatibility of my account with realist and procedural theories of politics. I conclude by pointing out that the failure to acknowledge that justice is action-guiding in circumstances of non-compliance not only constitutes a basic misunderstanding of how justice applies to citizens in unjust circumstances, but gives licence to those who are unwilling to comply with justice by suggesting that non-compliance is either unavoidable or justifiable.

## II. PRINCIPLES AS DECISION-MAKING PROCEDURES

Rawls's theory of justice is an obvious starting point for any discussion about the action-guiding role of justice. In part this is because his theory of justice has been the main target of realist criticisms, but also because his views on justice, more than most, are characterized by a commitment to feasibility and practicality.<sup>3</sup>

Reflecting that commitment, Rawls briefly discusses two ways in which a theory of justice can be thought of as action-guiding.<sup>4</sup> He suggests that, first, a theory of justice is action-guiding insofar as it identifies and describes the objective that citizens should aim to

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<sup>3</sup> For an excellent discussion of Rawls's realism see Gledhill (2012)

<sup>4</sup> See Rawls (1999a, 215-216); Rawls (1999b, 89-90). Those who discuss and broadly accept Rawls's account of action-guidance include: Gilibert (2012); Jubb (2012); Robeyns (2008); Robeyns (2012); Simmons (2010); Stemplowska (2008); Stemplowska and Swift (2012); Swift (2008).

achieve (the just, or well-ordered, society). This provides guidance for citizens because when they make decisions about the design of their institutions they should do so with the long-term aim of realising this objective in mind. Secondly, Rawls suggests that a theory is action-guiding because it helps citizens understand which injustices they should seek to eliminate first. A theory of justice is necessary for this purpose because it is only possible to identify the most urgent injustices by measuring their distance from an ideal, or perfect, conception of justice.

Rawls's account of the action-guiding role of justice is unsatisfactory for at least two reasons. Firstly, he says nothing about the properties a theory must possess to qualify as action-guiding. This is a significant omission because if we do not know which criteria a theory must satisfy to count as action-guiding then we cannot accurately assess the action-guiding claims of candidate theories of justice. The second, and more serious, problem is that it fails to capture the immediate and direct ways in which a theory of justice is (or should be) action-guiding. For Rawls, justice is only indirectly action-guiding. It identifies the target we should ultimately seek to achieve and performs an instrumental role in identifying the most grievous injustices. But justice does not, on Rawls's account, provide immediate and direct guidance for citizens who want to know what they ought to do here and now.

These failings, along with the brevity of Rawls's account, help explain why realists have reached the conclusion that justice is not action-guiding. And if Rawls's account was the best that could be said about the action-guiding role of justice then it would be hard to disagree. However, whilst realists are right to conclude that Rawls's account of action-guidance is unpersuasive they are wrong to draw the conclusion that justice is not action-guiding in a direct and practically useful way. To see this it helps to understand why Rawls reached the conclusion that justice is only indirectly action-guiding.

The underlying problem with Rawls's discussion of action-guidance is that it proceeds on the assumption that the aim of a theory of justice is to describe the ideal or perfectly just society.<sup>5</sup> Although I don't think this is Rawls's considered view,<sup>6</sup> it does inform his account of action-guidance and more recent discussions of the action-guiding role of justice. This is a problem not just because it is an unconvincing interpretation of the aim of a theory of justice, but because it obscures the role performed by principles. This has contributed considerably to the confusion surrounding whether or how a theory is action-guiding because, as I explain below, principles are the means by which a theory can guide the actions of citizens.

The first step to overcoming this confusion is to recognise that the aim of a theory of justice is not to describe the perfectly just society, but to explain what makes social and political institutions just or unjust.<sup>7</sup> A theory achieves this aim by formulating principles that systematically set out the conditions under which social and political institutions are just or unjust. When a principle, or set of principles, does this correctly it identifies the underlying features of institutions that make them just or unjust and, in so doing, contributes to our theoretical understanding of justice. It is possible to deduce from these principles what an

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<sup>5</sup> This view of justice is also widely accepted by realist critics of Rawls and forms the basis of their claim that justice is not action-guiding. See, for example, Sen (2006) and Sen (2009, Introduction and 98-102).

<sup>6</sup> For Rawls's considered view of the aim of a theory of justice see Rawls (1999a, 40-46).

<sup>7</sup> On the explanatory aim of a theory of justice also see Rawls (1999, 41).



ideal or perfectly just society might look like, but this is incidental to what a theory of justice seeks to do and should not be confused with the primary, explanatory aim of a theory.<sup>8</sup>

The fact that a theory of justice uses principles to achieve its explanatory aim is what also enables it to perform two further, practical roles. Firstly, when a principle correctly specifies the conditions under which an institution is just or unjust it also serves as a normative criterion of justice, or normative standard, which can be used by citizens to evaluate their particular social and political institutions.<sup>9</sup> This is the evaluative role of a theory of justice. Secondly, a principle of justice that delivers verdicts on the justness or unjustness of particular institutions can be used by citizens to help them decide what to do in matters relating to the design of those institutions because those verdicts identify which of the actions available to citizens are permissible and impermissible. This, I am going to argue, forms the basis of the action-guiding role of a theory of justice.

To better understand the action-guiding role of a principle of justice and how it relates to the other roles performed by a principle we can begin by considering an example. If Amy is trying to decide how to vote in a referendum that asks whether political parties and political campaigning should be funded publicly or by (unlimited) private contributions she might decide to consult Rawls's theory of justice in the hope of finding guidance (and, for the sake argument, assume that Rawls's first principle is correct). If Amy does this she will find that Rawls's first principle explains that political institutions are just only when they provide

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<sup>8</sup> In this sense a theory of justice is like a moral theory. Thus, a complete moral theory could be used to explain what a perfectly moral society would look like but its primary aim is to explain what makes an action right or wrong. For a clear overview of the purpose of a moral theory see Timmons (2002, esp. chapter 1).

<sup>9</sup> On this role see Rawls (1996, 9).

citizens with a fully adequate scheme of equal basic liberties, with fully adequate being understood to include fair value of the political liberties.<sup>10</sup> If we again assume for the sake argument (and with Rawls<sup>11</sup>) that this principle delivers verdicts that say, all things being equal, public funding for political parties and political campaigning is consistent with the first principle and permitting (unlimited) private contributions is not, then Amy can use those verdicts to guide her reasoning and subsequent actions (given that she is motivated to act justly).

We can see from this example how a principle of justice achieves its explanatory aim and performs its practical roles. It achieves its explanatory aim by identifying the underlying features that make an institution just or unjust. Hence, Rawls's first principle identifies the equal distribution of basic liberties, including fair value of the political liberties, as an underlying property of just institutions and expresses that information as a general statement that says that political institutions ought to provide each citizen with a fully adequate scheme of equal basic liberties. In achieving its explanatory aim a principle of justice also performs the first of its practical roles because it can function as a moral standard that can be used to evaluate political institutions. Thus, Rawls's first principle would (all things being equal) evaluate a set of political institutions as just when they provide each citizen with a fully adequate scheme of equal basic liberties (including fair value for the political liberties) and unjust (or less than fully just) when they do not.

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<sup>10</sup> See Rawls (1999a, 197-199).

<sup>11</sup> It is Rawls's view that the liberty principle would deliver these verdicts because unlimited private contributions are not consistent with the fair value of the political liberties. Rawls (1996, 356-363).

In its action-guiding role a principle of justice guides the reasoning of agents by delivering verdicts on the justness or unjustness of actions that agents can use to identify which of the actions available to them they ought to perform. Rawls's first principle does this by prescribing or permitting those actions that are consistent with furthering or supporting political institutions that distribute basic liberties equally and prohibiting those actions that undermine the ability of political institutions to distribute basic liberties equally. In the example above it was supposed that voting for the public funding of parties is permitted because it is consistent with the equal distribution of the basic liberties and voting for private contributions to parties is prohibited because it is inconsistent with an equal distribution of basic liberties.

Understanding this helps us explain how a theory of justice guides action. A theory guides action by formulating principles that agents can use as decision-making procedures to guide their reasoning about what it is they ought to do in a given situation. To perform this action-guiding role a principle of justice must also satisfy its explanatory aim because unless a principle correctly specifies what makes political institutions just or unjust it will fail to guide an agent's reasoning in a way that is consistent with what justice requires. This means that a theory of justice is action-guiding only when its principles correctly explain what makes institutions just or unjust and can be used by agents as decision-making procedures.

Although a principle of justice must perform both of these roles if it is to provide the right kind of guidance, it is not self-evident that a principle that achieves its explanatory aim will necessarily be action-guiding. After all, we can readily conceive of a principle that is action-guiding but which fails to correctly specify what makes an institution just or unjust and so it is entirely possible that a principle that satisfies the explanatory aim of a principle of

justice may fail to be action-guiding.<sup>12</sup> Consequently, if we want to know whether or not a particular theory is action-guiding we need to set out the criteria that any principle would have to satisfy in order to count as action-guiding rather than assuming that the action-guiding role of justice is entailed by its explanatory aim.

### III. THE PROPERTIES OF AN ACTION-GUIDING PRINCIPLE

If we assume that a given principle of justice correctly sets out the conditions under which a political institution is just or unjust (and is capable of performing its evaluative role) then it would need to satisfy at least four further conditions to also function as a decision-making procedure and so count as action-guiding.

Firstly, to function as a decision-making procedure a principle of justice needs to deliver verdicts that recommend a *coherent course of action*. If a principle is defective in some way this may prevent it from delivering verdicts that agents can use to guide their actions. This criticism has been made of act utilitarian principles on the grounds that they require agents to compare and rank the consequences of actions that have yet to be performed. Doing this, it is argued, is incoherent and as a result utilitarian principles are unable to deliver meaningful verdicts.<sup>13</sup> Secondly, a principle that is action guiding has to provide an agent with *consistent guidance*. Obviously, a principle that generates inconsistent verdicts in like cases would be incapable of providing agents with reliable guidance and so

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<sup>12</sup> On the relationship between the theoretical and practical role of a principle see McKeever and Ridge (2006, 9-10) and Vayrynen (2006, 292).

<sup>13</sup> See, for example, Singer's discussion of the incoherence of comparing the consequences of actions that are yet to be performed in Singer (1977, 66-77). See also Smith (2012, 371).

does not count as action-guiding.<sup>14</sup> But a more common problem is that a particular principle of justice may be only one constituent part of a theory of justice that comprises several principles. When that is the case it is important that principles do not offer conflicting verdicts and consequently inconsistent guidance. It is for this reason that Rawls emphasised the importance of priority rules and why he rejected intuitionism as ‘but half a conception of justice’.<sup>15</sup> Thirdly, a principle must deliver *determinate verdicts*. A principle does this when the verdicts it delivers are clear and definite about the justness or unjustness of the action in question. A principle that fails to deliver definite verdicts on an action is of little use to an agent because it fails to pronounce unambiguously on the actions available to that agent and so provides no useful guidance. For example, a principle that says that political institutions should be structured in such a way that all persons are treated with equal respect offers little or no guidance to agents concerned with the design of political institutions because, unless more is said about what is involved in treating a person with respect, almost any or no action can be presented as consistent with treating persons with equal respect.<sup>16</sup> A principle of justice (in conjunction with the relevant empirical facts) must therefore be capable of delivering determinate verdicts about the justness or unjustness of actions. Finally, a principle must provide verdicts *across a range of cases*. A principle that is narrowly drawn will avoid the problem of indeterminacy but only at the cost of delivering verdicts on a very small number of actions. Such a principle is liable to have nothing to say about most if not all of the

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<sup>14</sup> See Timmons (2002, 5-6).

<sup>15</sup> Rawls (1999a, 37).

<sup>16</sup> It is for this reason that Rawls rejected the idea of a principle of respect as a foundation for his theory of justice. Rawls (1999a, 513). On the indeterminacy of the concept of equal respect also see Griffin (1986, 208) and Timmons & Smit (2013, 229-268).

actions available to an agent and so will fail to provide the kind of guidance that agents expect.<sup>17</sup>

If we bring this together we can see that a principle of justice has the properties needed to function as a decision-making procedure when it is capable of delivering a *determinate* set of *coherent* and *consistent* verdicts about the justness or unjustness of actions *across a range of cases*. When this is the case we can say that a theory of justice is *formally action-guiding* because its principles possess the properties needed to function as decision-making procedures.

#### IV. USING A PRINCIPLE AS A GUIDE

If a principle of justice possesses the properties required to function as a decision-making procedure then it is formally action-guiding because there is no defect within the principle that renders it incapable of guiding action. However, such a principle might not be action-guiding for a particular agent because that agent may lack the ability to apply that principle to her circumstances and so will be incapable of using it to guide her actions.

To apply a principle of justice to her particular circumstances an agent must have the ability to identify the verdicts that a principle delivers on the justness or unjustness of each of the actions that are available to her.<sup>18</sup> If an agent does this correctly she should be able to use those verdicts to identify which of the actions available to her are prescribed (or permitted)

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<sup>17</sup> On the problems associated with understanding principles as ‘algorithmic decision-procedures’ see McKeever and Ridge (2006, 11).

<sup>18</sup> This act of judgment is what Kant called the ‘middle term’ that connects theory and practice. See Kant (1970, 61-2).

and which are prohibited and, on the basis of that information, obtain a prescription that tells her what to do. If an agent can do this then she is capable of using a principle as a decision-making procedure and it is action-guiding for her. However, there are at least four conditions that have to be met if an agent is to be capable of using a principle in this way.

Firstly, to use a principle as a guide an agent must know that a principle applies to her. An agent that is ignorant of a principle or fails to appreciate that a principle applies to her in some given situation will not be able to use that principle to guide her actions.<sup>19</sup> So if Amy is unaware that a principle of collective political responsibility<sup>20</sup> to further justice applies to her then she will not be able to use that principle of justice to guide her actions. Secondly, if an agent does have knowledge of a principle and recognises that it applies to her then she will still be incapable of using that principle to guide her actions if she fails to understand what it requires of her. For example, if Amy knows that a principle of collective responsibility applies to her but does not understand what the concept of collective responsibility entails then she will not be able to use that principle to guide her action.<sup>21</sup> Thirdly, an agent may know that a principle applies to her and have a sound understanding of that principle, but still be incapable of using it as a guide because she lacks the correct empirical beliefs needed to

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<sup>19</sup> This point provides support for Rawls's claim that publicity is a formal constraint on a conception of justice. Rawls (1999, 48).

<sup>20</sup> I am thinking here of the kind of principle that would generate duties for citizens to (collectively and individually) promote and further just institutions, similar to what Rawls refers to as a principle of natural duty and Buchanan calls the robust natural duty of justice. See Rawls (1999a, 293-301) and Buchanan (2002, 703-70)

<sup>21</sup> On concepts and principles that are not understood by agents and the effect this has on agent's ability to use a principle as a guide see Smith (1989, 113-114).

apply the principle. Hence, if Amy knows that a principle of collective responsibility requires her to support and vote for the party that will best promote justice but knows little to nothing of any party's policies then she lacks the facts needed to apply and use the principle to guide her actions.<sup>22</sup> Fourthly, an agent may understand a principle and possess what she believes to be the correct set of beliefs about her situation, but will fail to derive the correct prescription from that principle if it turns out that the beliefs she holds about her situation are mistaken. For example, if the principle of collective responsibility requires Amy to support and vote for the party that best protects the equal rights of all citizens then Amy needs to identify which of the available political parties' policies would best do this. But if Amy misunderstands a party's policies or mistakenly thinks that a particular party's policies would best protect citizens rights when in fact they would not, then although she derives a prescription (vote for that particular party), she derive the wrong prescription on account of holding false beliefs.<sup>23</sup> In this scenario Amy uses a principle to guide her actions but because she holds false beliefs, she uses it wrongly and derives a prescription that is contrary to what is actually prescribed by the principle in that context.

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<sup>22</sup> This is sometimes said to be a problem for act utilitarian principles because in many instances an agent will not possess the facts that would tell her which course of action would maximise general happiness. It for this reason that some utilitarians have sought to define outcomes not in terms of what is objectively maximally good, but in terms of what can reasonably be anticipated by an agent. For a discussion of two attempts to do this see Vallentyne (1987).

<sup>23</sup> For a persuasive account of how the beliefs an agent holds affects their ability to use a principle as a guide see Smith (2012).



If these obstacles are avoided then an agent should have the ability to derive a correct prescription from a principle. But whilst being able to derive a correct prescription from a principle is necessary for an agent to use a principle as a guide, it is not sufficient because an agent must also have the ability to comply with that prescription. For example, if Amy consults a principle of justice and correctly derives a prescription that tells her to vote for a particular party (because its policies will best further justice) then the principle is only action-guiding for her if she is able to vote for that party. If there is no election taking place or Amy is incapacitated so cannot get to the polling station then she lacks the ability to comply with the principle and so it is not action-guiding for her.<sup>24</sup>

This means that, in addition to being able to derive a correct prescription from a principle, the action that a principle prescribes must also be available to an agent. If the relevant action is unavailable to an agent then the principle does not apply to the agent (because 'ought implies can') and so is not action-guiding. There are typically two reasons why this might be so. Firstly, an agent may not have the opportunity to use a principle because the circumstances in which the principle would apply to the agent have not arisen and, secondly, an agent may lack the ability to comply with a principle because they are incapable of performing the action that a principle prescribes. In either of these instances an agent is incapable of complying with a principle and so cannot use it to guide her actions.<sup>25</sup>

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<sup>24</sup> This is, of course, another way of saying that 'ought implies can'.

<sup>25</sup> On what counts as having – or not having – the ability to do something see Estlund (2011).

## V. THE USABILITY DEMAND

If an agent cannot use a principle to guide her actions then the principle does not apply. As it is a desideratum of any principle of justice that it should apply to the agent that it is intended for, then it follows that we should require a principle of justice to be usable as a guide by the constituency of agents to which it is supposed to apply. We can call this requirement the *usability demand*.<sup>26</sup>

As we would normally expect a theory of justice to apply to all citizens<sup>27</sup> it follows that each citizen must be capable of using that theory's principles to guide their actions if the usability demand is to be satisfied. This poses a challenge because individual citizens have different sets of beliefs and varying cognitive, deliberative and other abilities. This means that in any given situation a principle that can be used as a guide by one citizen might not be one that can be used by another citizen.

The appropriate response to this challenge is to say that if using a principle requires a level of competence that is beyond the capacity of some citizens then that principle ought to be rejected on the grounds that it does not apply to its intended constituency, viz. all citizens. As any plausible candidate theory of justice should satisfy the usability demand for all citizens, the level of competence required to use its principles must be consistent with the

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<sup>26</sup> The usability demand has wider scope than the 'applicability demand' discussed by Holly M. Smith because it is concerned with principles that agents can be expected to use rather than those that they can in fact use. See Smith (2012, 369-70). See also Timmons (2012, 370).

<sup>27</sup> Here I assume that a conception of justice should apply to all citizens because each citizen is assumed to have a sufficiently developed sense of justice and hence the capacity to understand and comply with principles of justice. See Rawls (1999a, 496-505).

beliefs and abilities of all citizens. Amongst other things, as we saw above, this requires a principle of justice to be public, comprehensible to all citizens, consistent with the (correct) beliefs that citizens hold, and compatible with the performative abilities of all citizens.

However, when we evaluate whether or not an individual citizen has the ability to use a principle as a guide we need to take into account her capacity to acquire the beliefs and develop the abilities needed to use that principle.<sup>28</sup> If we do not do this and instead consider an agent to be capable of using a principle only when she possesses the beliefs and abilities needed to immediately use that principle then we risk making the content of justice concessive to the beliefs and abilities that an agent has and not the beliefs and abilities we should expect her to have. For example, if a principle of collective responsibility requires Amy to vote for the party that will best further just institutions then she will, amongst other things, need to inform herself about the policies that each political party advocates. However, if Amy makes no effort to inform herself about these policies then she will be unable to derive the necessary prescription because she will lack the non-moral beliefs needed to use that principle as a decision-making procedure. Even though this means that Amy cannot use the principle to guide her actions, she ought to have been able to use it and so we should consider the principle action-guiding and Amy blameworthy for not having acquired the beliefs necessary to derive a prescription from a principle.

Whilst we should be careful not to be concessive to the actual abilities and beliefs agents possess, it does not follow that a principle should be considered action-guiding just because an agent could acquire the beliefs or abilities needed to use that principle as a guide. In many cases an agent might have the ability to acquire the beliefs or abilities needed to use

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<sup>28</sup> On synchronic and diachronic possibilities with respect to agent abilities see Lawford-Smith (2013, 249).

a principle but will not have a duty to do so because requiring this of an agent would be unreasonable. For example, if Amy has the ability to acquire the beliefs and skills needed to succeed in politics, then a principle that requires Amy to further justice might appear to require her to stand for political office and dedicate her life to furthering justice. However, even though Amy has the ability to acquire these beliefs and skills, we would ordinarily think that (extenuating circumstances aside) Amy is entitled to pursue her own projects and this includes choosing her own career.<sup>29</sup> Consequently, we should understand an agent to be capable of using a principle not when she has or can acquire the beliefs and abilities to use it, but when she has or can *reasonably be expected* to acquire the beliefs or abilities needed to use that principle.

If we bring together the arguments of the last three sections we can summarise the criteria that must be satisfied for a principle to count as action-guiding as follows: a principle is action-guiding when citizens can use it as a decision-making procedure to help them decide what to do. For this to be the case two general conditions have to be satisfied. Firstly, the principle must be capable of functioning as a decision-making procedure, which it is when it is capable of delivering coherent, consistent and determinate verdicts on the justness or unjustness of actions across a range of cases. Secondly, citizens must be capable of using the principle as a decision-making procedure, which they are when they possess, or can reasonably be expected to acquire, the beliefs and abilities needed to derive a prescription from that principle and act in conformity with that prescription. When both of these conditions are satisfied citizens are capable of using a principle of justice as a decision-making procedure and so it should be considered action-guiding.

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<sup>29</sup> This is consistent with the fact that in certain circumstances an agent might be required to sacrifice their projects for the good of others. On this point see Goodin (2009).

## VI. ACTION-GUIDANCE AND NON-COMPLIANCE

We have said that a principle is action-guiding when an agent is capable of using it as a decision-making procedure. However, as I noted earlier, there are a number of realist political theorists who deny that justice is action-guiding for citizens in circumstances of non-compliance.<sup>30</sup> In the remainder of this paper I am going to demonstrate that this is mistaken by showing how citizens can use a principle to guide their decision-making when others refuse to act justly.

To do this I am going to focus on how non-compliance affects an agent's ability or duty to comply with a principle. The reason for this is that it is implausible to think that non-compliance could somehow change the internal properties of a principle and render it incapable of delivering coherent, consistent and determinate verdicts. And similarly, it is hard to see how the refusal of some to comply with a principle would affect an agent's ability to derive a prescription from a principle.<sup>31</sup> Consequently, if non-compliance does undermine the action-guiding capacities of a principle it must be because it affects an agent's ability or duty to comply with a principle of justice. I will argue, however, that non-compliance does not usually prevent an agent from being able to use a principle as a decision-making procedure and so does not normally render a principle incapable of guiding action. I will identify one

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<sup>30</sup> See fn1 above.

<sup>31</sup> The ability of agents to derive a prescription from a principle is more likely to be affected by collective action problems, as, for example, when uncertainty about the willingness of others to comply means that agents are not able to determine the facts of the situation and so cannot apply a principle reliably.

exception to this claim, but will note that even in this case some agents remain able to use a principle as a guide and so it remains partially action-guiding.

## VII. SIMPLE CASES

It is usually thought that conative failures in an agent do not affect the capacity of a moral principle to guide action because an (inexcusable) unwillingness to do as a moral principle prescribes is a failure on the part of an agent, not the principle. So if Amy makes a promise to Betty but (for whatever inexcusable reason) later breaks that promise then, all things being equal, we would normally say that the principle that required her to keep her promise was action-guiding because Amy could have used it to guide her actions (she simply chose not to and is blameworthy for this decision and its consequences).

Given that justice is a moral concept it would not be surprising to find the same point holds true for principles of justice. And in some simple cases, where a principle of justice applies to an agent, it clearly does. For example, if a principle of collective responsibility requires Amy to vote in an upcoming election, her refusal to vote would (all things being equal) mean that she is guilty of not complying with that principle. If that were the case then it seems clear that the principle remains action-guiding because there is nothing to prevent Amy from using it as a decision-making procedure.

This implies that, as with promise keeping, if an agent decides not to comply with a principle of justice that applies to her then it does not follow that the principle in question is not action-guiding. Instead it means that the principle is action-guiding for that agent and the agent is blameworthy for refusing to comply with the principle. The underlying reason for this should be clear: if a principle is action-guiding for an agent when she can use it as a

decision-making procedure then it follows that the principle remains action-guiding for that agent when she is unwilling to comply. This is because an agent's unwillingness to comply with the principle does not affect her ability to derive a prescription from the principle or her ability to comply with it. In other words, the refusal to comply with a principle does not imply an inability to use a principle as a decision-making procedure and so does not constitute a reason for believing that the principle is not action-guiding.

## VIII. COMPLEX CASES

It might be responded that whilst a principle is action-guiding when only a single agent is involved, in practice matters of justice usually involve the actions and cooperation of many agents and it is in these kinds of situations that non-compliance affects the duty of agents to use a particular principle to guide their actions. It is true that the collective nature of many duties of justice does complicate the circumstances under which a principle counts as action-guiding because it makes using a principle as a decision-making procedure more complex. However, we should not move too quickly and assume that just because some agents have refused to comply with a principle that this will invariably affect the duty that others have to comply. In many situations the non-compliance of some agents has little or no effect on any agent's ability and duty to use a principle to guide their actions even when that principle applies collectively.

For example, if a principle of justice requires each citizen to vote for a particular political party because its policies best support just institutions it does not matter that some fail to vote (or vote for another party) if enough people vote for the correct party and so it gains power and can implement its policies. The fact that some agents refuse to comply with

the principle does not prevent Amy, or any other agent, from using that principle as a decision-making procedure and so it remains action-guiding for all agents.<sup>32</sup>

In this example the salient point is that non-compliance has no significant impact on the ability or duty of agents to use a principle as a decision-making procedure. This means that from the point of view of the action-guiding role of a principle nothing changes. Those agents who are willing to comply with a principle can do so in the same way they would in circumstances of full-compliance and those who refuse to comply can still use the principle to guide their actions, they simply choose not to. In cases such as these, non-compliance does not affect any agent's ability to use a principle as a guide and so does not affect the action-guiding role of a principle.

In some scenarios, however, non-compliance does have significant consequences. If large enough numbers of citizens decide not to vote then non-compliance becomes a serious problem and there are likely to be implications for those agents who are willing to comply with a principle. This could be because either the system of democratic voting and collective responsibility is rendered impotent in the face of mass abstention or because the party that would best further justice will not be voted into power. Another, more general way of putting this would be to say that for an action prescribed by a principle there is often a threshold of

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<sup>32</sup> This is the gist of the point that Cohen makes against Andrew Williams when he points out that complying with a principle need not depend on others also complying. However Cohen fails to adequately appreciate that at times the duty to comply with a principle does depend on other agents being willing to comply (see below). See Cohen, G. A. (2008, 348-354) and Williams (1998).



non-compliance which when passed has consequences that threaten the possibility of achieving a just outcome and calls into question the guidance that a principle offers.<sup>33</sup>

From the point of view of an agent's duty to use a principle, the non-compliance threshold is of vital importance because it marks the point at which the refusal of some to comply with a principle alters the conditions under which other agents act. What we need to establish is whether or not the effect of passing the non-compliance threshold is such that agents who would have been expected to use a principle to guide their actions under full-compliance no longer have a duty to do so in circumstances of non-compliance.

#### IX. THRESHOLD EFFECTED CASES

When sufficient numbers of agents refuse to comply with a principle and the non-compliance threshold is passed the guidance offered by a principle can be affected. This is because non-compliance changes the circumstances in which a principle is applied and this affects how those willing to comply stand in relation to that principle. In circumstances of full-compliance all agents apply a principle under the assumption that others are willing to comply. When some refuse to comply with a principle the facts of the situation change and this means that when willing compliers apply a principle they do so on the basis of a different set of non-moral beliefs. This is important because whether and how an agent uses a principle as a guide depends upon the facts of their situation. This would suggest that what agents are

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<sup>33</sup> On the idea of a threshold effect see Lyons (1965, 72-3).

expected do in circumstances of non-compliance will be affected by the non-compliance of others.<sup>34</sup>

To see how non-compliance affects the action-guiding role of a principle it will be helpful to divide the agents to which a principle applies into those who are willing to comply with a principle (*willing compliers*) and those who are unwilling to comply (*non-compliers*). If non-compliance does render a principle incapable of guiding action then it must be that when some agents refuse to comply no agent can or should comply with that principle. We will see that this is not the case because when some refuse to comply with a principle it always remains action-guiding for non-compliers and in most situations remains action-guiding for willing compliers.

When the non-compliance threshold is passed for a prescribed action there are three possible ways in which non-compliance can affect willing compliers: firstly, willing compliers can be asked to pick up the slack left by non-compliers; secondly, willing compliers may be expected to continue to do their fair-share as defined under full-compliance; and thirdly, willing compliers may have their duty to comply cancelled either because compliance is not possible or is no longer required.<sup>35</sup> I am going to run through each

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<sup>34</sup> As Tamar Schapiro puts it: changes in circumstance can ‘corrupt [actions] by detaching them from the constitutive background against which they acquire their animating spirit’. Schapiro (2006, 48). My thanks to an anonymous referee for drawing my attention to this point.

<sup>35</sup> David Miller suggests willing compliers might be entitled to ‘grouch’, that is, to only comply partially with a principle, when others refuse to do their part. I exclude discussion of this on the grounds that grouching is unlikely to be a reasonable response to non-compliance because it would implicate willing compliers in the harm that non-compliances inflicts on

of these possibilities in turn and consider how non-compliance affects the action-guiding role of a principle. In so doing I simplify things by making the following three assumptions: firstly, I assume that a set of identifiable agents have a collective duty of justice to bring about some outcome by performing some action, or series of actions, and that each individual agent knows which individual action(s) they have a duty to perform. Secondly, I assume that those who refuse to comply cannot be forced to comply. Naturally, where appropriate mechanisms exist and it is possible to enforce compliance then this is the proper response, but I am concerned here with the affect that non-compliance has on the guiding role of justice and not on how non-compliance can be prevented. Thirdly, I assume that those who refuse to comply could comply if they wanted to. In practice this might not always be possible as sometimes the moment passes and the damage is done and when that happens moral blame takes the place of the duty to comply. But for present purposes I will assume that those who are unwilling to comply could comply if they wanted to.<sup>36</sup> I will begin by looking at cases where agents who are willing to comply are expected to pick up the slack left by non-compliers.

*a) Slack-Picking*

When the non-compliance threshold is passed the action prescribed by a principle is either not performed or only partially performed, which means that those who are owed justice will receive less than they are due. One possible response in this situation is to ask willing

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those who are owed justice. There are situations in which willing compliers cannot comply or ought not to comply, but I consider these under duty-cancelling cases. See Miller (2013, 216-7).

<sup>36</sup> On each of these three points see Miller (2013, 208-10 and 215-16).

compliers to pick up the slack left by non-compliers in order to prevent the harm that would otherwise befall those who are owed justice. For example, assume a principle of sufficiency requires citizens to pay taxes at a particular level in order to fund welfare services that ensure that no citizen has less than sufficient (however that is defined). Assume also that the refusal of some to pay their fair share (by utilising tax evasion or avoidance strategies) means that the poorest citizens will have less than sufficient and so there is a case for asking the wealthiest of the willing compliers to pick up the slack by contributing more than their fair share as was determined under full-compliance.

If the principle of sufficiency is action-guiding when all are willing to comply is there any reason to think that it is not action-guiding when some refuse to comply and others are required to pick up the slack? To see that there is not consider the guidance that the principle provides for each set of agents. For non-compliers the principle continues to be action-guiding in exactly the way it would be under full-compliance because in each instance the principle could be used by non-compliers as a decision-making procedure and would provide exactly the same guidance each time, viz. contribute your fair share. For willing compliers things are little more complicated. Whereas under full-compliance each willing complier is expected to pay their fair share in taxation, in circumstances of non-compliance they are told to pay their fair share as originally determined and, additionally, their fair share of the slack that is to be picked up. This does not, however, mean that the principle of sufficiency is no longer action-guiding because it still applies to the willing compliers and can be used by them as a guide. What alters is the prescription issued by the principle to the willing compliers. It changes because the facts of the case have altered from a situation in which all agents will comply to one in which only some agents will comply. When the context in which a principle applies changes, as is the case when some agents refuse to comply, then the prescription also changes to take into account the revised facts of the situation. In this example the refusal of

some to comply means that the total amount that must be paid as tax is divided across a smaller number of citizens (the willing compliers) with the consequence that each, or at least some, of the willing compliers must pay more to ensure that no citizen has less than sufficient.

The important point for us is that the principle continues to apply to and provide guidance for willing compliers because it can be used by them as a decision-making procedure. This means that in cases of non-compliance where some agents are required to pick up the slack left by others, a principle of justice remains action-guiding for both non-compliers and willing compliers. It tells the former to comply and do their fair share and the latter to do their fair-share and pick up their fair share of the slack left by those who refuse to comply.

*b) Fair Shares*

In a second set of cases in which the non-compliance threshold has been passed, willing compliers may not have a duty to pick up the slack left by non-compliers but will still be expected to do their fair share as this was determined under full-compliance. In these situations principles remain action-guiding for both willing compliers and non-compliers in exactly the same way as they are in circumstances of full-compliance.

To see this we can again imagine that a sufficiency principle requires all citizens to pay their fair share in tax to fund welfare services and the refusal of some to pay their fair share means that the poorest citizens will have less than sufficient. This time, though, willing compliers are (for whatever reason) not required to pick up the slack, but are expected to continue to pay their fair share of tax as that was defined under full-compliance. In the slack

picking case the willing compliers who picked up the slack had to bear the burden of the injustice caused by the refusal of some to comply. This time it is those who are owed justice (who now have less than sufficient) who bear the consequences of non-compliance because they do not receive all that they are due.

In this situation the principle of sufficiency remains action-guiding for both willing compliers and non-compliers in exactly the same way as it would be in circumstances of full-compliance. Willing compliers can still use the principle as a decision-making procedure and will derive the same prescription as they would under full-compliance because they are required to pay their fair share regardless of whether or not all comply. The duties of non-compliers also remain exactly the same as they too could consult the same principle and derive the same prescription as they would under full-compliance (i.e. 'pay your fair-share'). Consequently, in cases such as this non-compliance has no effect on the action-guiding capabilities of a principle because it remains action-guiding for all agents in exactly the same way it would be in circumstances of full-compliance.

### c) *Duty Cancellation*

A third set of cases concerns those situations in which the refusal of some agents to comply with a principle means that willing compliers either cannot comply or no longer have a duty to comply. In situations of this type the effect of non-compliance is such that a principle is no longer action-guiding for willing-compliers, but it remains action-guiding for non-compliers. We can briefly consider two examples to illustrate this.

Firstly, imagine that it takes six lifeguards to launch and operate a life-boat and successfully execute a sea-rescue. If there are only six lifeguards on duty at any one time then

it follows that the compliance of all the lifeguards is required if the passengers on a stranded boat are to be rescued. Assuming that the lifeguards on duty have a collective duty to rescue the passengers on a stranded boat, the refusal of two lifeguards to do their part means that the remaining four lifeguards will be unable to launch and operate the boat and so will be unable to rescue the passengers on board the ailing boat. As the willing compliers are unable to comply with the rescue principle then it is not action-guiding for them (because 'ought implies can'). Secondly, imagine the same scenario but assume this time that the refusal of two of the lifeguards to do their part does not mean that the other four guards cannot launch the life boat, but it does mean that attempting a rescue would be so hazardous as to represent an imminent risk to the lives of the four complying lifeguards. In this scenario the duty to rescue the passengers of the stranded boat is cancelled because the four lifeguards do not have a duty to undertake a rescue when doing so constitutes a substantial risk to their lives.<sup>37</sup>

In both of these examples the action-guiding role of justice is compromised.<sup>38</sup> This is because if the non-compliance of some means that willing compliers are unable to comply or no longer have a duty to comply then the principle is not action-guiding for those agents. The same is not true for non-compliers. If non-compliers were motivated to comply with the principle then they could because the fact that they can count on the willing compliers to comply means that there is no obstacle (other than their own unwillingness) to prevent them

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<sup>37</sup> On this point again see Goodin (2009).

<sup>38</sup> This discussion of duty-cancelling cases is consistent with Tamar Schapiro's insightful discussion of Kantian rigorism and mitigating circumstances. See Schapiro (2006, 49-56). Thanks to an anonymous referee for drawing my attention to this article. See also Schapiro (2003).

from using the principle to guide their actions. The principle therefore remains action-guiding for non-compliers in both of these examples.

Although in these situations a principle is no longer action-guiding for willing compliers it does not mean that they will have no duties because secondary duties may come into play at this point. For example, if it is not possible to rescue an agent in circumstances of non-compliance there may be a secondary duty to work to bring about the circumstances that would prevent agents from being denied justice in similar circumstances in the future. And whilst there is not the space to make the argument here, it seems likely that something like Rawls's view of the action-guiding role of justice applies in situations such as this because knowing which secondary duties apply to willing compliers depends on being able to identify the outcome that a principle was supposed to bring about.<sup>39</sup> If that is correct then it would mean, contrary to Sen,<sup>40</sup> that not only is a principle action-guiding for non-compliers under these circumstances, but knowledge of the principle is necessary for determining which (if any) secondary duties apply to willing compliers.

## X. IS DUTY CANCELLING THE NORM?

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<sup>39</sup> My suggestion is that in duty cancelling cases a secondary (or 'non-ideal') principle is identified by its ability to either: i) bring about an outcome that is as close as possible to a just outcome or ii) contribute to the transition to a state of affairs in which a just outcome would be possible. In both cases identifying the appropriate actions necessarily depends on knowledge of what a just outcome would be, which in turn requires knowledge of the relevant principle of justice. On Rawls and 'non-ideal' duties see Simmons (2010) and Chahboun (2015).

<sup>40</sup> See Sen (2006). For criticisms of Sen that are consistent with this view see Boot (2012).



Although a principle always remains action-guiding for non-compliers in duty-cancelling cases, the fact that it is not action-guiding for willing compliers means that there is one situation in which justice is not action-guiding in circumstances of non-compliance for one set of agents. If it turned out that such cases were the norm in politics then this would constitute a partial vindication of the realist claim that justice is not action-guiding in circumstances of non-compliance. In the remainder of this section I want to explain why duty-cancelling cases are not typical in moderately just and nearly just societies.<sup>41</sup>

We have seen that even though problems of non-compliance with justice are usually collective action problems, it does not follow that when some refuse to comply with a principle that no-one can comply or that duties of justice cannot be discharged (either fully or partially). In two of the four cases discussed above (non-threshold cases and slack-picking cases) we saw that willing compliers can still comply with justice because non-compliance either does not prevent collective duties from being discharged or else because willing compliers pick up the slack left by non-compliers. In a third case we saw that whilst non-compliance meant that collective duties were not fully discharged, a principle remained action-guiding for willing compliers because they could still do their fair-share as defined under circumstances of full-compliance.

This does not, of course, demonstrate that duty-cancelling cases are not the norm in politics, only that they are not the necessary consequence of non-compliance. So, in order to see that such cases are not typical consider the features that would have to be present if all or most cases of non-compliance with justice were duty-cancelling. Firstly, all citizens who are willing to comply with justice must be rendered either incapable of complying with a principle of justice or else the consequences of complying when others do not must be such

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<sup>41</sup> My thanks to an anonymous referee who pressed me to develop this argument further.

that no willing complier can reasonably be expected to comply. And secondly, given that in duty-cancelling cases no agent complies with a principle, it follows that whatever outcome a principle requires is not realised (even in part). What we need to establish is whether or not this is an accurate depiction of the experiences of moderately just and nearly just societies.

In radically unjust societies it seems clear that non-compliance will be duty-cancelling because those citizens who are willing to comply with justice frequently have either little opportunity to do so or would be under no obligation to do so (because trying to comply alone would be futile, unfairly burdensome or dangerous). However, the same is not true of moderately just or nearly just democratic societies. In such societies, and particularly nearly just societies, citizens can often discharge their duties of justice. We have already seen in the examples given earlier that citizens can usually comply with the duty to support and further just institutions even when others do not. Thus, the duty to vote and support the political party that a citizen justifiably believes will best further justice is not normally dependent on all other citizens doing the same. Similarly, duties to comply with just laws, pay taxation, respect the rights and property of other citizens do not depend on full-compliance because those who wish to comply with just laws, pay the tax they owe and respect the rights and property of others can do so even when others do not.

If we turn to the second feature we would expect to see if duty-cancelling cases were the norm, then we again see that this does not tally with the experiences of moderately and nearly just societies. For a case of non-compliance to be duty-cancelling it must be that willing compliers cannot or should not comply with a principle. When that happens no agent complies with justice, meaning that there is a complete and total collective failure to do whatever it is some principle of justice prescribes. This describes the experience of radically unjust societies, but it is not normally what happens in moderately just and nearly just societies. Social and political institutions in moderately just or nearly just societies are not

perfectly just, but equally they are not perfectly unjust. Instead, they are partially just (or unjust) with failings arising from non-compliance with principles of justice varying in kind, degree and intensity. The only reason that plausibly explains why institutions are moderately or nearly just, rather than perfectly unjust, is that compliance with principles of justice is (to a greater or lesser degree) partial. And if that is true then it means that duty-cancelling cases cannot be the norm because they are, by definition, cases in which compliance is zero.

It is not plausible, then, to claim that duty-cancelling cases are the norm in politics because neither of the features that characterise such cases are normally present in moderately just and nearly just societies. This suggests that in most cases, those who are willing to comply with a given principle of justice can discharge their duties, even when others do not, and that justice is therefore normally action-guiding for willing compliers as well as non-compliers.

## XI. IMPLICATIONS

The account of action-guidance presented in this paper has important implications for how we think about justice and politics, two of which are worth briefly drawing attention to. Firstly, and most obviously, it implies that we ought to reject realist accounts of politics and justice. Whereas realists emphasise the primacy of coercion, compromise and expediency in politics, the argument of this paper implies that decision-making in politics ought to be constrained and informed by justice. According to this view, when citizens vote for political parties or campaign for particular interests they should do so on the basis of a defensible conception of justice. And when political representatives and leaders propose, oppose and enact legislation they again should do so on the basis of moral reasons that are rooted in a defensible conception of justice. An underlying assumption of this paper, then, is that

decision-making and action in politics could and should be informed by justice and that the unwillingness to be guided by justice is wrong because it sacrifices what citizens ought to do to what they are willing to do. The argument of this paper therefore aligns with those who worry that realist politics are ‘concessive’ and believe that political decision-making ought to be constrained and informed by a defensible conception of justice.<sup>42</sup>

Secondly, the account of the action-guiding role of justice presented in this paper suggests that there are morally right (and wrong) answers to the question ‘what should we do?’ This should not be interpreted as meaning that there is only ever a single, correct answer to a political problem. But this paper does assume that for any given issue there will be morally permissible and impermissible actions available and that citizens can and should use a defensible conception of justice to help them identify those actions that are consistent with justice. This view of the guiding role of justice may appear to sit uncomfortably with the emphasis that is placed on pluralism and disagreement in much of the political theory literature today. It might also be thought to be at odds with the widely held view that because citizens (reasonably) disagree about justice some other (democratic) method for making political decisions must be found.

This paper does not deny that disagreement (reasonable or otherwise) extends to almost every issue and facet of political life. And nor does it reject the need for democratic decision-making procedures to overcome disagreement between citizens. However, it does reject the claim that justice cannot provide guidance to citizens when they disagree about what to do. The fact that we disagree about the right response to some issue does not imply

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<sup>42</sup> This would include the writings of the earlier Rawls, Ronald Dworkin and G. A. Cohen.

See Rawls (1999a); Dworkin (2011); Cohen (2008). On the charge that realism is concessive with respect to justice see Stemplowska (2008); Swift (2008); Estlund (2011).

that there is no longer a morally right response or that seeking to identify that response is somehow pointless or foolish. I assume the opposite is true. When citizens disagree about justice I believe that this is a reason for each person to reflect more carefully on what justice requires of them and to ensure that whatever actions they support and argue for are guided by a defensible conception of justice. And even though collective decisions are made democratically in the face of disagreements between citizens, how citizens decide and what they decide should still be guided by a defensible conception of justice.

Consequently, the account of action-guidance I outlined above assumes that moral reasoning is at the heart of politics and expects citizens and political leaders, both individually and collectively, to make decisions on the basis of what a theory of justice permits and prohibits. This account of action-guidance therefore rejects not only political realism, but also the procedural politics associated with agonist and radical democracy,<sup>43</sup> majoritarianism,<sup>44</sup> and some recent, more realistic accounts of public justification.<sup>45</sup>

## XII. CONCLUSION

This paper makes three contributions to our understanding of the action-guiding role of a theory of justice. Firstly, it explains that a theory of justice is action-guiding because its principles function as decision-making procedures that citizens can use to help them decide what to do in matters relating to the design of their shared institutions. Secondly, it sets out the criteria that must be satisfied for a particular theory to count as action-guiding. These

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<sup>43</sup> Connolly (1991); Mouffe (2000)

<sup>44</sup> Sleat (2013); Waldron (1999)

<sup>45</sup> Gaus (2011)

criteria state that a theory is action-guiding for citizens when i) its principles are capable of delivering coherent, consistent and determinate verdicts on the justness or unjustness of actions across a range of cases and ii) citizens have (or can reasonably be expected to acquire) the beliefs and abilities needed to derive a prescription from a principle and comply with it. Thirdly, this paper demonstrates that principles of justice are action-guiding in circumstances of non-compliance by showing that the refusal of some citizens to do as they ought does not usually prevent any citizen from using a principle as a decision-making procedure. I did note one set of exceptions to that claim (duty-cancelling cases), but pointed out that even in such cases principles of justice remain action-guiding for non-compliers. I also suggested, though did not argue, that in duty cancelling cases knowledge of principles of justice may be necessary for identifying further, secondary duties in the way that Rawls describes.

The account given in this paper improves on Rawls's brief discussion of the action-guiding role of justice because it specifies the criteria that must be satisfied for a theory to qualify as action-guiding. It also explains more persuasively than Rawls how a theory of justice is often directly and immediately action-guiding for citizens in circumstances of non-compliance. In so doing it demonstrates that those who argue that justice is not action-guiding in circumstances of non-compliance are mistaken. It is important to recognise this because the failure to acknowledge that justice is action-guiding in circumstances of non-compliance not only constitutes a basic misunderstanding of how justice applies to citizens in unjust circumstances. It also threatens to give licence to those who are unwilling to comply with justice by excusing their behaviour on the erroneous grounds that acting justly is either not possible or not required. If nothing else it is hoped that this paper has demonstrated that arguments that deny justice an action-guiding role in circumstances of non-compliance are untenable.

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