Consequentialism and Its demands: The Role of Institutions

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Abstract. It isn’t saying much to claim that morality is demanding; the question, rather, is: can morality be so demanding that we have reason not to follow its dictates? According to many, it can, if that morality is a consequentialist one. This paper takes the plausibility and coherence of this objection – we call it the demandingness objection – as a given. Our question, therefore, is how to respond to the objection. We put forward a response that we think has not received sufficient attention in the literature: institutional consequentialism. This is a consequentialist view that, however, requires institutions, and not individuals, to follow the consequentialist principle. We first introduce the demandingness objection, then explain what we understand under institutional consequentialism and how it responds to the objection. In the remainder of the paper, we defend the view against potential objections.

Keywords. Consequentialism, institutions, demandingness, rule-consequentialism, global justice

1. The demandingness objection to consequentialism

It isn’t saying much to claim that morality is demanding; the question, rather, is: can morality be so demanding that we have reason not to follow its dictates? According to many, it can, if that morality is a consequentialist one. Why is this?1

To answer this question, we need first to understand what consequentialism is. Consequentialism, in its most general sense, is the view that normative properties depend only on consequences. This general approach can be applied at different levels to different

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1 To answer this question in full we would also have to spend time on the issue why consequentialism is singled out as the only objectionably demanding moral theory and whether this is correct or not. For a detailed treatment of this issue see Tanyi (2015) on which this section relies in part.
normative properties of different kinds of things, but the most prominent example is consequentialism about the *moral rightness* of acts. This (moral) consequentialism holds that whether an act is morally right depends only on the valuable consequences of that act or of something related to that act, such as the motive behind the act or a general rule requiring acts of the same kind, as judged from an impersonal perspective. Consequentialism, in short, requires us to maximize the good as born by the consequences (understood as states of affairs) of acts, motives, rules and so on.

The paradigm case of moral consequentialism is *utilitarianism*. Classical utilitarians were (almost) all *act-consequentialist:* They held that whether an act is morally right or wrong depends only on its consequences (as opposed to the circumstances or the intrinsic nature of the act or anything that happens before the act or anything that relates to the act). They were *utilitarians* because they advocated consequentialism with a welfarist theory of value, that is, a theory that focuses on human welfare, well-being, or happiness as the relevant consequence. And since they understood happiness in terms of the balance of the amount of pleasure over pain, they were also *hedonists*. The demandingness objection has originally targeted these classical utilitarians, but can be employed against any form of act-consequentialism.

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2 See Sidgwick (1907), Moore (1903), Bentham (1970). The exception might be John Stuart Mill who is sometimes interpreted as a rule utilitarian. See Urmson (1953).

3 Although the focus will be on utilitarianism, our discussion also applies to non-utilitarian forms of consequentialism. This is especially so given that the welfarist assumption can be relaxed to include elements such as freedom, rights, fairness etc. as independent elements in the calculus without undermining the argument in this paper. For a pluralistic version of consequentialism see Sen (1979) and Sen (1982).
What exactly does the objection say? It is built upon two pillars: one, that consequentialism is excessively demanding and, two, that an adequate morality shouldn’t be excessively demanding. Consequentialism requires the agent to promote the good (consequences) until the point where further efforts would burden the agent as much as they would benefit others. However, the situation that determines what would be best overall is far from ideal: today’s world involves, for example, significant levels of poverty that prevailing levels of charitable donations are insufficient to eradicate. Given that acting to alleviate poverty is likely to have, in sum, better consequences than pursuing individual goals and projects, it seems unavoidable that, if one fully accepts consequentialism, one must devote most of one’s resources to humanitarian projects. At the same time, so the objection assumes, most people have a firmly held judgment that this cannot be right, that people should not be required to sacrifice their lives for morality. This is the second pillar of the objection. Its function is to ground a constraint on admissible moral theories requiring them to avoid excessive demands. If they do not, the conclusion follows that these theories should not be allowed to guide people’s conduct.

In short, the objection claims that consequentialism is objectionably demanding. However, there are two rather different ways to spell out this charge (Portmore 2011: 26 referring to Dorsey 2012). Consequentialism can be understood as wrongly demanding if it requires agents to make sacrifices that they are not, in fact, morally required to make.

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4 The objection is one of those charges that are most clearly stated by those who oppose it. For an early statement see Sidgwick (1907), p. 87; for a recent statement see Cullity (2004), Chapter 1. For further references see Hooker (2009), p. 162 footnote 4, and Carter (2009), pp. 163-85, as well as the works to be cited later in this section.

5 Unfortunately, it is easy to cite statistics for this claim. Any report by the WHO, the World Bank, UNICEF, UNDP and so on paints the same dire picture, certainly of the global situation, but also, in most cases, of domestic circumstances. See Miklós (2013), pp. 2-3 for more data and references.
Alternatively, consequentialism can be understood as *unreasonably* demanding if it requires agents to make sacrifices that they do not have decisive reason to make. In this paper we focus on the first reading of the objection, which is also its traditional reading, although recently the alternative reading gained serious attention. Having made this choice, we can put the objection somewhat more formally as making the following argument:

1) Consequentialism makes demand D;
2) Demand D is a wrongful demand;
Therefore,
3) Consequentialism is wrongfully demanding;
4) If a moral theory is wrongfully demanding, then we have reason to reject it;
Therefore,
5) We have reason to reject consequentialism.

From this way of putting the objection, it is clear how one can respond to it: one of the three premises – 1), 2), or 4) – has to be rejected. This is hardly an option with premise 4) though, since if a moral theory if wrongfully demanding, then that moral theory is false, hence conclusion 5) certainly follows. This leaves us with premises 1) and 2). Premise 2)

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6 One of us discusses this reading elsewhere, see Tanyi (2012) and (2015).
7 Unless one can show that the argument simply cannot get off the ground. Thus *scalar-consequentialists* claim that consequentialism makes no demands on us, although it does give us reasons to act. See Norcross (2006); for a response, see McElwee (2011).
relies on an intuition (or considered judgment, for some), and can be rejected by either denying the existence of this intuition, or arguing that we have reason not to rely on it.\footnote{This is often called the extremist strategy, see Kagan (1989); Singer (1972); Tännö (2002); Unger (1996); Sobel (2007); for critical discussion of this approach see Cullity (1994) and Mulgan (2001), (2007). There is also a related debate about the use of intuitions in moral theory. See Singer (2005) vs. Sandberg and Juth (2011). One of us has also recently done empirical work on the existence of the intuition, although the one that figures in the second reading of the objection. See Bruder and Tanyi (2014) for details.} This won’t be the route we take, though. This leaves premise 1) as the only possible target. Rejecting this premise is also the perhaps most popular way of responding to the objection, but we will give it a twist. Instead of either restructuring consequentialism so that it doesn’t make the demands it is alleged to make or denying the empirical circumstances that give rise to these demands (given the consequentialist principle and its application to individual agents), we change the subject of consequentialism from individuals to institutions.\footnote{For a discussion of the second, empirical strategy see Mulgan (2001) and Bykvist (2010). The first approach, the restructuring strategy has given rise to a variety of alternative approaches, some of which regard themselves as consequentialists, others do not. For these views and their criticism, see Slote (1984); Bradley (2006); Hare (1981); Railton (1984); McNaughton (1988); Hooker (2000); Mulgan (2001); Scheffler (1992); Kagan (1984); Murphy (2000).} In the next section we explain what we have in mind and in subsequent sections we defend it against possible objections.

2. Institutional consequentialism

The core idea of our approach is to direct attention to the ability of institutions to reduce moral demands on individuals. Accordingly, we call our view institutional consequentialism.\footnote{This is not an entirely unprecedented view in the literature. A similar view appears in Goodin (1995), Hardin (1986, 1988) and Bailey (1998), although only Hardin (1988: 126) appears to mention the kind of dualism we build our theory upon. We take up (some of) their ideas as we proceed.} Institutional consequentialism builds on one of the influential ideas of an avowedly non-consequentialist thinker: John Rawls’s (1971) theory of justice. Adapting
Rawls’s point about social justice to consequentialist morality, we hold that something like a division of labor is justifiable: the demanding moral principles regulate the design of a basic institutional structure, whereas individuals ‘only’ have the duty to set up and maintain these institutions.11 This idea clearly helps us to tackle the demandingness objection since, arguably, even in our present world, setting up and maintaining consequentialist institutions would be not nearly as demanding as applying the principles ourselves. Exactly how demanding it would be is ultimately an empirical question to be answered with the help of political science, economics, and other social sciences. Below we will introduce some reasons for thinking that our claim is along the right lines. We will first offer reasons for adopting institutional consequentialism that do not depend on worries about demandingness. Next, building in part on these considerations, we will show how institutional consequentialism can help with reducing moral demands on individuals.

There are good reasons supporting institutional consequentialism which are compatible with the consequentialist goal and are not rooted in the independent moral status of non-consequentialist values. First, as Rawls emphasizes, the basic institutional structure of society can make the necessary background adjustment that individuals cannot and should not be expected to make.12 Second, institutions determine the content of consequentialist morality for individual agents: they coordinate the collective pursuit of

11 The term ‘ethical division of labor’ comes from Thomas Nagel (1979). See also Nagel (1991) for a more detailed investigation of this Rawlsian thought.
12 We follow Rawls in talking about the basic structure: this includes roughly ‘the political constitution and principal economic and social arrangements’. It covers legal rules affecting property and the organization of the economy. Property is determined not only by property law regimes but by a broader set of public norms including contract and commercial law, laws in criminal law against force and fraud, public health law, labor regulations etc. (Rawls 1993: 258, 282-3)
consequentialist goals when individual duties cannot be specified without prior institutional assignment. In what follows we spell out these two ideas in more detail.

3. Institutions and background adjustment

Institutions enable the more effective promotion of consequentialist goals by counteracting informational, cognitive and motivational limitations in individual agents.\footnote{Hardin (1988: 6-9) discusses another type of limit of reason: limitations concerning our value theory. The idea is that we are limited in assessing both the utility to ourselves as well as the utility to others. These limits have partly to do with the difficulties concerning interpersonal comparisons of value and with the possible non-additivity of value (such as the case of organic wholes).} They are also necessary for a division of labor allowing individual agents to specialize and exploit their comparative advantages.\footnote{Like Rawls and Douglass North, we talk about institutions in a broad sense: as a public system of rules. More precisely, they are ‘the humanly devised constraints that shape human interaction.’ They ‘structure incentives in human exchange, whether political, social, or economic.’ (North 1990: 3)}

Consider, first, the point that institutions are better placed to deal with the consequences of individual choices that run far into the future and spread across a large number of individuals. For instance, we do not know the willingness to pay of all our potential customers, or the reservation wages of potential employees. Thus economic actors lack crucial information they would need if they were to calculate the social costs and benefits of their options, e.g. in the range of potential prices they can set for their products or in the range of salaries they could pay to their employees. Furthermore, the consequences of our actions lead into the indefinite future, and we have imperfect knowledge about how they will affect future persons.

Not only do we not currently have all relevant information about the consequences of our actions, it is also undesirable for us to try to maximize the information available to
us. Due to our cognitive limitations collecting and processing information is costly (think of the notion of bounded rationality coined by March and Simon (1958)). Individual agents are unlikely to maximize the good by spending all their time gathering information and trying to calculate the consequences of all the available courses of action open to them. Market institutions allow agents to economize on information by consulting market prices. This is a standard theme in the writings of economists; as Hayek (1976: 20) put it: the trouble with the classical utilitarian approach is that it completely neglects to take account of our ignorance.

Next, individual agents’ capacity to promote the good is further compromised by their tendency to biases such as self-deception due to non-consequentialist motives (Smart 1956: 347). Institutions correct for these biases by removing informational and motivational burdens from individuals in their day-to-day decisions.

Finally, institutions allow for an efficient division of labor between agents with different skill-sets and opportunity costs. They are necessary for a specialization that exploits agents’ comparative advantages. Take the example of adversarial systems such as legal procedures which are often justified by pointing out that a division of labor between adversaries leads to best outcomes. Defenders are required – within the limits of law – to do what they can in order to get their client acquitted even when they know them to be guilty. The necessary division of labor – adversary or otherwise – is likely to involve experts with special skills or knowledge and the assignment of special responsibilities, powers and prerogatives to participants.
The idea of background adjustment is that the consequentialist goal can be more effectively promoted in an institutional setting involving a division of labor rather than by independent individual actions by agents each of whom aims at promoting the good. This division of labor permits and may even require some agents to act on partial rather than impartial reasons following, for example, self-interest in markets and the interests of principals in courts of justice. Agents are to follow a narrow range of reasons in day-to-day decisions rather than aiming at promoting consequentialist goals. The upshot of these considerations is that the institutional structure can make the necessary background adjustment that individuals cannot and should not be expected to make.

4. Institutions constituting the content of morality

Besides replacing a broader set of factors agents are to consider with a narrower one, the division of labor under consideration specifies the content of consequentialist morality for individual agents when individual duties are indeterminate. Institutional rules allocate responsibilities within a larger group. To take two examples, political and economic institutions coordinate the behavior of large numbers of agents in strategic settings, and they solve collective action problems and implement policies that would otherwise not be implemented.

Consider first institutional coordination in a strategic setting. The outcome associated with individual choices often depends on the choices of numerous other agents which are in turn influenced by expectations about what the former might do. Owing to this kind of strategic interaction there is often no way to determine in the absence of
institutions what course of action one ought to do in pursuit of consequentialist goals (Hardin 1988). Institutional rules are an effective means to coordinate strategic interaction such that a group of individuals can achieve a morally required outcome when this is possible only if everyone or a sufficiently large number of people follow the same course. For example, institutional systems single out one specific combination of property rules, welfare provisions, educational and health systems etc. from among several possible combinations that are equally desirable on consequentialist grounds since they produce equivalent outcomes. Political institutions thus specify underdetermined consequentialist demands by settling a unique set of distributive rules (Miklós 2011; Miklósi 2008).

In addition to their coordinating function, political institutions solve collective action problems and implement beneficial policies that would otherwise not be implemented. For example, institutions are needed to provide public goods such as population immunity against infectious diseases or clean air. The provision of these goods requires the joint contribution of a significant part of the population, however, individuals have an incentive not to contribute their share since they benefit regardless and contribution is costly to them. Institutional rules involving sanctions against noncompliance and positive incentives encouraging contribution are needed to counteract

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15 Public goods are defined as goods that are non-excludable and non-rivalrous. That is, no one within the relevant population can be excluded from the benefits, not even those who did not contribute to their production; on the other hand, their consumption by one person does not reduce the quantity or quality available for others.

16 For example, routine vaccinations cause discomfort and entail a small risk of serious harm to vaccinated individuals. Over a threshold proportion of the population being vaccinated, individual members are protected by population immunity whether or not they themselves undergo vaccination. Members of a population protected by population immunity have an incentive to avoid vaccination. Mandatory vaccination relying on the coercive public health powers of governments might be necessary to establish and maintain the necessary level of protection for the population (Miklós 2009).
the incentive to free-ride and to make public goods possible. They provide assurance to members of a group that others contribute their share of the collective burden.

Institutional rules allocate responsibilities within the larger group in an authoritative manner since it is not at all obvious who bears what responsibility in promoting the good. How institutions go about allocating responsibilities is partly a matter of devising the most efficient division of labor (given individual preferences, comparative advantages etc.) but there is also an element of arbitrariness in dividing up the tasks. This is clearest in the case of public good provision, where individual contributions make no real difference to the outcome once the good – e.g. population immunity – is there.\textsuperscript{17}

We want to emphasize that institutions are subject to different rules when they coordinate, allocate and enforce responsibilities among their participants than the latter are. Institutional rules sometimes preempt the application of consequentialist reasoning by their subjects and permit or even require reliance on partial considerations, as in the case of economic competition or adversarial systems. Finally, at the extreme, as in the cases of public good provision and perfectly competitive market equilibria, individual duties do not even make sense without prior institutional assignment since by assumption individual actions make no difference to the outcomes. The consequentialist goals can sometimes be only collectively interpreted.

\textsuperscript{17} A further way in which economic and political institutions assign responsibilities in a constitutive manner is by determining distributive shares through an authoritative determination of property rights (Miklós 2011).
5. Institutions and demands

Institutional consequentialism can help us with the demandingness objection. It does so in (at least) three ways. Institutions economize on the time and attention spent by individuals on the pursuit of consequentialist goals. They also remove some of the motivational burdens in making and executing decisions. They thus allow individuals to lead personal lives. Let us consider each claim in turn.

First, institutions allow us to economize on information and attention. Agents can take a narrow perspective when they interact with others in institutional settings such as markets and courts, and benefit from an efficient division of labor. Furthermore, institutions can relieve individuals of some informational and cognitive burdens in their charitable contributions as well. Consider the fact that a large part of the consequentialist demands on us are iterative in nature. The particular demand in question is not itself significant, in fact, we can assume that it is rather trivial. Assume, for instance, that due to collective organization, we do not have to give out, at once, a huge sum of money to help the needy, but only a small sum. However, if we have to do this constantly, i.e., if consequentialist demands become too numerous (even if trivial), their intrusion to our life will be constant and objectionably demanding: they will demand our constant attention not allowing us to get on with our lives.\(^{18}\) Institutions can again help with this, though. They can not only make sure that our contribution is relatively little, but also that we do not have to contribute constantly, i.e., decide how much and to which organization to give to help the needy and then write a check several times a day (Goodin 2009: 9-10). They can do so

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\(^{18}\) See Cullity (2004) and (2009) for introducing and making substantial use of these iterated demands in drawing up the demandingness objection.
by, e.g., deducting our contribution from our monthly salary and then distributing it to the relevant agencies on the basis of their reliability and efficiency.

Second, as noted before, institutions are the best instruments for coordination in strategic settings (Goodin 1995: 67). Individuals cannot ensure that their fellow citizens contribute to the fulfillment of consequentialist aims: this is simply not in their power. However, institutions can both set the target to be achieved and make sure that people contribute to its achievement. They allocate responsibilities and help individuals avoid frustrating one another’s attempts at promoting the good, as they would when trying to do the same good deed in an uncoordinated manner. By preventing much waste caused by futile or counterproductive attempts at promoting the good, institutions reduce burdens on individuals.

Finally, third, institutions remove some of the motivational demands of consequentialism from individuals. For one thing, they provide assurance to individual agents that others are going to shoulder their share of the collective moral burden in the face of pervasive moral disagreement and self-interested motives. Besides changing payoffs associated with existing preferences, institutions can also shape preferences when individual agents cannot do so. Institutions can help ‘launder’ irrational preferences based on false beliefs (Goodin 1995: 133). They can also purge antisocial preferences in current and future human beings. For example, institutional pressure, the “naming and shaming” of wrongdoers and institutionalized dialogue can change our personal motivations to better

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19 Note that this claim is often put as a claim of fairness. See Murphy (2000) for the most complete theory along these lines. However, it is important to keep in mind, and Murphy is clear on this, that the supposed unfairness of consequentialism and its demandingness are two separate issues. If all there is to demandingness is lack of fairness, then there is no real demandingness problematic.
promote the good. Institutional solutions can also help society achieve the consequentialist goal by optimally designing future persons so as to cause them to lead healthier and happier lives, and to have preferences that make the outcome the best in the long run.

There are no psychological and motivational problems with institutions, not at least similar to those individuals face (Goodin 1995: 68). The demandingness objection derives its intuitive force in large part from the fact that a committed consequentialist individual would not be able to lead a personal life, that his/her individuality would be wiped away by the impersonal requirements of consequentialism. But it does not make much sense to claim that societies would face similar fate just because they have to contribute much. Such negative effects could only have on their members via the assumed destruction of certain shared social practices that constitutively contribute to their identity. But, first, given the alleviating effect of the division of labor in place, the particular society in question would really have to contribute extraordinarily much in order for such individual effects to threaten. This might happen, given the world as it is, but notice that the same idea of division of labor could then be taken to the global level to counteract this tendency. This no doubt raises the question of global morality, i.e., what our duties are to societies that we are not members of, but in principle, this is not an illegitimate move to make. We will say more about the problem of global morality and the role institutions, hence institutional consequentialism can play in it, at the end of the paper.

Finally, not everyone likes the idea of social practices being *constitutive* of one’s individual personality. This is after all a distinctively communitarian thought that not everyone is supportive of. Opponents of the view can say, if they don’t want to opt for
outright denial, that people can reflect upon and decide about their aims, projects and commitments in life (Kymlicka 2002). Given the good moral reasons in support of the consequentialist cause, it might therefore well be the case that, instead of experiencing the results of high societal contributions as destructive on their personal life, people would see them as more in line with their new, reformed personality (that, though, does not have to be so reformed as to also conform to consequentialism when applied to their actions directly).

6. Three versions of institutional consequentialism

We hope that the above considerations suffice to make the case for institutional consequentialism as a response to the demandingness objection convincing enough. Assuming that this is so, we will now spend some time on clarifying the exact nature of institutional consequentialism.

We see three options that can occur more or less naturally to those who want to endorse institutional consequentialism. The ‘default’ view - our first option - is a simple one: it keeps the original act-consequentialist setting and connects it to the Rawlsian division of labor idea. The act consequentialist principle of beneficence (“act in such a way as to produce the best possible consequences”) is applied to institutions, whereas individuals are required to set up and maintain those institutions. They are required to follow different decision rules in their everyday life: one rule for individuals and one rule for institutions. While simplicity counts in favor of this view and those who prefer direct
act-consequentialism will like it, the view has distinct disadvantages when it comes to its use on the institutional level.

On the negative side, it has to be noticed that at least some of our institutions are run by public officials and in the case of these institutions many of the traditional problems of act-consequentialism might reappear (Eggleston 2014: 136-7; Miller: 156-7; Harsanyi 1977, 1982, 1998). In particular, as we saw earlier, act-consequentialism requires huge amount of information regarding the consequences of actions, since it has to count with all the consequences of every possible action way out in the unforeseeable future. Although this could be, at least to some extent, counteracted by a division of labor among the officials themselves,, decision-making could still be seriously crippled by all the information gathering, processing and constant calculation. Also, act-consequentialism might well lead to the breaking down of coordination that we praised above as an advantage of institutional consequentialism. This is because the officials would expect one another not to stick to plans and commitments since, as committed act-consequentialists, they would shirk from these plans as soon as an opportunity with better (expected) consequences arises.

For many, these problems point in favor of introducing rules in the consequentialist picture. This conclusion could be further reinforced by some positive considerations. Thus, Goodin (1995: 62-5) argues that general rules are both needed and desirable in public decision-making. They are needed because public officials who run institutions do not see the particular circumstances of particular individuals. Or rather, even if this was technically possible, its costs would be prohibitive from a consequentialist point of view. What they
see are averages and aggregates. “They know what will happen most often to most people as a result of their various possible choices.” (Ibid. 63) This means that public regulations cannot be fine-tuned to individual circumstances and must be instead general in form. General rules are also desirable, according to Goodin. This is for two reasons. One, if too many exceptions to a rule are granted, i.e., if that rule becomes particularized to certain subset(s) of the general population, people will find it difficult to build their expectations and make long-term commitments based on that rule. In this respect the rule will create a situation similar to the one mentioned above concerning act-consequentialism. Two, general rules are easier to internalize since they are simpler and less numerous. And internalization of rules is important for a consequentialist since it leads to self-regulation of conduct saving the costs of non-compliance and hence of enforcement of the rule.

For those who accept the above reasoning and would like to introduce rules into institutional consequentialism, two ways are open. This then gives us two further versions of institutional consequentialism. One is to introduce the well-known distinction between criterion of rightness and decision-procedure and argue that the former is still given by act-consequentialism, but the latter consists mostly in rules that common-sense morality recognizes: they are those decision-making rules the following of which produce the best consequences overall (Hare 1981; Railton 1984). The other way to bring in rules is by endorsing rule-consequentialism: the view that an act is right if and only if, and because, it would be permitted by a system of rules whose general acceptance would produce at least as good consequences as the acceptance of any other system of rules (Hooker 2000).
Rule-consequentialism differs from what is often called two-level consequentialism in its criterion of rightness, which is rule-consequentialist, and in the fact that the rules the criterion appeals to are the rules to be used in decision-making. The rules themselves may not differ in the two theories, yet, their status does. Two-level consequentialist rules are typically considered to be what Rawls (1955) calls ‘summary rules’: heuristic devices, ‘rules of thumb’ that are to be employed in decision-making only insofar as they do indeed produce the best consequences. If it turns out that they do not, the rules can be broken, an exception created or an entirely different rule employed.\footnote{We say ‘typically considered’ because two-level consequentialists are not restricted to regarding all social rules as rules of thumb. They can support the adoption of legal rules and social practices that do not allow direct application of the consequentialist principle in particular cases. These rules may even penalize actions that do in fact maximize utility. So a second role of institutions in two-level consequentialism is to modify behavior by changing payoffs and preferences.} Rule-consequentialist rules, on the other hand, allow for no exception and are not to be broken. Many of them are what Rawls (1955) calls “practice rules”, rules that are logically prior to a practice (such as punishment, to use Rawls’ example) and define the practice: should we break the rule, we not only do something wrong, but also opt out of the practice (e.g., if we punish the innocent, we no longer punish, but ‘telish’, Rawls would say).

The two versions of institutional consequentialism are thus these. As a two-level consequentialist, one can hold that institutions (public officials), although ultimately judged by an act-consequentialist criterion rightness, apply general rules of the ‘summary’ kind and legal norms since these are the rules that produce the best consequences overall. Or, as a rule-consequentialist, one can argue that institutions (public officials) are to apply general rules that also determine which of their acts are right or wrong. Now, the choice
between these two versions is complicated, since the literature on the two consequentialist views to which we marry institutional consequentialism is vast. In briefly assessing these options, therefore, we concentrate only on those issues that are particularly relevant for establishing the connection to institutional consequentialism.

For independent reasons we do not want to endorse the rule-consequentialist alternative. However, two-level consequentialism encounters at least one relevant problem that does not affect rule-consequentialism. It is the following. The rules people, both private citizens and public officials, use in making decisions largely overlaps with the publicly affirmed morality of their society. However, on two-level consequentialism, these rules do not constitute the true morality: that is still given by the act-consequentialist criterion of rightness. The question, then, is how to combine these two moralities. One option is to inform people about both moralities and make it clear to them that the rules they use for decision-making are merely ‘summary’ rules whose function is instrumental to the true consequentialist aim. The problem with this solution is that in this case rules used in decision-making will be subject to change by anyone at any time. This not only calls into question whether they can be considered to be rules at all, but also reproduces problems mentioned earlier: long-term commitments, trust, and expectations might break down if too many exceptions are granted, or rules are continuously changed.

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21 For an overview see Eggleston (2014) and Miller (2014). Bykvist (2009), esp. Chapter 10 and Mulgan (2007), esp. Chapter 6 are also very useful. It should be noted that these approaches offer their own reply to the demandingness objection. However, the responses have serious problems (see footnote ??? for references). Moreover, as we saw, there are good reasons why consequentialism needs or is at least more desirable with the introduction of institutions.

22 See, for example, Smart (1956) for an argument against rule-utilitarianism (‘restricted utilitarianism’, in his terminology). Goodin (1995: 61-2), Bailey (1997: 24-7), Hardin (1988: 14-7, 100-110) appear to agree, although their use of the term rule-consequentialism is ambiguous between the two readings. Same is true of Mulgan (2007: 126-8) who holds that institutional consequentialism can only be rule-consequentialist.
Most two-level consequentialists, therefore, opt for a different alternative. Their idea is that, people should value decision-making rules for their own sake, i.e., they should look at them as constituting the true morality, as giving the content of their conscience. They are not supposed to be aware of their merely instrumental nature. While this could guarantee that the rules are rarely broken, two further problems arise. First, we do not want inflexible rules; after all, one virtue of the consequentialist approach is that it is sensitive to changing empirical circumstances. This outcome could be avoided if we do give some people the right to change the rules. However, this does not affect the second problem: that on this view the true morality must not be publicly affirmed but must be kept secret. All that is added is now that the secret morality will be safeguarded by a small elite of rulers who make sure that the correct rules are used via constant revisions and the requisite education and socialization of people. That is, we endorse what Sidgwick (1907: 489-90) – approvingly - called ‘Government House Utilitarianism’. However, most people find such a solution unpalatable.

We disagree. Concerning the first solution, we should not forget that we are talking about institutions. Most institutions have public rules of review and recognition: higher-order rules that tell us how to identify, review, and change rules. Of course, these rules too can be revised but their revision and change are normally made very difficult and subject to various conditions (think of constitutional amendment procedures). While this solution is not watertight, a sufficiently comprehensive institution design can make sure that rules are not constantly changed and sufficient trust is created in the system without violating the publicity requirement. Concerning the second solution, many reject the publicity
condition and argue that there is nothing wrong with an ‘esoteric’ morality, in fact, that it might well be the superior option (Lazari-Radek & Singer 2010, 2014; Eggleston 2013). Another way out is to reject the idea that people cannot pursue non-consequentialist decision rules for their own sake while also being aware of their instrumental nature. The idea here is that some kind of compartmentalization is possible: judges do this all the time when they bracket their personal views in making decisions and Rawls’s (1993) notion of public justification relies on a similar idea when it requires people not to introduce non-public justification in public debates. Hence, we conclude, either way there appears to be at least some hope for saving two-level institutional consequentialism.

7. Two objections to institutional consequentialism

So far we have described the demandingness objection to consequentialism (section 1), introduced institutional consequentialism as a response (sections 2-5), and further elaborated upon the exact structure of the view (section 6). It is now time to consider the problems. From the literature on Rawls’s theory of justice, two objections seem to have clear relevance for us. First, Murphy (1998) has argued that demandingness considerations will not give us what he calls dualism: the Rawlsian idea that different principles apply to institutions and to individuals. And, the thought is, we need dualism in order to substantiate the present response to the demandingness objection. Second, consequentialism, unlike, for instance, the Rawlsian system appears to be a monist theory in Murphy’s sense: the same criterion of rightness applies to individuals as to institutions. Hence the dualist idea that is taken to underlie the present response to the demandingness
objection may not be justifiable in the case of consequentialism, whether or not the objection can lead us to dualism.

Since we take the second problem to be more basic and our response to it will also help with the first problem, let us proceed in reverse order. It is a fact that Rawls and others following him use consequentialism as the prime example of a comprehensive, monist theory: the principle of beneficence should apply both to institutional and to individual conduct. How can we deny this? But we think the proper question to ask is: once we properly understand what it means for the principle of beneficence to apply to an agent, why shouldn’t we deny it? There seems to be nothing obvious in the idea of consequentialism that would preclude a denial. We saw this in the previous two sections: there is both logical, conceptual, and moral space to marry consequentialism with the idea of a division of labor between institutions and individuals (dualism). In fact, Goodin (1995: 8-11) and Mulgan (2007: 129) both argue that the special characteristics of consequentialism – its impersonal, calculating nature in particular – make it particularly suitable for public morality as opposed to private morality.

On the view defended here, beneficence does not apply to individuals in the sense that it does not guide their action. The maximization of the good often cannot and should not be what individuals aim at. Beneficence can provide the social planner an evaluative criterion for the ranking of alternative distributions, but it cannot provide a sufficiently action-guiding deontic rule individuals are to follow.\(^{23}\)

\(^{23}\) Murphy’s formulations of dualism are ambiguous about this point. At one point he defines dualism as making the claim that “the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle.” (Murphy 1999: 254) However, he also
We suspect that something else lies behind the idea that consequentialism simply cannot be a dualist theory. We can see this by introducing a distinction discussed at length by Scheffler (2005, 2006). There are two versions of the idea of division of labor in Rawls’s work. There is first a division of moral labor that urges us to have separate moral principles for institutions and individuals on the ground that they promote different moral values. Since the relevant moral values in the case of individuals also have to do with partial concerns – such as relationships or self-interest – this is indeed a division of labor that, it seems, consequentialism, being a thoroughly impersonal theory, cannot make use of; on this reading consequentialism must be a monist theory.

A possible line in response would be to argue that consequentialism is not necessarily impersonal in nature. But we let this go since there is a better answer. Recall that we introduced the thought above as one half of a distinction. As it happens, the other half is much more suitable for consequentialist purposes. Scheffler calls it the institutional division of labor. It relies on the idea that there are two kinds of social rules – one for the design of the basic institutional structure of society and one for individual conduct.

crosses monism and dualism the following way: “Whereas monism holds that people have direct responsibility for justice, dualism holds that as far as justice is concerned, the responsibility of people is mediated by institutions. If just institutions must aim at equality, monism holds that people must aim at equality too; dualism holds, by contrast, that people must aim at the existence of institutions that aim at equality.” Murphy (1999: 271). Insofar as ‘practical principle’ in the first characterization refers to an evaluative criterion, we need not deny it. However, we do deny what Murphy claims monism requires on his second characterization, i.e. that people must aim at whatever this evaluative criterion is. We have been arguing that people’s responsibility is indeed mediated by institutions.

In particular, rule-consequentialists often argue that they have no problem with accommodating partial - often called: agent-relative - concerns (Miller 2014: 162 referring to Hooker: 108-111). Does this make them non-consequentialists, as Howard-Snyder (1993) claims? This is far from clear since, as Sinnott-Armstrong (2003) points out, ‘consequentialism’ is a family resemblance term: what we can consequentialist is what descends from classic hedonistic act-utilitarianism and remains close enough to that theory in important respects. But of course, there is significant disagreement as to what those respects are: is impersonality one of them?
Principles of justice belong to the first kind for several reasons we discussed earlier. In maintaining what Rawls calls background justice epistemological, cognitive and motivational challenges arise that cannot be tackled by individuals on their own. Another good reason for the institutional division of labor is given by the constitutive role institutions play in determining the demands of justice. Institutional rules turn the consequentialist principle into action-guiding moral requirements and permissions for individuals. It seems that institutional division of labor is all that we need to answer Murphy’s challenge.

To sum up, consequentialist theory is in need of working institutions to carry out the necessary background adjustment and resolve the indeterminacy of its requirements. If this is so, it seems we have found a way for marrying consequentialism and dualism without endorsing a division of moral labor that might only be suitable, if at all, for rule-consequentialism.

We can also answer now Murphy’s first objection: that demandingness considerations will not give us what he calls dualism, yet we need dualism in order to substantiate the present response to the demandingness objection. We accept the second half of Murphy’s claim, so the question is what he says to support the first half. At its core, his point is simple: it is perverse to require people to establish and maintain consequentialist institutions, but not require them to personally pursue the consequentialist aim. Our response to this is twofold. First, we do not need to claim that the demandingness objection is what justifies dualism for the consequentialist. As we just saw, there are good reasons to single out institutions as morally special that make a perfectly good case for
why individuals shouldn’t and – as far as the reasons above are concerned – couldn’t pursue consequentialist aims individually. In short, our first claim is that we should endorse dualism for these (and perhaps other) reasons and this will still give us a response to the demandingness objection as a (perhaps unintended) side effect of the division of labor that dualism secures for us.

Our second response is more tentative and uses an argument by Goodin (1995: 30-7). We interpret him to argue that the demandingness objection, contrary to what Murphy claims, does in fact require consequentialists to endorse institutional consequentialism. His argument appears to rely on a particular reading of the demandingness objection: that when premise 2) claims that the consequentialist demand is a wrongful one, this is in fact a plea for excuses – the excuse being that it is not the individual’s job to fulfill the demand, yet, it is something that should be done. Goodin thinks that individuals do have this excuse available to them due to the absence of effective coordination on their level. This then exculpates individuals but, in turn, inculpates communities since the job has to be done and communities, in the form of institutions, have the relevant formal coordination structures present. This is a good argument, but a lot depends on whether Goodin is right about his reading of the demandingness objection: is there really a consensus that the “job has to be done” by someone? If there isn’t, Goodin’s argument collapses; if there is, we have a second answer to Murphy’s challenge.
8. Institutional consequentialism and global justice

Having taken care of these initial problems, we can move on to consider the institutional response to demandingness objection on its (substantial) merits. There are several issues that need to be discussed (including empirical questions concerning the exact demandingness of the institutional approach) but here we only focus on one that we find particularly interesting: global justice. Arguably, the demandingness objection is most persuasive when we appeal to existing global problems (what justice, peace, or the environment would require on the global scale). However, it might seem that the institutional approach is in trouble here since it seems that the relevant institutions, but not the demands are missing; hence, dualism could not be appealed to in response in this case.

One reply to this objection is to endorse what is often called the relationist position in the literature on global justice: that claims of justice are grounded in certain institutional relations among people. Hence the response: since these relations do not exist globally, there are no global demands of justice either. However, we are not inclined to endorse this way of thinking about global justice; besides, and this is more important in the present context, consequentialism is the prime example of a non-relationalist theory (just think of Singer’s 1972 famous argument), i.e., one that does not ground claims of justice in institutional relations among people. (Some, like Nagel 2005, seem to hold that a non-relationalist theory must be monist, but we fail to see the connection. The relational/non-relationist distinction concerns the grounds of justice (with consequences for its scope), whereas the monism/dualism distinction is about the site of justice. Although both invoke institutions, they do so in an entirely different role.)
If we don’t go down this path, we must find the relevant institutions. There are several, not mutually exclusive, ways to proceed. One is to point to already existing institutions on the global level. We can start from existing institutions and reform them. We cannot do justice here to the vast empirical research done in this field (see, e.g., Nussbaum 2007 for a long list of the relevant institutions and schemes) but we can briefly indicate some of the relevant institutions. The point is that there are already several institutions that can be used for the purposes of fulfilling consequentialist requirements.

Begin with the most obvious of these: nation-states. Consequentialists can regard the state-system as set of distributed general obligations (Goodin 1988: 685). Each government bears a special responsibility for its citizens’ welfare since it is better to have a system of states each of which is responsible for a limited number people than to require everyone to be responsible for everyone else – recall our previous discussion of the benefits of specialization, division of labor and coordination. This institutionally governed system of assigned responsibilities in turn reduces the burdens on individuals.

Furthermore, given that we have a system of nation-states, governments are in general in a better position to promote the welfare of their citizens than outside actors are. The institutional stance in the development economics literature emphasizes the quality of institutions as the primary determinant of economic development within countries. Outside actors can at best help the global poor by providing assistance in building institutions, for example by facilitating analytical work, supporting reform initiatives and providing

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25 This strategy coincides with proposals by relationist advocates of global justice (for an early representative see Pogge 1994; for a more recent one see Moellendorf 2011). Of course, the justification for their proposals differs from the consequentialist position we started out with, since they hold that claims of justice are grounded in institutional relations.
technical assistance, rather than by sending direct aid to improve welfare (Risse 2012). For this reason, Risse argues that duties to provide international assistance are sometimes going to be less demanding than might be thought or no duty will apply since what needs to be done cannot be done by outsiders (Risse 2012: 68-69, 80).

Nation-states are not the only relevant institutions, however. States are embedded in a system of transnational institutions such as the WTO, the IMF or the World Bank. Institutional consequentialists can welcome this fact since nation-states alone would not be able to solve global collective action problems such as limiting greenhouse gas emissions or the prevention of a global ‘race-to-the-bottom’ in labor regulations and tax laws. Nor can they satisfactorily specify duties for agents in domains such as international trade since it is often unclear which jurisdiction applies to them.

Transnational institutions can in some cases effectively coordinate national policies, solve global collective action problems and specify duties for multiple agents. They have the authority to make, interpret and enforce rules in direct or indirect rule-making relationships with individuals globally (Cohen and Sabel 2006: 165). Transnational institutions fundamentally shape national policies and individual conduct by imposing sanctions and providing incentives in domains such as food safety and product standards, labor standards and environmental regulation. They are at least potentially capable of performing the functions we argued require an institutional version of consequentialism.

Consider global collective action problems. The provision and maintenance of global public goods in public health require global coordination and enforcement. Freedom from drug-resistant strains of infectious diseases such as tuberculosis is a global public
good which no individual state can provide. It requires costly controls to prevent the emergence of new, drug-resistant, strains. Countries that are responsible in their drug policies – e.g. strictly regulate prescriptions, monitor patient drug use, provide patient support and quickly introduce alternative drug regimens when resistance begins to emerge – are at a disadvantage compared to countries with lax policies that could benefit from a globally available public good without contributing to their provision. Without assurance that other countries also follow responsible policies and incur extra costs associated with them, no country alone is likely adopt responsible policies (Kremer 2006; Miklós 2009). Thus, transnational cooperation governed by international institutions is needed to effectively combat infectious diseases: they can enforce compliance with beneficial policies and provide assurance to all parties. The WHO has some effective powers to combat infectious diseases globally under the current International Health Regulations, which grants authority to the WHO to take quick action in public health emergencies even in the face of resistance by member states.

We can now formulate the institutional consequentialist’s answer to the globalized version of the demandingness objection. While in a state of nature entirely devoid of institutions consequentialist duties for individuals may turn out to be very demanding indeed, in our current institutional world order demands are mitigated. What we have been arguing is that institutions can reduce consequentialist burdens on individuals, not that they will completely eliminate them.

Some of the moral burdens will remain. Duties for individuals will include a duty to promote the reform of existing institutions. Arguably, many of the currently existing
institutions with actual or potential global impact are not optimal by consequentialist standards. For example, critics regard the current global intellectual property right regime governed by the TRIPs agreement under WTO jurisdiction as suboptimal (Pogge 2010), (Kremer and Glennerster 2004). It is better than providing no protection to innovator pharmaceutical firms since it incentivizes the development of new drugs by allowing firms them to recoup their large investments into pharmaceutical R&D. However, critics argue, the current system leads to a neglect of diseases typically afflicting the poor and concentrates resources on new drugs marginally improving the life-prospects of people living in affluent countries. A lot more benefit could be generated by some alternative institutional schemes – such as Pogge’s Health Impact Fund or Kremer’s Advance Market Commitments – that incentivize the development of drugs for diseases afflicting the globally worst-off. Reforming the current global institutional structure requires political action by individuals as well as by governments, political parties, firms and NGOs.

One reason why some transnational institutions are suboptimal is that they lack support or legitimacy. Institutions need to be shaped such they motivate their own support. Achieving this is not trivial since there are moral disagreements, including disagreements about justice within any society, and disagreements are even more pronounced on the global level.

Procedural requirements on decision-making may be a good way to achieve legitimacy. For instance, transnational institutions may need to include in their decision-making frameworks those impacted by them in a way that they perceive as fair or
Furthermore, institutional mechanisms may need to be installed to accommodate competing moral views or values. Since the current system of global institutions does not constitute a global state, standard majoritarian democratic mechanisms are not feasible at the global level. Nonetheless, there may be feasible alternative mechanisms that do not require a global state. What Norman Daniels has termed Accountability for Reasonableness in the distribution of health care is a good example for a mechanism that has been used to generate legitimacy without a full-blown majoritarian political decision-process.

Naturally, a lot more can be done to improve existing institutions in the current global framework and it is a largely empirical matter what this will look like and what it will require (and how demanding this will be).

Another way to go about responding to the critic of institutional consequentialism is to make a radical break with what we can consider to be the status quo: why not build a global state instead of fiddling with particular, relatively constrained institutions? This is what Tännsjö (2008) suggests that we should do. Again, we cannot here discuss in detail his arguments, but the message is clear: global moral demands are here to tackle and we have or at least we can reasonably bring about the means to tackle them.

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26 For one attempt to forge legitimacy at the global level see Rawls (1999).
27 Note that we are not introducing here through the back door values that are justified independently from a consequentialist calculus of welfare effects. Consequentialists need to take into account facts of the world – including the facts of moral disagreement and selfish behavior in a world including consequentialists and non-consequentialists alike – that are relevant for the assessment of alternatives through their impact on consequences. Fairness and legitimacy are relevant for maximizing consequentialism in this non-fundamental sense.
28 Daniels (2008: Ch.10) has argued that the Accountability for Reasonableness framework is a good way to address what he calls ‘unsolved rationing problems’, such as conflicting intuitions about what benefits to aggregate in improving health outcomes; whether to give priority to those worse-off or maximize health benefits; and whether to give fair chances to everyone when doing so fails to maximize health benefits.
Finally, rather than to build a global state, it may be preferable to build a set of new institutions that does not constitute a global state but can still carry out the functions we emphasized earlier. The resulting global institutional structure need not consist (exclusively) of supra-state institutions. It can be a multilayered mixture of institutions with varying scope and functions (Pogge 1992; Miklós 2013).

To sum up: institutional consequentialism requires in the current world that individuals promote the establishment of institutions that can solve global collective action problems and can specify and enforce duties for agents. New institutions need to be built, existing institutions need to be reformed. Again, consequentialism calls for a division of labor between individuals and institutions – this time on the global level. The global institutional division of labor reduces burdens on individuals. Institutions provide assurance that others will contribute their share of the collective burden. They make it easier to do good by enforcing compliance with rules, and they change preferences to align individual interests with the overall good. Finally, they allow us to direct some of our attention and time to the pursuit of our personal projects and relationships.

The idea of a global division of labor invites an objection, however. Is it not futile to require individuals to support institutions promoting the good without requiring them to promote the good directly? Rather than lobbying their governments to promote institutional change, they could surely do a lot more good by devoting their resources to charities that help the global poor directly.

We disagree. It may be futile or worse, counterproductive, for individuals to directly pursue consequentialist aims rather than to support just institutions. For instance,
the proliferation of NGOs may break down coordination and exacerbate the global collective action problems we described earlier. Some critics of NGOs such as the Gates Foundation argue that their entry into the health care sector in third world countries has led to an internal brain drain of health personnel away from the public sector, resulting in suboptimal health outcomes (Daniels 2008: 330). More generally: foreign aid aimed at directly helping the global poor may make things worse through a mechanism similar to the so-called resource curse: it may generate rent-seeking by the elites and crowd out productive investments that are more desirable in the long run (Deaton 2013: 298). Individual philanthropy may also result in harmful long term consequences by undermining public trust in political institutions and by dampening people’s interest in political participation. If so, it forecloses the possibility of economic development benefiting the poor by precluding reforms necessary to fix underdeveloped countries’ systems of public institutions and the international institutional structure (Deaton 2013, Acemoglu 2015). The only way outsiders can help the poor is often indirect: in line with institutional consequentialism, our duty is to assist in building good institutions. Demands imposed on individuals by their duty to make institutions more just in an international context are limited by what individuals can be expected to achieve, taking into account the lessons from the institutional stance in social science.

9. Summary and concluding remarks

There may be several good reasons to reject consequentialism. We have argued in this paper that demandingness is not one of them. The right approach to this problem is
institutional. Once we realize that a division of labor between individuals and institutions is justified on consequentialist grounds, we will also see that putative features of consequentialism that many thought would impose excessive demands on individual agents will in fact arise on the level of institutional systems. Consequentialist demands on our time, attention and motivations need not undermine our ability to lead a life rich in personal projects and commitments. Our individuality need not be wiped away by impersonal calculating requirements on our decisions and actions. Our response to the demandingness objection is consistent with consequentialism since it is not based on the independent moral status of values such as fairness, rights or freedom. If, contrary to our interpretation in this paper, the demandingness objection derives its force from the observation that consequentialist morality cannot account for the independent moral status of non-consequentialist values, then additional arguments are needed to supplement our institutional approach to defuse the objection.

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