ON SUBSISTENCE AND HUMAN RIGHTS

Jesse Tomalty

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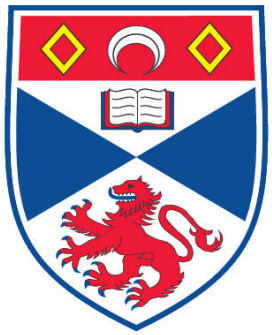

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ON SUBSISTENCE AND HUMAN RIGHTS

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THIS THESIS IS SUBMITTED IN PARTIAL FULFILMENT FOR THE DEGREE OF
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ABSTRACT

The central question I address is whether the inclusion of a right to subsistence among human rights can be justified. The human right to subsistence is conventionally interpreted as a fundamental right to a basic living standard characterized as having access to the material means for subsistence. It is widely thought to entail duties of protection against deprivation and duties of assistance in acquiring access to the material means for subsistence (Shue 1996, Nickel, 2004, Griffin 2008). The inclusion of a right to subsistence among human rights interpreted in this way has been met with considerable resistance, particularly on the part of those who argue that fundamental rights cannot entail positive duties (Cranston 1983, Narveson 2004, O'Neill 1996, 2000, 2005).

My purpose in this dissertation is to consider whether a plausible interpretation of the human right to subsistence can succeed in overcoming the most forceful and persistent objections to it. My main thesis is that a minimal interpretation of the human right to subsistence according to which it is a right not to be deprived of access to the means for subsistence provides the strongest interpretation of this right. Although the idea that the human right to subsistence correlates with negative duties is not new, discussion of these duties has been overshadowed in the literature by debate over the positive duties conventionally thought to be entailed by it. I show that the human right to subsistence interpreted as a right not to be deprived of access to the means for subsistence makes an important contribution to reasoning about the normative implications of global poverty.

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—1—
INTRODUCTION

1.1. Central Problems and Aims

One of the most striking features of the world in which we live is the enormous disparity in the living standards of its human inhabitants. Few, if any, of those who read this will have ever experienced chronic hunger or thirst; and few, if any, will be personally acquainted with anyone who has. Few of us will have faced a lack of clothing or housing suitable for the climate. Most of us will have always had access to health care facilities and medication, and few will have lost loved ones to preventable illness. Most of us will have had at least twelve years of education, and many will have had significantly more. And beyond all this, many of us enjoy significant luxuries, or at least have the means to spend some of our resources and time on promoting our own pleasure and advancing our own projects. Moreover, we enjoy these goods with a high degree of security. We are among the global rich.

It is by now a familiar fact that, by contrast, many people in many parts of the world suffer from severe and chronic material deprivations. Exactly how many is hard to know; but the most conservative estimates suggest that well over a billion (1000 million)

people worldwide (over sixteen per cent of the world's population) are unable to consistently meet their most basic material human needs including food adequate for a nutritious diet, clean drinking water, and clothing and housing suitable for the climate.[1] Many more lack access to basic health care and education. These are the global poor. The global poor are not merely poor relative to others; they are poor relative to an absolute baseline below which anyone is considered poor. I take it that the relevant baseline is the threshold for subsistence: the threshold below which a person lacks the material means necessary to have any chance of living a minimally decent human life.[2]

The persistence of global poverty in the face of the feasibility of its eradication, or at least its substantial alleviation, is held by some to constitute a violation of human rights. In particular, it is held to constitute a violation of the human right to subsistence – a universal right of access to a set of basic necessities for living a minimally decent human life. The analysis and evaluation of this claim will be the central focus of this dissertation.

Motivation for this project derives from a recent trend of framing the issue of global poverty in terms of socio-economic human rights, and in particular the human right to subsistence. The human right to subsistence is affirmed by thinkers of various persuasions. Many cosmopolitan theorists have made the human right to subsistence central to their discussions of global justice.[3] The human right to subsistence has equally found a central place in some liberal nationalist accounts of global justice.[4] Acceptance of the human right to subsistence furthermore cuts across many accounts of the grounding

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[1] A number of different metrics are used for measuring poverty worldwide. The most comprehensive resource for statistics on global poverty is the United Nation's *Human Development Report* published annually since 1990. According to the 2010 report, an estimated 1.44 billion people worldwide fall below the World Bank's income poverty line of $1.25 USD per day (2005 PPP). Furthermore, at least 1.75 billion people live in 'multidimensional poverty', that is 'a measure of serious deprivations in the dimensions of health, education and living standards that combines the number of deprived and the intensity of their deprivation'. All of the *Human Development Reports* so far published are available at <http://hdr.undp.org/en/reports/>

[2] In what follows, I take 'poverty' to refer to absolute poverty unless otherwise specified.

[3] See, for example, Simon Caney, *Justice Beyond Borders : A Global Political Theory* (Oxford: Oxford University Press, 2005); Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 1999).

[4] See, for example, David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007); and Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edn (Princeton, NJ: Princeton University Press, 1996).

of human rights, and is equally common amongst those who reject the need for an appeal to foundations altogether in theorizing about human rights.[5]

The human right to subsistence does not only find support among professional philosophers; it is increasingly invoked by development workers, aid organizations, and human rights organizations alike. According to a recent Oxfam briefing paper, for example, the various effects of climate change 'are undermining millions of people's [human] rights to (…) food, water, health, shelter (…)'.[6] And according to Amnesty International,

> suffering [endured by those subject to severe poverty] should be no more inevitable than torture, false imprisonment or censorship. The right to live in dignity, with access to health care, education, secure housing and an adequate livelihood is fundamental.[7]

Furthermore, human rights in general, but especially socio-economic human rights including the human right to subsistence were put centre-stage in the United Nation's 2000 *Human Development Report*, and have been invoked in many subsequent publications of this document. For example:

> [A] decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. (p. 73)

The human right to subsistence is conventionally interpreted as a universal moral claim not to be deprived of access to the means for subsistence, but also to be protected against such deprivation, and to be provided with assistance in gaining access to the means for subsistence when one is otherwise unable to secure this for oneself.[8] Framing the problem of global poverty in terms of this right has appeal in that it serves to highlight the urgency and enormity of the problem, and it has great potential to motivate action especially on the part of political actors and NGOs. Whatever else human rights

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[5] See, for example, Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009); Jack Donnelly, *Human Rights in Theory and Practice*, 2nd edn (Ithaca, NY: Cornell University Press, 2003).

[6] Kate Raworth, 'Climate Wrongs and Human Rights', *Oxfam International* (2009) <http://www.oxfam.org/en/policy/bp117-climate-wrongs-and-human-rights>

[7] Amnesty International's official website, <http://www.amnesty.org.uk/content.asp?CategoryID=11179>

[8] This account draws on Henry Shue's influential account of the right to subsistence in *Basic Rights*.

are, they are matters of urgent international and transnational moral concern. So to characterize global poverty as a large-scale violation of human rights implies that its eradication is unequivocally an urgent matter of international and transnational moral concern.

But there is no reason to think that *all* matters of urgent international and transnational moral concern involve human rights. Framing the problem of global poverty in terms of human rights undoubtedly has a great deal of rhetorical appeal, but the inclusion of a right to subsistence among human rights has nevertheless been met with considerable resistance. This resistance predominantly takes issue with the positive duties of protection and assistance taken to correlate with the human right to subsistence on the conventional interpretation outlined above.[9]

Skeptics about the human right to subsistence rightly point out that the rhetorical appeal of affirming such a right alone provides no good reason in support of the affirmation of such a right. In fact, yielding to the temptation to call any matter of urgent international and transnational moral concern a human right is what pushes us towards greater and greater human rights inflation. This is indeed a chief worry among those who reject the human right to subsistence.[10]

The worry about human rights inflation is that the more human rights that are affirmed without sufficient justification, the less value the 'currency' of human rights will have. If all we mean when we say that there is a human right to X is that people's enjoyment of X is a matter of urgent international and transnational moral concern, then it is not clear what is gained by calling it a human right and not simply an urgent matter of international and transnational moral concern. This might be innocuous if not for the side-effect it has of degrading the force of other human rights affirmations. It is my aim in this dissertation to evaluate the charge against those who affirm a human right to subsistence of contributing to human rights inflation, and ultimately to defend the affirmation of a human right to subsistence against it. This will involve arbitrating between those who affirm and those who deny a human right to subsistence. This task is complicated by the fact that multiple interpretations of this right are available. The

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[9] See, for example, Maurice Cranston, 'Are There Any Human Rights?' *Daedalus* 112 (1983), 1-17; Jan Narveson, 'Welfare, Wealth, Poverty, and Injustice in Today's World' *Journal of Ethics* 8 (2004), 305-348; Robert Nozick, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974); Onora O'Neill, 'The Dark Side of Human Rights' *International Affairs* 81 (2005), 427-439; and Richard Rorty, 'Who are We? Moral Universalism and Economic Triage' *Diogenes* 173 (1996), 5-15.

[10] See in particular Cranston, 'Human Rights, Real and Supposed', in *The Philosophy of Human Rights*, e. Patrick Hayden (St Paul: Paragon House, 2001), pp. 163-173.

central question I seek to address, therefore, is whether there is a defensible interpretation of the human right to subsistence. I ultimately answer this question in the affirmative, although the interpretation of the human right to subsistence that I endorse differs from the conventional interpretation in the correlative duties it takes as its focus.

This dissertation divides roughly into three parts; the first and second parts consisting of the first and second chapters respectively, and the third part consisting of the third and fourth chapters together. The aim of the first part is to present the general problem I seek to address. I characterize this problem as an apparent tension between the conventional interpretation of the human right to subsistence on the one hand, and on the other hand the condition on the existence of rights notably propounded by Onora O'Neill that they be claimable. Claimability, on O'Neill's account, requires that the bearers of the duties correlative to the right in question and the content of the relevant duties are determinate.[11] She objects to the inclusion of a right to subsistence among human rights on the basis that it does not fulfil this condition. Whether this objection is successful is the central concern of the second and third parts.

The positive duties taken on the conventional interpretation to correlate with the human right to subsistence are, according to O'Neill's challenge, not claimable on account of being imperfect. A duty[12] is imperfect in the sense relevant to O'Neill's challenge if its fulfillment is not owed to any particular individual. If the fulfillment of a duty is not owed to any particular individual, no particular individual has a legitimate claim to its fulfillment. According to the objection, because the positive duties thought to correlate with the human right to subsistence are imperfect, no individual suffering from severe poverty has a claim on any other agent to their assistance or protection.

O'Neill's account makes clear why the positive duties taken to correlate with the human right to subsistence on the conventional interpretation are not claimable. This has to do with the limits on the ability of any given individual to assist those in need. Even

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[11] O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996); *Bounds of Justice* (Cambridge: Cambridge University Press, 2000); 'The Dark Side of Human Rights'.

[12] In what follows, I use the terms 'duty' and 'obligation' interchangeably. Sometimes duties are distinguished from obligations in that the latter are taken to be more specific than the former. For example, the general *duty* to keep one's promises might be thought to entail the *obligation* to, for example, tidy the house, assuming that is what one promised to do. Although I think we can distinguish between general duties and the more specific duties that derive from them given particular circumstances, I see no reason to use the terms 'duty' and 'obligation' to label this distinction given the synonymy of these terms in ordinary usage.

the wealthiest people in the world could not succeed in assisting every individual in need. As such, no individual in need has a claim on any wealthy individual in particular unless institutions are in place that allocate specific duties to specific duty-bearers. That the positive duties of individual agents to protect and assist those in need are imperfect, and thus not claimable in the absence of institutions is widely accepted, even by proponents of the conventional interpretation of the human right to subsistence. What O'Neill's account lacks, however, is a convincing account of why we should accept that claimability is a condition on the justified affirmation of rights in the first place. All she offers is the thought that rights just are claims; so if no one has a claim against some identifiable duty-bearer, then no one has a right. But this overlooks alternative conceptions of the nature of rights that do not take claimability as a condition on their existence, or so I shall argue.

Replies to the sort of challenge levied by O'Neill on behalf of the conventional interpretation of the human right to subsistence tend to suffer from a similar deficiency in that they either implicitly presuppose or simply assert a conception of rights according to which claimability is not a condition on their justified affirmation. My aims in the second part of this dissertation are threefold: The first is to expose what is really at stake in the debate over the human right to subsistence – namely the very nature of moral rights. The second is to show that many of the most influential contributions to this debate, on both sides of it, have failed to adequately engage with the fundamental questions about the nature of rights. Finally, I offer an argument in support of the claimability condition that supplements O'Neill's account. I argue that the reason that rights must be claimable is that unless they are, they fail to make a distinctive contribution to practical reasoning.

Given that the human right to subsistence on the conventional interpretation is not claimable, O'Neill concludes that we should therefore reject the inclusion of a right to subsistence among human rights altogether. One purpose of the third part of this dissertation is to assess this move. I argue that O'Neill's conclusion is too hasty in that it overlooks potentially plausible alternative accounts of the human right to subsistence that promise conformity to the claimability condition. A second aim of this third part is to evaluate whether any account can make good on this promise while at once offering a generally satisfactory interpretation of the human right to subsistence.

The central thesis I defend is that the strongest available interpretation of the human right to subsistence is one that places primary emphasis on the negative duties correlative to it, and in particular on the duty not to deprive people of access to the means for subsistence. This represents a departure from the conventional interpretation which places at least as much emphasis on the positive duties of assistance and protection. The implications of the kind of interpretation I propose are underexplored in the existing literature. I aim to show that this represents an unacceptable deficit; I hope to contribute to eliminating it.

1.2. Context and Relevance

The question of whether there is a plausible interpretation of the human right to subsistence has been addressed from at least three different, but importantly related philosophical perspectives. One is from the perspective of human rights theory. Those involved in putting forward full-fledged theories of human rights generally offer an account of what specific rights are included among human rights. The most influential in-depth theories of human rights all include some treatment of socio-economic human rights including the human right to subsistence.[13] These theories generally provide an account of how we should go about reasoning about which rights are included among human rights, and then apply their account in producing a list of human rights.

A second perspective from which the question of whether there is a plausible interpretation of the human right to subsistence arises is the perspective of theorizing about global justice. Human rights are treated by a number of theorists as at least minimal principles of global justice. Socio-economic human rights including the human right to subsistence on this sort of account provide at least minimal principles of global distributive justice.[14] This perspective is broader than the perspective of human rights theory because it is concerned not only with a theory of human rights, but also with the question of how human rights function as principles within a theory of global justice. Accounts that take some interpretation of the human right to subsistence as a principle of global distributive justice presuppose some account of human rights or other, but they

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[13] See, for example, Beitz, *The Idea of Human Rights*; Donnelly, *Human Rights in Theory and Practice*, 2nd edn; James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); James W. Nickel, *Making Sense of Human Rights*, 2nd edn (Oxford: Blackwell, 2007).

[14] See, for example, Simon Caney, *Justice Beyond Borders: A Global Political Theory*; C. Jones, *Global Justice: Defending Cosmopolitanism*; Miller, *National Responsibility and Global Justice*; and Shue, *Basic Rights*.

are largely focused on the implications of the human right to subsistence for questions of global justice, such as how wealth and resources should be distributed or redistributed globally, and how global social, economic, and political institutions and relationships should be structured.

Finally, the question of whether there is a plausible interpretation of the human right to subsistence can also be asked from the perspective of theorizing specifically about the normative implications of global poverty. Theorizing from this perspective begins with the observation that a great deal of people are currently suffering from absolute poverty while many others enjoy lives of considerable privilege and comfort, and goes on to question what, if any, normative implications this disparity has. This is the perspective I take in addressing the question of whether there is a plausible interpretation of the human right to subsistence. This perspective potentially overlaps with each of the other two perspectives so far outlined. It overlaps with the second perspective insofar as at least some of the normative implications of global poverty are matters of justice; and it overlaps with the first perspective insofar as at least some of the normative implications of global poverty derive from human rights.

I take it that the second and third perspectives, and in particular the second, draw on the first and in so doing give purpose to it. For theorizing about human rights to be relevant, it has to be relevant to something. My suggestion is that theorizing about human rights has relevance with respect to theorizing about global justice and theorizing about the normative implications of global poverty. It has relevance in particular to the questions of whether and to what extent the alleviation of global poverty is a matter of global justice.

Much of the literature on the normative implications of global poverty avoids questions of justice and rights, and addresses instead another set of important questions concerning the extent to which individuals among the global rich are morally obligated to sacrifice in order to contribute to the alleviation of global poverty.[15] By contrast, my focus in what follows is not on the specific content of the moral obligations to contribute to the alleviation of global poverty, but rather on their nature.

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[15] Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Oxford University Press, 2004); Tim Mulgan, *The Demands of Consequentialism* (Oxford: Oxford University Press, 2001); Liam B. Murphy, *Moral Demands in Nonideal Theory*. (Oxford: Oxford University Press, 2000); and Peter Singer, 'Famine, Affluence, and Morality' *Philosophy and Public Affairs* 1(1972), 229-243.

Peter Singer famously challenged the view that assisting the global poor is morally supererogatory, a matter of mere charity.[16] He persuasively argued that there are stringent moral obligations to assist the severely poor in attaining a decent living standard on the part of those able to do so.[17] In questioning whether there is a plausible interpretation of the human right to subsistence, I am interested in whether and to what extent the moral obligations to contribute to the alleviation of global poverty can be characterized as duties of justice as opposed to duties of beneficence.[18]

This is a narrower project than that of providing a full-fledged account of global justice. A complete theory of global justice would include principles having to do with security, political participation, sovereignty, just war, and so on. It is also potentially narrower than the project of providing a full-fledged account of the normative implications of global poverty which might also include moral requirements that do not count as obligations of justice. Nevertheless, I hope to make an important contribution to both of these broader projects.

I take it that the fulfillment of rights is a matter of justice and that the duties correlative to rights can be characterized as duties of justice. If there is a human right to subsistence then the moral obligations correlative to it can be characterized as duties of justice. How does this pertain to reasoning about the normative implications of global poverty more broadly? In order to answer this question, I will need to say more about (a) reasoning about the normative implications of global poverty, and (b) what being a duty of justice implies. I will do this in what remains of this section.

(a) Reasoning about the Normative Implications of Global Poverty

Questions arising from the fact of global poverty centrally concern (1) its causes and (2) its remedy. (1) is an empirical matter whereas (2) has both empirical and normative aspects. Remedying global poverty requires knowledge of how this can be done – and in particular how it can be done effectively – which is an empirical matter. But which

[16] 'Famine, Affluence, and Morality'.

[17] Singer, 'Famine, Affluence, and Morality' and *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1993), especially Chapter 8. While many object to the extent of the sacrifice Singer thinks is required in order to fulfil our obligations, few reject the view that there are at least some stringent moral obligations towards the global poor.

[18] What I refer to here as 'duties of beneficence' are also sometimes referred to as 'duties of charity', 'duties of humanity', or 'humanitarian duties'. I take it that these all refer to the same sorts of duties.

agents, if any, are morally required to carry out the relevant actions, and which ones, if any, are morally required ultimately to bear the associated burdens are normative matters.

What follows will be concerned exclusively with the normative questions arising from the fact of global poverty. The normative question that dominates the philosophical literature on global poverty concerns what David Miller has called *remedial* responsibility.[19] Remedial responsibility is the forward-looking responsibility to take the actions necessary to remedy a bad situation. I will discuss remedial responsibility for global poverty in more detail in Chapter 6. My purpose here is just to point out that determining which agents are remedially responsible for global poverty is an important component of reasoning about the normative implications of global poverty. As such, it is something that might be affected by the nature of the relevant obligations.

A further concern is how other agents are morally permitted or required to act in case remedial responsibilities are not fulfilled. For example, is it permissible for the victims of poverty to take what they are owed from those who owe it to them? Is it permissible for first and third parties to use coercive force to ensure the fulfillment of these obligations on the part of second parties? I argue that it is with respect to these and other related questions that the nature of the obligations makes a difference. This, I argue in the next sub-section, is because duties of justice are enforceable. Therefore, if there is a human right to subsistence, whatever remedial duties correlate with it will be enforceable.

(b) Duties of Justice and Duties of Beneficence

Many of those who deny that there are fundamental duties of justice to assist those in need nevertheless hold that there are stringent duties of beneficence to do so. In order to access the reasons for thinking that assistance is either a duty of justice or a duty of beneficence, it is important to grasp what is at issue in drawing this distinction. A view that seems to motivate much of the literature in defence of the human right to subsistence is that duties of justice are stronger than duties of beneficence; that to violate a duty of justice is morally worse than to violate a duty of beneficence.[20] If this were the case, then the nature of the duties to protect and assist the global poor would affect their strength. We have, I think, little reason to hold this to be true as such. Although we

[19] *National Responsibility and Global Justice*, Chapter 7.

[20] See, for example, Miller, *National Responsibility and Global Justice*, p. 248; although he concedes that there might be some duties of beneficence that are stronger than duties of justice.

might observe that duties of justice tend to be weightier than duties of beneficence, we would need some principled reason to think that duties of justice *must* be weightier than duties of beneficence in order for this claim to be convincing.[21] If the difference between duties of justice and duties of beneficence is *just* their relative strengths, we would need some account of where to draw the line between the two. Presumably there are not just two strengths of duty: Some duties of justice are stronger than other duties of justice, and some duties of beneficence are stronger than other duties of beneficence. Given an ordinal ranking of duties, the question remains of where to draw the line between duties of justice and duties of beneficence. But if the only difference between duties of justice and duties of beneficence is their relative strength, then we are left with nothing to appeal to in determining at what point a duty is strong enough to qualify as a duty of justice. This indicates that the claim that duties of justice are (or tend to be) stronger than duties of beneficence relies on some other feature that distinguishes duties of justice from duties of beneficence.

A widely accepted view, and one that I endorse, is that duties of justice can correlate with rights while duties of beneficence cannot. Rights necessarily correlate with duties: for each right, there is some correlative duty. It is not, however, the case that for each duty there is a correlative right: some duties are not owed to anyone in particular.[22] When a duty correlative to a right is violated, that is, when someone is deprived of the object of her right, it is appropriate to say that an injustice has occurred. As such, the duties correlative to rights can be properly called duties of justice, since their fulfillment is a matter of justice. Since any duty whose fulfillment is a matter of justice is a duty of justice, all duties correlative to rights are necessarily duties of justice. A duty of beneficence will never, therefore correlate with a right.

The observation that a duty of justice is one that correlates with a right does not get us very far in establishing what something being a duty of justice implies. What we need is an account of what conditions must be satisfied in order for a particular duty to be said to correlate with a particular right. We can begin to see what might be required

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[21] For further criticism of the claim that duties of justice are necessarily weightier than duties of beneficence, see Debra Satz, 'What Do We Owe the Global Poor?' *Ethics & International Affairs* 19, no. 1 (2005), 47-54 (p. 52); and Tom Campbell, 'Humanity before Justice' *British Journal of Political Science* 4 (1974), 1-16 (p.14).

[22] O'Neill, *Towards Justice and Virtue*, p. 134-136, concludes from this that recipient-based perspectives are therefore deficient. This is true only insofar as we are confined to one perspective or another. I do not see why we cannot consider moral relationships from both the perspective of recipients and obligation-bearers.

for a particular duty to be said to correlate with a particular right by considering why something's being a duty of justice matters from the perspective of practical reasoning. The fact that duties of justice can (and perhaps must) correlate with rights while duties of beneficence cannot is not very interesting unless this makes some actual difference to the way we think about and treat these types of duties respectively. Another widespread view about the distinction between duties of justice and duties of beneficence that I also endorse is that duties of justice are enforceable whereas duties of beneficence are not. This claim requires some unpacking.

The concept of enforceability requires some elucidation. First, I take the relevant sense of enforceability to be *coercive* enforceability. We can understand enforcement in a broader sense including social sanctions. John Stuart Mill, for example, thought that what distinguished morality from mere expediency was that transgressions of it deserved punishment. But punishment for Mill was not restricted to subjection to coercive force, but also reproach by one's peers and even one's own conscience.[23] It may be true that morality can be delineated in this way, but what we are interested in here is what distinguishes duties of justice from other moral duties. The suggestion is that duties of justice are enforceable in the sense that those who bear them may be coerced into fulfilling them.

Second, enforceability in the sense relevant here needs to be distinguished from the capacity for enforcement.[24] For something to be enforceable in the sense that the means of enforcement of that duty are available does not imply that there is sufficient justification for the enforcement of that duty. But to base the distinction between duties of justice and other moral duties on enforceability in this respect would make the criterion for a duty being a duty of justice contingent on facts about the means of enforcement available in a given place and at a given time. It is unclear why a moral distinction should rely on such arbitrary and contingent non-moral facts. The relevant

[23] According to Mill, 'We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency.' *Utilitarianism*, ed. by Roger Crisp (Oxford: Oxford university Press, 1998), Chapter 3.

[24] These must both be distinguished from actual enforcement. I will not take up here the line of argument according to which rights and duties of justice only exist insofar as they are, as a matter of fact, enforced. For a persuasive refutation of this view, see John Tasioulas, 'The Moral Reality of Human Rights' in *Freedom from Poverty as a Human Right: Who Owes what to the very Poor?*, ed. by Thomas Pogge, UNESCO (Oxford: Oxford University Press, UNESCO, 2007), pp. 75-100.

sense of enforceability must be moral since what we are interested in is whether something being a duty of justice makes any difference from the perspective of morality. What we are therefore interested in is *justifiable* enforceability. A duty might be justifiably enforceable in the absence of the means necessary for actual enforcement. The morally relevant distinction is between duties which it would be justifiable to enforce if doing so were practicable and those which it would not be justifiable to enforce even if doing so were practicable.

A third clarificatory point about the relevant sense of enforceability is that it is left open who might justifiably enforce a duty. It may be the case that a particular duty is justifiably enforceable by some but not others.[25] All that is relevant for our current purposes is that the duty is justifiably enforceable by at least one agent. The claim is that duties of justice are justifiably enforceable in this sense whereas duties of beneficence are not.

Finally, it is important to note that to say that a duty is enforceable in the sense relevant to the present discussion is not to say that it must be enforced, that it necessarily will be enforced, or even that, all things considered, it ought to be enforced. What it means here to say that a duty is enforceable is that there is *prima facie* justification to enforce it. There might be practical impediments to its enforcement, or there might be reasons that countervail against its enforcement making it ultimately unjustified.

The view that duties of justice can be distinguished from duties of beneficence on the basis of their justifiable enforceability has been queried by Allen Buchanan.[26] He argues that it can be justifiable to enforce duties of beneficence. Notably, he thinks it is justifiable to enforce duties of beneficence in order to solve collective action problems, particularly with respect to duties of beneficence to contribute to collective goods. This, Buchanan points out, is true even in the case where the collective good in question is not something to which people have an antecedent moral right. He argues that 'some

[25] Locke, for example, thinks that the duties correlative to natural rights are justifiably enforceable by individual right-holders themselves in a state of nature, but that individual right-holders forfeit their individual right to enforcement upon entering civil society. *Second Treatise of Government*, in *Classics of Modern Political Theory: Machiavelli to Mill*, ed. by Steven M. Cahn (New York: Oxford University Press, 1997), pp. 213-292 (Chapter II and Chapter VII). The justifiably enforceability of a particular duty by a given agent will therefore depend on the socio-political circumstances.

[26] 'Justice and Charity', *Ethics* 3 (1987), 558-575 (pp. 562-569).

collective goods are of sufficient importance that enforcement seems justifiable if that is what it takes to secure them' (p. 564).

One possible reply is that if this is the case, then the good in question actually is the object of a fundamental moral right, and that the duties in question, therefore, are duties of justice. But this is not necessarily the case. We can think of collective goods that are clearly not the objects of fundamental moral rights, the duties to contribute to which might nevertheless be justifiably enforceable. Take, for example, public libraries. Suppose the members of a particular community agree that it would be desirable to have a public library. For the sake of argument suppose that the members of this community unanimously agree to contribute their fair share (whatever they collectively decide that is) to the establishment and maintenance of a public library. Now, the members of this community are aware of the potential for free-riding, that is, some members failing to contribute their fair share on the grounds that the library project will still go ahead without their contribution, and so they can benefit from the good of having a public library without paying the cost. Seeing as they all recognize that they themselves are susceptible to temptation by this line of reasoning, and that if a number of them succumb, the project will fail, they unanimously decide that enforcement of the duty (of beneficence) to contribute to the establishment and maintenance of the public library is in order. The community council thus sets up a coercive scheme of taxation to ensure that the library project succeeds.

I think that Buchanan is right to think that enforcement in this kind of case is justifiable. But his intention is for this kind of case to provide a counter-example to the claim that duties of beneficence are never justifiably enforceable, whereas duties of justice are. A possible reply is that the duty to contribute to collective goods, if it is a duty at all, is not a duty of beneficence. It could plausibly be argued that the duty to contribute to collective goods only applies to those who partake, or who might partake at some future point, in those goods. Duties of beneficence are duties to act in the interest of others. While the promotion of collective goods is in the interest of the other members of the collective, the motivation to promote them is not generally beneficence, but rather self-interest. As such, once a duty is characterized as a duty to promote a collective good, it is hard to see how this can at once be considered a duty of beneficence.

I do, however, think that Buchanan's argument can be adapted in such a way as to refute the claim that duties of beneficence can never be justifiably enforced. We can

imagine a case in which the members of a community recognize that they all hold some duty of beneficence towards others who are not part of the community. They also recognize that the most efficient and effective way of discharging these duties is for them to pool their efforts. Recognizing also the potential for free-riding, the members of the community might agree to subject themselves to the enforcement of these duties. In this case, even though the good to which the individual agents are contributing is not a collective good in the sense that they will not benefit from it, it seems that enforcement is indeed justifiable. I therefore agree with Buchanan that the claim that duties of beneficence are never justifiably enforceable while duties of justice are does not provide a plausible way of distinguishing between duties of justice and duties of beneficence. I argue, however, that there is a morally relevant difference between duties of justice and duties of beneficence that has to do with justifiable enforceability.

What Buchanan's account misses is something important about the distinction between the justifiability of enforcement of duties of justice and duties of beneficence respectively. In both the examples above, I take it that the reason that enforcement of the duty to contribute is justifiable is because everyone subject to the enforcement has consented to it. The use of coercive force is therefore justified on the basis of the consent of all those who are subject to it. The original duty in the first example is justifiably enforceable, but not on account of the value of the collective good in question. And the duty of beneficence in the second example is justifiably enforceable, but not on account of being a duty of beneficence. In both cases, the duties are justifiably enforceable on account of the consent of those subject to the enforcement.

I argue that the morally relevant distinction between duties of justice and duties of beneficence is that the former are justifiably enforceable *as such*, whereas the latter require some additional justificatory feature such as consent in order to be justifiably enforceable. The examples above do not provide counter-examples to this claim since the justifiability of enforcement in them is based on consent.

It might be replied that the consent of all those upon whom a duty of beneficence is enforced is not in fact necessary for the enforcement to be justifiable in every case. Some goods are of sufficient importance to justify the enforcement of the duties to contribute to them. Take, for example, national security. This is a highly desirable collective good, but not clearly one to which people have a fundamental right. However, many agree that the duty to contribute to national security is justifiably enforceable, even without the explicit consent of all those subject to enforcement. But to

say that it is justifiable to enforce this duty on the basis of the importance of the collective good in question is simply to beg the question against those who think that only duties of justice are justifiably enforceable. Some further ground must be provided.[27]

What I hope to have shown is that while Buchanan is right to argue that there can be grounds for enforcing duties that are not duties of justice, he does not succeed in showing that there is no morally relevant distinction between duties of justice and duties of beneficence on the basis of justifiable enforceability. Justification is always owed to those subject to coercive enforcement. As Buchanan implies, there are multiple acceptable grounds for enforcement. The difference between duties of justice and duties of beneficence is not that the former are justifiably enforceable and the latter are not; rather it is that the former are justifiably enforceable *as such*, while the latter always require some further justificatory feature. This, I take it, is because duties of justice stem from the legitimate demands of individuals. What it means to have a right is partly to have a demand. What distinguishes demands from requests is that the addressee is morally obligated to comply with a demand, but not with a request. Requests, unlike demands, can be considered and permissibly denied. Demands morally must not be denied. Since addressees are required to comply with the demand then, *prima facie*, enforcement is justifiable. My claim here is not that the bearers of duties of beneficence are not required to comply with those duties. They are, or else it would be strange to speak of them as being duties. My claim is that in the case of duties of beneficence, the most that a potential beneficiary of the fulfillment of the duty can make against the duty-bearer is a request. The duty-bearer must fulfil her duty, but she is not bound to comply with the request of any particular potential beneficiary. For this reason, duties of beneficence are not justifiably enforceable as such.

I have so far argued that the nature of the moral obligations associated with global poverty makes a difference with respect to what sort of action is justifiable on the part of first and third parties in anticipation of or in response to failures on the part of second party duty-bearers to fulfil their duties. In particular, I have argued that when these obligations are duties of justice, there is *prima facie* justification for their enforceability. There might also be justification for the enforceability of some duties of beneficence, but a duty of beneficence will never be *prima facie* justifiably enforceable *as such*. So if the

[27] This further ground might, for example, appeal to the notion of tacit consent, or perhaps rational consent under ideal conditions.

affirmation of a human right to subsistence can be justified, then it follows that the duties correlative to it will be duties of justice and therefore *prima facie* enforceable. Whether the affirmation of a human right to subsistence is justified therefore has important implications for reasoning about the normative implications of global poverty in this respect.

This provides both the context of the discussions to follow, but it will also figure into one of the main arguments that I will advance. I have so far suggested that the human right to subsistence contributes to reasoning about the normative implications of global poverty with respect to the justifiable enforceability of duties. This is not meant merely as a descriptive claim, but as a normative one. If the affirmation of the human right to subsistence does not contribute to reasoning about the normative implications of global poverty in the way that I have suggested, it is not clear what theoretical purpose it serves.[28] It might be thought to serve a purely practical purpose in motivating and mobilizing support for the cause of poverty relief. But this would be to succumb to the charge that the human right to subsistence is empty rhetoric. In order for the affirmation of the human right to subsistence to be justified, I argue that it must make a distinctive contribution to reasoning about the normative implications of global poverty. It promises to do so by offering *prima facie* justification for the enforcement of at least some remedial and preventive duties. Whether it can make good on this will be evaluated in the chapters to follow.

1.3. Project Overview

It is not the proliferation of human rights itself that leads to human rights inflation. There is nothing about human rights that suggests that there should be few of them. There could be any number of human rights, but the affirmation of each must be justified in order to avoid the devaluation of human rights affirmations overall. To defend the affirmation of a human right to subsistence against the charge of human rights inflation, it must therefore be shown that there is sufficient justification for it. This, of course, requires an account of the justification of human rights.

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[28] Simon Hope bases his argument in support of the claimability objection on a similar point in 'Subsistence and Imperfect Duties', unpublished manuscript, presented at the workshop on Human Rights and Subsistence at the University of Stirling, 4-5 March 2011. I am grateful to Simon for a number of conversations about this and a number of related matters over the last few years that have helped shape several of the arguments that I advance in what follows.

In Chapter 2, I begin in §2.1 by outlining the sort of justification conventionally offered for the human right to subsistence. On this sort of account, human rights are grounded in fundamental human values. While there are multiple and conflicting accounts of the fundamental human values that underpin human rights, the most prominent accounts converge on the fundamental value of having access to the means for subsistence. We therefore find widespread convergence within the conventional interpretation of human rights on the justified inclusion among them of a right to subsistence.

In §2.2, I outline what I take to be the four most prominent and persistent philosophical objections to the inclusion of a right to subsistence among human rights. Each one raises a challenge to the justification offered in support of the human right to subsistence on the conventional account. None directly challenges the idea that human rights are grounded in fundamental human values, but each one suggests that some other condition for the justified affirmation of a human right cannot be fulfilled in the case of the human right to subsistence. These conditions are (1) that the fulfillment of the right for all right-holders must be feasible, (2) that the duties correlative to the right must not be excessively demanding, (3) that the duties correlative to the right must be only in the first instance negative, and (4) that the duties correlative to the right must be claimable. I argue that the first condition can be met by the human right to subsistence and that there are good reasons to reject the second and third as conditions on the justified affirmation of rights. My focus in the chapters to follow is largely on the fourth condition. The reason for this is that it is inadequately addressed in the literature in defence of the human right to subsistence, or so I shall argue.

My aim in the Chapter 2 is therefore to set out the central problem that I seek to address in what follows. The central question that I seek to answer is whether there is reason to reject that claimability is a condition on the existence of rights, or whether there is a plausible interpretation of the human right to subsistence that conforms to this condition.

In Chapter 3, I argue that some of the most influential defences of the human right to subsistence fail to take seriously the objection on the basis that the human right to subsistence is not claimable – what, following John Tasioulas, I refer to as the 'claimability objection'.[29] I argue that this is because they presuppose without adequate argument a conception of moral rights according to which claimability is not a condition

[29] 'The Moral Reality of Human Rights'.

on their justifiable affirmation. In §3.1 I locate the claimability condition among the various debates within rights theory. I argue that one way that claimability can be understood is as a condition imposed by the Will Theory of the function of rights. Another way it can be understood is as a condition imposed by an account of the logical structure of rights according to which rights express deontic relations between right-holders and duty-bearers.

In §3.2. I discuss two influential lines of argument in defence of the human right to subsistence against the claimability objection. According to one, the enjoyment of access to the means for subsistence is necessary for the enjoyment of any other right including civil and political human rights, and so it too must be the object of a human right. This kind of argument has been advanced notably by Henry Shue, and a variation of it has recently been proposed by Elizabeth Ashford. According to the second line of argument, the interest of all humans in having access to the means for subsistence is sufficient to justify the affirmation of a human right with this as its object. Variations of this argument have been advanced notably by Jeremy Waldron and John Tasioulas. Both of these lines of argument involve an outright rejection of the condition that rights must be claimable. I argue that both accounts are intolerably incomplete in that neither provides support for a conception of rights according to which claimability is not a condition on the justified affirmation of rights.

In §3.3 I consider what sort of justification might be offered in support of both a conception of rights according to which claimability is a condition on their justified affirmation, and a conception of rights according to which it is not. My aim is more modest than to resolve this dispute altogether. Rather, I focus only on the human right to subsistence. I argue that if the human right to subsistence is not claimable, then it fails to make a distinctive contribution to reasoning about the normative implications of global poverty. I conclude that there is a fundamental and irresolvable tension between the conventional interpretation of the human right to subsistence and the claimability condition, and that there is reason to prefer the claimability condition.

In Chapter 4, I turn to the question of whether there is an alternative conception of the human right to subsistence according to which it is claimable. I discuss and ultimately reject three proposals before going on in the next chapter to defend a fourth. According to the first (§4.1) human rights are held primarily against the coercive social institutions imposed upon us. On this account, the claimability condition poses no problem since it is given that the human right to subsistence, like all other human rights,

is claimable in the first instance against the coercive social institutions imposed upon oneself. According to the second proposal (§4.2), the positive duties correlative to the human right to subsistence are borne, not by individuals, but by the collective of all those in a position to make some contribution to the alleviation of global poverty. Although the duties of individuals on this account are imperfect and thus not claimable, the duties of the collective are perfect, and thus fulfil the claimability condition. Finally, according to the third proposal (§4.3), the duties correlative to the human right to subsistence are not primarily imperfect duties of assistance and protection, but rather perfect duties of consideration. On this account, although the duties of assistance and protection are not claimable, this does not affect the human right to subsistence.

Despite the failure of each of these proposals, I argue in Chapter 5 that we should not abandon the human right to subsistence. I argue that to do so would be to overlook the negative perfect duties correlative to it. In particular, I argue that an interpretation of the human right to subsistence built on the duty not to deprive others of access to the means for subsistence can overcome the claimability objection and make an important contribution to reasoning about the normative implications of global poverty.

Finally, in Chapter 6, I discuss some of the implications of the duty not to deprive, as well as some of the applications that a human right to subsistence based on it has.

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THE HUMAN RIGHT TO SUBSISTENCE: FOR AND AGAINST

Evaluating the affirmation of a human right to subsistence is complicated by the fact that there are multiple interpretations of this right. Whether the affirmation of a human right to subsistence is justified will depend on what is meant by it. I begin with what is the most conventional interpretation of the human right to subsistence, at least among philosophers. In the second section of this chapter, I discuss four prominent objections to the human right to subsistence on this interpretation.

2.1. The Conventional Interpretation of the Human Right to Subsistence

In this section, I outline the central features of the human right to subsistence as it is conventionally interpreted. My focus will be on the nature, substance, and normative content of the human right to subsistence on this interpretation, but I will also say a bit about the sort of justification offered in support of it. On the conventional interpretation, the human right to subsistence is (1) a fundamental right (2) to a basic living standard characterized by having access to the material means for subsistence that entails (3) duties not to deprive people of access to the material means for subsistence, (4) duties to protect others against deprivations of access to the material means for subsistence, and (5) duties to assist those who cannot acquire the material means for

subsistence for themselves.[30] The human right to subsistence on this interpretation is conventionally justified by appeal to the paramount value for all humans of having access to the means for subsistence. Let us look at each feature in turn.

2.1.1. Human Rights are Fundamental Rights

Human rights are conventionally taken to be fundamental rights. Fundamental rights are held in virtue of some necessary feature of the right-holder. They are rights that beings who possess the relevant features necessarily have. Fundamental rights can be contrasted with special rights. Special rights derive from special relationships or arrangements that the right-holder has with other moral agents. Special rights, unlike fundamental rights, are therefore contingent on the existence of particular relationships between moral agents.

That human rights are fundamental rights is widely accepted, but reasons in support of this view are seldom offered. I do not, however, think that this is a problem. This is because, as Griffin has argued, theorizing about human rights is best approached from the bottom up rather than from the top down.[31] A 'top-down' approach takes as its starting point a general account of value, then a full-blown moral theory, and finally an account of human rights as they pertain to and describe aspects of that theory. This sort of approach begins with high-level moral principles and derives an account from them. A 'bottom-up' approach, by contrast, starts with human rights as they appear in practice, as used by 'politicians, lawyers, social campaigners, as well as theorists of various sorts'.[32] Bottom-up approaches then go on to establish which higher-level moral principles must be invoked in order to explain the normative force of human rights.

Although Griffin does not repudiate top-down approaches, he provides two reasons for preferring a bottom-up approach in theorizing about human rights. One is that in taking a bottom-up approach, we may not need to rise all the way up to highly abstract moral principles. We can potentially reach agreement about the content and normative force of human rights despite disagreement about high-level moral principles.

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[30] This account is largely based on Shue's account of the human right to subsistence as he presents it in *Basic Rights*. Shue's account has been influential among theorists of human rights. Even those who reject his 'indirect' justification of the human right to subsistence (which I will discuss in more detail in section 3.2), many have adopted some version of his typology of duties correlative to the human right to subsistence.

[31] *On Human Rights*, pp. 29-30.

[32] Ibid., p. 29.

This is advantageous because people tend to be highly divided over abstract moral theories and the fundamental values that underlie them. Griffin thinks that a bottom-up approach allows us to circumvent many of these disagreements and yet still make use of human rights in our day-to-day moral discourse. As we shall see over the course of the following chapters, however, it seems that we cannot get very far with a bottom-up approach before running into higher-level moral disagreement. For this reason, I think that Griffin's second reason in favour of a bottom-up approach is more persuasive. He argues that we should prefer the bottom-up approach because a theory of human rights must be able to provide some explanation of how the notion of human rights is used in social life. We are prompted to ask questions about human rights, their content and their normative force, on account of their ubiquitous invocation in a variety of social realms including both domestic and international politics, international law, and in ordinary morality. Griffin argues that top-down approaches risk changing the subject.[33] By starting with a high-level moral theory and attaching the term 'human rights' to some entities within it is, on Griffin's account, stipulative. If we do not take into account how the term is used in practice, we would have no reason for thinking that the term should attach to any entity in particular within our moral theory.[34]

On a bottom-up approach, the basis of the affirmation that human rights are fundamental rights is that this is how they appear in practice. This can be disputed, but common usage of the term 'human right' would seem to favour interpreting it as a fundamental right.

The fundamentality of human rights entails that they are moral rights. To say that a right is a moral right is to say that it exists morally. This means that its normative force comes

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[33] Ibid., p. 3.

[34] What Griffin refers to as a bottom-up approach should be distinguished from another sort of 'bottom-up' approach recently taken by a number of theorists following Rawls's lead. The most extensive argument for this approach comes from Beitz, *The Idea of Human Rights*, who argues that in seeking to answer questions about the content and normative force of human rights, we need not start with a theory about the nature and justification of human rights. He argues instead that we can seek to understand human rights by thinking of them as practical principles governing conduct within a specific arena. In particular, he argues we should understand the question of what human rights are as a request for an account of the meaning of the term within the 'public normative discourse of global politics', p. 103. Theorizing about human rights in this way leads Beitz to reject the conception of human rights as rights that all humans have in virtue of their humanity as a starting point for answering questions about the content and normative force of human rights. I will discuss this approach in more detail in Chapter 4.

from morality and not, for example, from positive law. To violate a moral right is to violate a moral requirement, regardless of whether there are corresponding legal principles. There is a question of whether legal rights have moral force in addition to legal force: I set this question aside here since we are primarily concerned with rights that are not necessarily enshrined in law. A separate question concerns whether it makes sense to speak of such rights. I take this up in the next sub-section.

Fundamental rights are necessarily moral rights since they exist in virtue of some necessary feature of the right-holder, and not in virtue of contingent facts about particular legal arrangements. As such, insofar as human rights are fundamental rights, they must also be moral rights. Not all moral rights are fundamental rights. Special rights can also be moral rights. For example, the right of a child to care from her parents is a special right, but one that exists whether or not it is enacted in law. This right is contingent on the special relationship that holds between parents and children, and so it is not fundamental; but as its existence is not contingent on particular legal arrangements, it is a moral right.

Just because a right is not enacted in any particular legal system does not mean that it cannot be justified as a moral right. Likewise, even though a particular right is enacted in some legal system, it does not follow that it also exists independently as a moral right. Therefore, from the inclusion of versions of the human right to subsistence in the United Nation's Universal Declaration of Human Rights, and several subsequent international covenants and treaties, we cannot infer that there is such a right.

The fundamentality of human rights also entails that they are universal, at least in one sense. The universality of a right can refer to the scope of its holders or of its corresponding duty-bearers. To make clear this distinction, we can speak of a right being universal *in scope*, meaning that it is held by all right-holders (or all right-holders of a certain kind), or we can speak of a right being universal *in obligation*, meaning that it is held against all moral agents. A right that is universal in scope need not be universal in obligation, and vice versa. It could be that a right is held by all right-holders, but only against certain duty-bearers. It could also be that a right is held by only some right-holders, but against all duty-bearers.

The fundamentality of human rights entails that they are universal in scope because since they are rights held in virtue of some necessary features of humans, all humans, regardless of their nationality, race, ethnicity, culture, sex, or other accidental

features, must hold them.[35] An important question concerns whether human rights are temporally universal in the sense of being held by all humans regardless of when they exist. I will leave this question aside for the time being, however. For our present purposes, we need not adopt more than the moderate view that human rights are held universally by *at least* all humans existing within the current historical context.[36]

A further question concerning the universality of human rights is whether their universality in scope implies universality of obligation. There is disagreement on this matter amongst proponents of the conventional interpretation of the human right to subsistence.[37] I will return to this matter in section 2.2.

It is worth noting briefly that there is disagreement among theorists as to the relationship between fundamental (and therefore moral and universal) rights on the one hand and human rights on the other. Some theorists take the set of fundamental rights and the set of human rights to be identical.[38] Others take human rights and fundamental rights to be distinct, but potentially overlapping sets.[39] And others take human rights to be a sub-set of fundamental rights.[40] On this last account, being a fundamental right is a necessary, but not sufficient condition for being a human right. Further conditions must be fulfilled in order for fundamental rights to count as human rights. I reject the second account of the relationship between fundamental rights and human rights for reasons I will discuss

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35 An important philosophical question concerns the sense of 'human' relevant to delineating the scope of human rights. I briefly discuss this point in section 2.1.4.

36 This is far from satisfactory, and I think it is important for theories of human rights to include an account of the sense in which human rights can be understood to be universal. Nevertheless, this issue is beyond our present concern. For illuminating discussions of the possibility of the temporal universality of human rights, see Griffin , *On Human Rights*, pp. 48-51; and John Tasioulas, 'Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps', *European Journal of Philosophy* 10 (2002), 79-100 (pp. 86-88); and Tasioulas, 'Taking the Rights out of Human Rights', *Ethics* 120 (2010), 647-678 (pp. 667-672).

37 Griffin, for example, claims that human rights are 'doubly universal' in that they are held by all human agents against all other human agents, *On Human Rights*, pp. 101-104. Tasioulas, by contrast, denies the need for symmetry in the scope and obligations of human rights, 'The Moral Reality of Human Rights', p. 77.

38 See, for example, Tasioulas, 'The Moral Reality of Human Rights'.

39 This seems to be the view espoused by Beitz, *The Idea of Human Rights*. Beitz is concerned exclusively with human rights, but there is nothing in his account that precludes at least some human rights also being fundamental rights, and indeed some of the rights that he includes among human rights are widely included among fundamental rights. The important point is that on Beitz's account, whether a right is a human right does not depend on it being a fundamental right.

40 See, for example, John Skorupski, 'Human Rights' in *The Philosophy of International Law*, ed. by Samantha Besson and John Tasioulas, (Oxford: Oxford University Press, 2010), pp. 357-373.

in Chapter 4. In what follows I remain indifferent between the first and last accounts. In so doing I leave open the possibility that the fundamental right to subsistence, insofar as it can be defended, lacks the relevant features to be considered a human right. This is not a great concern, however, since the most persistent objections to the inclusion of a right to subsistence – namely the four I discuss in the next part of this chapter – concern its status as a fundamental right. A successful defence of the fundamental right to subsistence will go at least most of the way towards the complete defence of a human right to subsistence.

2.1.2. A note about moral rights

As a prelude to our discussion of the justification of human rights, I want to acknowledge and address a potential concern about moral rights in general. I have noted that there is widespread consensus on the view that human rights, whatever else they might be, are moral rights in that their justification is independent of their institutionalization. To affirm a human right is not to say that it is part of any positive law, but rather that the duties it entails are justified and required by morality. If existing positive law in some way contravenes human rights, then there exists a strong and (in the vast majority of cases) overriding moral reason to reform the law.

Some skeptics about human rights question whether a right can be justified independent of its institutionalization.[41] The suggestion here is that a right cannot pre-exist its implementation. A right comes to be justified only when it is implemented in some institutional structure. Prior to the institutional implementation of a right, there is only the goal of having a right and not a real right. While there is perhaps some plausibility to the legal positivist view that a right's institutionalization can serve as its justification even if the right has no moral grounds, the view that it is *only* through institutionalization that rights can come to be justified is seriously at odds with the ordinary understanding of rights. Take, for example, the case of arbitrary imprisonment. It would be strange to suggest that a person who is arbitrarily imprisoned in a society that has not enacted any law against arbitrary imprisonment has had no right violated. To say that there is a moral right against arbitrary imprisonment is not simply to say that it would be a good idea for each society to implement such a right. It is to say that even

[41] For a notable challenge to this effect, see Jeremy Bentham's *Anarchical Fallacies*, in *Nonsense upon Stilts: Bentham, Burke, and Marx on the Rights of Man*, ed. by Jeremy Waldron (New York: Methuen, 1987), pp. 46-76.

when such a right has not been implemented, it can nevertheless be violated; that even where there is no positive law against arbitrary imprisonment, the arbitrary imprisonment of any person is nevertheless an injustice.

A second skeptical concern is that even if some sense can be made of institutionally-independent moral rights, it is not clear what value such rights have if they are not institutionalized given that the institutional implementation of rights precedes their enforcement. But although moral rights are intended in some sense to protect some value for the right-holder, they need not do this in a direct way. Moral rights are tools of moral, political, and legal discourse. They provide reasons for acting in certain ways and abstaining from acting in other ways. They provide (at least partial) justification for their own implementation and coercive enforcement. Peter Jones has forcefully articulated what it is to have a moral right:

> Rights are things which it is appropriate to 'assert' or 'demand'. (…) Our rights are what, morally, we must be accorded. When we assert that we have a right to something, we do not merely request it, nor do we simply suggest that it would be a 'good thing'; nor, again, are we merely putting ourselves forward as deserving cases. We are saying that we are entitled to it, that it is rightfully ours and that, morally, others are obligated to act in ways which respect that entitlement. (…) Correspondingly, when we are denied our rights, we typically respond with indignation or outrage, rather than with mere disappointment; we conceive ourselves as being the victims of an injustice rather than as mere unfortunates who have been denied the milk of human kindness.[42]

The idea is that moral rights entitle right-holders and those acting on their behalf to act and respond in certain ways towards the addressees of those rights. They license demands and a certain set of attitudes towards the addressees when they fail to fulfil their duties. And, as I argued in the first chapter, they provide *prima facie* justification for their coercive enforcement.

2.1.3. Justifying Human Rights

This account of the force of moral rights provides a point of entry for a discussion about their justification. Recall that to have a right in the sense we are interested in entails

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[42] Peter Jones, *Rights* (New York: Palgrave Macmillan, 1994), pp. 49-50. For a similar account, see also Joel Feinberg, *Social Philosophy* (Engelwood Cliffs: Prentice Hall, Inc., 1973), pp. 58-59.

having a legitimate demand on some other agent(s) that they act or refrain from acting in certain ways. To justify a right thus involves justifying the requirement to act or not act in a particular way on the part of some agent(s). There can, however, be justified moral requirements without corresponding rights. There might, for example, be a general moral requirement to be kind, and yet no moral right to be treated kindly. So justifying a moral requirement is not sufficient for the justification of a right. In order for a right to be justified, not only must there be a justified moral requirement on some other agent(s) to act or refrain from acting in certain ways, but the justification must stem from some person's legitimate demand that the agent comply with the requirement in question. This in turn justifies the set of responses to a failure on the part of the addressee to fulfil her duty.

Justifying moral rights therefore requires an account of why the morally permissible actions of an agent are restricted in a particular way, and why another agent can demand compliance with that restriction. In the case of special moral rights, the justification of the right rests on the special relationship that gave rise to it. In the case of fundamental rights, justification will refer to the feature of the right-holder in virtue of which they are thought to hold the right(s) in question. Since human rights are thought to be held universally by all humans, in seeking justification for particular human rights, the first step will be an account of what it is about being human that entails that we have human rights.

There are a number of different accounts of the features of humans that give rise to human rights. These notably include theories according to which human rights are grounded in personhood,[43] needs,[44] and interests.[45] What is common to all of these theories is that they purport to identify features inherent in all humans that justify duties on the part of at least some moral agents to act or refrain from acting in certain ways towards them. These features represent the values that human rights are taken to protect, and so an account of what human rights there are will depend on what the relevant values are taken to be. Because different conceptions of human rights differ with respect to what the relevant values are, there is some disagreement concerning what human rights there are. Nevertheless, as we shall see in the following sub-section, competing

[43] See Griffin, *On Human Rights*.

[44] See, for example, Miller, *National Responsibility and Global Justice*, Chapter 7.

[45] See, for example, Tasioulas, 'Human Rights, Universality and the Values of Personhood'; and Pogge, *World Poverty and Human Rights*, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press in association with Blackwell Publishers, 2002), Chapter 1.

accounts of the relevant aspects of humanity that ground human rights converge on the human right to subsistence.

The above description of the justification of human rights is not meant to suggest that there is a direct path from the grounding values of human rights to the existence of particular human rights. The existence of particular human rights is widely taken to be mediated by what Griffin refers to as 'practicalities'.[46] Practicalities are considerations beyond the grounding values of human rights that help to shape the substance and normative content of human rights, and in some cases to limit what human rights there can be. Griffin refers to practicalities as a 'ground' of human rights, but there is an important difference between the role of practicalities in the justificatory process and the role played by what I refer to as the 'grounding values' of human rights. The grounding values of human rights provide reason for thinking that some right exists. The value of human life, for example, might be thought to ground a human right to life. But presumably this does not entail that one is entitled to someone else's kidney if this is what is required to stay alive. Moreover, values that ground uncontroversial human rights such as the right against arbitrary arrest can plausibly be seen as comparable in strength to other values that are not widely thought to ground human rights, such as the value of being loved. The reasons that the right to life is generally not thought to entitle us to the use of other people's organs, and that there is no right to be loved have to do with practicalities.

Practicalities are practical considerations that help to determine and constrain the shape that particular human rights take. They include considerations such as whether what would be required to promote a particular value can be provided by human agency, whether it is the sort of thing that can be demanded of other human agents, whether it would conflict with other human rights, and whether it is feasible given the availability of relevant resources.[47] Practicalities help to determine the specific substance and normative implications of human rights, and also to explain why certain values, despite their importance do not entail human rights. I mention this in part because some of the objections discussed in section 2.2 can be interpreted as flagging a problem with respect to practicalities. I will return to this point later.

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[46] *On Human Rights*, pp. 37-39.

[47] These are the four practicalities that Miller identifies and discusses in *National Responsibility and Global Justice*, pp. 185-194.

2.1.4. The Conventional Interpretation of the Human Right to Subsistence

There is widespread agreement among theorists of human rights that having access to the means for subsistence is of sufficient importance for all humans as to be protected by a human right. On some accounts this is because lacking access to the means for subsistence impedes the exercise of our normative agency while on others it is because lacking access to the means for subsistence leads to pain and misery and vulnerability; but all agree that having access to the means for subsistence is of paramount importance to all humans. But to identify a value that is of sufficient importance to warrant protection by a right does not on its own entail all of the characteristics of the relevant right. To identify life, or security, or subsistence, and so on as values of sufficient importance as to warrant protection by rights does not tell us much about what the rights to life, security, subsistence, and so on entail. A complete account of a given right will include specifications of (a) the substance of the right and (b) the normative content of the right. The substance of a right is what the right is a right to. The normative content of the right includes the duties correlative to the right and what the right entitles the right-holder to do. In the following two sub-sections, I will outline what the conventional interpretation has to say about each.

(a) Substance

Subsistence is generally taken to refer to a threshold living standard. An initial problem comes in determining the metric by which living standards should be assessed.[48] Then, there is the challenge of figuring out where the threshold lies. I argue that a relatively high level of indeterminacy concerning the substance of the human right to subsistence is tolerable for our current purpose.

Accounts of the substance of the right to subsistence tend to be both minimal and lacking specificity. Shue, for example, takes the means for subsistence to include 'unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive health care', where what counts as adequate is determined by 'what is needed for a decent chance at a reasonably healthy and active life of more or less normal

[48] An insightful discussion of the metric problem for measuring living standards is found in Amartya Sen's *The Standard of Living* (Cambridge: Cambridge University Press, 1987). Sen proposes that the relevant metric for judging living standards takes into account 'the various living conditions we can and cannot achieve (...), and our ability to achieve them', p. 16. Sen refers to these as 'functionings' and 'capabilities' respectively.

length, barring tragic interventions'.[49] But what does it mean to have a 'decent chance at a healthy and active life'? And how long is a life of 'more or less normal length'? These refer to the threshold living standard mentioned above, but do not provide any information useful in specifying it except to suggest that health, activity, and lifespan are relevant.

Although many defenders of the human right to subsistence do not provide a complete account of the substance of this right, the fact is that so many people in the world are so badly off that, although it may not be clear where the threshold lies, we can say with certainty that many millions of people fall well below it. Whatever the upper limit turns out to be, surely someone who is highly prone to illness because she is persistently dehydrated, malnourished, and exposed to the elements falls below it. And there are so many people in this situation that we can sensibly question whether their situation constitutes a human rights violation without establishing whether people who are better off than they are, but still quite badly off are also victims of a human rights violation.

For our present purposes, it is sufficient to say that subsistence on the conventional interpretation refers to a minimum living standard that includes at least access to food sufficient to avoid malnutrition, clean drinking water sufficient to avoid dehydration, clothing and shelter sufficient to avoid exposure to the elements, and basic health care including minimal preventative treatments such as vaccinations against malaria and tuberculosis, as well as basic emergency medical care including the setting of broken bones and treatment of infections.[50]

(b) Normative content

Most accounts of the human right to subsistence jump from the right-grounding value of subsistence to the existence of a claim to assistance in acquiring the means for subsistence when one is otherwise unable to do so. Although it is uncontroversial that the human right to subsistence, like all human rights, imposes negative duties on others, it is also widely thought that an important feature of the human right to subsistence is

[49] *Basic Rights*, p. 23.

[50] Shue's account outlined above includes only preventive health care, but as Nickel points out, this is too minimal, 'Poverty and Rights', *The Philosophical Quarterly*, 55(2005), 385-402 (pp. 386-388).

that it additionally entails positive duties at least to provide for those who cannot, through no fault of their own, provide for themselves.

It is also thought by a number of defenders of the human right to subsistence that this right entails duties to protect others against deprivation. Shue's tripartite typology of duties corresponding to the human right to subsistence has found favour with a number of defenders of this right. He argues that the right to subsistence entails (1) duties not to deprive, (2) duties to protect against deprivation, and (3) duties to assist those who have been deprived or are, for other reasons, unable to access the means for subsistence. These duties will be explored in detail in the following chapters.

This brings us back to our original statement of the central features of the conventional interpretation of the human right to subsistence, namely that it is (1) a fundamental (and therefore institution-independent and universally-held) right (2) to a basic living standard characterized by having access to the means for subsistence that entails (3) duties not to deprive people of access to the means for subsistence, (4) duties to protect others against deprivations of access to the means for subsistence, and (5) duties to assist those who cannot acquire the means for subsistence for themselves. The human right to subsistence is justified, on the conventional interpretation, on the basis of the tremendous importance of having access to the means for subsistence for all humans. While the value for all humans of having access to the means for subsistence can hardly be denied, some have argued that it is nevertheless not sufficient for the justified affirmation of the human right to subsistence. In the following section, I discuss four arguments that have been advanced in opposition to the inclusion of a right to subsistence against human rights.

2.2. Against the Human Right to Subsistence: Four Objections

I have provided a general outline of what I have called the conventional interpretation of the human right to subsistence. An endorsement of this right entails that global poverty constitutes a serious and widespread injustice. Casting the problem of global poverty in terms of human rights has several virtues. It serves to emphasize the gravity, urgency, and enormity of the situation. Also, human rights are part of the vocabulary of international political morality. Expressing the problem of global poverty terms of human rights therefore has potential to incite global political action.

Proponents of the conventional interpretations of the human right to subsistence are right to signal that the values protected by human rights are extremely important and should therefore be considered matters of international concern. But it cannot simply be because a value is extremely important that it implies the existence of a human right. While we can infer from the justified affirmation of a human right that the substance of that right is of great importance to all persons, we cannot infer from something being of great importance to all persons that there is a corresponding human right with that as its substance. This is because human rights are rights, and must therefore conform to certain constraints imposed by the nature of rights. Although it is hard to deny that the value for all humans of having access to the means for subsistence is of the order of values that uncontroversially ground human rights such as physical security and liberty, opponents of the human right to subsistence argue that there are constraints on what can count as a human right that preclude the inclusion of a right to subsistence among human rights, at least on the conventional interpretation of this right.

In what follows, I will discuss four objections that have been raised against the inclusion of a right to subsistence among human rights. The first three can be seen as based on 'practicalities' as discussed in the previous section, while the fourth is based on a structural constraint imposed by the nature of rights. The first objection I will discuss below deals with the practical concern that such a right could not feasibly be fulfilled for everyone, and therefore cannot be a universal human right. I call this the 'feasibility objection'. The second holds that even though it is feasible to fulfil the human right to subsistence for everyone, doing so would place excessive demands on many people. I call this the 'demandingness objection'. I argue that neither of these objections succeeds in providing sufficient reason to reject the inclusion of a right to subsistence among human rights. The third and fourth objections that I discuss share the premise that human rights can only have negative duties as their correlates, and so the conventional interpretation of the human right to subsistence must be rejected. On the libertarian version of this argument, only negative duties can correlate with human rights because fundamental positive duties of justice would constitute a violation of the fundamental (and overriding) right to liberty. I call this the 'liberty objection'. On the Kantian version, the reason that only negative duties can correlate with human rights is that positive duties are imperfect, and thus not claimable. Since claimability is taken, on this account, to be an existence condition on rights, the human right to subsistence understood as correlating with positive duties of protection and provision must be rejected. Following Tasioulas, I refer

this the 'claimability objection'. I argue that the claimability objection poses the most serious challenge to the human right to subsistence.

2.2.1. The Feasibility Objection

Human rights necessarily correlate with duties. It is widely held that in order for a duty to exist, its fulfillment must be feasible. This is expressed by the familiar dictum that 'ought' implies 'can'. If the duties correlative to a right cannot be fulfilled, then there in fact are no such duties, and therefore no right. One objection to the human right to subsistence takes this as its starting point and argues that the fulfillment of the duties required in order for everyone to be guaranteed access to the means for subsistence is infeasible. An example of this kind of argument has been advanced by Maurice Cranston. In support of his objection to the inclusion of a right to subsistence and other socio-economic rights among human rights, he points out that

> For a government to provide social security it (...) has to have access to great capital wealth, and many governments in the world today are still poor. The government of India, for example, simply cannot command the resources that would guarantee each one of the 480 million inhabitants of India 'a standard of living adequate for the health and well-being of himself and his family'.[51]

What Cranston says has some truth. Some governments – though perhaps not many – are unable to guarantee access to the means for subsistence to their subjects due to a lack of resources. On Cranston's account, this makes the fulfillment of a human right to subsistence impracticable, and therefore bunk. In order to evaluate this claim, the concept of impracticability, or infeasibility, requires some elucidation. I will argue that, contrary to Cranston's claim, the realization of the human right to subsistence is feasible in the sense relevant to its justification.

The concept of feasibility, though little analysed, is far from straightforward. Pablo Gilabert has recently provided an illuminating discussion of feasibility in which he points out that feasibility can vary according to type, domain, and degree.[52] With respect to type, feasibility can refer to a number of different kinds of constraints. What Gilabert refers to as 'hard' constraints on feasibility include logical, physical, and biological

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[51] Cranston, 'Human Rights, Real and Supposed', pp. 170; quoted in Gilabert, 'The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration', *The Philosophical Quarterly* 59(2009): 659-681 (p. 660).

[52] 'The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration'.

possibility. These pose the most straightforward constraints on acceptable normative principles. But when feasibility is invoked in normative contexts, it frequently refers to relatively 'soft' constraints including economic, political, and cultural constraints. These constraints are soft on Gilabert's account because, unlike the hard constraints, they are malleable, at least to some degree.

The fulfillment of the human right to subsistence does not seem to be impeded logically, physically, biologically, or by any other 'hard' constraint. The suggestion in Cranston's argument is that there are economic constraints on the fulfillment of the human right to subsistence. There are, however, at least two reasons to doubt this point. First, in many cases it is not a lack or resources that prevents governments from guaranteeing access to the means for subsistence to their citizens; rather the realization of subsistence rights is impeded by social and political factors such as government corruption and incompetence, a lack of functioning infrastructure, and entrenched cultural practices. These nevertheless function as constraints, however soft, on the feasibility of the realization of the human right to subsistence and will need to be addressed.

A second reason to doubt Cranston's point is that, while it is true that some governments do not command sufficient resources to guarantee access to the means for subsistence to all of their citizens, there is little reason to think that the duties correlative to the human right to subsistence are held exclusively by governments towards their citizens. In fact, as Gilabert rightly flags, this idea runs contrary to international human rights doctrine and practice which take human rights in general, including the human right to subsistence, as matters of international concern and responsibility, whose full realization will in many cases require the cooperation of multiple individual and institutional agents.[53]

The economic feasibility of the eradication of global poverty is supported by the fact that the resources needed to eliminate global poverty are far surpassed by the wealth commanded by the global rich.[54] But just because there are sufficient resources to enable the eradication of global poverty does not entail that doing so is feasible. It might be that

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[53] Gilabert, 'The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration', p. 665.

[54] Pogge offers the following statistical support for this point: The aggregate shortfall from the World Bank's $2 PPP a day poverty line of all those below it 'amounts to some $300 billion annually or just 1.2 percent of the aggregate annual gross national incomes of the high-income economies', *World Poverty and Human Rights*, p.7.

there is a lack of infrastructure to carry out the relevant transfers of resources. This would make the eradication of global poverty inaccessible. Accessibility is one of the domains that Gilabert discusses across which feasibility can vary. The eradication of global poverty might be inaccessible at this time due to a lack of political infrastructure, a lack of motivation on the part of the global rich to part with some of their wealth, or both. I will return to this point after a brief word about the other domain across which feasibility can vary, namely stability.

If the realization of a right is unsustainable, then it is unstable and thus infeasible. An example of an objection to the human right to subsistence along these lines is the sort of neo-Malthusian argument advanced by Garrett Hardin according to which the redistribution of resources with the aim of eradicating global poverty would actually have the effect of making future generations much worse off.[55] There are good empirical reasons not to take this sort of argument seriously.[56] This leaves accessibility as the main constraint on the feasibility of the fulfillment of the human right to subsistence for all.

This brings us to the final dimension of feasibility that Gilabert discusses, namely degree. In any given set of circumstances and at any given time, the fulfillment of a principle in those circumstances and at that time is either possible or not. But because of the malleability of the 'soft' feasibility constraints discussed above, the fulfillment of some principle, p, that is not possible in one set of circumstances, c-1, at one time, t-1, can become possible in another set of circumstances, c-2, and at another time, t-2. If there is reason to think that p could not be realized in *any* circumstances – for example, if the realization of p is logically impossible – then we could say that p is *completely infeasible*. And if there is reason to think that the fulfillment of p is always possible in any circumstances, then we could say that p is *completely feasible*. In between complete infeasibility and complete feasibility, there are various degrees of *partial* feasibility/infeasibility. For example, if the realization of p is impossible in c-1 at t-1, but would be possible in c-2 at t-2, and if c-2 can feasibly be brought about, then we could say that p is partially feasible to the degree to which the bringing about of c-2 is feasible. By the same reasoning we can order different principles by degree of feasibility. If the realization of another principle, q, is also impossible in c-1 at t-1, but would be possible

[55] Hardin, 'Lifeboat Ethics: The Case Against Helping the Poor', *Psychology Today*, September (1974), 38-40, 123-124, 126.

[56] See, for example, Kai Nielsen, 'Is Global Justice Impossible', in his *Globalization and Justice* (Amherst, NY: Humanity Books, 2003), pp. 243-280 (pp.247-248).

in c-3 at t-2, if c-3 could be brought about more easily than c-2, then we could say that q is more feasible than p.

An important question concerns the degree to which the fulfillment of a right has to be feasible in order for the affirmation of that right to be justified. Of course if its fulfillment is completely infeasible, there can be no such right; but Gilabert rightly holds that complete feasibility, on the other hand, is too strong. Part of the purpose of talk of human rights is 'to orientate political action aimed at the expansion of currently feasible sets';[57] so the partial infeasibility of a human right at this time cannot *as such* be a constraint on its justification. Gilabert's suggestion is that the fulfillment of a right is sufficiently feasible for that right to be justified at least when its realization in an ample majority of cases can be made possible in the foreseeable future. Of course, this account requires sharpening: How far away is the foreseeable future? What constitutes an 'ample majority'? How likely does the realization of the relevant circumstances have to be?

The question of how feasible the realization of a right must be in order for the affirmation of that right to be justified, and the question of how feasible the realization of the human right to subsistence is are important questions that require more attention than I can afford them here.[58] There is, however, good *prima facie* reason to reject objections to the human right to subsistence on the basis that it cannot be fully realized right now. I have argued that the constraints on the feasibility of the realization of the human right to subsistence are all soft constraints. They include the sorts of social and political constraints mentioned above as well as constraints based on the motivation (or lack thereof) to make the necessary changes. These sorts of constraints are all malleable, and in some cases highly so. To commit ourselves to the view that these constraints make the realization of the human right to subsistence sufficiently infeasible as to warrant its rejection is not only to overlook the progress – slow though it might be – that has been made towards the alleviation of global poverty so far, but also the considerable moral progress that has been achieved historically and that relied on overcoming similar kinds of constraints.[59]

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[57] 'The Feasibility of Basic Socio-Economic Human Rights', p. 675.

[58] Fruitful discussions of these issues have been provided by Nickel, 'Poverty and Rights'; Sen, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs* 32(2004), 315-356; and Gilabert, 'The Feasibility of Basic Socio-Economic Human Rights'.

[59] As Pogge has pointed out, 'Slavery, autocracy, colonialism, and genocide – practiced openly in the eighteenth and nineteenth centuries and for millennia before – are now outlawed and widely regarded as paradigms for injustice. Apparently, at least, humanity has made substantial moral progress in its response to these and other forms of conduct and social organization', *World*

I have not provided conclusive support for thinking that the realizability of the human right to subsistence is feasible. My suggestion, however, is that the feasibility objection comes across as convenient, despairing, and in need of a great deal more substantiation. Given the malleability of the constraints on the realization of the human right to subsistence, it seems reasonable to suppose that the impediments to the fulfillment of the human right to subsistence for all can be overcome. I suggest, then, that the onus is on proponents of the feasibility objection to provide further support for their view.

2.2.2. The Demandingness Objection

A second objection to the inclusion of a right to subsistence among human rights is that the fulfillment of the right to subsistence for all would place excessive demands on the relevant duty-bearers. It is important to distinguish this objection from the feasibility objection discussed in the previous section. The demandingness objection accepts the feasibility of the fulfillment of the right to subsistence for all, but objects that this would be excessively burdensome on those required to make sacrifices.

Feasibility is one thing, and desirability another.[60] This distinction is helpful in better understanding the demandingness objection. The fulfillment of a principle might be desirable but not feasible. Proponents of the feasibility objection generally accept that the fulfillment of the human right to subsistence for all is desirable, but not feasible. The fulfillment of a principle can also be feasible without being desirable. It might, for example, be entirely feasible for the government of a country to enforce a strict national dress-code, but an enforced strict national dress-code is not desirable. Proponents of the demandingness objection seem to be making the latter kind of claim with respect to the human right to subsistence. The claim is that although the fulfillment for all of the human right to subsistence is feasible, and although the eradication of poverty worldwide is in itself desirable, the overall result of eradicating poverty and thereby fulfilling the human right to subsistence for all would be on balance undesirable. This is because the demands that the fulfillment of this right would place on the relevant duty-bearers would be so great that their fulfillment would be sufficiently undesirable – not just for them,

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Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms, 2nd edn (Cambridge: Polity Press, 2008), p. 2.

60 Gilabert draws this distinction in 'The Feasibility of Basic Socio-Economic Human Rights'. See also G. A. Cohen, *Why Not Socialism?* (Princeton, NJ" Princeton University Press, 2009).

but in some more general sense – as to outweigh the desirability of the eradication of global poverty.

An example of this kind of objection comes from Richard Rorty who suggests that the redistribution required to eradicate global poverty would render the global rich unable to recognize themselves and lead them to no longer think their own lives worth living.[61] Rorty's argument presupposes that the eradication of global poverty would lead to the demise of our own culture, and that this would provide sufficient reason to reject any requirement to do so.

This kind of objection fails for at least two reasons. First, as Pogge rightly points out, there is little reason to think that the eradication of global poverty would in fact devastate our culture.[62] Just 1.2 per cent of the aggregate annual gross national incomes of the world's high-income economies would be required in order to elevate the global poor above the World Bank's poverty line.[63] To think that this would endanger the capacity of the global rich to recognize themselves is to overlook the enormous wealth wielded by the world's high-income economies.

Secondly, even if the eradication of global poverty were very costly to the global rich, it is doubtful upon close examination that this would, on its own, provide sufficient reason to reject the human right to subsistence. Liam Murphy has raised a number of serious problems with the demandingness objection of which the following is an example.[64] In order to make sense of the demandingness objection, we need to know against which baseline demandingness is to be measured. Murphy suggests that the demandingness of compliance with a moral principle is determined based on how much well-being is given up on the part of the complying agent relative to the factual status quo, namely 'how things are now and how they can be expected to be in the future' (p. 35). The demandingness objection to the human right to subsistence would then hold that compliance with the correlative duties would, to an unacceptable degree, result in complying agents being worse off than they were before and could have reasonably expected to otherwise remain.

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[61] Rorty, 'Who Are We?'.

[62] Pogge, *World Poverty and Human Rights*, p. 7-8.

[63] This is not to imply that the best way to eradicate global poverty is through a straightforward transfer of resources from rich to poor. Rather, this is just meant to highlight that the necessary sacrifice on the part of the global rich in order to eliminate global poverty would be relatively small.

[64] *Moral Demands in Nonideal Theory*, Chapter 3.

An initial problem comes in trying to establish what counts as an unacceptably high demand. One option is to rely on very strong intuitions. For example, we might think that any moral principle that requires someone to give up all her luxuries is too demanding. But Murphy points out that if the relevant baseline is the factual status quo, then on this account it would be unacceptably demanding to require a thief to return all of the stolen goods if this would amount to her having to give up all of her luxuries. The implausibility of this might motivate us to look for a baseline other than the factual status quo.

A tempting alternative is to use a baseline determined by entitlements. The thief is not entitled to what she stole and it cannot, therefore, be unacceptably demanding to require that she return the stolen goods. Using entitlements as a baseline, however, requires an account of entitlement. Murphy argues that this poses an insurmountable challenge. Entitlements can be worked out either within or outwith a given moral theory, and neither provides a workable account. If we establish entitlements from within a moral theory, we end up defining away the very notion of demandingness. This is because we cannot be entitled to that which we are required to give away. If a moral theory includes a principle requiring people to give up all their luxuries, they are not, on this theory, entitled to their luxuries. But if the baseline relative to which demandingness is to be measured is that to which agents are entitled, then no principle will ever impose any demands at all.

On the other hand, if we determine entitlements based on principles external to the moral theory in question, then we simply beg the question against that moral theory. The suggestion, for example, that compliance with a principle, P, according to which we must give up all of our luxuries is unacceptably demanding is parasitic on some competing moral theory. If we have reason to accept this other moral theory, then the objection to P is not that it is very demanding (which, at any rate, they are not), but that it contradicts what morality *actually* requires. If we do not have independent reason for accepting this other moral theory, then to use its account of entitlement as the relevant baseline is simply question-begging.

This leaves us with the factual status quo as the baseline relative to which the demandingness of compliance with a moral principle should be measured. However, this precludes anything inherently objectionable about demandingness as such. In order to defeat the human right to subsistence, it is therefore not sufficient to show that the demands that its realization requires are unacceptably high for the global rich. Even if

this were true, we would need further reason to think that the relevant duties do not in fact apply. In the following two sections, I will discuss two such arguments. Although both are compatible with there being potentially demanding requirements of beneficence on the global rich, they both deny that these requirements can be considered duties of justice.

2.2.3. The Liberty Objection

The Liberty Objection relies on the distinction between negative and positive duties. Negative duties are those whose fulfillment requires only forbearance on the part of the duty-bearer. The fulfillment of positive duties, by contrast, requires that the duty-bearer make some sort of provisions to the right-holder. On a libertarian conception of justice, fundamental duties of justice can only ever be negative. Since the duty to assist those who cannot acquire access to the means for subsistence themselves is a positive duty, it is not, therefore, a fundamental duty of justice on the libertarian account.

The libertarian view accepts the view I argued for in the first chapter according to which duties of justice are characterized by the fact that they can justifiably be enforced. The claim that duties of justice are necessarily negative is supported on the libertarian account by the view that the only thing that can justify coercive intervention in the exercise of another's liberty is the unjustified interference, or imminent threat of interference, on their part with the liberty of others. This claim is derived from the idea that there is a fundamental right to liberty. The relevant sense of liberty here is negative in Berlin's sense.[65] That is to say that the right to liberty is in the first place a right to non-interference. As such, the appropriate understanding of the right to liberty is not merely as a liberty right in the Hohfeldian sense according to which it is a right simply to do what one pleases. The right to liberty is, at root, a claim according to which others are correspondingly duty-bound not to interfere with the exercise of one's liberty.

As I mentioned in the section 2.1, Miller argues that one 'practicality' that constrains the normative content of human rights is that their correlative duties cannot conflict with the human rights of the duty-bearers. On Miller's account, this is why the right to life cannot have as its correlate the requirement that someone give up their organs to save the life of another. The liberty objection can be interpreted along these lines as the view that any positive duties thought to correlate with a human right will

[65] Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).

necessarily be in conflict with the fundamental and overriding right to liberty of the duty-bearers and so must be rejected.

The existence of a universal right to liberty is generally justified based on the moral status of persons. On this account, individual liberty is intrinsically valuable and should therefore never be violated in the name of promoting other goods, except in very exceptional circumstances.[66] The inviolability of the individual is supported on traditional libertarian accounts by the idea that all persons are self-owners. What it means to own something is to have the exclusive right to do with it as you please (within the bounds of respect for other people's rights). Since persons are self-owners, no-one but themselves has the right to do with them as they please. The only exception to this being interference with the exercise of another's self-ownership rights in order to prevent him from violating the rights of another.

Nozick, perhaps the most prominent proponent of the fundamental right to liberty, draws inspiration from the Kantian dictum that persons must always be treated as ends in themselves.[67] Insofar as we accept this, he thinks that we are committed to thinking of rights as side-constraints on the pursuit of goals, even when those goals are in the interests of others, and even when those goals involve the promotion of the greater good. What it means to have a right on Nozick's account is to be inviolable in some respect. He argues that persons should be treated as ends in themselves because they can form conceptions of what a good life for them would be and act in pursuit of it. Because persons can act in pursuit of their own conceptions of the good life, they should be left to do so to the greatest extent possible.

Nozick concludes that the only time anyone is justified in interfering with someone's pursuit of their own conception of the good life is when their doing so interferes with someone else's similar pursuit. In this we glimpse something that has long characterized the debate between Nozickean libertarians and defenders of (liberal and socialist) egalitarian theories, namely that they are founded on conflicting intuitions (or perhaps considered judgements) about when coercive intervention is permissible. In this respect, there is some warrant in Allen Buchanan's criticism of Nozickean libertarianism on the grounds that it simply begs the highly debated question of whether there are any

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[66] Nozick, for example, seems open to the possibility that individual rights can be violated in order to avoid 'catastrophic moral horror', although he does not elaborate on this point, *Anarchy, State, and Utopia*, p. 30.

[67] Nozick, *Anarchy, State, and Utopia*, pp. 26-35.

fundamental rights with positive duties as their correlates.[68] On his view, the libertarian thesis that duties of justice are necessarily negative is stipulative, or at best supported by some questionable intuitions about when it is justifiable to enforce duties. Nevertheless, we must not ignore the fact that many egalitarian arguments in support of duties of justice to assist those in need are equally culpable of relying on intuitions that may or may not be correct or broadly shared.

Jan Narveson has notably attempted to overcome the apparent impasse that has been reached in the debate between libertarians and egalitarians by resting his libertarian theory on contractualism rather than mere intuition. He agues that a morality derived from agreement about mutual benefit yields the libertarian 'principle of right' according to which the use of coercive force is only justified in order to prevent unjustified infringements of liberty or to exact rectificatory action in case of the violation of this principle. The reason Narveson provides for this is that a situation in which this principle is not recognized would be worse for all.[69]

Narveson's account has, however, been subject to a number of forceful criticisms. For example, Larry Temkin has noted that, far from overcoming the reliance on intuitions, Narveson's account simply shifts it to the level of decision methods for arriving at principles by assuming that mutual-benefit contractualism is the right one.[70] Even more damaging is Gilabert's objection that the proper execution of Narveson's approach is self-defeating. He notes that Narveson wavers with respect to the matter of the respective bargaining positions of the parties to the social contract; but Gilabert points out that whatever account Narveson chooses will ultimately yield an outcome that misses the libertarian mark. If the parties to the contract are ignorant of their positions in society (as they are on Rawls's contractualist theory), then they will rationally opt for at least a minimal set of enforceable principles of redistribution – perhaps not Rawls's Difference Principle, but presumably something more than what libertarians are willing to endorse. On the other hand, if they are aware of their respective bargaining positions, then the very wealthy and powerful will reject such principles. This does indeed seem to be Narveson's view. However, Gilabert rightly points out that it would be equally rational for the wealthy and powerful parties to the contract on Narveson's account to also reject enforceable principles that require them to forbear from harming those less

[68] 'Justice and Charity', p. 559-560.

[69] 'Welfare and Wealth', pp. 321-322.

[70] 'Thinking about the Needy: A Reprise', *Journal of Ethics* 8 (2004), 409-58.

wealthy and powerful: 'if we grant bargaining agents full appeal to their *ex ante* power, the bargaining game need not yield "social contracts" prohibiting all forms of significant harm'.[71] This goes further in the direction of deregulation and moral permission than the libertarian will ordinarily accept.

This leaves the liberty objection reliant on the intuition that the use of coercion is only ever permissible in order to prevent or exact compensation for the unjustified infringement of liberty. I think we have strong reason to doubt both the correctness and pervasiveness of this intuition, not least because a principle based on it will clearly advantage those who are already very well-off relative to other feasible schemes. Nevertheless, the interpretation of the human right to subsistence that I ultimately defend is compatible with at least most versions of libertarianism. As such, I will not dwell on the topic here.

2.2.4. The Claimability Objection

The claimability objection was originally advanced by Onora O'Neill. It is founded on the premise that 'Any right must be matched by some corresponding obligation, which is so assigned to others that right-holders can in principle claim or waive the right (or where not competent to do so, that others be able to claim it on their behalf)'.[72] I refer to this as the 'claimability condition'. According to O'Neill, the human right to subsistence fails to fulfil this condition, and so it must be rejected.

As we saw in the previous section, the human right to subsistence on the conventional interpretation constitutes a claim to assistance in gaining access to the means for subsistence when one is unable to do so oneself. As Joel Feinberg has pointed out, (claim) rights have two components. On the one hand, they involve 'claims to'; on the other hand, they involve 'claims against'.[73] Rights on this account express relations between claimants, objects, and addressees. A claim right is therefore not fully justified until some account is given of who the relevant duty-bearers are and what it is that is required of them.

The justification outlined in the previous section for the human right to subsistence only fills in the 'claim to' side. In order for the human right to subsistence to

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[71] Gilabert, 'Basic Positive Duties of justice and Narveson's Libertarian Challenge', *The Southern Journal of Philosophy* 40(2006): 193-216.

[72] *Towards Justice and* Virtue, p.129.

[73] Feinberg, 'Duties, Rights, and Claims', *The Philosophical Quarterly*, 3 (1966), 137-144 (p. 137).

be fully justified, we need an account of the 'claim against' component. What we are looking for here is primarily an account of who the relevant duty-bearers are. And here is where O'Neill thinks that a defence of the conventional interpretation of the human right to subsistence runs into trouble. Until very recently, relatively little attention has been paid in the literature on the human right to subsistence to the question of who bears the corresponding duties. O'Neill's objection is sometimes interpreted as simply drawing attention to this deficiency and the need to remedy it. As such, some have sought to quell O'Neill's concern by turning their focus to the provision of an account of the 'claim-against' side of the human right to subsistence. This is, of course, no straightforward task. It is widely acknowledged that, unlike negative duties that can be borne by all, the positive duties of assistance associated with the human right to subsistence cannot be distributed in such an even-handed way. As discussed in the first chapter, a number of factors will affect which agents are required to protect and assist which potential beneficiaries and to what extent.

Simon Caney thus interprets O'Neill's concern as being that there is 'no easy or obvious answer (…) to the question of who has the duty to protect positive rights'.[74] But, he argues, the fact that it is neither easy nor obvious should not stop us trying to find the answer to the question. Caney does not, however, say anything about how these duties should be distributed. James Nickel goes further than Caney in sketching a plausible pattern of deliberation about the duties connected with human rights.[75] He suggests the following four types of duties associated with human rights:

A. Primary duties or responsibilities

1. Duties of individuals and institutions everywhere to refrain from violating rights.

2. Duties of governments and other regional institutions to uphold (protect and provide for) rights.

B. Secondary duties or responsibilities

1. Responsibilities of the residents of a country to create, maintain, support, and participate in institutions that will respect and uphold rights.

2. Responsibilities of other governments and international institutions such as the United Nations and the World Bank to discourage rights violations and to encourage efforts to uphold rights.

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[74] Caney, 'The Case for Positive Duties', in *Freedom from Poverty as a Human Right: Who Owes what to the very Poor?*, ed. by Thomas Pogge, pp. 275-302 (p. 278).

[75] Nickel, 'How Human Rights Generate Duties to Protect and Provide', *Human Rights Quarterly*, 15 (1993), 77-86.

This looks like a sensible and feasible proposal for how the duties corresponding to the human right to subsistence could be allocated. But both it and Caney's reply miss something important in O'Neill's objection. Nickel and Caney both hold that a set of moral principles could be provided that, when applied, would yield a determinate set of addressees for any given poor person's human right to subsistence. According to Nickel, 'if there are two or more alternative addressees for a right, there must be principles for choosing between them' (p. 83). This, of course, is not necessary in the case of negative duties since they can unproblematically be fulfilled by everyone at the same time. Positive duties of assistance, however, are not owed by each person to all others. There might be any number of people able to assist a given person suffering from poverty; but it does not follow that each of them must provide something to the victim. According to Nickel's and Caney's approaches, although it may be very difficult and complicated to establish precisely who owes precisely what to precisely whom, this can be determined through the application of the appropriate moral principles. This is precisely what O'Neill denies. We might be able to narrow the class of potential addressees for any given individual's right on the basis of, say, their ability to help; but in many cases, there will still be a number of potential addressees of any given person's alleged claim. For any given person in dire need, there are millions of people each of whom are able to assist or at least contribute to assisting. Furthermore, there are multiple ways of distributing the responsibility to assist that are equally effective and fair. From the perspective of the person in need, it does not matter which of these distributions is chosen. But O'Neill's point is that until it has been decided which of these distributions will be applied, the person in need does not have a claim on any moral agent in particular to assistance. On O'Neill's account, institutions are required in order to decide on and apply a particular distribution of duties, and so in the absence of institutions, no one has a claim to assistance.

As we shall see in more detail in the following chapter, what is at issue with respect to the claimability objection is the extent to which the corresponding duties and duty-bearers must be identifiable in order to have justification for the affirmation of a right. The interpretation of O'Neill's concern to which both Caney and Nickel reply provides only a partial characterization of her objection. On O'Neill's view, it is not just that there is no easy or obvious answer to the question of who owes the duties corresponding to the human right to subsistence, but rather that there is no fact of the

matter, and therefore no answer at all, at least until the relevant institutions have been set up.

It may initially be surprising that O'Neill endorses the view mentioned in section 2.1 that fundamental rights, and so human rights, must be doubly universal. If this holds true, then it appears that there is no problem filling in the 'claim against' side of the human right to subsistence: insofar as subsistence is a human right, it is owed by each to all. The trouble is that this comes at the cost of the 'claim to' side. This is because it is not clear what it could possibly mean for everyone to owe to everyone else access to the means for subsistence. The claimability condition is straightforwardly fulfilled by universal rights to forbearance on the part of all others. This is why O'Neill thinks that so-called liberty rights such as the right against torture and the right to freedom of expression are unproblematic. These rights are commonly thought to entail only negative duties on the part of others to, for example, not torture others or not prevent others from expressing themselves. It is clear, at least in the vast majority of cases, what it means for everyone to owe to everyone else forbearance in these cases.[76] As such, taking the claim to be against everyone does not compromise our understanding of what it is a claim to.

The claimability condition is equally fulfilled by special rights since they are, by their very nature, held to something specific and against specific others. It is universal rights that entail positive duties that encounter difficulty fulfilling the claimability condition. It is certainly not the case that everyone has a claim on everyone else to provide them with access to the means for basic subsistence. Proponents of the conventional interpretation of the human right to subsistence accept this. First of all, not everyone is in a position to be able to provide anything at all. Even if we narrow the class of duty-bearers to only those able to make some contribution, it is not clear what it is that any given individual can be said to owe to any other individual. As Henry Shue nicely expresses it, 'I could not give a penny to each hungry child, even if that were a good idea – I do not even have the time to give one minute's thought to each hungry child'.[77] If universal rights are held against all others, or at least against all others in a position to do something, and if there is a human right to subsistence, it follows that

[76] There are, of course, disagreements about what constitutes torture, and likewise what it means to prevent someone from expressing herself. While there are undoubtedly borderline cases of both and indeed of other paradigm 'liberty rights' violations, large classes of actions are unambiguously ruled out by these rights.

[77] Shue, 'Mediating Duties', *Ethics*, 98 (1988), 687-704 (p. 690).

those who fall below the threshold living standard have a claim on most of us – that is, myself and probably anyone reading this, since given that we have the luxury of being able to spend time writing or reading philosophical dissertations, there is probably some contribution we could make to help alleviate at least some poverty. The question is, to what is this claim? What can a Malawian woman dying of malnutrition-related causes justifiably demand of me? I might be able to help her, but that might exhaust my resources so I would not be able to help her neighbour who is also dying of poverty-related causes. Even if helping one person does not exhaust my resources, my resources are not enough to help everyone in need.

This last thought raises the central problem with the duties that are supposed to correlate with the human right to subsistence. The central reason that they are thought to fail to fulfil the claimability condition is that they are *imperfect* duties. The distinction between perfect and imperfect duties comes from Kant, but can been interpreted in various ways and so it is worth saying a few words to clarify the sense relevant to the discussion at hand.[78]

One way of understanding the distinction between perfect and imperfect duties is that perfect duties prescribe or prohibit particular actions whereas imperfect duties prescribe the adoption of certain maxims.[79] An example of a perfect duty on this account is the universal perfect duty not to torture. This is an action that is categorically and universally prohibited. An example of an imperfect duty is the duty to adopt the maxim of beneficence. This means adopting the happiness of others as an end. What it means to adopt something as an end involves taking a certain attitude towards it and taking certain actions in certain contexts that exhibit one's attitude towards the end in question. The specific actions that must be taken in particular contexts in order to fulfil an imperfect duty are not directly prescribed.

Both perfect and imperfect duties on this account can admit of greater or lesser discretion in their fulfillment. This is most apparent in the case of imperfect duties which can often be fully discharged through many different patterns of action. It is, however, equally true of perfect duties. Although a perfect duty might prescribe a specific action,

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[78] A helpful discussion of various interpretations of imperfect duties can be found in Hope, 'Subsistence and Imperfect Duties'.

[79] See, for example, Thomas Hill Jr., *Human Welfare and Moral Worth*, *Kantian Perspectives* (Oxford: Oxford University Press, 2002), pp. 203-204; and 'Kant on Imperfect Duty and Supererogation', *Kant-Studien*, 61 (1971), 55-77.

in many cases, there are a number of different ways of performing that action. To borrow Thomas Hill's example, if a perfect duty requires you to keep valid contracts, and you are under a valid contract to pay someone a certain amount of money, unless otherwise specified in the contract, you can discharge this duty by paying them the requisite amount with a cheque, cash, direct deposit, and so on.

I argue that this is not the distinction between perfect and imperfect duties that is most relevant to the claimability objection. This is because it is not clear why, on this account, only perfect duties are claimable. I will return to this point in Chapter 4. For now, I argue that in order to make sense of the claim that only perfect duties are claimable, we must refer to O'Neill's characterization of the distinction between perfect and imperfect duties. According to O'Neill,

> When we have an obligation, we are required to do or omit some type of action. Sometimes we are required to do or omit this type of action for *all* others. Sometimes we are required to do or omit it for *specified* others. Sometimes we are required to do or omit the action for *unspecified* others, but not for *all* others.[80]

According to O'Neill, the first two sorts of obligations are perfect while the third is imperfect. As on the previous account, perfect duties on this account are duties to some specified act or forbearance. Furthermore, they are owed to specific others – either all others or some specified others. Universal duties can be perfect so long as they are negative since universal negative duties can be owed to everyone else, because forbearance can be demanded by everyone else. Likewise, special duties that are either negative or positive can be perfect since they are owed to specific others and whatever the agreed upon content is can be demanded.

Imperfect duties, though no less stringent than perfect duties, admit of discretion in their fulfillment. As we have seen, this is true in one sense of both perfect and imperfect duties in that the specific action prescribed by a perfect duty can sometimes be performed in a number of different ways. However, what is specific to imperfect duties on O'Neill's account is that the fulfillment of an imperfect duty, although it will usually benefit some persons, need not benefit any person(s) in particular. There might be a number of persons who could potentially benefit from the fulfillment of an agent's duty; but if the agent is not required to benefit all those who might be benefitted by her action (usually because she is unable to, but perhaps because this would require an unreasonable

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[80] 'Children's Rights and Children's Lives', *International Journal of Law and the Family*, 6 (1992), 24-42 (p. 26).

sacrifice), then her duty is imperfect and it is left up to her which potential beneficiaries will ultimately benefit from the fulfillment of her duty. This is why, on O'Neill's account, imperfect duties cannot correlate with rights: 'so long as the recipients of the obligation are neither all others nor specified others, there are no right-holders, and nobody can either claim or waive performance of any right'.[81]

According to O'Neill's Kantian account, only perfect duties can correlate with rights. Universal duties of assistance are imperfect; and so a universal duty to assist those who cannot acquire access to the means for subsistence for themselves does not correlate with any right. An individual might have a duty to alleviate some poverty, but he cannot alleviate the poverty of everyone suffering from poverty – even by a tiny amount – and so, absent institutions, it is up to him who will benefit from the fulfillment of his duty. This means, however, that absent institutions no particular potential beneficiary has a claim against him that he benefits them in particular, and therefore, on O'Neill's account, no one has a right to his assistance.

This is not to deny that imperfect duties can be perfected. Perfecting imperfect duties involves setting up institutions that match duty-bearers with right-holders thus giving rise to rights. In the case of poverty relief, perfecting imperfect duties involves setting up systems of transfer that coordinate the contributions of wealthy individuals and channel their efforts towards specific persons in need. The reasoning involved in deciding on the structure of these institutions might be something along the lines of the sort of strategic reasoning that Nickel has in mind. O'Neill's point, however, is that until an imperfect duty is perfected, there are no rights corresponding to it. Whereas Nickel and others following him hold that the strategic reasoning about addressees and their responsibilities can take place subsequent to the affirmation of a right, O'Neill holds that in the case of the human right to subsistence and other socio-economic rights, the rights come to be only through the conclusion of these reasoning processes and establishment of the relevant institutions. This is because only through institutionalization do such duties become perfect. On O'Neill's account, to have a right is to have a claim, but where duties are imperfect, no one has a claim.

[81] 'Children's Rights', p. 27.

2.3. Summary

It is with the claimability objection that I will be predominantly occupied over the next two chapters. The reason for this is that I do not think that the most influential arguments in defence of the human right to subsistence have succeeded in providing an adequate reply to it.

I have characterized the problem raised by the claimability objection as one of balancing the 'claim to' side of the human right to subsistence with the 'claim against' side. The problem is that if the human right to subsistence is understood as a claim to assistance when one cannot secure access to the means for subsistence for oneself, then it cannot be held against every other moral agent. In section 2.1, I left open the question of whether fundamental rights must be universal both in scope and in obligation. According to proponents of the claimability objection, fundamental rights must be 'doubly universal' in this sense since if a right is not held against every other moral agent, then it must be contingent on some non-essential feature of the right-holder that allows us to identify, at least in principle, who the relevant duty-bearers are and what the content of their duty is. If this is true, then there can be no human right to subsistence interpreted as a fundamental right correlating with positive duties of assistance and protection since these duties are not owed by each moral agent to all others.

There are, broadly, two approaches to overcoming the claimability objection. One is to deny the claimability condition. The other is to grant the claimability condition and show that there is in fact a plausible conception of the human right to subsistence which fulfils. In Chapter 3, I discuss arguments of the first kind. In Chapter 4, I discuss arguments of the second kind. I conclude that the strongest argument in defence of the human right to subsistence deviates from the conventional interpretation in emphasizing the negative duties correlative to it, and in particular the duty not to deprive others of access to the means for subsistence. In Chapter 5, I offer a detailed conceptual analysis of this duty, and in Chapter 6 I explore some of the implications it has for reasoning about the normative implications of global poverty.

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CLAIMABILITY AND THE NATURE OF RIGHTS

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In this chapter, I begin by arguing that the debate over the claimability condition is ultimately a debate about the nature of moral rights. In section 3.2, I argue that this is not sufficiently appreciated by defenders of the conventional interpretation of the human right to subsistence who tend to simply assume a conception of rights according to which claimability is not a condition. In order to provide a complete defence of the conventional interpretation, reasons are needed to prefer the conception of rights that underlies it. I argue in the final section, however, that this conception struggles to explain how rights constitute a distinctive moral category, and so it struggles to show that the human right to subsistence can make a distinctive contribution to reasoning about the normative implications of global poverty.

3.1. Debates about Rights

Three debates dominate the literature on rights theory. It will be helpful to briefly look at each in order to better understand where the claimability condition fits in. Although I show that it can be interpreted as deriving from the Will Theory of the function of rights, I argue that it is best understood as a constraint imposed by the logical structure of claim rights.

3.1.1. The Justification of Moral Rights

In Chapter 2, I discussed the justification of moral rights. The discussion there concerned how particular moral rights are justified. Here, I am concerned not with the justification of particular rights, but rather with the justification of the normative force of moral rights in general. A great many moral theories employ the concept of rights, but there are important differences between how the normative force of rights is justified.

According to status-based theories of rights, the normative force of rights comes from the moral status of right-holders. On this sort of account, there are certain ways in which it is categorically impermissible to treat a person. Status-based theories typically juxtapose themselves with consequentialist theories of morality, and especially utilitarianism. According to the status-based approach, rights are 'side-constraints' on the permissible exercise of personal liberty and, importantly, on the pursuit of the aggregate good. As Ronald Dworkin puts it, rights trump the pursuit of maximum aggregate utility.[82] The motivation for this kind of approach is Kantian in nature. The central idea is that there are certain ways in which we must not treat people, even if this will yield greater overall good. This is because doing so would involve treating the person as a mere means to an end (the end of maximizing some good), and that this ought not to be done.

Rights, however, are not necessarily incompatible with consequentialism. Some consequentialists incorporate rights into their moral and political theories, and indeed some hold them in very high regard. The difference between status-based accounts and consequentialist accounts is that the justification for the normative force of rights on the latter sort of account is instrumentalist. On instrumentalist conceptions, rights have the same features as they do on status-based conceptions, but their normative force derives from considerations of the consequences that widespread respect of rights would have. This is notably how Mill supports the existence of individual rights. On his account, widespread respect for individual rights will actually serve to maximize utility.

I will not pursue a discussion of the debate over the justification of moral rights here seeing as the claimability condition does not figure into the debate between status-based theorists and instrumentalist theorists about rights. Whether or not claimability is a condition on the justified affirmation of a right will not bear on how moral rights in general are justified. Defending one approach or the other will not therefore settle the matter of the plausibility of the conventional interpretation of the human right to subsistence.

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[82] *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978).

3.1.2. The Function of Rights

A second important debate in the philosophical literature on rights concerns their function. Noticing that the term 'a right' is used in a variety of different ways, the legal theorist Wesley Newcomb Hohfeld famously provided a typology of rights according to which the term extends to the following four 'incidents':[83] (1) Privileges. To have a privilege is to have no duty not to perform a specified action. (2) Claims. To have a right in this sense is to have a claim to some substance held against some other agent(s). Claims are always held *against* some other agent or agents. (3) Powers. To have a power is to have the ability within a set of rules to alter one's own or another's Hohfeldian incidents. (4) Immunities. To have an immunity is to lack the ability or for others to lack the ability within a set of rules to alter one's Hohfeldian incidents. On Hohfeld's account, all rights are privileges, claims, powers, immunities, or some combination thereof. However, we might notice that not all privileges, claims, powers, immunities, and combinations thereof count as rights.

A long-running and ongoing debate concerns what distinguishes those Hohfeldian incidents and combinations thereof which are rights from those which are not. Two theories have dominated the scene: Will Theory and Interest Theory. More recently, several theorists have offered hybrid theories that attempt to combine the best features of the two.[84]

The Will Theory takes the function of rights to be the empowerment of the right-holder with respect to the actions of other agents.[85] What distinguishes rights from other Hohfeldian incidents on this account is that they confer upon the rightholder the power to demand, waive, or enforce the corresponding duties. The Interest Theory, by contrast, takes the function of rights to be the protection and promotion of very important interests.[86] As such, according to this theory, what distinguishes rights from other

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[83] 'Some Fundamental Legal Concepts as Applied to Juridical Reasoning', *The Yale Law Journal*, 23 (1913), 16-59.

[84] See, for example, Rowan Cruft, 'Rights: Beyond Interest Theory and Will Theory?', *Law and Philosophy*, 23 (2004), 347-397; and Leif Wenar, 'The Nature of Rights', *Philosophy and Public Affairs* 33 (2005), 223-252.

[85] See, for example, H. Hart, *The Concept of Law* (Oxford: oxford University Press, 1961).

Hohfeldian incidents is that they serve to protect or promote the interests of the right-holder.

This is a rather blunt characterization of the Will and Interest Theories, of which there are a number of nuanced variants. It nevertheless provides us with one way of interpreting the claimability condition, namely as a constraint imposed by the Will Theory. According to the Will Theory, because the function of rights is to empower the right-holder, all rights must additionally include a power of claim or waiver. We might, then, interpret the claimability condition as a limit imposed by the Will Theory as follows. In order for a right-holder to have power over the duties of another, he must be able to identify who that other is and what her duties are. Or put negatively, in the absence of identifiable duties and duty-bearers, so-called right-holders lack the power to claim or waive their so-called right. According to the Will Theory, in order for the human right to subsistence to properly constitute a right as opposed to just an abstract claim, it must contain the power of claim or waiver. Because in the absence of relevant institutional structures we lack sufficiently specific information about the duties entailed by the claim to subsistence, it does not meet the claimability condition thus understood, and therefore fails to include the necessary power of claim or waiver that is required by the Will Theory in order for it to constitute a right.

Because the Interest Theory only requires that a claim must fulfil some interest of its holder in order to be considered a right, it poses no problem for the conventional interpretation of the human right to subsistence. The fulfillment of the duties correlative to a claim to access to the means for subsistence is clearly in the interest of the claim-holder, and so the condition imposed by the Interest Theory for it being a right is fulfilled.

The suggestion here is that we might interpret the debate over the status of the right to subsistence as a human right as reducing to the question of whether the Will Theory, the Interest Theory, or some alternative theory offers the best theory of the function of rights. In seeking to resolve the dispute, then, we would need to seek resolution to the debate between these theories. A successful defence of the human right to subsistence would at least have to show that a right can exist despite the right-holder

[86] See, for example, Neil MacCormick, 'Rights in Legislation', in *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, ed. by P. Hacker and J. Raz (Oxford: Oxford University Press, 1977), pp. 189–209; David Lyons, 'The Correlativity of Rights and Duties', *Nous*, 4 (1970), 45–57; and Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), especially Chapter 7.

lacking the powers of waiver or enforcement. While I think that there is good reason to reject such an account,[87] I will not embark on a discussion of this here. This is because I do not think that seeing the claimability condition as a condition imposed by the Will Theory of the function of rights provides any helpful insight into what is really at stake in the debate over the human right to subsistence. The reason for this is that Hohfeld's analysis was an analysis of legal rights, whereas we are interested in the status of the right to subsistence as a moral right.

As Peter Jones has pointed out, Hohfeld's taxonomy was based on observations about the way the term 'right' is used within a legal context.[88] Although his taxonomy can be applied to moral rights, it is not central to theorizing about moral rights. This is because the way that the term 'right' is used in the context of morality does not correspond exactly with the ways in which it is used in the legal context. As such, the question of what makes something a *moral* right as opposed to a claim, privilege, power, or immunity may not be the same as what makes something a *legal* right as opposed to a claim, privilege, power, or immunity. Indeed Hart, who was one of the most influential Will Theorists, eventually conceded that the Will Theory does not apply to moral rights which, he suggested, could focus on peoples needs rather than their choices.[89]

The debate between Will Theorists and Interest Theorists has long dominated the literature on rights theory, and so it is helpful to understand how the question of whether there is a human right to subsistence relates to it. My purpose in this section has been to argue that, although the claimability condition can be interpreted as a condition on the existence of rights imposed by the Will Theory of the function of rights, because this is a theory about the function of *legal* rights, interpreting the claimability condition in this way does not provide any insight into whether and why claimability might constitute a condition on the existence of *moral* rights.

3.1.3. The Logical Structure of Rights

In this section, I argue that the claimability condition is best understood as a condition imposed on the existence of moral rights by a particular account of the logical structure

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[87] For some forceful arguments for the rejection of the Will Theory as I have characterized it here, see Cruft, 'Rights: Beyond Interest Theory and Will Theory?', and Wenar, 'The Nature of Rights'.

[88] *Rights,* pp. 47-48.

[89] Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), p. 192-3. Discussed in P. Jones, *Rights*, p. 35-6.

of rights. I argue that the conventional interpretation of the human right to subsistence presupposes an account of the logical structure of rights which is at odds with the account that supports the claimability condition. My claim is that the debate over the human right to subsistence is, at root, a debate about the logical structure of rights.

It will be helpful to begin by noting a terminological ambiguity in the literature. Some theories of rights are characterized as 'interest-based'. This, I argue, can mean at least three different things. In one sense, an account of rights being interest-based can refer to the sort of justification offered in support of moral rights in general. This would imply an instrumentalist justification according to which the normative force of moral rights is justified on the grounds that widespread respect for rights promotes the fulfillment of interests overall. To refer to a conception of rights as being 'interest-based' can also imply the Interest Theory of the function of rights discussed in the previous section. It is important to note, however, that the interest-based justification of rights is logically distinct from the interest-based account of their function. These are distinct since the former concerns the normative force of *moral* right, and the latter the function of *legal* rights.

I want to suggest now that there is a third sense in which a conception of rights can be interest-based. This sense has to do with the logical structure of rights, and of claim rights in particular. I have in mind the sort of view espoused by Raz according to which "'X has a right" if and only if X can have rights, and, other things being equal, an aspect of X's well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty'.[90] We should note that Raz's is an account of the nature of *moral* rights. He is sometimes interpreted as advancing the Interest Theory of the function of rights, but as I have argued, the question of the nature of legal rights is distinct from that of moral rights.

Raz's account includes, importantly, an account of the logical structure of rights. My central claim in this and the next section is that proponents of the conventional interpretation of the human right to subsistence rely on a Razian account of the logical structure of rights that is a odds with the more traditional account of the logical structure of rights that supports the claimability condition. In order to make this case, I will begin by providing a brief outline of Raz's account and contrast it with the sort of account that underlies the claimability objection.

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[90] *The Morality of Freedom*, p. 166.

According to Raz, 'rights are grounds of duties in others' (p. 167). Rights and duties are not just two sides of the same coin. To affirm a given right is not just to affirm a specific duty or a set of duties on the part of others. The existence of certain duties can be derived from the affirmation of a right, but the affirmation of that right is something different from the affirmation of the specific duties that it grounds.

Rights on the Razian account are logically prior to duties. They do not merely correspond to duties; they serve to justify the existence of certain duties. For this reason, I will refer to this account of the logical structure of rights as the Logical Priority Account, or the LPA for short. What it means to have a duty on Raz's account is to have a reason of 'peremptory character'. The existence of a right does not depend on the prior existence of some corresponding duty; rather the existence of some duties is justified by the existence of certain rights. What, then, justifies the existence of particular rights? According to Raz, rights are justified by the interests of persons. This strand of moral reasoning on Raz's account therefore moves from observations about the interests of persons to the affirmation of rights to the assignment of duties; and, importantly, it cannot go in the other direction. We cannot infer from the existence of a duty that there is a corresponding right. This is because duties can be justified on other grounds besides rights.[91] A right according to Raz is an intermediate moral conclusion in an argument from the interests of an individual to duties on the part of other moral agents:

> [Rights] are, so to speak, points in the argument where many considerations intersect and where the result of their conflicts are summarized to be used with additional premises when need be. Such intermediate conclusions are used and referred to as if they are themselves complete reasons. (p. 181)

It is important to note that rights on Raz's account add nothing new to an argument; they merely *summarize* the argument to that point. An important question for Raz concerns whether rights really serve any important function in moral reasoning, given their apparent role as mere place-holders. To this, he replies that

> The fact that practical arguments proceed through the mediation of intermediate stages so that not every time a practical question arises does one refer to ultimate values for an answer is (…) of crucial importance in making social life possible, not only because it saves time and tediousness, but primarily because it enables a

[91] Raz is explicit that while all rights correlate with duties, not all duties correlate with rights. Rights, on Raz's account, provide one sort of justification for duties; but there are other justifications available, for example, the promotion of public goods. See Raz, *The Morality of Freedom*, Chapter 8.

> common culture to be formed round shared intermediate conclusions, in spite of a great degree of haziness and disagreement concerning ultimate values. (Ibid.)

I will return to a discussion of the relative merits and demerits of an interpretation of the human right to subsistence according to LPA in section 3.3. My purpose here is simply to flag an important difference between the LPA and the account that supports the claimability condition, which I will discuss shortly. As we have seen, on the LPA, rights justify holding others to be under duty to perform or abstain from some action. Rights, however, are not the only reasons that must be taken into consideration when determining whether someone is under duty. Considerations about the specific circumstances including potential conflicts between rights, but also non-rights considerations such as the feasibility and desirability of certain actions must be taken into account.[92] As such, a given right does not, taken on its own, entail the existence of any duty in particular. This leads Raz to reject the claimability condition:

> [O]ne may know of the existence of a right and of the reasons for it without knowing who is bound by duties based on it or what precisely are these duties. (p. 184)

This is because

> the implications of a right, (…), and the duties it grounds, depend on additional premises and these cannot in principle be wholly determined in advance'. (p. 185)

The account of the logical structure of rights that underlies the claimability objection allows that there can be moral duties that are entailed by rights whose bearers and content can not be wholly determined in advance. These include duties to implement rights and duties to protect people's enjoyment of their rights in general. As we shall see, however, in order to be justified in affirming a right on this account, at least one correlative duty must be determinate. This is because, on this account, rather than rights grounding duties, rights are understood as expressing deontic relationships between specific duty-bearers and specific right-holders. As such, I will refer to this account of the logical structure of rights as the Deontic Relationship Account, or DRA for short. Rights are not logically prior to duties on this account, and neither are duties logically

[92] According to Raz, 'Which duties a right gives rise to depends partly on the basis of that right, on the considerations justifying its existence. It also depends on the absence of conflicting considerations', *The Morality of Freedom*, p. 183.

prior to rights. This is because rights and duties are just two sides of the same coin. According to O'Neill

> From a normative view of rights, obligations and claimable rights are just two perspectives on a single normative pattern: without obligations there are no rights.[93]

This stands in stark contrast to the Razian view that, since rights are logically prior to duties, although they will in many cases justify the existence of duties, there is nothing conceptually problematic about the situation in which there is a right with no identifiable duties or duty-bearers.

Another way of understanding the distinction between the two accounts of the logical structure of rights that I have in mind has to do with the relationship between the substance of a right and its correlative duties. The logical structure of a claim right is usually expressed as '*R* has a claim to *s* against *A*', where *R* is the right-holder, *A* is the addressee, and *s* is the substance of the right. This expression of the structure of rights is neutral between two competing accounts. On the one hand, some theories treat the required action(s) or abstention(s) as identical with the substance of the right, *s*. Rights on this account might be expressed as '*R* has a claim that *A s*', where *s* is both the substance of the right as well as the specific action or abstention required of *A*. This is the kind of account O'Neill seems to endorse. We might alternatively regard the action(s) or abstention(s) required by a right as distinct from its substance. On this model, a claim right can only be expressed as '*R* has a claim that *A s*' in case the substance of the right and the action or abstention required of *A* in fact are identical. Whereas this must be the case on the first model, on this alternative model the substance of the right could be something other than a specific action or abstention on the part of a duty-bearer. On this model, it follows from every claim right that there are some actions or abstentions required of *A* in order to bring it about that *R* enjoys the substance of her right; but the right is not a claim to those actions or abstentions, but rather to what it is those actions or abstentions are meant to bring about. This seems to be the sort of account endorsed by Raz.[94]

To further illustrate the difference between LPA and DRA, let us take as an example a paradigmatic claim right: the right against torture. On DRA, the substance of

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[93] 'The Dark Side', p. 431.

[94] Amartya Sen makes what I think is the same distinction in 'Rights and Agency', p. 16.

the right against torture is the abstention from torture on the part of all addressees. By contrast, on LPA, the substance of the right against torture is freedom from torture. Surely this will involve the abstention from torture of all other agents, but this abstention is not itself understood as the substance of the right; rather, it is a necessary condition for the fulfillment of the right. On DRA, the content of the duty is identical to the substance of the right whereas on LPA, they need not be the same.

The difference is even more apparent in the case of socio-economic rights. To have a right to subsistence (positively construed) on DRA is to have a claim that some specific addressee provides you with access to the means for subsistence when you cannot otherwise acquire this. The right to subsistence on this account is therefore a claim to *provision*. On LPA, by contrast, to have a right to subsistence is to have a claim to have access to the means for subsistence. This will provide justification in certain cases for holding some other(s) to be under a duty to provide you with such access; but on this account, your claim is not to their provision, but rather to the access.

DRA and LPA express two different ways in which we can think about the relationship between the substance, *s*, of a right and its addressee(s), *A*. On DRA, the addressees of the right must be determinate in order for the substance of the right to be determinate since the right is to their acts or abstentions. On LPA, by contrast, the substance of a right can be determinate without it being determinate who the addressees are, or what is required of them. Seeing the claimability objection as predicated on DRA may therefore help to explain why claimability would be taken as an existence condition on rights. On this model, if it is indeterminate against whom your right is held and what it requires of them, then so is the substance of your right. Where institutional mechanisms are required to specify and allocate duties, on DRA, the substance of so-called rights is indeterminate in the absence of such mechanisms. And surely to assert a right with an indeterminate substance is, at best, empty rhetoric. This is why claimability, understood as being able to identify the addressees of the right and the content of their duties, is an existence condition on rights on DRA. The reason the same is not true of LPA is that it takes the substance of a right to be a state of affairs enjoyed by the right-holder. Many states of affairs can be brought about in a number of different ways; and what matters for the fulfilment of a right is just that the relevant state of affairs is brought about, not how or by whom it is achieved (except in cases where the state of affairs is partly constituted by some action or abstention on the part of some particular agent(s).).

In what follows, I will show that two of the most influential lines of argument in defence of the conventional interpretation of the human right to subsistence against the claimability objection simply assume LPA. I will argue that the trouble with this is that it fails to provide a satisfactory response to the claimability objection which rests on DRA. Looked at another way, proponents of the claimability objection are equally culpable of failing to address what is really at issue by simply presupposing DRA. The point is that the conflict between the conventional interpretation of the human right to subsistence and the claimability objection can only be truly resolved by settling the debate over the nature of rights. Although I will not endeavour anything so ambitious here, in this and the following chapters, I will explore some potential ways of moving the discourse about the normative implications of global poverty forward despite enduring tensions.

3.2. In Defence of the Human Right to Subsistence

This section constitutes a discussion of various attempts to overcome the claimability objection. As we have seen, according to this objection, a moral right cannot be at once universal, fundamental, and have as its correlates positive duties of assistance. The central reason for this is that the positive duties in question are imperfect since it cannot be the case that every person able to provide assistance owes assistance to every person in need of assistance. According to the objection, imperfect duties cannot correlate with rights because what it means to have a right is to have a claim on some specific agent or agents; but where the duties of agents are imperfect, they are not owed to anyone in particular. The fulfillment of the duty to contribute to poverty relief will inevitably have some beneficiaries, but since no one agent can assist all those in need, no particular person in need has a claim on any particular agent to their assistance. And as such, no particular person can be said to have a right to assistance.

It is on account of the claimability condition that both the 'claim to' and the 'claim against' side of rights must be determinate in order for the affirmation of a right to be justified. The approach to avoiding the claimability objection I will discuss in this chapter denies that the 'claim against' side needs to be determinate in order to justifiably affirm a right. While proponents of this sort of account emphasize the importance of working out the deontic implications of human rights, they hold that we can justifiably affirm human rights prior to establishing who the relevant duty-bearers are. This chapter will explore the reasons given in support of the denial of the claimability condition. I

shall argue that the most plausible arguments all hinge on a rejection of the traditional picture in which perfect duties must be negative or special, and positive universal duties must be imperfect. I will discuss in detail the work of Henry Shue who urges us 'both be ready to use the above distinctions where they help and be ready to modify this simple picture of interlocking dichotomies if it turns out to be a conceptual straightjacket'.[95]

The approaches to defending the human right to subsistence discussed in this chapter do indeed take the picture of interlocking dichotomies to be a conceptual straightjacket and so opt to modify it. As such these approach to overcoming the claimability objection rest on a different conception of rights than the one that O'Neill presupposes. In particular, my claim is that these approaches rest on an account of the logical structure of rights according to which rights are logically prior to duties (LPA), while the claimability objection rests on an account of the logical structure of rights according to which rights express deontic relationships between duty-bearers and right-holders (DRA). The debate over the legitimacy of the claimability condition therefore rests on a more fundamental disagreement about the very nature of rights. As we shall see, both arguments outlined in what follows simply assume LPA. But this is simply to assume, at least in part, what they have set out to prove. In order to effectively challenge the claimability objection by rejecting the claimability condition, reasons must be given in support of LPA. I will turn to an evaluation of the human right to subsistence understood according to LPA in section 3.3.

3.2.1. The Basic Rights Argument

The first argument I discuss is the Basic Rights Argument. This argument was initially advanced by Henry Shue, and has more recently been adapted by Elizabeth Ashford in light of some objections to it.[96] The Basic Rights Argument has two main elements. One is an argument for the deontic pluralism or rights. The second is an argument for the linkage between subsistence rights and all other rights. Let us discuss each in turn.

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[95] 'Mediating Duties', p. 689.

[96] 'The Alleged Dichotomy Between Positive and Negative Rights and Duties', in *Global Basic Rights*, ed. by Charles R. Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009), pp. 113-155.

(a) Deontic Pluralism

Shue's first target is the traditional distinction between 'liberty rights' and 'welfare rights'.[97] He argues that this distinction is false and outdated. According to this distinction, 'liberty rights' are those that entail only negative duties, whereas 'welfare rights' entail positive duties. This bifurcation of rights is at the root of the distinction drawn in contemporary international human rights doctrine between 'first-generation human rights' which include the civil and political rights, and 'second-generation human rights' which include the social, economic, and cultural rights. This distinction saw the ratification of human rights in two separate covenants in 1966: The International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic, and Cultural Rights.

Shue's basis for rejecting the traditional view is what can be called *the deontic pluralism of rights*, namely the idea that any given right actually corresponds to a plurality of duties, some negative and others positive. Shue highlights the frequently overlooked negative duties associated with so-called (positive) welfare rights. He points out that the right to subsistence is not merely a right to be provided with assistance when one cannot secure access to the means for subsistence for oneself, but also, and at least as importantly, it is a right not to be deprived of access to the means for subsistence. Furthermore, he argues that so-called (negative) liberty rights entail positive and often very onerous duties. On Shue's view, the right to, for example, physical security is not fulfilled simply in virtue of people refraining from threatening the physical security of others; rather, the fulfilment of this right requires that systems are in place to provide a reasonable guarantee of physical security to right-holders. These systems will likely include police forces, criminal courts, a penal system, and all the subsidiary requirements for making these effective. These systems tend to be incredibly costly and require enormous contributions of time and resources.

Shue's blurring of the distinction between liberty rights and welfare rights on the grounds of deontic pluralism rests on his account of moral rights. According to Shue, 'A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats' (p. 13). On

[97] *Basic Rights*, especially Chapter 2. Parenthetical references to page numbers in this section will hereafter refer to this text.

this account, in order for any moral right to be fulfilled, including liberty rights, it will not be enough that others refrain from behaving in certain ways; right-holders must also have a reasonable[98] social guarantee that others will refrain from treating them in certain ways. On Shue's account, all moral rights entail both positive and negative duties, all of which must be discharged in order for the right to count as fulfilled. We begin here to feel the tension between the respective conceptions of rights that underlie Shue's defence of the human right to subsistence and the claimability objection.

(b) Linkage

The second stage of Shue's argument builds on the widespread commitment to civil and political human rights by emphasising an important link between civil and political liberties and social and economic security. It is founded on the observation that an expression of a commitment to the promotion of civil and political liberties rings hollow if not accompanied by a concern for the socio-economic conditions necessary to meaningfully enjoy and exercise those liberties. The promotion of civil and political liberties through civil and political human rights is motivated by the values of agency and autonomy; but agency and autonomy are equally threatened by poverty and socio-economic insecurity in general. It is argued that we must take a holistic approach to the promotion of these values.

It does not, however, follow from this that insofar as there are civil and political human rights grounded in the values of agency and autonomy so too must there be socio-economic human rights such as the human right to subsistence. More needs to be said about the nature of the connection between civil and political rights and socio-economic rights in order to make the argument from one to the other. According to Shue, the secure enjoyment of subsistence is necessary for the actual enjoyment of the substance of all other rights including civil and political rights. This is because lack of secure enjoyment of subsistence poses a standard threat to the enjoyment of any other right. One reason that Shue provides for thinking this is the case is lacking access to the means for subsistence will have the effect of physically weakening individuals to the point at which they are incapable of exercising their rights (pp. 24-25). For example,

[98] A social guarantee on Shue's account is reasonable insofar as it protects against *standard threats*. Protection against all possible threats is too much to require, but in many cases certain threats to people's enjoyment of the substance of their rights are highly predictable. For a detailed discussion of social guarantees against standard threats, see *Basic Rights*, pp. 6-17 and pp. 29-33.

freedom of assembly cannot actually be enjoyed by those who are too sickly to assemble. Whether this is true for all rights is not clear. Some rights, it seems, can be enjoyed even by those who are too weak to act. Enjoyment of the right to physical security of equality before the law, for example, do not seem to require persons to be strong enough to act. The second reason Shue offers is therefore more convincing. He argues that where people's subsistence needs are not met, their vulnerability to coercion constitutes a standard threat to the enjoyment of other rights (pp. 185-87, note 13). This, he contends, is true for any other right.

Shue offers the following example in support of the latter claim: The widely-accepted human right against torture, he argues, cannot be fully enjoyed by those who cannot meet their subsistence needs because they will always be vulnerable to offers of subsistence goods in exchange for submitting to a limited amount of non-fatal torture. The central claim is that subsistence is so fundamentally important to all human beings that without it, we cannot enjoy any other right because the susceptibility to this sort of trade-off constitutes a standard threat to the enjoyment of other rights. As such, Shue holds that insofar as we are committed to the fulfillment of any rights at all, we must give high priority to the right to subsistence because there is a necessary connection between this right and the fulfillment of any other right.

Shue's claim is that the enjoyment of subsistence rights is 'inherently necessary' for the enjoyment of all other rights (p. 27). What he means by 'inherent necessity', however, is somewhat vague. A plausible way of interpreting the claim that A is inherently necessary for B in light of what Shue says is that there is a conceptual connection between A and B. Shue is explicit that 'an "inherent necessity" needs to be distinguished carefully from a mere means to an end'. His suggestion is not merely that subsistence is a means to the enjoyment of other rights; rather, his claim is that part of what it means to enjoy any other right is that one has access to the means for subsistence (Ibid.).

But the idea that there is a conceptual connection between the secure enjoyment of all rights and the secure enjoyment of the right to subsistence falls prey to the following powerful objection: It is in fact possible to securely enjoy other rights while suffering severe shortfalls in subsistence goods.[99] It is possible, according to the critic, to

[99] Shue attributes this objection to Mark Wicclair, *Basic Rights*, p. 184, note 13. Thomas Pogge makes a similar point in 'Shue on Rights and Duties', in *Global Basic Rights*, ed. by Charles R. Beitz and Robert E. Goodin, pp. 119-121.

securely enjoy freedom from torture as a right despite being severely malnourished. It may be the case, as Shue suggests, that those who do not have secure enjoyment of subsistence are liable to agree to compromise their other rights in exchange for subsistence goods; but then these sorts of contracts could simply be outlawed. If the rules against torture are strictly enforced as are rules against such torture contracts as have been described, then it seems that people do in fact securely enjoy their right against torture even if they do not have secure enjoyment of subsistence. Therefore, the objection goes, securely enjoying the right to subsistence is not necessary in order to have socially guaranteed freedom from torture, among other rights.

The claim that there is a conceptual connection between the secure enjoyment of all rights and the secure enjoyment of the right to subsistence is, then, surely misguided since there is nothing conceptually incoherent about the possibility of enjoying, say, one's right against torture despite suffering severe malnourishment so long as effective enforcement mechanisms are in place to guarantee that people do not engage in torture as well as to guarantee that people do not enter into torture contracts.

Elizabeth Ashford has offered a more plausible variation on Shue's original linkage argument.[100] According to Ashford, the connection between subsistence and the enjoyment of other rights is not conceptual, but rather substantive. Although it is conceptually possible to securely enjoy one's right against torture while lacking the means for subsistence, this would require the banning of torture contracts. Banning torture contracts, Ashford rightly notes would, however, be against the interests of people who lack the means for subsistence. The reason that a person would be willing to enter into a torture contract in the first place is that the interest in subsistence is so important as to outweigh the interest in not being tortured. That is to say that lacking access to the means for subsistence and not being tortured is worse for a person than having the means for subsistence and submitting to (a limited amount of non-fatal) torture. As such, denying someone who lacks access to the means for subsistence the option of the torture contract would make her worse off than she would be if such contracts were available to her; if it were not, there would be insufficient motivation for her to enter into the contract in the first place, and so such contracts would not constitute standard threats.

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100 'The Alleged Dichotomy between Positive and Negative Rights and Duties', especially pp. 95-100.

Ashford goes on to argue that if we hold the plausible view that, at the very least, the secure enjoyment of a right should not thwart the very fundamental interests of the right-holder, banning the torture contract in order to uphold the right against torture would fail to be an appropriate measure. The only way to ensure that torture contracts and other perverse trade-offs do not constitute a threat to the enjoyment of rights is therefore to annihilate the incentive for entering into them in the first place. This entails, *inter alia*, guaranteeing access to the means for basic subsistence. So while we can perhaps conceive of the enjoyment of the right against torture, among other rights, independent of guaranteed access to the means for subsistence, this kind of situation is morally inconsistent in light of the needs that human beings actually have and the social circumstances in which they actually exist. Ashford concludes that having guaranteed access to the means for subsistence is thus a necessary condition for the enjoyment of any other right; and so the right to subsistence can be derived from the existence of any other moral right. Therefore, insofar as we think that there are any human rights at all, the right to subsistence must be among them. Or so the argument goes.

3.2.2. Trouble With the Basic Rights Argument

The Basic Rights Argument provides a challenge to the claimability condition since if it is right, it implies either that the claimability condition holds and there are no rights at all, since all rights entail at least some positive, imperfect duties; or that there are rights, including the human right to subsistence, and the claimability condition does not hold. I argue, however, that this sets up a false dichotomy. It overlooks the possibility that there is a plausible conception of rights according to which the claimability condition holds that is compatible with the existence of at least some rights.

The Basic Rights Argument was originally intended by Shue as a challenge to American foreign policy-makers who affirmed both universal liberty rights and universal welfare rights, but systematically treated the former as more important.[101] In this respect, it should be read not as an attempt to justify a universal right to subsistence, but rather as an effort to emphasize its importance. The Basic Rights Argument is, nevertheless often taken as an argument for the existence of a universal right to subsistence. I argue that it can only succeed in this capacity insofar as Shue's conception of moral rights is taken for

[101] *Basic Rights*, pp. 5-8.

granted. Because Shue's conception of moral rights is at odds with the one that underlies the claimability objection, presupposing it does not therefore provide a satisfactory defence of the human right to subsistence.

Recall that, according to Shue, rights are deontically plural. If the right against torture were simply a right that others not torture you, then there would be no reason to think that this right could not be enjoyed in the absence of secure access to the means for subsistence. But social guarantees against standard threats to the enjoyment of rights, which are obviously desirable and probably morally required, do not count as conditions for the fulfillment of moral rights on all accounts. That the substance of a right is *securely enjoyed* is a feature of Shue's account of moral rights, but notably not O'Neill's. If it turns out that social guarantees against standard threats are not conditions on the fulfillment of moral rights, then even Ashford's more plausible variation of the linkage argument will fail.

Shue, however, offers very little in support of his conception of rights. He acknowledges the relative 'thickness' of it and he anticipates the objection that his account conflates purely negative liberty rights with rights to the protection of one's liberty rights. According to this sort of account, the latter rights are positive and therefore special, whereas the former are negative and can therefore be universal. Shue, however, argues that we should resist dissecting rights in this way since, even if there is a meaningful line to be drawn between enjoyment of the substance of a right and the social guarantees of that enjoyment against standard threats, the former is of little interest to persons living in the sorts of social conditions in which they currently live (and have lived for much of human history) in the absence of the latter. Taking again the example of the right to physical security, Shue argues that

> in an organised society, insofar as there were any such things as rights to physical security that were distinguishable from some other rights-to-be-protected-from-assaults-upon-physical-security, no one would have much interest in the bare rights to physical security. (p. 38)

Shue is certainly right that the secure enjoyment of physical security is of greater interest to right-holders than merely not having one's physical security violated contingently. This observation on its own cannot, however, support his conception of moral rights against its opponents, including those who endorse the claimability condition. Just because having guarantees against violations of our physical security is of greater interest to us

than merely not having our physical security violated as a matter of contingency does not give us any reason to think that there is no morally relevant distinction to be drawn between the two. Furthermore, the inference from the enjoyment of some substance being of great interest to right-holders to the existence of a right to that substance can only be drawn on LPA, and not DRA. As such, Shue's account seems to presuppose LPA.

Shue's point, it seems, is that, given the importance of secure enjoyment of the substances of rights, insofar as we take rights seriously, we should not downplay the importance of the duties to protect right-holders against standard threats to the enjoyment of the substance of their rights. I think this is a point of crucial importance in thinking about the implementation of rights. I doubt, however, that it is sufficient to support Shue's conception of moral rights and his defence of the human right to subsistence. In order to support his conception of moral rights along these lines, it would have to be the case that the importance of the secure enjoyment of rights, and so the importance of the duties to protect right-holders against standard threats to their enjoyment of the substance of their rights, cannot be adequately captured by competing conceptions of moral rights, in particular DRA, according to which only perfect duties can correlate with rights. I will argue in what follows that this is not the case.

We have seen that in support of blurring the distinction between 'liberty rights' and 'welfare rights', Shue argues that the we have a very strong interest not only having the substance of our rights, but also protection of that substance. The question I will address here is whether this really counts as a point in support of his view that there is no morally relevant distinction between 'liberty rights' and 'welfare rights'. I will argue that it does not. I will argue that DRA is compatible with a qualified version of the account of the deontic pluralism of rights that underlies the rejection of the distinction between 'liberty rights' and 'welfare rights'. As we shall see, however, the version of deontic pluralism that the proponent of DRA could endorse does not support the rejection of the distinction between 'liberty rights' and 'welfare rights'. I argue, however, that it is just as adept as the version of deontic pluralism on LPA at accounting for the truth of Shue's claim about the importance of the protection of rights.

DRA is clearly compatible with deontic pluralism understood simply as the idea that the fulfillment of a given right can entail the discharging of duties on the part of multiple

agents. As we have seen, the right against torture on DRA entails negative duties on the part of all other moral agents to refrain from torture. In order for this right to be fulfilled, all of the agents against whom it is held must discharge their duties. If so much as one person engages in torture, the victim's right against torture goes unfulfilled. This is equally true on LPA, but the proponent of LPA would add that the fulfillment of a right can include the discharging of duties with different content, some held against all other agents and others held against particular agents.

This too, however, is compatible with DRA. There is no reason that DRA should preclude rights whose substance is a conjunction of different acts or abstentions on the part of multiple others. A spectator might have a right to a musical performance by Simon and Garfunkel on the basis of having purchased a ticket to their show. This is a right to Simon singing along with Garfunkel and Garfunkel singing along with Simon. Simon therefore has a duty to sing along with Garfunkel and Garfunkel has a duty to sing along with Simon, and if either of them defects, then the spectator's right to a musical performance by Simon and Garfunkel goes unfulfilled. These sorts of rights, that is, rights with conjunctive substances, are what Pogge has referred to as 'programmatic rights'.[102] A programmatic right can be decomposed into a number of rights, each with a non-conjunctive substance. In order for the assertion of a programmatic right to be meaningful, we must be able to make good on each of the individual components of its substance by providing justification for the claim and by identifying the relevant duty-bearers and the content of their duties.

The upshot of this condition is that, while having a right to physical security *and* protection against assaults to one's physical security may be extremely important to people, in the absence of the relevant institutions, only the former conjunct is the substance of a fundamental right on DRA. People certainly might have the right to physical security and the right to have their right to physical security protected, and indeed many do in societies with effective institutional mechanisms for securing rights to physical security. But absent the relevant institutional mechanisms, the duty to protect people's rights to physical security is imperfect, and is therefore not the substance of any right on DRA.

Although very important interests can and do ground rights, just because there is a very important interest in some substance does not entail that there is a right to that substance on DRA. This, as we have seen, is because what rights there are is constrained

[102] 'Shue on Rights and Duties', p. 124.

at least by the logical structure of rights. While DRA is compatible with deontic pluralism, this does not change the fact that the relevant addressees and the content of their duties must be determinate in order for there to be a right. So just because there is an important interest not just in enjoying the substance of one's right, but in enjoying it *securely* does not entail that there is a fundamental right to have the enjoyment of one's right socially guaranteed.

I began by suggesting that Shue is right in saying that having the right to a substance without having the enjoyment of that right securely is not of great interest to right-holders as compared to having the right to the substance socially guaranteed. Given what I have just said about how DRA makes sense of deontic pluralism, is it compatible with this claim? I argue that it is. There is a further addition to DRA's account of deontic pluralism that is relevant here. It involves distinguishing between duties *entailed* by a right and those *correlative* to it.[103] On this view, a duty that is correlative to a right is one that is directly entailed by it; it is one whose violation constitutes the violation of the right. Other duties may be indirectly entailed by the right in two ways: First, the reasons that support the existence of the right might equally support other rights that themselves entail correlative duties. In this sense, the existence of a first right entails the existence of a second right, and thus indirectly entails the existence of the duty correlative to the second right.

Alternatively, the reasons supporting the existence of a right might entail the existence of other duties that do not correlate with any particular right. So in the example of the human right against torture, we might understand the duty to enforce the duty to abstain from torture as a duty that is correlative to a right to the enforcement of the duty to abstain from torture; or we might understand it as an imperfect duty that is justified on the same grounds as the right not to be tortured (namely the interest in enjoying freedom from torture), but that does not correlate with any right to the enforcement of the duty to abstain from torture. Either way, proponents of this account will deny that the fulfillment of the duty to enforce the duty to abstain from torture is necessary for the fulfillment of the right against torture.

On the kind of account just described, we might distinguish between the *broad* deontic implications of a right which include all those duties directly or indirectly entailed

[103] Pogge makes this distinction in 'Severe Poverty as a Human Rights Violation', in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. by Thomas Pogge (Oxford: Oxford University Press and UNESCO, 2007), pp. 11-53 (p. 20).

by the right, whether they correlate with other rights or not, and the *narrow* deontic implications of a right which are confined to its one correlative duty (which could, however, be held by any number of agents). We might say that the right is *respected* insofar as its narrow deontic implications are satisfied, and that it is *enjoyed* insofar as its broad deontic implications are satisfied. This is compatible with both DRA and LPA. Although Shue is right to emphasize the importance of enjoyment, his conflation of what I am calling respect with enjoyment is unnecessary to ensure that enjoyment is taken seriously. The proponent of DRA can agree that the enjoyment of a right is incredibly important; but she will also point out that the enjoyment of a right might require actions on the part of agents to which there is no *correlative* right. The deontic implications of a right could include imperfect duties that are themselves not correlative to any right.

This is not intended as an argument for preferring DRA over LPA. Rather, it is just meant to point out that LPA enjoys no particular advantage over DRA with respect to its capacity to account for the importance of the enjoyment of rights. I have argued that DRA can accommodate the idea that the *enjoyment* of rights is of greater interest to right-holders than the mere *respect* of them. Furthermore, it is compatible with there being stringent moral requirements to promote the enjoyment of rights where they exist. But the proponent of DRA will insist that, while it may be the case that all rights give rise to reasons to promote their enjoyment, in order to give rise to such reasons the right must be justified in the first place. O'Neill argues that this condition is not met in the case of universal welfare rights but that it is in the case of liberty rights. The version of deontic pluralism compatible with DRA still allows for a meaningful distinction between these two kinds of rights. Both sorts of rights may well be understood as programmatic rights. But when it comes to fundamental moral rights, only those conjuncts in the substance of the right can be maintained which are claimable in the absence of institutions. Whereas something recognizable remains in the case of liberty rights, in the case of welfare rights we are left just with the claim held against all others that they not deprive us of access to the means for subsistence. I will eventually argue that this is worth more attention than it typically receives; but for the moment, the important point is that this precludes the conventional interpretation of the human right to subsistence.

The point of this section has been to show that LPA has no obvious advantage over DRA with respect to accounting for the highly plausible claims that what people care about most is securely enjoying their rights. I have argued that much hinges on the distinction between the fulfillment of rights and their enjoyment. The arguments

discussed earlier in this chapter tend to blur this distinction. In particular, they assume that something that is necessary for the *enjoyment* of a right must also itself be the substance of a right.

I have so far shown that the Basic Rights Argument in assuming LPA assumes a conception of rights that is at odds with the conception of rights that underlies the claimability objection, namely DRA. Without providing reasons for preferring LPA over DRA, the Basic Rights Argument fails to provide an adequate response to the claimability objection. In section 3.3 I will discuss whether an interpretation of the human right to subsistence based on LPA can be vindicated, but in the meantime I will turn to another influential argument offered in defence of the human right to subsistence that I argue suffers from similar shortcomings to the Basic Rights Argument.

3.2.3. The Interest Argument

The claimability condition, as we have seen, precludes the correlation of imperfect duties with rights. A convincing argument showing that imperfect duties can correlate with rights would therefore provide a strong case against the claimability condition. Jeremy Waldron has attempted to advance such an argument.[104]

Waldron acknowledges that the duties of assistance correlative to the human right to subsistence are imperfect, at least until institutions have been put in place; but he does not see this as a problem in affirming a human right to subsistence. Waldron's argument, like Shue's, plays on controversy at the level of rights theory. Waldron's argument makes explicit what is implicit in the Basic Rights Argument: that we should not take for granted the orthodoxy according to which only perfect duties correlate with rights.

Waldron's argument rests on the observation that there is some morally relevant variation among imperfect duties. He argues that this variation can be expressed in terms of rights. In particular, he argues that the morally relevant difference between some imperfect duties and others is that some correspond to rights while others do not. Waldron asks us to consider and compare two cases. In the first case, (1), we encounter Smith who is drawing up his will. Although he is inclined to give the value of his entire estate to a charity for dogs, he recognizes some moral obligation to leave at least some

[104] 'Rights and Duties: Two Sides of the Coin', in his *Liberal Rights: Collected Papers 1981-1991*, (Cambridge: Cambridge University Press, 1993), pp. 1-34 (pp. 14-17).

money to some member of his family. Insofar as he has this obligation, and insofar as there is no morally relevant reason to prefer leaving the inheritance to any particular family member, Smith's duty is imperfect. Smith may therefore choose at random which of his family members will be his heir. Smith's duty to leave some money to a family member is imperfect since none of his family members has a claim on him that he leave money to them in particular, and his duty is fulfilled insofar as he leaves at least some money to at least one of his family members.

Waldron contrasts this case with (2), the case of Jones who is a wealthy philanthropist.[105] Although Jones recognizes that he has a moral obligation to help people in need, he also recognizes that his wealth is not sufficient to help all those in need. Jones's duty, like Smith's, is therefore imperfect since no particular person in need has a claim to receive assistance from Jones. Jones's duty is fulfilled insofar as he helps as many people as his resources allow (taking into account whatever the relevant limits are on the extent of required sacrifice), but he is free to choose from among those in need which ones he will assist.

Despite Smith and Jones both having imperfect duties, Waldron argues that there is an important difference between these two cases. The difference, he argues, has to do with what can be said about those who do not benefit from the fulfillment of the duty in question, but who might have. According to Waldron, in (1) if Smith does not fulfil his duty to benefit at least one of his family members, each of his family members has cause for complaint. Their complaint in this case would not be that he has not benefitted them in particular, but that he has not benefitted anyone from among the group of potential beneficiaries of which each plaintiff is a member. But once Smith has fulfilled this duty, Waldron notes that those who were not benefited no longer have cause for complaint even though they themselves received no benefit.

Waldron goes on to argue that all those in desperate need who could have been helped by Jones likewise have cause for complaint if Jones fails to fulfil his duty to benefit at least some of them; but in contrast to the Smith case, Waldron argues that those who are not benefited by the fulfillment of Jones's duty but who might have been retain their cause for complaint. This, he thinks is on account of their having moral

[105] What Waldron refers to as a 'wealthy philanthropist' is perhaps better characterized as someone who is able (taking into account whatever the relevant limits are on the extent of required sacrifices) to make some contribution to alleviating the plight of those suffering from severe poverty. Such people are wealthy at least relative to those they might assist, but they need not be philanthropists in order to bear duties of assistance.

standing not just as potential beneficiaries of Jones's imperfect duty, but also as potential beneficiaries of the imperfect duties of the many other wealthy philanthropists of the world. So even when Jones has fulfilled his duty, the persistence of severe poverty suggests that others have not fulfilled theirs, giving those who remain in desperate need cause for complaint.

Waldron argues that the moral difference between these two cases can be expressed in terms of rights. He thinks the reason that the potential beneficiaries of the Smiths' imperfect duties have no cause for complaint should they not be benefitted is because they do not have a right to inheritance.[106] By contrast, the reason that the potential beneficiaries of the imperfect duties of Jones and the other wealthy philanthropists retain cause for complaint when they have not been benefited is because they have a right to assistance. This, Waldron thinks, holds true despite the fact that the relevant duties are imperfect. Waldron claims, then, to have provided an example of imperfect duties correlating with a right.

In reply, however, we might note that there is another way of accounting for the moral difference between (1) and (2). The difference has to do with the presence of other duty-bearers. We should note that in (2), even if it is the case that those not benefitted by the fulfillment of Jones's duty retain cause for complaint, they do not retain cause for complaint *against Jones*. Rather, their complaints can now only be directed at those duty-bearers who have not fulfilled their duties. If there were no one else who could assist those in need, presumably Waldron would agree that, as in (1), those not benefitted have no more cause for complaint on account of having no one to complain against. In this way, we can account for the moral difference between (1) and (2) without invoking rights.

But this analysis neglects another important point that Waldron raises, but does not, I think, develop adequately. Waldron rightly suggests that 'Jones and his [wealthy philanthropist] friends may think that something has gone wrong if all of them end up (accidentally) lavishing their charity on the same few persons or if, after all of them have fulfilled their imperfect duties, some indigents have still not received any benefits at all'.[107] By contrast, we can imagine a parallel case in which Smith's siblings, all writing

[106] This should not be confused with the claim that people have or do not have a right to inherit. The right to inherit is understood primarily as a right not to be prohibited from inheriting goods. The right being denied here is the right to be made an heir. I think this is reasonably uncontroversial.

[107] 'Rights and Duties', p. 16.

their wills, find themselves in the same situation as Smith (and therefore bound by the same duty). I think it is less clear in this case that anything has gone wrong – let alone terribly wrong – if each sibling chooses the same family member as their heir. The relevant difference between (1) and (2) therefore concerns what can be said of the situation in which all the relevant duty-bearers have fulfilled their duties, and yet some potential beneficiaries nevertheless remain unbenefitted, *despite it having been possible for all to be benefitted.*

But why is it that something has gone wrong in case the duty-bearers in (2) but not in (1) all benefit the same few potential beneficiaries leaving others unbenefitted, despite it having been possible for all to be benefitted? On Waldron's account, it is because the potential beneficiaries in (2) have a right to assistance whereas the potential beneficiaries in (1) do not have a right to the inheritance. This can plausibly be chalked up to the importance of the interest in avoiding severe poverty. While I think this comes closer to capturing the moral difference between (1) and (2), I do not think that it adequately supports Waldron's claim that imperfect duties can correlate with rights.

Waldron's suggestion is that the importance of this interest and the feasibility of it being fulfilled for everyone in need through the actions of others are together sufficient to affirm a right to assistance, despite the relevant duties being imperfect. He argues that

> Our concept of a right is loose enough to be defined in a way that accommodates what we want to use it to say. It would be crazy if a philosophically controversial view about the tightness of the relation between rights and duties were to preclude us from using the language of rights to mark the difference between what we think about case (1) and what we think about case (2), above'.[108]

This argument picks up on the central point that I am trying to emphasize in this chapter, namely that the disagreement over the human right to subsistence hinges on what counts as a right. Waldron's point is just that there is a recognizable difference between case (1) and case (2), and one way of expressing this difference is through the language of rights. We might note that expressing the difference between case (1) and case (2) in terms of rights is compatible with LPA, but not DRA. Ultimately, Waldron's argument aims to show that there is a conception of rights according to which the difference between various imperfect duties is considered a difference with respect to rights. The conception of rights Waldron has in mind is a conception along the lines of

[108] 'Right and Duties', p. 16.

the Razian account discussed above according to which 'to invoke a right is to predicate a duty on some concern for a certain individual interest'.[109] As we have seen, on this conception of rights, a right is justified based on the importance of the interest it protects. Claimability is not a condition on the justified affirmation of rights on this sort of account.

John Tasioulas has recently mounted a similar defence of the conventional interpretation of the human right to subsistence.[110] He explicitly endorses a Razian account of rights according to which 'a right exists if an individual's interest, taken by itself, has the requisite kind of importance to justify the imposition of duties on others variously to respect, protect, and promote that interest'.[111] He argues that we are therefore justified in affirming a human right to subsistence based on the fact that the interest in having access to the means for subsistence is of tremendous importance to all persons, and on its own sufficient to justify holding others to be under duties to respect, protect, and promote this interest.

As we have seen, the claimability objection hinges on the view that universal rights must entail universal duties. If they do not, then some mechanism is required for establishing who owes what to whom. So far, Tasioulas, and indeed Waldron and Shue, will be in agreement: If the duties owed to any given individual are not owed by every moral agent, then we need to establish by whom they are owed. The central difference between these two accounts is that according to the claimability condition, we cannot justifiably affirm a right until the relevant duty-bearers and the content of their duties have been identified, whereas Shue, Waldron, and Tasioulas deny that this is the case.

Tasioulas, for example, argues that

> Although it would be pleasingly symmetrical, there is no implication that the duties [corresponding to universally-held rights] must also be universal (i.e., that all persons bear the duties correlative to the human rights enjoyed by all).[112]

Likewise, Shue argues that '[u]niversal rights (…) entail not universal duties, but full coverage'.[113] Shue goes on to argue that a division of moral labour is required in order to

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[109] Waldron refers here to Raz as well as to Neil MacCormick, whose account of rights was influential for Raz. 'Rights and Duties', p. 16.

[110] 'The Moral Reality of Human Rights'.

[111] 'The Moral Reality of Human Rights', p. 77

[112] Ibid.

ensure the fulfillment of universal rights when the duties entailed are positive. The idea is that the positive duties corresponding to a given universal right are initially imperfect, but can be perfected through the introduction of patterns of cooperation.

Interestingly, one could agree that universal rights do not entail universal duties, and yet still hold that human rights must be doubly universal. A right that is universal in scope could, in principle, not be universal in obligation. But as we saw in Chapter 2, the reason that that human rights are thought to be doubly universal is on account of their being fundamental. It might be that some universal rights do not entail universal duties, but O'Neill's point is that insofar as we take a right to be *fundamental*, it must entail universal duties. Tasioulas does not deny that human rights are fundamental rights – rights held simply in virtue of our humanity. They are not, on his view, held in virtue of any special relationships. This, however, poses a problem: If a human right is not held against all moral agents, then some criteria are necessary in order to decide who the duty-bearers are. As O'Neill's argument implies, no criteria are available such that their application will, in all instances, yield a determinate attribution of duties to specific duty-bearers. As such, institutions are required to place agents able to assist in a special relationship to certain persons in need. The objection is thus that the right can therefore not be fundamental since this means that it is held in virtue of the value to all persons of having access to the means for subsistence, but *also* in virtue of the particular relationship in which the right-holder is placed by the relevant institutional arrangements to those who are assigned the duties. Tasioulas's reply is that this is to confuse the existence of a right with its implementation.[114] On LPA, the implementation of all rights requires that specific duties be assigned to specific agents; but this is taken to be a separate matter from the justified affirmation of a right. On their view, we can justifiably affirm a right before knowing who the relevant duty-bearers are and the content of their duties.

Tasioulas goes on to argue that indeterminacy in the content of duties and identification of duty-bearers does not threaten the existence of a right, but rather 'reflects a healthy plurality of mechanisms for securing the right'.[115] This, he argues, is because, following Raz, he takes rights to be *dynamic*. To say that rights, or more specifically their deontic implications, are dynamic means that the fulfillment of a right can be multiply realizable: Some rights can be fulfilled in a number of different ways

[113] 'Mediating Duties', p. 690.

[114] 'The Moral Reality of Human Rights', p. 93.

[115] 'The Moral Reality of Human Rights', p.94.

involving different combinations of acts and abstentions on the part of others. Affirming that the deontic implications of rights can be dynamic constitutes a denial of the claimability condition. This is because the dynamism of rights affirms that it can simultaneously be the case that *X* is a right and that the deontic implications of *X* are not determinate. This is precisely what the claimability condition precludes.

3.2.4. Trouble with the Interest Argument

What I have shown so far is that both Waldron and Tasioulas defend the conventional interpretation of the human right to subsistence against the claimability objection by explicitly affirming LPA. While LPA can undoubtedly accommodate a human right to subsistence given the tremendous value for all persons of having access to the means for subsistence, the trouble with both of their arguments is that, like the Basic Right Argument, they simply presuppose this conception of rights. Neither Waldron nor Tasioulas provides any reason for thinking that LPA is superior to DRA.

Waldron's argument might be more convincing if it were the case that the conception of rights according to which rights cannot correlate with imperfect duties cannot adequately account for the moral difference between case (1) and case (2) above. If it could be shown both that there is no other satisfactory way of expressing the difference between the two cases but through the vocabulary of rights, and that all of the duties involved genuinely are imperfect, proponents of the claimability condition would have cause to re-assess their conception of rights. I argue, however, that DRA can provide a satisfactory account of the moral difference between (1) and (2). As such, Waldron's argument, like the Basic Rights Argument, is incomplete.

As we have seen, the moral difference between case (1) and case (2) has to do with what can be said of the situation in which each duty-bearer has discharged her duty, and yet some potential beneficiaries remain unbenefitted despite it having been possible for all potential beneficiaries to receive some benefit. It seems plausible to suppose that there is nothing morally problematic about this situation with respect to case (1), whereas something has indeed gone terribly wrong if this happens in case (2). The question is whether this difference can be adequately accounted for without attributing rights to the potential beneficiaries in case (2). I think it can.

While imperfect duties admit of discretion in their fulfillment, it is a mistake to think that all imperfect duties admit of a wide degree of discretion. What is required in order to fulfil an imperfect duty may depend on features of the circumstances in which

the duty-bearer finds himself, and the features of the circumstances in which the duty-bearer finds himself serve to limit the ways in which his imperfect duty might be fulfilled. The relevant features of one's circumstances must therefore be taken into account in deciding how to discharge one's imperfect duties.

When ascertaining how to discharge one's imperfect duty to assist those in dire need, I argue that the relevant features of one's circumstances include what others are doing. If all of Waldron's wealthy philanthropists accidentally lavish their charity on the same few individuals, leaving others in dire need, this is because they have each failed to take into account what the others will be doing. We can understand the moral fault of this situation to lie in the fact that the duty-bearers failed to take into account all the morally relevant features of their circumstances in deciding how to discharge their own imperfect duties, and thus failed to properly discharge those duties. It might be pointed out that the same could be said in case (1) where there are multiple benefactors and multiple potential beneficiaries. Why should Smith and his siblings not be required to cooperate so as to ensure an equitable distribution of inheritance among their family members?

The reason is, I think, in line with Waldron's own view to the extent that it has to do with the interests of the family members in inheriting from Smith and his siblings. The thought is that these interests are not sufficient to warrant consideration in this case, whereas the interests that the needy in case (2) have in acquiring access to the means for subsistence is of sufficient importance as to warrant consideration in the deliberations of Jones and his wealthy philanthropist friends about how they ought to act. It is this distinction that Waldron characterizes in terms of rights. My query is that it is not clear what more we get out of characterizing it terms of rights as compared to characterizing it purely in terms of the relative importance of the interests in question. In the next chapter, I will provide a more detailed discussion of this question.

I have outlined three related arguments in defence of the conventional interpretation of the human right to subsistence which are based on the rejection of the claimability condition. What these arguments have in common is they all presuppose, implicitly or explicitly, LPA. I argue that it is the viability of this conception of rights that is fundamentally at issue in the debate over the human right to subsistence and socio-economic human rights in general. If LPA can be vindicated, it does indeed seem that we have reason to reject the claimability condition altogether. In the absence of reasons for

preferring this conception of rights, however, the arguments just discussed provide only a partial defence of the conventional interpretation of the human right to subsistence. In the following section, I turn to an assessment of the interpretation of the human right to subsistence based on LPA.

3.3. Towards Resolving the Dispute

I have so far argued that (1) the conventional interpretation of the human right to subsistence and the claimability objection presuppose different and incompatible accounts of the nature, and particularly the logical structure, of rights; and (2) some influential arguments in defence of the conventional interpretation fail to address the claimability objection because they simply assume a conception of rights according to which claimability is not a condition. One way to proceed here would be to attempt to provide a decisive argument in favour of either LPA or DRA. If DRA could be vindicated and LPA rejected, then we would have to discard the arguments discussed in the previous section. On the other hand, if LPA could be vindicated, then the arguments discussed in the previous section would be complete. In this section, I will advance a slightly weaker argument. Rather than trying to show that LPA or DRA should prevail, I argue instead that understood according to LPA, the conventional interpretation does not provide a plausible account of the human right to subsistence. In this, I remain agnostic as to whether claimability is a condition on *all* rights, and argue instead that it is at least a condition on the justified affirmation of a human right to subsistence.

My argument hinges on my earlier claim that the justifiability of affirming a human right to subsistence requires that it make a distinctive contribution to reasoning about the normative implications of global poverty. Theorizing about human rights does not take place in a vacuum. Just as theorizing about legal rights must make reference to the legal context and purpose of rights, so too must theorizing about human rights – as moral rights – make reference to their normative context and role in normative reasoning. My claim in this section is that unless the duties correlative to the human right to subsistence are claimable, this condition remains unfulfilled.

3.3.1. The Human Right to Subsistence and the Normative Implications of Global Poverty

In Chapter 1, I outlined the central questions concerning the normative implications of global poverty. These include the question of which agents bear remedial responsibility for the deprivations experienced by the global poor as well as the question of what

responses are warranted when these responsibilities are shirked. I argued that a plausible account of the human right to subsistence must make some distinctive contribution to answering at least one of these questions, and I suggested that it is with respect to the justified responses on the part of first and third parties that it is likely to do so. I argue in this section that interpreted according to LPA, the human right to subsistence in fact fails to make this or any other distinctive contribution to reasoning about the normative implications of global poverty.

In a sense Raz himself concedes the point that rights according to his conception make no distinctive contribution to normative reasoning. On his account, we can move directly from interests to duties without positing rights at all; but positing rights serves the purpose of making reference to these arguments easier, and also highlighting how different premises at the level of values can lead to the same conclusions about duties. In this respect, the affirmation of a right serves a distinctive purpose in moral and political *discourse*, namely by facilitating it; yet it does not make a distinctive contribution to *reasoning* about the specific normative implications of a situation. The affirmation of a right merely signals that it is justifiable to hold agents to be under duties with respect to the interests of others. The right itself does no justificatory work. Furthermore, it contributes nothing to determining which agents owe which duties to which right-holders, nor what right-holders and third parties are entitled or required to do when the duties in question are not fulfilled.

The affirmation of a right on the Razian account is just the re-statement of a given set of premises using a different term, in much the same way as one might affirm on the basis of having two fifty-pence coins that one has a pound. Understood on the Razian account, the human right to subsistence is an essentially redundant conclusion in an argument from the importance for all persons of having access to the means for subsistence to duties to respect, protect, and promote their enjoyment of access to the means for subsistence. Referring to a human right to subsistence allows us to remain neutral with respect to which specific values give rise to duties – on our analogy, which specific combination of small coins yields our one pound. But as far as working out the normative implications of global poverty, the affirmation of a human right to subsistence says nothing more than that there is at least one argument from the value of having access to the means for subsistence to duties on the part of others to respect, protect, and promote this value. This does not contribute anything distinctive to answering the

questions of remedial and preventive responsibility, nor does it contribute to justifying actions in response to the failure to fulfil these responsibilities.

Defenders of the conventional interpretation of human right to subsistence do not typically endorse such a weak interpretation. Few would be happy to say that the affirmation of a human right to subsistence expresses nothing more than the observation that there are a number of arguments that lead to the conclusion that there are moral duties to respect, protect, and promote people's enjoyment of access to the means for subsistence. The affirmation of a human right to subsistence is generally taken by its proponents to entail facts about the nature of the corresponding obligations. In particular, proponents of the conventional interpretation of the human right to subsistence generally endorse the view discussed in Chapter 1 according to which the duties correlative to rights are necessarily duties of justice, and are therefore justifiably enforceable, at least *prima facie*.

This claim is, for example, at the core of Simon Caney's argument in defence of the conventional interpretation of the human right to subsistence.[116] He argues that we should see the duties to protect people from deprivation of and to provide them with access to the means for subsistence as duties of justice because otherwise, they will not be enforced. If this were the case, Caney notes that 'there would be less compliance and more poverty' (p. 299). He concludes that we should therefore prefer an account that characterizes the duties to protect people from deprivation of and to provide them with access to the means for subsistence as duties of justice, correlative to a human right to subsistence.

An initial problem with Caney's argument is that, as discussed in Chapter 1, there is no reason to think that duties of justice will necessarily be enforced. There is furthermore no reason to think that they are even more likely to be enforced than duties of beneficence. If this argument is to have any plausibility, it must therefore be weakened to the claim that if there is a human right to subsistence, then there will be *prima facie* justification to enforce whatever duties correlate with it. Since the human right to subsistence correlates with positive duties of protection and assistance on the conventional account, on this account, these duties are therefore *prima facie* justifiably enforceable. In the following sub-section, I raise some doubts about the success of this argument.

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[116] Caney, 'Global Poverty and Human Rights: The Case for Positive Duties'.

3.3.2. The enforceability of duties to protect and assist

If the duties correlative to human rights are duties of justice, and duties of justice are *prima facie* justifiably enforceable as such, then we can infer that the duties correlative to the human right to subsistence are *prima facie* justifiably enforceable as such. In this respect, it looks as though the affirmation of a human right to subsistence makes a distinctive contribution to reasoning about the normative implications of global poverty, particularly with respect to the sorts of responses that are warranted in case remedial and preventive responsibilities are neglected. Insofar as these responsibilities constitute duties correlative to the human right to subsistence, then it follows that the use of coercive force in guaranteeing their fulfillment is *prima facie* justifiable. In this section, I will suggest that this is actually not the case for the positive duties of protection and assistance. This, I will argue, is because in the absence of institutions, they do not correlate with the human right to subsistence in the way requisite for their enforcement to be justifiably enforceable as such.

My central claim is that the view that the positive duties of protection and assistance thought to correlate with the human right to subsistence on the conventional interpretation are enforceable neglects an important epistemic component of enforceability. Enforcement is never justified if it is arbitrary. In order for enforcement to be justified, we must know who can justifiably be coerced and what they can justifiably be coerced into doing. I argue that the force of the claimability objection is to underscore the indeterminacy of the relevant duties. Because the positive duties thought to correlate with the human right to subsistence on the conventional interpretation are imperfect and thus have indeterminate bearers and content, they cannot justifiably be enforced until it is established who owes what to whom. This is not what O'Neill herself argues, but my point here is that it provides the best way to understand the claimability objection. While it may be unclear clear why claimability itself matters to the justified affirmation of rights, its connection to enforceability makes its relevance more apparent.

Proponents of the conventional interpretation might reply that this is not damaging to their view since all they are saying is that *once we establish who owes what to whom*, those duties can *prima facie* justifiably be enforced. Interpreted according to LPA, the affirmation of a human right to subsistence admittedly contributes nothing to establishing who is remedially and preventively responsible. However, the claim on behalf of defenders of this account is that once it is worked out who owes what to

whom, the fact that these duties are necessary to fulfil a human right justifies their enforcement, at least *prima facie*.

I argue that the problem with this reply has to do with the allocation of duties. Miller helpfully distinguishes between the *identification* and *assignment* of responsibility.[117] The identification of responsibility can take place only when there is a fact of the matter about who is responsible. In cases where there is no fact of the matter, responsibility must be assigned. An identification of responsible agents can be correct or incorrect. By contrast, an assignment of responsibility to agents can be justified or unjustified, but not correct or incorrect since there is no fact of the matter to appeal to as a standard.

There might be principles for the identification of remedial responsibility that apply in some cases. We might think, for example, that the agent who is morally responsible for the bad situation is necessarily remedially responsible for it.[118] This, however, will not be the case for the fundamental positive duties thought to correlate with the human right to subsistence since they are not owed on the basis of any prior interaction. It is acknowledged even by defenders of the conventional interpretation that the bearers of the positive duties thought to correlate with the human right to subsistence are indeterminate. As such, these duties cannot be *identified*; rather they must be *assigned*.

Given the vast number of people in need and vast number of agents able to assist, there will almost always be more than one justifiable assignment of the relevant duties. An important question therefore concerns who gets to do the assigning. My claim is that the justifiability of enforcement of duties that must be assigned rather than identified will depend in part on the legitimacy of the agent doing the assigning and enforcing. And this requires institutional arrangements. The positive duties thought to correlate with the human right to subsistence will therefore not be justifiably enforceable *as such* in the absence of institutions. This, I think, is the best way of interpreting O'Neill's point.

A defender of the conventional interpretation might reply that if there are multiple distributions of duties that are morally equivalent (no moral principle make one preferable to the others), then they are each *prima facie* justifiably enforceable. This

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[117] *National Responsibility and Global Justice*, p. 84.

[118] Miller himself does not think that there are any such straightforward principles, but it remains an open question whether there are. I discuss this further in Chapter 6.

thought requires careful formulation since it is not the case that there is *prima facie* justification to enforce *all* of the options. If there is no moral difference between A assisting X while B assists Y, and A assisting Y while B assists X, the suggestion under consideration is that there is *prima facie* justification to enforce *either* A's duty to assist X and B's duty to assist Y, *or* A's duty to assist Y and B's duty to assist X, but at any rate not both of these options. The claim, then, must be that insofar as there is a fundamental right to assistance, there is *prima facie* justification to enforce the exclusive disjunction of all the morally equivalent distributions of duties of assistance. That is to say that any one, but not all of the morally equivalent sets of duties can *prima facie* justifiably be enforced. In order to support this interpretation, it must be shown that it makes a distinctive contribution to reasoning about the normative implications of global poverty. I argue that in the absence of institutions, it does not.

I mentioned in the introductory chapter that the reason the duties correlative to rights are *prima facie* justifiably enforceable is that they stem from the legitimate demands of individuals. The duties correlative to rights unlike those that do not correlate with rights, are owed to particular individuals on the basis of the legitimate demands those individuals have. What it means for someone to owe you a duty is that you are *prima facie* justified in responding in certain ways when that duty goes unfulfilled. In particular, it is *prima facie* justifiable for you or someone acting on your behalf to use coercive force to exact performance of the duty in question. It follows from this, however, that a duty is only justifiably enforceable for this reasons if it is claimable on O'Neill's account of claimability. Rights that are not claimable do not have duties that correlate with them in the sense required to warrant the use of coercive force in ensuring their performance. In such cases, institutions are required to assign duties to agents before any duties are even *prima facie* justifiably enforceable.

My point is that duties with indeterminate content cannot be justifiably enforceable until their content has been made more determinate. But because institutions are required for this, duties with indeterminate content are never *prima facie* justifiably enforceable *as such*, as a matter of fundamental justice: further justificatory contributions are always required.

A defender of the conventional interpretation of the human right to subsistence might point out that from the perspective of those in need, it does not matter which distribution of duties is chosen from among the set of morally equivalent fair distributions. While this is true, it does not help solve the problem that until one

distribution has been chosen, no one has a claim on any agent in particular, and so no duties can justifiably be enforced as such.

The point of this discussion has been to show that although we can infer that the duties correlative to rights are *prima facie* justifiably enforceable as such, in the absence of institutions, no positive duties correlate with the human right to subsistence in the right way for this to apply. As such, the human right to subsistence on the conventional interpretation does not make the contribution to reasoning about the normative implications of global poverty that some have argued it does.

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AVOIDING THE CLAIMABILITY OBJECTION

I have argued that at the core of the debate between proponents of the claimability condition and defenders of the human right to subsistence is the question of the nature of moral rights. I have also suggested that the conventional interpretation of the human right to subsistence based on a conception of rights that denies the claimability condition struggles to make a distinctive contribution to reasoning about the normative implications of global poverty. O'Neill concludes that we should therefore abandon reference to the human right to subsistence altogether in reasoning about the normative implications of global poverty. I think that this is too hasty. It overlooks alternative interpretations of the human right to subsistence that promise conformity with the claimability condition. The arguments in defence of the human right to subsistence discussed in the previous chapter rejected the claimability objection on the basis of a denial of the claimability condition. In this chapter, I turn to a different strategy for overcoming the claimability objection. Rather than seeking to deny the claimability condition, the arguments that I discuss in this chapter and the next grant it, and instead consider whether a plausible account of the human right to subsistence is available that can fulfil it.

In the following sections, I explore three alternative ways of defending the human right to subsistence that take for granted the claimability condition. One takes human rights in general to be claims held primarily against the coercive social institutions

imposed upon oneself. In section 4.1, I discuss an institutional account according to which the human right to subsistence is claimable for each individual against the coercive social institutions imposed upon her. This account deviates from the conventional interpretation in that it does not take human rights to be fundamental rights, but rather rights that arise out of the special relationship between individuals and coercive social institutions. I argue that this account fails because it arbitrarily limits the role of human rights. In section 4.2, I discuss a further alternative account of the human right to subsistence that involves interpreting the positive duty of assistance correlative to the human right to subsistence as a claim held against the collective of all those in a position to make some contribution to the alleviation of global poverty. I argue that this interpretation fails since the relevant collective cannot fulfil the necessary conditions for bearing duties. The final interpretation of the human right to subsistence that I discuss in section 4.3 of this chapter remains true to the conventional interpretation in that it takes human rights to be fundamental rights, but it deviates from the conventional interpretation in that it reinterprets the human right to subsistence as a right held against all others to respect, recognition, and consideration. Although of the three accounts I discuss here, I think this one provides the most plausible interpretation of the human right to subsistence in light of the claimability condition, it diverges considerably from how rights in general, and the human right to subsistence in particular, are generally understood. Furthermore, this account falls prey to some of the same problems as the interpretation of the conventional interpretation based on LPA discussed in the previous chapter. In the next chapter, I advance a fourth alternative interpretation of the human right to subsistence that I argue succeeds both in avoiding the claimability objection and in providing a plausible interpretation of this right.

What these approaches all have in common is that they all grant the claimability condition and seek instead to challenge the second premise of the claimability objection, namely that the human right to subsistence is not claimable. Although I argue that none of the accounts discussed in this part ultimately succeed, I think that their broad approach has great potential to move the discussion forward. In particular, it is an appealing approach in that it allows us to circumvent deep-rooted differences over the nature of rights. My own argument in defence of the human right to subsistence which I advance in Chapters 5 and 6 takes this approach.

It might be objected that my acceptance of the claimability condition is hasty in the absence of further reasons in support of DRA over LPA. I concede that I have offered only a tentative reason in support of maintaining the claimability condition as applied to the human right to subsistence, and I certainly think that further investigation is required in this area of rights theory. My hope, however, is to contribute to the discourse on the normative implications of global poverty without getting mired in debate at the level of rights theory. This is because debates at this level are long-standing and there is no clear path to their resolution. To reiterate, I do not mean to suggest that progress in these debates should not be pursued. Rather, my purpose here is simply to show that we can make progress in reasoning about the human right to subsistence and the normative implications of global poverty *despite* enduring tensions at the level of rights theory. Surely this is advantageous.

4.1. Institutionalism about Human Rights?

The focus of this section will be on the work of Thomas Pogge. Pogge has made an important contribution to the literature on global poverty and the human right to subsistence and his account is worth discussing in detail here for at least two reasons. First, his account of the human right to subsistence promises to avoid the claimability objection. That said, Pogge's account is not intended specifically as a reply to the claimability objection. Rather, Pogge's account is widely interpreted as reply to the libertarian view outlined in Chapter 2 that duties of justice are only ever in the first place negative. As we shall see, Pogge grants this premise without necessarily endorsing it in order to show that, contrary to what is generally thought, it is consistent with a human right to subsistence and positive duties of justice on the part of the global rich to assist the global poor. I will argue that, in addition to promising to provide a reply to the libertarian argument, Pogge's account offers a potential reply to the claimability objection. Nevertheless, I will argue that Pogge's argument ultimately fails as a reply to both.[119] Pogge's account does, however, contain considerable insights, some of which I borrow in the account I advance in Chapter 5.

This brings us to the second reason that a detailed discussion of Pogge's account is relevant here. The account that I advance in Chapter 5 shares much in common with Pogge's account, particularly in that it seeks common ground from which the discussion

[119] Tasioulas makes a similar point in 'Philosophy, Criticism, and Community', *Journal of Applied Philosophy*, 26 (2009), 259-268 (p. 262).

of the normative implications of global poverty can proceed. Understanding Pogge's account and why I do not think it is successful will help to highlight the ways in which my own account differs from it and, hopefully, improves on it.

4.1.1. Pogge's Institutional Account

An important insight from Pogge is that the specific content of a right is not always given by how it is expressed.[120] The right to life, for example, is not generally understood as a right not to die. Neither is it a right to have one's life saved at all cost. A right to life may mean having a claim not to be killed, but even some killing is thought to be morally justifiable. So the right to life is more accurately characterized as giving the right-holder a claim not to be unjustifiably killed, and perhaps under certain conditions a claim to some life-preserving measures. While rights are often stated in lofty, abstract terms, the specific content of a right is given by its correlative duties. Pogge reminds us of this because many are quick to dismiss the possibility of a human right to subsistence on the grounds that human rights cannot have as their correlates positive duties of provision. Pogge invites us to consider a conception of the human right to subsistence according to which its content is not necessarily the provision of access to basic necessities on the part of all those who are able to do so. In this respect, Pogge's account of the human right to subsistence represents a deviation from the conventional interpretation. On Pogge's account, the content of the human right to subsistence is more complicated than this. As we shall see shortly, this has to do with his emphasis on the institutional side of human rights. Ultimately Pogge argues that we should interpret the human right to subsistence as a right not to have coercively imposed upon us any social institution under which we are foreseeably and avoidably subject to severe poverty. In what follows we shall take a closer look at what Pogge means by this and why he thinks we should endorse this account.

Pogge's approach is to grant the libertarian premise that fundamental duties of justice can only be negative:

> My argument conceives (…) both human rights and justice as involving solely negative duties: specific minimal constraints – more minimal in the case of human rights – on what harms persons may inflict upon others.[121]

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[120] Pogge, 'Severe Poverty as a Human Rights Violation', p. 14.

[121] *World Poverty and Human Rights*, p. 13.

Pogge does not reveal whether or not he thinks this conception to be correct. He emphasizes, however, that his silence on this matter should not be taken as an endorsement of the view that there are no fundamental positive duties of justice.[122]

In reply to those who reject the human right to subsistence on the basis of its correlation with positive duties of assistance it is often pointed out that it also correlates with the negative duty not to deprive others of access to the means for subsistence.[123] Interestingly, this is not the central duty that Pogge's account is built on. The negative duty that Pogge primarily focuses on is the duty not to be complicit in or to benefit from the imposition on others of unjust coercive social institutions. A coercive social institution that deprives those upon whom it is imposed of access to the means for subsistence is, on Pogge's account, unjust. But as we shall see shortly, his account of social injustice includes more than this.

Pogge distinguishes his 'institutional' account of human rights from 'interactional' conceptions that place 'the treatment of human beings under certain constraints that do not presuppose the existence of social institutions.'[124] On an interactional conception, human rights provide norms that govern, primarily interpersonal interaction. The duty not to deprive people of access to the means for subsistence is a norm of interpersonal interaction. By contrast, Pogge's institutional understanding sees human rights 'primarily as claims on coercive social institutions and secondarily as claims on those who uphold such institutions.'[125] Human rights on an institutional conception therefore provide norms that govern the conduct of individuals indirectly.

Inspiration for Pogge's institutionalism about human rights comes from Article 28 of the UDHR according to which 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized'.[126] This formulation is, however, open to some interpretation. First of all, it is

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122 'Severe Poverty as a Violation of Negative Duties', *Ethics & International Affairs*, 19 (2005), 55-83 (pp. 65-66, p. 74).

123 See, notably, Shue, *Basic Rights*, Chapter 2. This claim is central to my own account advanced in Chapter 5. I return to it there.

124 *World Poverty and Human Rights*, p. 45.

125 *World Poverty and Human Rights*, p.45. Although Pogge focuses on the institutional interpretation of human rights, he concedes that human rights might also have interactional elements as well. See 'Human Rights as a Violation of Negative Duties', pp. 65-66.

126 Pogge sites Article 28 in a number of places including *World Poverty and Human Rights*, p. 1, p. 64; 'Human Rights and Human Responsibilities', in *Global Responsibilities: Who Must Deliver on*

not clear whether this right simply constrains morally what sorts of social institutions can be coercively imposed on persons, or whether it mandates the creation of new social institutions when this would make possible the full realization of human rights. Given his focus on negative duties, Pogge remains neutral on whether this right entitles people to the creation of new institutions, and focuses instead on the constraint it imposes on existing and hypothetical institutions.

Secondly, it is not clear what constitutes an institutional order in which human rights can be fully realized. Elucidating this requires an account of what it means for a right to be fully realized. Pogge equates full realization of rights with their fulfillment. On one interpretation, a right is fulfilled insofar as it is, as a matter of fact, not being violated by any moral agent. But Pogge's account is rather more demanding than this. On his account, 'a human right is fulfilled for some person if and only if this person enjoys *secure access to the object of this human right*'.[127] In most cases, this will involve institutional guarantees to the objects of human rights.[128] Pogge recognises that no institution can absolutely guarantee secure access to the objects of human rights to all those upon whom it is imposed; however, he holds that in order for human rights to be fully realized, the enjoyment of their objects must be protected against standard threats.[129] In many cases this will require a great deal of social planning and infrastructure that may go well beyond the intended function of the institutions in question. Furthermore, this will inevitably entail costs for those involved in the imposition of the institutions in question.[130]

Finally, interpreting Article 28 requires the provision of an account of how we can ascertain whether human rights can be fully realized within a given institutional order. It seems plausible to suppose that we know that an institutional order fulfils this condition if (and only if) the incomplete realization of any human rights cannot be

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Human Rights, ed. by Andrew Kuper (New York: Routledge, 2005), pp. 3-36 (p. 14); and 'Severe Poverty as a Violation of Negative Duties', p. 11.

127 'Human Rights and Human Responsibilities', p. 15.

128 Pogge acknowledges, however, that the object of a right can be socially guaranteed without being institutionally guaranteed. See *World Poverty and Human Rights*, p. 45.

129 The idea of 'standard threats' to the enjoyment of the object of a right is borrowed from Shue, *Basic Rights*. Although Pogge himself does not specifically invoke Shue's work in this case, it seems to be what he has in mind.

130 As discussed in 3.2.1., it is on similar grounds that Shue famously rejects the distinction between positive (welfare) and negative (liberty) rights in *Basic Rights*, Chapter 2.

attributed to the order in question. But when can we attribute the incomplete realization or non-realization of rights to a given institutional order?

On one account, we can attribute the incomplete realization of human rights to an institutional order if reforming that institutional order is necessary for human rights to be fully realized. That is to say that we can attribute the incomplete realization of human rights to an institutional order if there are no modifications that can feasibly be made to any other factors affecting the realization of human rights such that these rights could be fully realized without modifying the institutional order in question. This account involves keeping constant the structure of the institutional order under evaluation and asking whether it is possible to arrange other factors affecting the realization of human rights in such a way that human rights are fully realized. If this can be accomplished, then on this account human rights can be fully realized under that institutional order.

This, however, is not the account that Pogge favours. Rather, he claims that, 'how fully human rights can be realized in some institutional order is measured by how fully these human rights generally are (…) realized in it'.[131] Note that on the account outlined in the previous paragraph, it is possible for human rights not to be fully realized in general, but for their full realization nevertheless to be possible under the institutional order in question. On Pogge's view, the incomplete realization of human rights can be attributed to an institutional order if there are feasible alternatives to the way the institutional order is structured that would guarantee that human rights are fully realized, or at least that they are realized to the greatest possible extent given practical constraints.

Given the various ways in which the components of Article 28 can be understood, we are left with a range of interpretations of the right expressed in it. At one extreme is the *minimalist* interpretation and at the other extreme is the *maximalist* interpretation.

Minimalist Interpretation of Article 28: Everyone has a claim against anyone involved in coercively imposing upon them an institutional order that the institutional order in question not be structured in such a way that makes it impossible for the other rights and freedoms set out in the UDHR to not be violated.

Maximalist Interpretation of Article 28: Everyone has a claim against anyone involved in coercively imposing upon them an institutional order that the institutional order in question be structured in such a way as to ensure their enjoyment of secure access to the objects of the other rights and freedoms set out in the UDHR, and everyone

[131] 'Human Rights and Human Responsibilities', p. 14.

is also entitled to the creation of new institutional orders that make possible the secure enjoyment of the objects of their human rights where this is not otherwise possible.

Pogge's interpretation falls somewhere in between these two extremes, but slightly closer to the maximalist interpretation.

Pogge's Interpretation of Article 28: Everyone *at least* has a claim against anyone involved in coercively imposing upon them an institutional order that the institutional order in question be structured in such a way as to ensure their enjoyment of secure access to the objects of the other rights and freedoms set out in the UDHR.

It is notable that Pogge opts for more than the minimalist interpretation of Article 28 given his aims of engaging with those who deny that duties of justice can extend to the positive provision of goods and services except by contract. I will, however, return to this point over the course of what follows.

So far we have seen that Pogge argues that there is a stringent universal negative duty of justice not to impose, be complicit in imposing, or benefit from the imposition of unjust coercive social institutions. He thinks that this is compatible with the libertarian view that fundamental duties of justice are only ever negative. On Pogge's account, a social institution is unjust insofar as it could feasibly be modified in such a way that human rights deficits could be avoided. Rather than being understood as rights that all persons hold against all other moral agents, on Pogge's account, human rights are, in the first place, claims held against the coercive social institutions imposed upon oneself. This may seem to have the odd implication that someone who is not subject to any coercive social institution does not therefore have any human rights.[132] I do not, however, think that Pogge's account need be interpreted in this way. Pogge holds that to have a human right to X is to have a claim against the social institutions coercively imposed upon oneself to guarantee one's enjoyment of X. I argue that we should understand the human right to X on Pogge's account, then, as a claim that no one coercively impose upon oneself a social institution that does not guarantee one's enjoyment of X. In this respect, human rights are held by all humans, regardless of the social institutions that happen to be coercively imposed upon them, and against all moral agents. The idea is that, if there is a human right to X, the guarantee of X (among the other objects of human rights) is a condition

[132] Thanks to Peter Jones for bringing this point to my attention.

on the justified coercive imposition of a social institution on any person. This, we should note, is consistent with any substantive account of human rights.[133] So in order to make any substantive evaluations of existing institutional orders based on this, what we now need is an account of what human rights there are.

Pogge accepts that the justification of human rights must be widely-acceptable. In order to achieve this, he advances an account of human rights according to which they are grounded in widely accepted values. In order to accommodate the plurality of values held by people worldwide, Pogge thinks human rights are grounded not in any particular conception of human flourishing, but rather in 'the social context and means that persons normally need, according to some broad range of plausible conceptions of what human flourishing consists in, to lead a minimally worthwhile life'.[134] As the core criterion of basic social justice, human rights thus imply that (at least minimally) just social institutions are ones that are structured in such a way 'that the persons affected by them can develop, deepen, and realize an ethical world view of their own' (Ibid.). From this, Pogge argues that we can derive three categories of human rights: liberty of conscience, political participation, and basic goods.

The human right to subsistence falls under the category of rights to basic goods. The object of this right is access to the means for basic subsistence including adequate food, water, clothing, housing, and medical care. Pogge's justification for including this right among human rights is that a person has no reasonable chance at living a minimally decent human life insofar as they lack access to the means for basic subsistence. The existence of a human right with access to the means for subsistence as its object on Pogge's account means that any institutional order in which those on whom it is imposed cannot securely enjoy access to the means for subsistence but who could given certain feasible institutional reforms is unjust, and anyone who cooperates in upholding it is in violation of their negative duty not to impose upon others unjust coercive social institutions. Recall that on Pogge's view it is not sufficient that the institutional order in question simply not impede the secure enjoyment of access to the means for basic subsistence. For Pogge, in order for an institutional order to be just, human rights must in general be fulfilled within it, where fulfillment implies reasonably secure enjoyment of the objects of the rights in question. As such, for an institutional order to be at least

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[133] Pogge, 'Human Rights and Human Responsibilities', p. 14.

[134] *World Poverty and Human Rights*, p. 48.

minimally just, it must be structured in such a way as to guarantee reasonably secure access to the means for basic subsistence for all those upon whom it is imposed.

4.1.2. Trouble with Pogge's Account

It should be clear enough that the existing global order is failing badly in respect to Pogge's interpretation of the human right to subsistence. Pogge is right to point out that there are feasible alternatives to the way that the global order is currently structured that, if implemented, would result in much less severe poverty worldwide.[135] On his account, all those who are complicit in the imposition of the existing global order or who benefit from it are in violation of their duty not to impose on others unjust coercive social institutions. He argues that those who are complicit in the imposition of the existing global order or who benefit from it therefore owe assistance by way of compensation to those burdened by it.

Pogge favours his institutional interpretation of the human right to subsistence because he thinks it 'occupies an appealing middle ground':

> It goes beyond (minimalist interactional) libertarianism, which disconnects us from any deprivations we do not directly bring about, without falling into a (maximalist interactional) utilitarianism of rights, which holds each of us responsible for all deprivations whatever, regardless of the nature of our causal relation to them.[136]

In this section I will question whether Pogge's account really offers the sort of compromise he thinks it does.

Although Pogge is explicit about his methodology, he is not always clear about who his intended interlocutor is. As I mentioned earlier, Pogge is generally taken to be engaging with the libertarian, but his argument is also at times aimed at the average citizen of a relatively affluent democratic country who does not have a well worked-out moral and political philosophy, and at other times aimed at the liberal egalitarian nationalist. As we shall see, Pogge's argument is not equally successful in addressing each of these interlocutors. In this section, I argue that although Pogge's account is minimalist with respect to interactional duties, because it goes beyond minimalism with respect to what is required of social institutions, it draws on premises that his libertarian interlocutors will reject. As such, my claim is that Pogge fails to provide a convincing

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[135] Pogge argues for this point at length in a number of publications including notably *World Poverty and Human Rights,* Chapter 8, and 'Severe Poverty as a Violation of Human Rights'.

[136] *World Poverty and Human Rights*, p. 66.

reply to the libertarian view. I argue that his arguments may fare better against the average citizen and the liberal egalitarian nationalist before turning to the question of whether it can avoid the claimability objection.

Pogge's libertarian interlocutor is someone who holds that duties of justice are always in the first place negative. I argue that it is unlikely that someone who conceives of 'both human rights and justice as involving solely negative duties' will accept Pogge's view that justice requires that coercive social institutions be structured in such a way as to guarantee reasonably secure access to the means for subsistence for those upon whom they are imposed. Libertarians draw a sharp distinction between harming and merely failing to benefit. They will argue that being guaranteed reasonably secure access to the means for subsistence constitutes a benefit. On this account, failing to guarantee reasonably secure access to the means for subsistence does not count as harming people, but merely failing to benefit them.

Pogge has responded to this sort of criticism by arguing that coercively imposing a global order under which people are foreseeably and avoidably subject to severe poverty does in fact constitute a harm. But Pogge's notion of harm differs from the conventional understanding. Harm is a comparative notion. It is ordinarily understood with reference to some baseline. Harm is ordinarily understood relative to either a diachronic or a subjunctive baseline. According to the diachronic notion of harm, 'someone is harmed when she is rendered worse off than she was at some earlier time'. On the subjunctive notion of harm, someone is harmed insofar as she is rendered worse off 'than she would have been had some earlier arrangements continued undisturbed'.[137] These notions of harm can factor into an account of injustice, namely that justice requires refraining from (these notions of) harming others.

Pogge argues that neither of these notions of harm is relevant in ascertaining whether the current global order harms the global poor.[138] To evaluate the global order with respect to severe poverty on the basis of the diachronic notion of harm would entail considering whether the global poor are made worse off by it than they were at some previous time under some different order. But even if the global poor are, on the whole, better off under the current global order than they were under previous global orders, this does not entail that they are not being harmed by the current global order. This

[137] Pogge, 'World Poverty and Human Rights', *Ethics & International Affairs*, 19 (2005), 1-7 (p. 4).

[138] 'Severe Poverty as a Violation of Negative duties', pp. 39-41.

would be akin to saying that because there is less slavery under the current regime than there was under the past regime, the current regime does not harm those subject to slavery. This is a false inference.

To evaluate the global order with respect to severe poverty based on the subjunctive notion of harm would entail considering whether the global poor are worse or better off under the current global order than they would have been had some past order been allowed to persist. But again, to conclude that the global order does not harm the poor just because the global poor are, on the whole, better off than they would have been had some previous institutional order persisted is irrelevant to whether they are being harmed by the current institutional order. To illustrate, consider the claim that 'the regime of Jim Crowe laws did not harm African-Americans in the US South because they were better off than they would have been had slavery continued'.[139] Surely this is false even if it is true that they were better off under the regime of Jim Crowe laws than they would have been had slavery persisted.

On Pogge's account, the baseline by which harm is to be assessed is given by what justice requires. Instead of conceiving of injustice in terms of harm, Pogge's account 'relates the concepts of *harm* and *injustice* in the opposite way, conceiving harm in terms of an independently specified conception of social justice.' According to Pogge, 'we are *harming* the global poor if and insofar as we collaborate in imposing an *unjust* institutional order upon them'.[140] On Pogge's account, injustice is necessarily harmful, but the injustice does not have to be characterised in terms of the ordinary notions of harm outlined above.

On Pogge's account, the assertion that the imposition of unjust coercive social institutions is harmful leaves open what constitutes an unjust coercive social institution. Injustice on this account *may* be characterized in terms of the ordinary notions of harm discussed above, but it need not.[141] So, for example, if we take treating like cases alike as a principle of justice, a coercive system of laws that requires that men are paid more than

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[139] Ibid., p. 40.

[140] 'World Poverty and Human Rights', pp. 4-5.

[141] We should notice that if injustice is characterized in terms of the ordinary notions of harm, the claim that to impose an unjust social institution on others is to harm them becomes trivially true since it is both the case that the institution is harmful because it is unjust and unjust because it is harmful.

women for equal work is unjust.[142] This is true even if everyone is better off under this system than they were under the previous system (diachronic) or than they would have been had the previous system been allowed to persist (subjunctive), and even if the minimum wage for women is well above what anyone needs to live a comfortable and flourishing life. On Pogge's account, women under this system are harmed on account of being subject to injustice, not because they are made badly-off either in relative or absolute terms.

I agree with Pogge about the inadequacy of diachronic and subjunctive notions of harm with respect to evaluating the current global order. Furthermore, I agree that we can both conceive injustice in terms of harm and harm in terms of injustice without circularity. The problem with Pogge's account is the independent notion of injustice that he appeals to. Conceiving of harm in terms of injustice is consonant with the view that both human rights and justice involve only in the first instance negative duties; but Pogge's view that justice requires that coercive social institutions be structured in such a way as to guarantee reasonably secure access to the objects of human rights to all those upon whom they are imposed is not. This is why Pogge's account does not work as an reply to the libertarian account. Pogge's argument does not take into account the reasons that support the libertarian view that fundamental duties of justice are only ever negative and that justice requires in the first place only the non-violation of rights. The central reason for this, as we saw in the Chapter 2, is that all persons have a fundamental right to liberty. A social institution that is structured in such a way as to guarantee reasonably secure access to the objects of all of the human rights included in the UDHR will inevitably violate this right. This is because it will require, at least in some cases, the redistribution of resources on the basis of need. Pogge's interpretation of the human right to subsistence therefore does not offer a plausible reply to the libertarian, at least insofar as it is intended to grant the central libertarian premise.[143]

Although Pogge's argument fails to provide a successful reply to the libertarian objection, this may not be not as damaging a criticism as some have made it out to be. This is because there is reason to think that Pogge is not engaging specifically with the

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[142] I am not making any particular claim about whether we should accept this as a principle of justice. I am just giving an example of the sort of principle that Pogge has in mind, namely a principle of justice that has nothing to do with harming people on the ordinary notions of harm discussed above.

[143] Similar arguments have been advanced by Tasioulas, 'Philosophy, Criticism, and Community', p. 261; and Debra Satz, 'What do we Owe the Global Poor?', p. 53.

libertarian. The introductory chapter of *World Poverty and Human Rights* suggests that Pogge's interlocutor is not someone who holds a well-worked out libertarian theory. In fact, it suggests that he is engaging with the average citizen of a relatively affluent democratic country who has certain 'firmly entrenched moral convictions about interpersonal morality and domestic justice',[144] but not a particularly well thought-out moral or political philosophy. Elsewhere, Pogge engages with an interlocutor who espouses the nationalist view that different principles of justice apply respectively at the domestic and global levels.[145] I will set aside the question of whether Pogge's account succeeds as a response to either of these views since it is not material to out present concern. Our main concern here is with the potential of Pogge's institutional account of the human right to subsistence to overcome the claimability objection.

Pogge's institutional account of the human right to subsistence seems to avoid the claimability objection since he specifies outright that human rights are claims held in the first instance against the social institutions coercively imposed upon us. If this turns out to be a conceptual fact about human rights, then the human right to subsistence would be unproblematically claimable. This is because on the institutional conception, we could identify coercive social institutions as owing duties of assistance and protection against deprivation to all those upon whom they are imposed. Moreover, we can in principle identify as being in violation of the human right to subsistence all those responsible for the coercive imposition of social institutions that do not guarantee to all those upon whom they are imposed reasonably secure access to the means for subsistence.

I argue, however, that we lack sufficient reason to conceptually limit human rights in this way. Although it will often be the case that coercive social institutions are best placed to ensure the fulfillment of human rights, this is not a necessary fact about human rights, but rather a contingent fact about how the world happens to be structured. The fact that coercive social institutions will often be best placed to ensure the fulfillment of human rights is compatible with an interactional account because it does not follow from this that human rights are *necessarily* claims held primarily against coercive social institutions. Unless it is a conceptual fact about human rights that they are

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[144] Pogge, *World Poverty and Human Rights*, p. 1.

[145] Pogge has explicitly aimed his argument at liberal nationalists in 'Do Rawls's Two Theories of Justice Fit Together?' in *Rawls's Law of Peoples: A Realistic Utopia?* ed. by Rex Martin and David A. Reidy (Malden, MA: Blackwell Publishing, 2006), pp. 206-242. Miller has offered a reply in *National Responsibility and Global Justice*, pp. 238-247.

claims held primarily against the coercive social institutions imposed upon us, the claimability condition is not fulfilled.

An initial problem with Pogge's account is that it does not cohere with some plausible judgements about human rights. On his account, a necessary feature of human rights violations is that they are in some sense official. On Pogge's account, there are a number of ways in which a coercive social institution can disrespect the human rights of those upon whom it is imposed ranging from explicitly sanctioning rights violations to failing to provide adequate protection against rights violations.[146] At any rate, civilians, on Pogge's account, cannot violate human rights. They can violate moral rights; but on Pogge's account, what distinguishes human rights from the general class of moral rights is precisely the official nature of their violations.

To illustrate the implausibility of this implication of Pogge's account, consider two recent examples of what are known as honour killings: In one, an adolescent Iraqi girl was beaten to death by her father for having affection for a British soldier, though by all accounts the affection was not mutual and nothing sexual had transpired between them.[147] Killings of family members, especially girls, are not unusual in Iraq and are socially condoned by some groups. No charges were raised against the man; in fact local authorities appear to have supported his action. In the other case, an adolescent Muslim girl was beaten to death by her father, in this case for refusing to wear the hijab, the traditional Islamic headdress.[148] This incident occurred in Canada where such occurrences are rare and socially condemned. The father has been charged with first degree murder and awaits trial in state custody.

Assuming that there are human rights to life and security of person, on an interactional conception of human rights, both cases constitute violations of these rights. On an institutional account, by contrast, human rights are held against coercive social institutions and not individuals. Although both cases involve grievous moral wrongs, on an institutional conception of human rights, a human rights infringement occurred in the

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146 Pogge, 'Human Rights and Human Responsibilities', pp. 16-17.

147 Afif Sahran, 'The Iraqi Girl Killed for Loving a British Soldier', *Observer*, 27 April 2008 <http://www.guardian.co.uk/world/2008/apr/27/iraq.military>; Afif Sahran and Caroline Davies, "'My daughter deserved to die for falling in love'", *Observer*, 11 May, 2008 <http://www.guardian.co.uk/world/2008/may/11/iraq.humanrights>

148 Kenyon Wallace, 'Father Charged in Teen's Killing', *Globe and Mail*, 11 December 2007 < http://www.theglobeandmail.com/news/national/father-charged-in-teens-killing/article802820/>

Iraqi case but not in the Canadian one because appropriate and effective coercive social institutions that offer the security of person to everyone are in place and generally effective in Canada, but not in Iraq (as evidenced in particular by the reaction of the state to the killing).

Pogge argues that we should favour his institutional conception of human rights because it accommodates the view that, although human rights may be grounded in fundamental human interests, not all affronts to people's fundamental interests count as human rights violations. Isolated harms, he notes, are not generally counted as human rights violations, but large-scale, systematic threats to people's basic interests are, especially when they are the result of official behaviour or state policy. According to Pogge, a one-off infringement of a person's physical security does not count as a human rights violation. By contrast, a legitimate human rights grievance exists on Pogge's account where a person's physical security is systematically at risk despite never actually being infringed.

As Tasioulas rightly notes, 'a lot here turns on our considered judgments as to what should count as paradigm cases of human rights and their violation.'[149] And it is not clear that Pogge has the intuitive edge. It is not, for instance, obvious that a one-off threat to someone's physical security is not a human rights violation. Furthermore, Pogge's institutional conception of human rights excludes cases of persistent domestic violence and cases like the Canadian honour-killing example. These strike many as paradigmatic violations of human rights. An implication of Pogge's argument is that such people are conceptually confused. I doubt this is the case, and Pogge provides insufficient reason to think it is.

4.1.3. Beitz's Practical Approach

Beitz concurs with Pogge that human rights are claims held primarily against coercive social institutions, but he offers further justification for this view. Beitz rejects the traditional approach to human rights theorizing in favour of what he refers to as a 'practical' approach. The traditional approach begins by determining the nature of human rights and from this deriving accounts of their specific content and normative force. As we saw in Chapter 2, this is the sort of approach taken in justifying the human right to subsistence on conventional interpretation. On the traditional approach, international

[149] Tasioulas, 'The Moral Reality of Human Rights', p. 96.

human rights as we find them in modern practice derive their authority from deeper values. The task of the human rights theorist is therefore to provide an account of these underlying values in order to be able to judge whether existing practice is in line with it. In discussing Beitz's approach, it is helpful to distinguish between 'human rights', which generally refers to the naturalistic or humanistic idea of rights that all humans have simply in virtue of their humanity, and 'international human rights', which refers to the objects of international human rights doctrine. Traditionally, 'international human rights' has been taken to refer simply to human rights as they manifest themselves in international doctrine and practice. Beitz argues that we should resist understanding international human rights in this way.

Beitz argues that we should take the practice of human rights as primary in theorizing about the content and normative force of international human rights. On this approach, our understanding of the idea of human rights is framed 'by identifying the roles this idea plays within a discursive practice'.[150] According to Beitz, in order to theorize about human rights as normative principles, we must start, then, by identifying their role in the relevant discursive practice. He is largely influenced by Rawls who takes human rights to be standards of international legitimacy.[151] Beitz argues, however, that this arbitrarily limits the role of human rights. He argues instead that the practical approach must take 'the doctrine and practice of human rights as we find them in international political life as the source materials for constructing a conception of human rights'.[152] Taking this as his starting point, Beitz proposes a model of the discursive function of human rights according to which (1) 'Human rights are requirements whose object is to protect urgent individual interests (…)'; (2) 'Human rights apply in the first instance to the political institutions of states, including their constitutions, laws, and public policies'; and (3) 'Human rights are matters of international concern'.[153] Our interest here is primarily in (2).

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[150] Beitz, *The Idea of Human Rights*, p. 102.

[151] Ibid., p.99. To characterize Rawls's account in this way is not entirely accurate, namely because Rawls takes human rights as governing relations between 'peoples' rather than nations or states, and so they cannot strictly be understood as standards of inter*national* legitimacy. Furthermore, it is unclear what could be meant by 'international legitimacy'. Human rights, according to Rawls, are standards that must be met by any people in order for its self-determination to be respected by other peoples. When human rights are not respected by a people, intervention on the part of other peoples is considered legitimate.

[152] Ibid., p. 102.

[153] Ibid., p. 109.

We should note that Beitz's institutionalism is narrower than Pogge's since he takes human rights to be claims held primarily against 'the political institutions of states' whereas on Pogge's account, human rights are claims held primarily against any social institution coercively imposed upon an individual. If anything, this makes Beitz's account more resilient to the Claimability Objection. On Pogge's account, any given individual might be subject to multiple coercive social institutions, so it might not be clear against which institution a given human rights claim is held. On Beitz's account, human rights claims are always held initially against one's state. Beitz's account also has the advantage over Pogge's that it offers greater justification in support of the institutionalist conception of human rights. On Beitz's account, institutionalism about human rights is justified based on (a) the validity of the practical approach to theorizing about human rights, and (b) the role that international human rights play within the relevant discursive practice as inferred from observations about contemporary international human rights doctrine and practice.

In what follows, I argue that Beitz's institutionalism about human rights encounters fatal difficulties with respect to both (a) and (b). With respect to (a), it is doubtful whether there is a sufficiently cohesive practice to anchor our understanding of international human rights.[154] This is in part due to the fact that the practice of human rights is not well-established. Beitz acknowledges that international human rights practice is an 'emergent' practice,[155] but he thinks it is nevertheless sufficiently cohesive as to provide at least a loose framework for theorizing about international human rights. Beitz focuses on international human rights doctrine from 1948 onwards. I argue that Beitz's focus on doctrine is too narrow to account for the practice in general. Because international human rights doctrine is notoriously (and in most cases intentionally) vague, international lawyers, diplomats, policy-makers, and theorists play an important role in interpreting these documents. This poses a problem for Beitz's account since interpretation will, in many cases, depart significantly from the doctrine itself, drawing on both legal and non-legal precedents in particular jurisdictions, political discourse, as well as ordinary moral reasoning. My claim is that we cannot infer from cohesion in human rights doctrine that there is cohesion in the overall discursive practice. When we broaden our focus beyond international doctrine, we find considerable disagreement not just

[154] Miller makes a similar argument in *National Responsibility and Global Justice*, pp. 168-172.

[155] *The Idea of Human Rights*, pp. 42-44.

about the inclusion and interpretation of particular human rights within international doctrine, but about the very concept of what a human right is.

Setting aside this concern and granting for the sake of argument that the practical approach is both desirable and workable, there are nevertheless important problems with Beitz's conclusion that human rights are claims held in the first instance against the state. First, Beitz's institutionalism about human rights falls prey to the same challenge as Pogge's, namely that it precludes a number of plausible judgements about human rights infringements. Like Pogge, Beitz is committed to denying that a threat by a civilian to the life of another civilian on its own constitutes a violation of human rights. Unlike Pogge's claim, however, Beitz has recourse to reasons beyond our (alleged) ordinary judgements about what does and what does not count as a human rights violation. Beitz's claim is that we can infer from international human rights doctrine that the role that human rights play in the relevant discursive practice is confined to providing practical principles governing primarily relations between citizens and their respective states, and secondarily between states and other institutional agents (including other states). I doubt, however, that this conclusion is warranted.

Even if international human rights doctrine were the only aspect of the discursive practice relevant to theorizing about human rights, it does not give us sufficient reason to endorse institutionalism about human rights. This is because nowhere in international human rights doctrine does it say that the duties correlative to human rights are borne *only* in the first instance by states. International human rights doctrine from 1948 is compatible with the humanistic conception of human rights. Take, for example, the concluding paragraph of the preamble of the UDHR:

> The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Although it certainly makes clear that the political institutions of states should be working to secure the human rights of their members, nothing follows from this with respect to whether human rights are also held against other moral agents. Gilabert has

recently argued that many of the claims made in the UDHR 'give a humanist framing to the whole declaration'.[156] My claim is not so strong. My point is just that contemporary human rights doctrine does not preclude a humanist interpretation of human rights, and thus we cannot infer from it the institutional conception Beitz has in mind. We cannot draw any inferences from international doctrine about which conception of human rights is appropriate. International doctrine is ambiguous in this respect. To take another example, consider the preamble to the 1966 International Covenants. Like the preamble to the UDHR, it highlights the obligations of states 'to promote universal respect for, and observance of, human rights and freedoms'; but it equally states that 'the individual (…) is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant'. Of course there are various ways of interpreting these and other similar statements made in international human rights doctrine. The important point is that they do not provide conclusive evidence in support of institutionalism. My argument is therefore that Beitz fails to provide adequate reason in support of his institutional conception of human rights.

I have argued that neither Pogge nor Beitz provides sufficient reason to conceptually limit the bearers of the duties correlative to human rights in the way they propose. Of course it might turn out that states or coercive social institutions are best placed to fulfil many of the duties correlative to human rights, but this is not necessarily so. Nickel, for example, takes the primary duty-bearers of the positive duties correlative to human rights to be states, but this is the outcome of 'strategic reasoning' rather than conceptual analysis.[157] As I argued in Chapter 2, however, unless the use of such strategic reasoning can yield a determinate assignment of duties of assistance and protection against deprivation, the claimability objection still stands.

4.2. Collective Perfect Duties of Assistance?

In this section, I draw again on the sort of examples raised by Waldron and discussed in Chapter 3. I suggest that this sort of example gives rise to concerns beyond the one he expresses. Both of the examples he discusses involve the bearer of an imperfect duty, the discharging of which will benefit some, but not all potential recipients. Waldron's claim is that where the potential recipients' interests in being benefitted are of sufficiently high

[156] Pablo Gilabert, 'Humanist and Political Perspectives on Human Rights', p. 14.

[157] Nickel, 'How Human Rights Generate Duties to Protect and Provide', especially pp. 82-83.

importance, they can be said to have rights despite the corresponding duties being imperfect. I argued that his reasons in support of this view are insufficient to vindicate his claim that imperfect duties can correlate with rights. Nevertheless, I think that the concerns Waldron expresses raise further challenges for the view that just because the duty on the part of individuals to assist the global poor is imperfect there can be no human right to assistance. In this section and the next, I will discuss several examples along the lines of the ones Waldron discusses in order to highlight the importance of his concerns. I argue that in at least some Waldron-type examples, the existence of a right can be justified on the basis of a perfect duty held by a collection of individuals. If this could be generalized to the case of global poverty, then it seems the human right to subsistence would be claimable for each individual in need against the collective of all those in a position to assist. The purpose of this section will ultimately be to evaluate this possibility.

As I mentioned in Chapter 2, there are various interpretations of the distinction between perfect and imperfect duties. I argued that insofar as perfect duties are taken to correlate with rights on account of being claimable, the relevant interpretation of imperfect duties must be as duties that are not owed to any particular potential recipient and so are not claimable. What makes a duty imperfect in the sense relevant to the claimability objection is that its fulfillment cannot be directed at every potential recipient. This is notably the case with respect to positive duties whose fulfillment can only benefit a limited number of potential recipients. This is in the first place because of physical constraints on what persons can accomplish. Even if a person decided to devote all of her time and resources to, for example, assisting the global poor, given the magnitude of severe poverty worldwide, she could not benefit each and every person suffering from it. Another reason the fulfillment of imperfect positive duties might not benefit every potential recipient is because of reasonable limits on what people can be required to do in the interests of others. Even if it were the case that one individual could assist all those in need if she devoted all of her time and resources to doing so, she might not be duty-bound to assist all those she can. An example of a reasonable limit on the extent of required sacrifice in the interest of others is the point at which the person offering assistance becomes worse off than those she is trying to assist.[158]

[158] This is the limit that Singer uses. In saying that it provides an example of a 'reasonable limit' I do not mean to suggest that it is the correct one. There might be good reasons to limit the extent

On this account of the distinction between imperfect and perfect duties, whether a duty is perfect or imperfect cannot always be inferred from the content of the duty alone. Whether a duty is perfect or imperfect can be contingent on the particular circumstances. Although some duties are necessarily perfect, for other duties, whether they are imperfect or perfect will be determined by the particular circumstances. Straightforward negative duties to abstain from certain types of action such as torture, murder, rape, and so on seem to be perfect in all conceivable circumstances. However, there are other duties, in particular positive duties, which might be imperfect in some set of circumstances, C, and yet perfect in another set of circumstances, C_1. Relevant facts about the circumstances must be taken into account.

The general duty of individual agents to assist those in need in the world as it is, given the number of people in dire need and the limited capacities of any individual, is imperfect. What the above discussion implies, however, is that the duty of assistance can, in the right circumstances, be perfect. This is straightforwardly the case when the duty of assistance is special. In welfare states, for example, the duty to assist those who cannot obtain the material means for subsistence falls on the state since the state has granted its citizens the right to its assistance in times of need. The more pertinent point for our current discussion is that the duty of assistance can, in certain circumstances, be perfect despite being owed by all to all. In a universe of two people, if one person, N, is in need of assistance and the other person, A, is able to assist (taking into account whatever reasonable limits there are on the extent of required sacrifice), then A's duty to assist N to the extent that he can (taking into account the reasonable limits on the extent of required sacrifice) is perfect. In this case, N has a right to A's assistance. All of this is compatible with the claimability condition.

But if there is a right in this example, then it would seem strange to suggest that there is no right in the situation in which there are two people, N1 and N2, in need of assistance, and two people, A1 and A2, who are each able to assist one – but only one – person. At first blush, this seems to be what a conception of rights that includes the claimability condition is committed to. This is because if it is not possible for an agent to assist all those in need of assistance, then her duty of assistance is imperfect. And if her duty of assistance is imperfect, then no one has a claim to her assistance. In the case just

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of required sacrifice even further (for example, utility, duties to the self, justified priorities for loved ones). The point is just that this seems like a reasonable *minimum* limit on the extent of required sacrifice.

described, it is true that neither A1 nor A2 can assist both N1 and N2. This is the kind of case that Waldron seems to have in mind in his discussion of the wealthy philanthropists. I think we ought to be troubled by the claim that N1 and N2 lack rights to assistance in this case, but as I argued in the previous chapter, this kind of concern alone does not provide sufficient reason to deny the claimability condition.

In this section, I will explore an option for affirming that both N1 and N2 have rights to assistance despite the duties of A1 and A2 being imperfect, while nevertheless granting the claimability condition. This can be done, I argue, by identifying a collective agent as holding perfect duties of assistance to both N1 and N2. If this works, it offers a potential way of understanding the human right to subsistence, namely as a claim held by each against the collective of all those in a position to contribute to alleviating global poverty. Although I argue that collectively-borne duties are plausible in some cases including the case of N1 and N2, I ultimately argue that the collective of all those in a position to contribute to alleviating global poverty does not fulfil the relevant criteria for being collectively responsible.

In order to vindicate the claim that N1 and N2 each have claims to assistance from A1 and A2 jointly, we need to show (a) that collectives can bear moral duties, and (b) that the collective comprised of A1 and A2 fulfils the conditions for bearing moral duties of assistance which are perfect towards both N1 and N2.

The most persistent objection to the very intelligibility of collective moral responsibility comes from methodological individualists who challenge it on the ground that collections of individuals lack certain features thought to be necessary for being morally responsible, namely agency or the capacity for forming intentions.[159] While it is widely thought that propositions about the actions of collectives can be meaningful, methodological individualists regard such propositions as purely figurative. And if propositions about the actions of individuals are merely figurative, propositions about their moral responsibility cannot be literal. According to H. D. Lewis, when we attribute moral responsibility to collectives, 'We hypostatize abstractions and make them the bearers of value, forgetting that linguistic devices which make for succinctness of

[159] See, for example, H.D. Lewis, 'Collective Responsibility", *Philosophy*, 23 (1948), 3-18; and Jan Narveson, 'Collective Responsibility', *Journal of Ethics*, 6 (2002), 179-198.

expression or poetic and rhetorical effect are not to be divested of their metaphorical and elliptical meanings, and taken as literal truth'.[160]

If methodological individualism is correct, then saying that A1 and A2 are jointly responsible for assisting both N1 and N2 is just shorthand for saying that they are each responsible individually. This, however, will not suffice for N1 and N2 to have rights given the claimability condition. As we have already seen, the duties that A1 and A2 have individually are imperfect, and therefore cannot correlate with rights if we grant the claimability condition. We are looking for a way of accounting for the judgement that N1 and N2 have rights to assistance while nevertheless accepting the claimability condition. In order to succeed, it must be the case that some agent *literally* bears a perfect duty of assistance to each of N1 and N2. If there can be no literal sense in which A1 and A2 are jointly responsible, then this line of argument will fail.

Methodological individualists seek to debunk the notion of collective responsibility either by showing that collections of individuals cannot act or by showing that their actions are exempt from moral evaluation. Both of these lines of attack generally focus on the alleged impossibility of collective intentions. Insofar as intentions are taken to be necessary for action, some have argued that collections of individuals are incapable of action, thereby denying anything for collections of individuals to be responsible for. Others who accept that the presence of an intention may not be necessary for action have argued that intention is nevertheless integral to an action being the proper subject of moral evaluation.

In response to methodological individualism, some defenders of collective responsibility have sought to show that it is possible for a collection of individuals to have agency and intention in a way that is not reducible to the aggregation of the respective agencies of its individual members.[161] Others have argued that intentionality is necessary for neither action nor moral responsibility.[162] Indeed these sorts of arguments have been the focus of the literature on collective moral responsibility. But there are two important differences between the sorts of cases that tend to be the focus of the literature on collective moral responsibility and the kind of situation we are interested in

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[160] 'Collective Responsibility', p. 7.

[161] Michael Bratman, 'Shared Intention', *Ethics*, 104 (1993), 97-103; Mary Gilbert, *Solidarity and Responsibility: New Essays in Plural Subject Theory* (Lanham, MD: Rowman & Littlefield Publishers, 2000), especially Chapter 2; and David J. Velleman, 'How to Share and Intention', *Philosophy and Phenomenological Research*, 57 (1997), 104-117.

[162] Larry May, *Sharing Responsibilities* (Chicago: University of Chicago Press, 1992).

here. One is that the literature is almost exclusively concerned with attributions of backward-looking collective responsibility for bad outcomes, whereas we are interested in forward-looking responsibility for the prevention of bad outcomes or the remedying of bad situations. Second, the literature tends to focus on attributions of moral responsibility for particular actions, whereas we are interested in the question of collective moral responsibility for culpable *in*action.

Virginia Held is one of the few theorists who has directly addressed the kind of concerns that are of immediate interest to us.[163] Supposing that A1 and A2 have no special relationship or previously-agreed procedure for jointly making decisions, they form what Held refers to as a 'random collection of individuals'.[164] A random collection of individuals is 'a set of persons distinguishable by some characteristics from the set of all persons, but lacking a decision method for taking action that is distinguishable from such decision methods, if there are any, as are possessed by all persons'.[165] The plausibility of the suggestion that A1 and A2 jointly bear perfect positive duties of assistance correlative to N1 and N2's respective rights to assistance thus depends on whether a random collection of individuals can bear moral responsibility.

Agency is required for action, and therefore for responsibility for action; but Held's focus, and our current interest is in culpable inaction. Just as individuals can be morally responsible for failing to act, so too can collectives. Although a random collection of individuals may not be an agent, it may have the capacity to form itself into a collective agent. It is important to note, however, that it is not the case that a random collection of individuals can literally form *itself* into a collective agent, since this would be an action and would therefore require pre-existing agency. The idea is rather that the individuals that make up the random collection can, at least under certain conditions and if they so choose, form *themselves* into a collective agent by cooperating. This is important because as we shall see, it is not always the case that a random collection of individuals can succeed in forming itself into a collective agent.

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163 'Can a Random Collection of Individuals be Morally Responsible?', *The Journal of Philosophy*, 67 (1970), 471-481. Others include Robert Goodin, *Protecting The Vulnerable* (Chicago: University of Chicago Press, 1985), pp. 134-144; Larry May, 'Collective Inaction and Shared Responsibility', *Noûs*, 24 (1990), 269-277. I will focus on Held's account because it is the one which deals most comprehensively with issues of concern here.

164 'Can a Random Collection of Individuals be Morally Responsible?', p. 471.

165 Ibid. Following Stanley Bates, we might note Held's somewhat idiosyncratic use of 'random', 'Reply to held', *Ethics*, 81 (1971), 343-349 (p. 343). A truly random group of individuals would not be distinguishable from the set of all persons in the way that Held has in mind.

The sort of case we are interested in is one in which there are a number of individuals, none of whom can bring about the desired end on their own, but who, if they each contribute in the right way, can collectively succeed in bringing about the desired end. Held argues that a random collection of individuals can be held responsible for bringing about (or for failing to have brought about, depending on whether we are evaluating before or after the fact) a given desirable end, if the action called for 'is obvious to the reasonable person'.[166] This seems to be the case in our example. It is obvious that what is required of A1 and A2 is simply that they agree on who will assist N1 and who will assist N2 in order to ensure that both N1 and N2 get the assistance they need. If they fail to confer before acting and they both end up assisting N1, on this account N2 has been wronged by A1 and A2 jointly.

Held's account thus offers us a way for us to accept the view that N1 and N2 each have a right to assistance without concluding, as Waldron does, that a right can exist with only imperfect duties as its correlate. Although it is true that A1 and A2's respective duties of assistance are imperfect, on the account inspired by Held, the duty of assistance of the collective comprised of A1 and A2 is perfect, and so N1 and N2 can be said to have claims against it.

Does this account of the moral responsibility of random collections of individuals offer a plausible way to interpret the human right to subsistence? On this sort of account, the human right to subsistence – understood as a right to assistance – would be held against the random collection of all those in a position to make some contribution to the alleviation of severe poverty worldwide. One problem with this proposal is that it does not seem to satisfy Held's condition that the action required is obvious to the reasonable person. The question of how any given individual should contribute is incredibly complicated, even given the institutional structures already in place. Should we be donating money to aid organizations such as Oxfam, Save the Children, and UNICEF? If so, which ones should we donate to? Should we favour organizations that focus on emergency aid, development, political reform, or economic reform? Or should we be lending money to support small businesses in the developed world through micro-finance organizations such as Kiva? Or perhaps it would be better to spend time engaging in political action by writing letters to political leaders, signing and circulating petitions, engaging in peaceful protests or other forms of resistance, or perhaps even running for political office. All of these seem like worthy contributions to

[166] 'Can a Random Collection of Individuals be Morally Responsible', p. 476.

fighting global poverty, but it is not obvious for any given individual which, if any, is the right course of action.

Held discusses such cases in which the required action is not obvious to the reasonable person. In some such cases collective responsibility is simply not attributable, but in other cases she thinks that it is. An example is Held's case in which three unacquainted pedestrians encounter a man whose leg is trapped under the wreckage of a collapsed building. In order to assist him, various beams must be removed, and this requires the strength of all three. The trouble is that although it strikes each pedestrian as obvious which beam should be moved first, the three pedestrians cannot agree. In the absence of a decision-making procedure, the three pedestrians argue until the victim has bled to death. Held argues that in this case, the random collection may be considered morally responsible for failing to adopt a decision-making procedure. This would be most obviously true in case nothing much is at stake with regards to which beam gets moved first. If that were the case, the disagreement would be frivolous, and inaction would surely be culpable. However, we can imagine that each of the three pedestrians reasonably thinks that the consequences of moving the wrong beam would lead to dire consequences for the victim, and yet they nevertheless disagree with respect to which beam should be moved first. In this case, a decision-procedure is essential for collective action, and which decision-procedure is selected could make an important difference to the outcome.

We might notice, then, that Held's claim that the pedestrians can be held responsible for failing to adopt a decision-making procedure just shifts the uncertainty to another level, threatening regress. What if the pedestrians could not agree on a decision-making procedure? What conditions must be fulfilled in order for a random collection of individuals to be morally responsible for failing to adopt a decision-making procedure? In keeping with Held's account, it would seem that in order for a random collection of individuals to be morally responsible in a case like this, it would have to be obvious to the reasonable person which decision-making procedure they should adopt. But why should we suppose this to be the case? Held acknowledges this potential problem. She points out that the question of which decision-making procedure to adopt is a separate question occurring in its own context, and so it will sometimes be obvious, even when the required action is not. For example, if it turns out that one of the three pedestrians in Held's example is a retired rescue-worker with a great deal of experience in extricating people from difficult situations, then it might be obvious to the reasonable person that

the other two should defer to him. However, if this is not the case and no decision-making procedure is obvious, then it seems moral responsibility cannot be attributed to the collective for failing to act.

In the case of global poverty, it may seem reasonable that we should defer to experts on poverty-relief and development; but even where there is widespread agreement about what is needed in order to eliminate severe poverty in some area, there is little agreement on how this translates into action on the part of individuals. Held argues that collective moral responsibility may nevertheless still be attributable in cases like this. On her view, when it is not obvious to the reasonable person which decision method is appropriate,

> the reasonable person may perhaps then be morally responsible for not acting to transform the random collection of which he is a member into an at least loosely organised group seeking answers to questions concerning the most appropriate and justifiable decision methods for classifiable kinds of contexts. Such a group might be the community of those moral inquirers who are capable at arriving at decisions on moral questions by a process of free inquiry and reasonable discussion.[167]

It is certainly plausible to think that there is a moral requirement that people worldwide work towards the establishment of decision-making procedures with the aim of eventually eradicating severe poverty. However, it is unhelpful in providing a plausible account of the human right to subsistence in light of the claimability condition. This is because until a decision-making procedure has been adopted, there are only imperfect duties to work towards the adoption of a decision-making procedure. In this case, no collective can plausibly be identified as holding a perfect duty of assistance to each person in desperate need. Without some sort of institution to oversee individual contributions and to ensure that they are well-directed, there is little sense in which there is the sort of potential for collective effort required for an attribution of collective moral duties that are perfect.

This is not to disparage an approach to reasoning about the normative implications of global poverty that focuses on collective responsibility. Global poverty, like other large-scale global problems, can only be adequately addressed with the

[167] 'Can a Random Collection of Individuals be Morally Responsible', p. 481.

cooperation of multitudes of agents, both individual and institutional.[168] Collective responsibility for inaction is thus central to our normative understanding of this issue. My claim here is just that interpreting the positive duties thought to correlate with the human right to subsistence as collective duties does not succeed in avoiding the claimability objection.

In this section, I have argued that although I think there is scope for vindicating the claim that A1 and A2 jointly owe perfect duties of assistance to both N1 and N2, I do not think that the same line of argument can support the claim that all those in a position to make some contribution to the alleviation of global poverty collectively owe a perfect duty of assistance to each of those in need. Although the judgement that N1 and N2 have rights to assistance can be vindicated on the basis of the collective duties of A1 and A2, the relevant conditions for collective perfect duties cannot be met in the case of global poverty.

4.3. Perfect Duties of Consideration?

I have so far argued that the first two proposals for how the human right to subsistence positively construed might fulfil the claimability condition fail. I have argued that it is implausible to conceptually limit the bearers of the duties correlative to human rights to states or other coercive social institutions. Furthermore, I have argued that the human right to subsistence cannot plausibly be interpreted as a claim to assistance and protection held against the random collection of all those in a position to make some contribution. In this section, I consider a third proposal for how the human right to subsistence positively construed might be claimable on O'Neill's conception of claimability. Although the human right to subsistence is construed on this proposal as having positive duties as its correlates, it deviates from the conventional interpretation in that it takes the relevant duties to be duties of consideration rather than duties of assistance and protection. I argue that this provides the most plausible account of the human right to subsistence positively construed, but that it nevertheless encounters some of the same difficulties as the conventional interpretation based on LPA as discussed in Chapter 3.

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[168] See, for example, Micheal Green, 'Institutional Responsibility for Moral Problems', in *Global Responsibilities: Who must deliver on human rights?*, ed. by Andrew Kuper, pp. 117-134.

As we have seen, we can account for the rights to assistance of N1 and N2 in the example above by holding that A1 and A2 jointly bear perfect duties of assistance to each. Now consider another similar case in which two people, N3 and N4, are in need of assistance. In this case, however, just one person, A3, is able to assist, and he is able to assist only one of the two. If it were the case that A3 could make some partial but nevertheless beneficial contribution to assisting both N3 and N4, and supposing that there is no reason to make a greater contribution to assisting one than the other, we might plausibly say that A3 has a perfect duty to both N3 and N4 to assist them to the extent that he can (taking into account reasonable limits on the extent of required sacrifice). But suppose that the goods required by both N3 and N4 cannot be distributed between them. Say, for example, what is needed is rescue; and say that A3 is only physically able to rescue one. A3's duty of assistance in this case is imperfect since its fulfillment cannot benefit both potential recipients. A3 is permitted, and indeed must use his discretion in determining which victim to assist. If all things are equal, then A3 can fulfil his imperfect duty by saving either N3 or N4.

Because A3's duty of assistance in this example would be fulfilled by assisting one of the two victims, and because he is not duty-bound to assist both, on a conception of rights that includes the claimability condition, neither victim has a right to A3's assistance. This is because neither can claim assistance from A3. Although A3 can be identified as a duty-bearer, A3's duty is not owed to N3 or N4 in particular, and so neither can demand of A3 to be assisted.

As we have seen, on a conception of rights that includes the claimability condition, only perfect duties correlate with rights. This implies that only the violation of a perfect duty constitutes a directed wrong. If no one has a claim to an act or forbearance on the part of an agent, that agent wrongs no one in particular in failing to act or forbear in that way. In the example above, if A3 chooses to assist N3, then N4 cannot be said to have been wronged, and vice versa. But then if neither N3 nor N4 has a claim against A3 to assistance, on this account neither of them is wronged if A3 fails to fulfil his duty of assistance altogether. This is unpalatable since it seems like in failing to do what he can to assist, A3 in some sense wrongs *both* N3 and N4. But how could this be if neither had a claim on A3?

It might be suggested that actually, both N3 and N4 do have rights to A3's assistance. They both have highly important interests in receiving the assistance, and in principle, they can both identify A3 as the relevant duty-bearer. On this account, A3 has

a perfect duty of assistance to N3 and to N4, but because he cannot fulfil both duties, he is justified in infringing either N3 or N4's right. This account, however, takes us back to the question of what distinctive contribution rights make to normative reasoning. With respect to this example, it does not seem that the affirmation of a right affects moral reasoning about how to act. A3's deliberations look no different whether or not N3 and N4 have rights. And it is not clear what difference it would make to the matter of justifiable enforcement of the relevant duties whether N3 and N4 have rights.

One thought is that N3 and N4 both having rights to A3's assistance does make a difference in that A3 would owe compensation to whichever victim he did not assist. Suppose that the assistance needed by N3 and N4 in our example is not a matter of life or death, but rather one of debilitating injury. Call the initial situation in which both N3 and N4 are in need of assistance to avoid the debilitating injury S1, and the subsequent situation in which either N3 or N4 has suffered the debilitating injury S2. It might be thought that, although A3 is only able to assist one person in S1, if both had rights to his assistance, he is obligated to provide compensation by way of further assistance in S2 to the one who ends up suffering the debilitating injury. I think this suggestion is implausible, namely because it is not clear that compensation would be owed in this sort of case. After all, if A3 did everything that he could, there seem to be no grounds for a further demand of compensation. It nevertheless seems plausible to suppose that whichever person suffered the debilitating injury in S1 could have a claim to assistance from A3 in S2 insofar as A3 is able to assist (taking into account the relevant limits on the extent of required sacrifice).

I argue, however, that the assistance that A3 might owe in S2 is not helpfully construed as being owed as a matter of compensation for his failure to assist both victims in S1. S2 can unproblematically be treated as a new and discrete situation in which someone is in need and someone is able to assist. In support of this interpretation, suppose that, having received assistance from A3 in the initial situation, N3 is now equally in a position to assist N4 who is now in need of further assistance. If A3 had owed N4 assistance in S1, there would be reason to think that he should provide N4 with the assistance she needs in S2. But given that both A3 and N3 are equally well suited to assist N4 in S2, this does not seem to hold.

I argue that a more plausible account is that both N3 and N4 have rights in S1, but they are not rights to A3's assistance. Rather, they are rights to A3's appropriate

consideration in matters concerning how to act.[169] In assisting one of the victims, A3 shows both victims appropriate consideration. In failing to assist either victim, A3 shows inadequate consideration of both victims. On this account, N3 and N4 can have their right violated even if they would not have ultimately benefitted from the discharging of A3's duty.

We can understand the human right to subsistence on this sort of account as a right held by all humans against all others that they adopt the end that everyone who requires assistance in avoiding severe poverty gets it. (This might be construed as derivative of a broader requirement that all moral agents adopt the end that no one preventably suffers). Sen advances this sort of interpretation of the human right to subsistence, and of human rights in general. On his account, 'Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms'.[170] This sounds a lot like the Razian conception of rights discussed in Chapter 3. However, there is at least one important difference between the Razian account and the account that Sen advances. This has to do with the nature of the obligations entailed by rights. While Raz draws a sharp distinction between reasons and duties (rights provide reasons for holding others to be under duties to act or refrain from acting in particular ways), Sen seems to blur this distinction by treating the correlates of all rights as reasons:

> The induced obligations primarily involve the duty to give reasonable consideration to the reasons for action and their practical implications, taking into account the relevant parameters of the individual case. (Ibid.)

> The basic general obligation is that one must be willing to *consider* seriously what one should reasonably do, taking note of the relevant parameters of the cases involved. The necessity to ask that question (rather than proceeding on the assumption that we owe nothing to others, unless we have actually harmed them) can be the beginning of a more comprehensive line of ethical reasoning. The territory of human rights firmly belongs there. (Ibid., p. 340)

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[169] I will speak of consideration in what follows, but the notions of respect and recognition also seem equally appropriate in this context. For our present purposes, I will not distinguish between these three notions. Although I suspect that they are not merely synonymous, analysis of them and their relationships to each other, and their respective roles in moral reasoning is beyond the scope of the present project.

[170] 'Elements of a Theory of Human Rights', p. 319.

The rights of the global poor on the sort of account Sen has in mind are thus violated in that many among the global rich are failing to take their plight adequately into consideration in deciding how to act. This is certainly true of anyone who makes no contribution at all to global poverty relief efforts, assuming they have the means to do so within the relevant limits on the extent of required sacrifice. It will also be true of anyone failing to make a sufficiently large contribution based on their means. It will furthermore be true of anyone who sacrifices enough, but does not use appropriate discretion in how to direct the benefits.

I think that this account, though flawed for reasons I will discuss presently, is the most plausible of the three alternatives to the conventional interpretation so far considered. It tells us that our failure to work towards the eradication of severe poverty worldwide constitutes an affront to every individual suffering from severe deprivations. Our acquiescence in severe poverty shows a lack of consideration for the freedom and humanity of each person in dire need. On this account, those in dire need have a claim on each of us that we show them the consideration to which they are entitled as human beings. We can do this not by trying in vain to assist each and every person in need, but rather by working towards the eradication of global poverty by cooperating with others in the fostering of institutions that can effectively address the problem.

This is a powerful message, but although I think it provides the best way of understanding the positive duties correlative to the human right to subsistence, I argue that it has at least two serious shortcomings. First, like the accounts of the human right to subsistence based on LPA discussed in Chapter 2, it draws no distinction between what I referred to as the broad and narrow deontic implications of human rights. I take the narrow deontic implications of a right to refer to the duties directly entailed by the right – namely those whose unfulfillment constitutes a violation of the right. The broad deontic implications of a right on this distinction refer to the duties that are indirectly entailed by it, such as duties to protect others from violations of the right and duties to assist those whose rights have been violated.

I agree with Sen that 'Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms', but reasons are not the same as duties. According to Sen, however, the failure to draw a sharp distinction between reasons and duties

> would indeed involve an immense escalation if the duty in question were not one of giving reasonable consideration to a possible action, but an absolute obligation

> to undertake that action, no matter what other values one has and what other commitments one has reason to consider. (Ibid., p. 339)

What Sen seems to be saying here is that when the duty in question is the duty to give 'reasonable consideration to a possible action', it does not differ significantly from the reasons for taking that action. This, however, departs significantly from the ordinary understanding of what a duty is, namely something that one is obligated to perform (or not perform, as the case may be). To this line of argument Sen replies as follows:

> But that way of seeing one's duties—as compulsory action—is not only at some distance from the acknowledgment of reasons for action, but it also lacks cogency, and even internal coherence. There are many fine deeds for each of which a reason for action exists, but it would typically be impossible to carry out the totality of all those deeds. There is a need for the assessment of priorities and for discrimination in the way the obligation to give reasonable consideration may be followed up by sensible choices of action. (Ibid.)

What Sen seems to be saying here is that we cannot do all of the things that we have reason to do, and so we must make a reasoned choice as to which actions to carry out. This is precisely the thought that underlies the claimability objection. Since we cannot assist every person that we have reason to assist, we cannot be obligated to do so. This does not, however, mean that we have no obligations whatsoever with respect to those actions; it only means that those obligations are imperfect, and so not owed to anyone in particular.

In Chapter 2, I discussed two ways of interpreting the distinction between perfect and imperfect duties. I argued that a duty is imperfect in the sense relevant to the claimability objection if it is not owed to anyone in particular. The other sense in which a duty might be thought to be imperfect is that it is a requirement to adopt a particular end rather than to perform or not perform a particular action. Acknowledging this difference helps to clarify Sen's account. Although a duty that is imperfect in the sense of requiring the adoption of an end might be thought to be owed to no one in particular, it might equally be thought to be owed in some sense to everyone. This, I think, gets us closer to what Sen means in claiming that 'imperfect obligations are correlative with human rights in much the same way as perfect obligations are' (Ibid., p. 319). If we are in fact duty-bound to adopt the end that everyone in need of assistance receives it, and if we owe this duty to humanity at large, then claimability does not seem to be a problem.

Although I have argued that conceiving of the human right to subsistence as a right that all others give due consideration to one's need in deciding how they will act succeeds in avoiding the claimability objection, I am skeptical that it constitutes a plausible interpretation of this right. I argued in the previous chapter that the reason we should take seriously the claimability condition is that rights that are not claimable struggle to make a distinctive contribution to reasoning about the normative implications of global poverty. Insofar as there is a requirement on rights that they make a distinctive contribution to normative reasoning, I argued that claimability is a necessary condition on the existence of all rights. Claimability is not, however, sufficient for the existence of a right. The claimability of a right does not guarantee that it will make a distinctive contribution to normative reasoning. It is for this reason that I am sceptical about the success of the interpretation of the human right to subsistence according to which it constitutes a claim that everyone give due consideration to the needs of those suffering from severe poverty. Although, unlike the conventional interpretation of the human right to subsistence based on LPA, it is claimable, I argue that, like the conventional interpretation, this interpretation struggles to make a distinctive contribution to reasoning about the normative implications of global poverty.

The interpretation of the human right to subsistence as a claim to due consideration would have purchase on two related views, neither of which is plausible. One is the view that duties of justice are always more important than duties of beneficence. If this were the case, we could infer from the existence of a human right to subsistence on this interpretation that the consideration of those in need should outweigh many other considerations in our deliberations about how we ought to act. In this way, it would contribute to reasoning about the normative implications of global poverty. This contribution would not, however, be distinctive since the conclusion that the consideration of those in need should outweigh many other considerations in our deliberations about how we ought to act could be reached without positing a right to subsistence. The relative weight of this consideration could be inferred from the importance of the value of people having access to the means for subsistence irrespective of them having any claim to this. At any rate, as I argued in Chapter 1, there is good reason to reject the view that what distinguishes duties of justice from duties of beneficence is simply that they are more important.

The other view on which the interpretation of the human right to subsistence as a claim to due consideration would have purchase is the view according to which

something is either owed as a matter of right or is morally supererogatory. On this sort of account, what is gained from affirming a human right to subsistence on the interpretation under consideration is that it implies that to give consideration to the needs of those suffering from severe poverty in deliberating about how to act is a stringent moral requirement. This, I argue, rests on a false dichotomy. While I accept that it is either the case that something is a duty or that it is not morally required, there are duties that do not correlate with rights. For example, being kind, charitable, or beneficent is not morally supererogatory despite kindness, charity, and beneficence not being owed to others as a matter of right. Failure to be kind, charitable, or beneficent is morally blameworthy; and duties to be kind, charitable or beneficent are no less stringent than those that do correlate with rights. As I argued in Chapter 1, duties that correlate with rights are distinguished from other duties in that they are *prima facie* justifiably enforceable as such, not in that they are morally required.

Aside from these two possibilities – both of which I argue should be rejected – it is not clear what is gained with respect to reasoning about the normative implications of global poverty from the affirmation of a human right to subsistence understood as a right to consideration. As such, despite the human right to subsistence being claimable on this interpretation, I argue that this interpretation does not provide an overall plausible account of the human right to subsistence.

4.4. Two Observations

At this juncture, it is worth making two observations. The first has to do with the extent of the disagreement between those who affirm the human right to subsistence and those like O'Neill who argue for stringent and potentially demanding moral obligations on all moral agents to work towards the eradiation of global severe poverty while denying a corresponding human right. I think that the persistent disagreement between proponents of these views has obscured the degree to which they are actually in agreement about many of the normative implications of global severe poverty. Both agree that the general duties to work towards the eradication of severe poverty are imperfect. Both agree that these are, nevertheless, stringent moral obligations. Furthermore, both agree that the discharging of our imperfect duties of assistance and protection against deprivation will in most cases be institutionally oriented. Effectively discharging our duties to work towards the eradication of severe poverty worldwide will in some cases make use of existing institutions that may or may not need to be restructured to suit the task. In other

cases the creation of new institutions will be required. Both agree that the effect of institutions will, in many cases, be to make imperfect duties of assistance and protection perfect by allocating specific responsibilities to specific duty-bearers. The only significant difference between these two views is that on one, we are warranted in the affirmation of rights to assistance and protection prior to the establishment of the relevant institutions, and on the other we are not. On reflection, it is not obvious that this difference is all that significant.

The second observation has to do with what more can be said about the nature of the imperfect duties of assistance and protection against deprivation. I argued in the previous chapter that the linkage argument advanced by Ashford, although an improvement on Shue's linkage argument, nevertheless does not succeed in vindicating the human right to subsistence. However, Ashford's argument does succeed in justifying stringent moral duties to assist those in dire need on the basis of a commitment to promoting the enjoyment of rights. These duties fall somewhere in between duties of beneficence and duties of justice since they are not correlative to any right, but their fulfillment is indirectly a matter of human rights.

One of the central motivations for affirming a human right to subsistence is to support the view that the duties to work towards the alleviation of severe poverty worldwide are duties of justice as opposed to duties of beneficence. The reason for this is that duties of beneficence are often taken to be weak and discretionary whereas duties of justice are seen as being stringent and strong. But insofar as there is a clear distinction between duties of justice and duties of beneficence, for reasons discussed in Chapter 1, I doubt that it has to do with their stringency or strength. Duties of beneficence are discretionary only in that the duty-bearer has discretion over how they are discharged and who is benefitted, not whether they must be discharged. With respect to the stringency of the requirement to fulfil them, duties of beneficence are no different, morally, than duties of justice: both must, morally, be fulfilled.

While simply showing that some duty is a duty of justice does not tell us much about the strength of that duty, showing that a duty is entailed by a human right does. As we saw in Chapter 2, human rights protect particularly important values and their fulfillment will, in most cases, take precedence over the promotion of other values. So to show that a duty is entailed by a human right is to provide support of the high

importance of the fulfillment of that duty, regardless of whether it is a duty of justice or a duty of beneficence.

I argue that there are universal duties of assistance and protection that do not correlate with the human right to subsistence, but whose fulfillment is nevertheless a matter of human rights. Drawing on the linkage argument advanced by Ashford, I argue that there are duties of assistance that are indirectly entailed by human rights, though not the human right to subsistence.

Recall that according to Ashford, there is a substantive connection between the secure enjoyment of the substance of certain core human rights and the secure enjoyment of access to the means for subsistence. In the absence of secure enjoyment of access to the means for subsistence, people are vulnerable to perverse trade-offs such as accepting to undergo (a limited amount of non-fatal) torture in exchange for subsistence goods. The banning of such contracts would serve the purpose of securing the enjoyment of freedom from torture, but would ultimately be against the interests of the right-holders who may have a greater interest in subsistence-plus-torture than they do in freedom from torture without subsistence. The only way to both respect the interests of the right-holders and protect them from the violation of their rights is to ensure that they have secure enjoyment of access to the means for subsistence.

Ashford takes this argument to support the human right to subsistence understood a right to be provided with secure access to the means for subsistence. I argued, however, that this does not follow. While I accept that people have rights to things that are necessary for the *fulfillment* of their rights, I distinguish between fulfillment and enjoyment. Ashford's argument requires that people have rights to things that are necessary for the enjoyment of their rights, but I have argued that this view presupposes an account of rights based on LPA, which is inadequately supported.

Nevertheless, I do think that the argument has force in another respect. Even a non-consequentialist can accept that the promotion of the widespread enjoyment, not mere fulfillment, of human rights is an important moral goal. Ashford's argument shows that insofar as we care about promoting the enjoyment of human rights, we must work towards the widespread enjoyment of secure access to the means for subsistence. As such, insofar as there is a moral requirement to work towards the widespread enjoyment of human rights, then it follows that there is a moral requirement to work towards the widespread enjoyment of access to the means for subsistence. In this respect, the duty to

work towards the widespread enjoyment of access to the means for subsistence is a matter of human rights, albeit indirectly.

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THE MINIMAL INTERPRETATION: A PROPOSAL

I have so far argued that the force of the claimability objection comes from the challenge it presents to proponents of the human right to subsistence to show how the affirmation of this right affects moral reasoning about the normative implications of global poverty. Understood according to the conventional interpretation as a fundamental right to assistance and protection against deprivation, I have argued that the affirmation of a human right to subsistence does not significantly affect reasoning about the distribution, extent, and stringency of obligations to assist those in need and to protect people against deprivation. More controversially, I have argued that it does not contribute to reasoning about what actions are permissible or required by first and third parties in response to failures of second parties to fulfil obligations of assistance and protection. I also argued that the same is true of the human right to subsistence interpreted as a right that others give due consideration to those in need.

In this chapter, I argue that we should not conclude from this that affirmations of a human right to subsistence are merely empty rhetoric. This, I argue, would be to overlook the significance of the negative duties correlative to this right. Following Shue, it is widely accepted that we should not restrict the duties correlative to the human right to subsistence to positive duties of protection and provision;[171] but the nature and

[171] Shue, *Basic Rights*, Chapter 2.

implications of the negative duties correlative to the human right to subsistence are underexplored in the literature. Interpreting the human right to subsistence as correlating primarily with negative duties promises to avoid the claimability objection. It has the added advantage of also promising to avoid the liberty objection. It remains to be seen, however, whether focusing on such duties will have a significant effect on moral reasoning about the normative implications of global poverty. I argue in the next chapter that it does. In this chapter, I lay the foundation in support of this claim by providing an analysis of the negative duties correlative to the human right to subsistence.

5.1. The Minimal Interpretation

It is widely acknowledged, though seldom discussed, that there are important negative duties correlative to the human right to subsistence. It is important to distinguish between two negative duties:

> (1) The duty not to support coercive social institutions that do not uphold the human right to subsistence
>
> (2) The duty not to deprive others of access to the means for subsistence

As we saw in Chapter 4, Pogge's account focuses almost exclusively on duty (1). This is because of the 'institutional' conception of human rights he espouses. Duty (2), by contrast, is a norm of interpersonal interaction. I argue that the shortcomings of Pogge's account discussed in Chapter 4 can be remedied by shifting our focus to duty (2). The account of the human right to subsistence that I advance in this chapter will take duty (2) as the central point of our understanding and application of this right. I will begin in this section by providing a conceptual analysis of this duty. The purpose of this is twofold. First it provides a framework for the identification of violations of the human right to subsistence, negatively construed. Second, in providing this framework, my analysis of the duty not to deprive will allow us to assess the contribution of an interpretation of the human right to subsistence based on it to reasoning about the normative implications of global poverty.

As we have seen, Pogge's account of the human right to subsistence falls somewhere between a thoroughly minimalist account according to which it is a claim held against the coercive social institutions imposed upon us that they not deprive us of access to the means for subsistence on the one hand, and on the other hand a thoroughly maximalist account according to which not only is it a claim against the coercive social institutions

imposed upon us to guarantee our access to the means for subsistence, but also a claim on others including non-institutional agents to create institutions with the express purpose of ensuring that everyone is guaranteed access to the means for subsistence where such institutions are lacking. Pogge's account is based on a minimalist account of interactional justice and something closer to a maximalist account of institutional justice. Individuals, on Pogge's account, are only bound by negative duties of justice (namely duties not to violate human rights, and duties not to support unjust coercive social institutions), whereas coercive social institutions are bound by more demanding principles of justice (such as the protection and promotion of the objects of human rights).

Focusing on the duty not to deprive yields an interpretation of the human right to subsistence that is closer to the thoroughly minimalist account. A thoroughly minimalist account of the human right to subsistence would hold that any institutional order that makes it impossible for those on whom it is imposed to enjoy access to the means for subsistence is unjust. This is because an institutional order that makes it impossible for those on whom it is imposed to enjoy access to the means for subsistence is in violation of the negative duty not to deprive people of access to the means for subsistence. As such, anyone who cooperates in upholding this institutional order is in violation of their negative duty not to impose upon others unjust coercive social institutions.

There are two problems with the thoroughly minimalist account of the human right to subsistence, and indeed of human rights in general. The first has to do with the account offered in section 4.1.1 above of what is required for an institutional order to make it impossible for those upon whom it is imposed to securely enjoy the objects of their human rights. On this account, the global order makes it impossible for people to enjoy the objects of their human rights if and only if, holding the structure of the global order constant, no changes can feasibly be made to any other variable such that people would securely enjoy the objects of their human rights. This, however, precludes the possibility that the structure of the global order *combined with* other variables – notably the structure of domestic institutions – leads to people not being able to enjoy the objects of their human rights.

To illustrate, consider an example from Pogge.[172] In this example, two companies have factories operating alongside the same river. Each company disposes of its chemical waste in the river. Neither chemical alone would have any effect whatsoever on the quality of the water in the river, but the combination of the chemicals from the two factories causes the water to become contaminated, thus endangering the health of the residents of a village downstream. Although the actions of each company are individually benign and morally permissible, the combination of each company's respective actions causes harm in which both companies are complicit. Although it is true that neither company's actions would be harmful were it not for the actions of the other company, this does not excuse their actions. This is because there is no more reason for one company to refrain from disposing of its waste in the river than there is for the other (or so we assume here for the sake of argument). As such, the responsibility and therefore the burden must be borne by both companies together.

The thoroughly minimalist account of responsibility outlined in Chapter 4 precludes multiplicative harms of this sort since it requires holding constant the structure of the institutional order in question. In this example, if we held constant the actions of one company and asked ourselves whether any other variable could be changed such that the harm was avoided, we would come up with the answer that, yes, in fact the other company could cease dumping its waste in the river. But this holds true for each company, so the thoroughly minimalist account yields the implausible conclusion that neither company (and indeed no one) is responsible for the harm. To suggest that the structure of the global order should be held constant in evaluating its contribution to human rights deficits is to suggest that it takes precedence over other factors that may affect the realization of human rights such as the structure of domestic political institutions.

Pogge is right to suggest that while human rights violations are usually the direct result of local factors, this does not preclude the shared responsibility of the global order. I argue, then, that a plausible account of the human right to subsistence will hold that an institutional order can be said to impede the realization of human rights *if*, but not *only if*, there are no modifications that can feasibly be made to any other factors affecting the realization of human rights such that these rights could be fully realized without modifying the institutional order in question. It must also allow that there are other

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[172] Pogge, 'Recognized and Violated by International Law: The Human Rights of the Global Poor', *Leiden Journal of International Law*, 18 (2005), 717-745 (pp. 734-735).

factors which, combined with the structure of the global order, affect the realisation of human rights; but that some such factors can equally be held constant in our evaluation of the global order, and any other institutional order or other contributing factor for that matter.

The second problem with the thoroughly minimalist account is its claim that in order to be considered unjust in respect to the human right to subsistence, the global order must make it *impossible* for people to acquire the material means for subsistence. Although an institutional order that does this is surely unjust, an institutional order that makes it extremely difficult for people to acquire the material means for subsistence would also seem to be unjust. Just how difficult it has to be to acquire access to the means for subsistence under a given institutional order in order for it to be considered unjust is a separate question, and one that I will set aside for the moment.

In light of these two deficiencies, I reject the thoroughly minimalist account in favour of what I simply refer to as the 'minimal interpretation' of the human right to subsistence. This interpretation places the duty not to deprive at the core of the human right to subsistence, but it allows that an institutional order might violate this duty in conjunction with other factors, and that an institutional order might violate this duty despite it being possible – thought extremely difficult – for persons within it to acquire access to the means for subsistence. We should note that the minimal interpretation, like the thoroughly minimalist account, blurs the distinction between institutional and interactional conceptions of human rights. This is because the reason that individuals are duty-bound not to support unjust coercive social institutions is because unjust coercive social institutions violate the human rights of others. Supporting an unjust coercive social institution thus entails being complicit in the violation of human rights; and since individuals are duty-bound not to violate human rights, the duty not to support unjust coercive social institutions can be reduced to this duty. On Pogge's mixed account, by contrast, the principles of justice that apply to social institutions are not the same as those that apply to individuals; so the duty of individuals not to support unjust coercive social institutions cannot be reduced to their duty not to violate human rights.[173]

[173] This brings to mind a debate between Pogge, G. A. Cohen, and Liam Murphy over whether different principles of justice govern interpersonal interaction and institutional structure respectively. The minimalist account I am proposing here is not necessarily committed to the view that all of the principles of justice that govern the structure of institutions also apply to

5.2. The Duty not to Deprive

The minimalist interpretation of the human right to subsistence that I am proposing is based on the duty not to deprive. This duty is the direct correlate of the human right to subsistence. This is widely accepted by proponents of the human right to subsistence, but discussion of this duty has tended to be overshadowed in the literature by discussion and debate about the positive duties taken to correlate with the human right to subsistence. Indeed very little has been written about the duty not to deprive. The most influential treatment of it is in Shue, and so I take that as my starting point. On his account, the negative duty correlative to the human right to subsistence is

> a duty simply not to take actions that deprive others of a means that, but for one's own harmful actions, would have satisfied their subsistence rights or enabled them to satisfy their own subsistence rights, where the actions are not necessary for the satisfaction of one's own basic rights and where the threatened means is the only realistic one.[174]

I have two minor objections to this account, neither of which concerns its content. My first objection is to the suggestion that fulfilling this duty is simple. As we shall see in what follows, the duty not to deprive is considerably more complex than is suggested here. Furthermore, because its violation is largely the result of aggregate or collective action, it is often difficult to ascertain whether or not the action of a particular agent constitutes a violation of this duty. My second objection is just that this account is insufficiently determinate. Although it provides a loose guide for thinking about the duty not to deprive, there is more that the theorist can contribute. My aim in this chapter is therefore to supplement Shue's account and show that a sufficiently detailed account of the duty not to deprive can make an important contribution to moral reasoning about global poverty. In what follows, I will discuss eight key features of the duty not to deprive based on Shue's account. Together, these will provide the supporting beams, so

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individual conduct, and vice versa; only that at least the non-violation of human rights is common to both. Pogge, it seems, is willing to accept this. See Pogge, 'On the Site of Distributive Justice; Reflections on Cohen and Murphy', *Philosophy & Public Affairs*, 29 (2000), 137-169; G. A. Cohen, 'Where the Action Is: On the Site of Distributive Justice', *Philosophy & Public Affairs*, 26 (1997), 3-30; and Liam Murphy, 'Institutions and the Demands of Justice', *Philosophy & Public Affairs*, 27 (1998), 251-291.

[174] *Basic Rights*, p. 55.

to speak, of a framework for assessing violations of the human right to subsistence on the minimalist interpretation.

(1) The duty not to deprive is a duty not to deprive people relative to an absolute baseline, namely the threshold for subsistence.

We can begin by noticing that the duty not to deprive on Shue's account is a duty not to deprive relative to an absolute baseline. Someone might be deprived of what they previously had (deprivation relative to a diachronic baseline), or they might be deprived of what they would have had had some previous state of affairs been allowed to persist (deprivation relative to a subjunctive baseline). Although for a person to be deprived, they must be made poorer than they were before, or than they might have been, my claim is that in order for the deprivation to be unjust, they must also be made poor relative to the threshold for absolute poverty. On Shue's account, the relevant threshold is the threshold for subsistence. We can distinguish those suffering from poverty in this sense by referring to them as *absolutely* poor. The human right to subsistence is grounded in the tremendous and undeniable importance for every human being to have access to the means for subsistence. Whatever else the human right to subsistence entails, its fulfillment requires at least that right-holders not be forseeably and avoidably deprived of access to the means for subsistence.

Shue's account is not committed to the injustice of deprivation in general, and rightly so. Examples of morally permissible ways in which one might be causally implicated in someone's deprivation include claiming one's winnings in a fair game of cards, despite this resulting in one's opponent being poorer than he was before, or than he would have been had he not wagered; or offering a better service than a business competitor thereby drawing in those who were previously the competitor's patrons. This might cause the competitor to become poorer than she was before, or poorer than she would have been had you not offered a good service, but it is nevertheless morally permissible.[175] Furthermore, there are laws that may have the effect of making people poorer than they might otherwise be, but where this does not make them unjust. For example, a law might require that every commercial building have a secondary fire escape. This might entail a considerable financial burden for a shopkeeper who is thereby required to have a secondary fire escape installed. But just because a law imposes costs

[175] David Miller makes a similar claim in 'Distributing Responsibilities', in *Global Responsibilities: Who Must Deliver on Human Rights?*, ed. by Andrew Kuper, pp. 95-115 (p. 100).

on some people making them worse off than they were or than they would otherwise be, this does not entail that the law is unjust.

Shue's account also leaves open whether deprivation relative to some higher absolute baseline would also be unjust. The baseline that he has in mind is the threshold for subsistence, but his account is compatible with it being unjust to deprive people relative to a higher baseline than this. Shue's point is that whatever other cases of deprivation might be unjust, it is at least unjust to deprive someone relative to the absolute baseline in question.

(2) The duty not to deprive is a duty not to deprive people of access to the means for subsistence.

According to Shue, the object of which we are duty-bound to avoid depriving people is 'a means that would have satisfied their subsistence rights or enabled them to satisfy their own subsistence rights, (...) where the threatened means is the only realistic one'. This requires some unpacking. First of all, given that the duty not to deprive is meant to be the corollary of the human right to subsistence, it is equivocal and potentially circular to suggest that it is a duty not to deprive people of a means that would satisfy this same right. I take it that the relevant duty is better expressed as the duty not to deprive people of access to the means for subsistence. This initially raises two questions: What is meant by 'subsistence'? And, What does it mean to have access to the means for subsistence? In this section, I address each in turn.

I already discussed the matter of what is meant by 'subsistence' in Chapter 2. As we saw, what counts as subsistence is often described in vague terms. Nevertheless, I argued that our analysis of the human right to subsistence can proceed based on a fairly rough idea of what subsistence means. To reiterate, I take it that our analysis of the human right to subsistence – and in this case of the negative duties correlative to this right – can proceed based on an account of subsistence understood as including food adequate to avoid malnutrition, clean water adequate to avoid dehydration, clothing and shelter adequate to avoid exposure to the elements, and basic emergency and preventive medical care to avoid at least easily avoidable disease and debility, and easily preventable death.

Let us, then, turn now to the second question posed above. As I said earlier, the substance of the human right to subsistence, and so the object of which people must not be deprived, is *access* to the means for subsistence. Having access to some good is not the same thing as having that good. I have access to X if, for example, it is among the things

that I can purchase with the money that I actually have or barter with goods that I actually possess; but this is not the same as actually having X. To be sure, we have access to all those things that we have; but the inverse does not hold. Having access to the means for subsistence means having opportunities to acquire the material means for subsistence when one does not actually possess these.

I take it that having access to the material means for subsistence is the relevant object of the human right to subsistence because the fulfillment of the human right to subsistence should be compatible with people freely choosing to deny themselves all or some of the material means for subsistence. For example, although actually having enough food to avoid malnutrition is tremendously important for all persons, we would not say of someone who is on a politically motivated hunger strike or who is fasting for religious reasons that her human right to subsistence is not fulfilled. Insofar as human rights are intended to protect highly important human interests, it is the interest in being able to acquire the material means for subsistence that matters most.

A further qualification is required. A single mother who has no way of obtaining the material means for subsistence for herself and her children except by prostituting herself can be said to have access to the means for subsistence in that she has at least one opportunity to secure for herself and her dependents the material means for subsistence. But insofar as the human right to subsistence is meant to protect the interest in being able to acquire the material means for subsistence, we should add the qualification that this be possible in a way that does not threaten the dignity or integrity of the right-holder. Having access to the means for subsistence should then be interpreted as having *reasonable* opportunities to acquire the means for subsistence, understood as having opportunities to acquire the means for subsistence that do not compromise the dignity or integrity of the agent.

What counts as an opportunity to acquire the material means for subsistence that does not compromise the dignity and integrity of the agent is a difficult question. Examples of opportunities that compromise the dignity or integrity of the agent that come to mind immediately include things like prostitution and selling one's organs. But it might be pointed out that prostitution and organ-selling do not *necessarily* compromise the dignity and integrity of the agent. Take, for example, a woman who chooses prostitution as means to make profit from among a large range of other opportunities. Compared to the woman who has no choice but to prostitute herself in order to feed her children, it seems less clear that her dignity and integrity is compromised. What we can

perhaps say is that few people would choose prostitution, organ-selling, and the like as ways to make a living unless they had no other choice, and so on their own they do not count as reasonable opportunities to acquire the means for subsistence. But this is not entirely unproblematic. There might be opportunities to acquire the means for subsistence that do not obviously compromise the dignity and integrity of the agent forced to take them up despite being ones that few people would choose unless they had no other option. Perhaps more problematic is that an opportunity that compromises the dignity and integrity of one person may not compromise the dignity and integrity of another. Making a living as a taxi driver does not generally compromise the agent's dignity; but it might if it represents the only available option for a refugee who has trained as a surgeon in his home country but whose qualifications are not recognized in his host country. Working in an abattoir does not generally compromise the integrity of the agent; but it might if it represents the only available option for a practicing Buddhist.

On the one hand, these questions serve to underscore my earlier point that assessing violations of the duty not to deprive is not simple. On the other hand, we can put the matter of what precisely counts as having a reasonable opportunity to acquire the means for subsistence aside for the moment since we can go a considerable way in our analysis and evaluation of the human right to subsistence without a precise account. This is because there are a huge number of people who clearly lack a reasonable opportunity to acquire the means for subsistence in light of the fact that they lack any opportunity at all. There are also millions of people who clearly have many reasonable opportunities to acquire the means for subsistence. It will suffice for the purposes of the current analysis to say that the substance of the human right to subsistence is access to the means for subsistence understood as having reasonable opportunities to acquire the means for subsistence. This implies that the negative duty correlative to the human right to subsistence is a duty not to be complicit in rendering someone incapable (either having no opportunities or having only opportunities that compromise the agent's dignity or integrity) of accessing the means for subsistence.

(3) The duty not to deprive is a duty not to deprive people of their only realistic opportunity to acquire the means for subsistence.

It is important to note Shue's requirement for an act to count as a violation of the duty not to deprive that 'the threatened means is the only realistic one'. There is nothing inherently wrong with depriving someone of one of many opportunities that they might

take to acquire the means for subsistence. A shop-keeper with several employees who decides upon retirement to close the shop deprives the former employees of the opportunity to acquire the means for subsistence by working in the shop; but assuming there are further reasonable opportunities for them to acquire the means for subsistence available, he does not violate his duty not to deprive. A person has access to the means for subsistence in the relevant sense if she has at least one reasonable opportunity to acquire the means for subsistence. As such, the human right to subsistence is violated only insofar as a person is deprived of her *only* reasonable opportunity to acquire the means for subsistence.

An implication of this is that it is unjust to be causally implicated in someone's absolute impoverishment even if that person consented to the action that resulted in it. So in the examples mentioned above in which two parties willingly engage in fair economic competition, the winning party is not justified in claiming her winnings in case this will result in the absolute impoverishment of the other. It might be objected that this is to deny people the moral freedom to wager their only means for subsistence, even if they stand to gain considerably. This is a difficult question and I cannot address it adequately here. I note, however, that we can find a parallel in the question of the extent to which people are morally free to consent to undergoing highly damaging treatment by others. While it is generally accepted that a boxer who gets knocked out in a fair match has had no right violated insofar as he consented to compete and the competition is fair, it is less clear that a person's consent to be killed and cannibalized morally justifies those actions on the part of another.[176]

(4) The duty not to deprive is not parasitic on other duties.

Consider the following case:

> Case 1: Family A is a family of subsistence farmers in a country that predictably experiences several unproductive months each year as a result of the climate. Family A works hard during the productive months and stores enough food to get through the unproductive months. Just before the unproductive season,

[176] In 2002, Armin Meiwes, a German man, slaughtered and then ate parts of another man who had explicitly consented to these actions. Meiwes, who was initially convicted of manslaughter, was ultimately convicted of murder in 2006 and sentenced to life in prison. See Luke Harding, 'German Court Find Cannibal Guilty of Murder', *Guardian*, 10 May 2006 <http://www.guardian.co.uk/world/2006/may/10/germany.lukeharding?INTCMP=SRCH> Although the German judiciary found that the acts were not legally permissible despite the victim's consent, the question remains whether his consent renders them morally permissible.

someone comes and steals all of the food they had stored, leaving Family A no way of feeding themselves for this time.

This example seems like a clear case of behaviour that constitutes a deprivation of Family A's access to the means for subsistence. However, we might note that a satisfactory account of the injustice in this situation can ostensibly be given by appeal to the property rights of Family A. Assuming that the Family A had a legitimate claim to the food they stored, the injustice in this situation consists in the violation of their right in their property. The violation of this right might be thought to be aggravated by the fact that it leaves Family A particularly badly off; but it would straightforwardly constitute a rights violation even if it did not. If Family A were very wealthy to begin with and only a small amount of their property was stolen, an injustice would still have been committed.

There are plenty of ways in which injustice can result in people lacking access to the means for subsistence. In addition to straightforward violations of property rights, unjust discrimination, exploitation, and coercion, to name a few, can also result in those subject to them falling below the threshold for subsistence. The human right to subsistence appears to be superfluous in accounting for injustice in these cases and others like them. If it turns out that the injustice of severe impoverishment always resides in how it is brought about and never in the impoverishment itself, then it seems that there is no human right against severe poverty, but rather rights against being deprived of one's rightful property, being unjustly discriminated against, being unjustly exploited, being unjustly coerced, and so on. A great deal of poverty in the world is undoubtedly the result of such injustices, and we should, of course, be concerned about this, perhaps especially when they result in people being deprived of access to the means for subsistence. But what we are really interested in *here* is whether there is a duty not to deprive, the violation of which amounts to the violation of the human right to subsistence. To show that there is, we need to show that the violation of the duty not to deprive is not merely parasitic on the violation of some other duty. If it is, then it is really just an aggravating factor. When someone's right is violated which in turn results in their being deprived of access to the means for subsistence, this is a worse violation of *that* right. But is the human right to subsistence really just the aggravated violation of other rights? This seems too weak. In order to support the affirmation of an independent right against deprivation, however, we would need to show that there are cases in which the injustice in the deprivation resides in the deprivation itself. Consider, then, another case:

> Case 2: Family B are subsistence farmers in a remote area. They have been grazing their animals on the same small tract of land for several generations. This land actually belongs in deed to their neighbours, Family C, who are much better off than they are and who have had no use for the land for many years. The neighbouring farm is eventually passed on to the next generation of Family C who decide to sell it to Family D. Family D decide that they want to make use of the land that Family B use for grazing. This means that Family B will no longer be able to keep animals, without which they will slip below the threshold for subsistence.

This case is not quite as straightforward as Case 1. First of all, there is a question of whether Family D's act of evicting Family B constitutes an injustice at all given that Family D has a claim to the land on the basis of their having purchased it from Family C who also presumably had some claim to the land. According to the human right to subsistence, however, the eviction of Family B is unjust since it constitutes an action that forseeably and avoidably results in the severe impoverishment of Family B. This suggests that Family B has a competing and indeed overriding claim to the land. But if this is right, Case 2 starts to look rather like Case 1 in that the injustice does not reside in the mere fact that Family B is caused to fall below the threshold for subsistence, but rather that doing so was a violation of their right in the land. There is, however, an important question here of what grounds such a claim.

The answer, it seems, is the right to subsistence of each member of Family B. It is plausible that principles of property ownership must be sensitive to the importance of people's basic needs being met.[177] Such principles would not permit the eviction from property of those for whom the use of that property is their only means of subsisting. Case 2, then, offers an example of how an otherwise just action (claiming purchased property) is rendered unjust by the constraint imposed by the human right to subsistence. I argue that this provides a helpful insight in analyzing the negative duties correlative to the human right to subsistence.

I argue that the human right to subsistence manifests itself predominantly as a constraint on the acceptability of moral principles and their application. Principles of

[177] Waldron, for example, argues that systems of private property must presuppose that everyone has access to the means for subsistence. This finds support in many libertarian theories, including notably Locke's. According to Locke, the system of private ownership should not make anyone worse off than he would have been in the state of nature. The human right to subsistence understood negatively is embodied in this principle. See Waldron, 'Rights and Duties: Two Sides of the Coin', pp. 18-23.

property ownership that support the unrestricted license of property-owners over the use of their property, for example, are generally justifiable.[178] However, where the application of this principle leaves people unable to adequately provide for themselves and their dependents, it conflicts with the right to subsistence, even construed as entailing only negative duties. Since the interest in not falling below the threshold for subsistence is so important, the case can be made for injustice in the application of any principle – even one that is otherwise justifiable – that results in some people inevitably falling below this threshold.

(5) The duty not to deprive is a duty not to deprive people of opportunities.

What I said in the previous sub-section echoes the 'centrist' libertarian view that everyone is entitled to the resources necessary for subsistence.[179] On this sort of libertarianism, the validity of private property rights presupposes that everyone has access to the resources they need for subsistence. This is not just a matter of initial acquisition; rather it is an ongoing requirement.

My interpretation of the negative duty correlative to the right to subsistence is not, however, a mere re-statement of a centrist libertarian account. This is because of its focus on opportunities rather than property. Of course property will in many cases represent opportunity, as in Cases 1 and 2, but this will not always be the case. Consider a third case:

> Case 3: Family E, which consists of a mother, a father, and three children, manage to secure for themselves the material means for subsistence only because the eldest child, who is 14 years old, has been withdrawn from school in order to work at the local factory. The combined income of the two parents is insufficient to provide adequately for the family. One day, upon realizing that the child-employee is only 14, the factory owner fires him on the grounds that he does not think that children under the age of 15 should be employed. Although this allows the child to return to school, the family soon finds itself lacking the material means for subsistence.

This is a difficult case. A principle against the employment of children under the age of 15 is discriminatory. But not all discrimination is unjust. In general, there seem to be

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178 There are, of course, egalitarian arguments that aim to impose further restrictions on private property ownership. This, however, is not our concern here.

179 See, for example, A. John Simmons, *The Lockean Theory of Rights* (Princeton, NJ: Princeton University Press, 1992), especially Chapter 5.

good reasons for not employing children, so it is not clear that this principle is unjustly discriminatory. However, the factory owner's application of this principle denies the members of Family E the opportunity to adequately provide for themselves. According to Shue's account, therefore, the impoverishment of Family E in this case constitutes an injustice. This implies that there are circumstances under which it is unjust to refuse to employ children. Again, as in the previous cases, it looks as though the injustice of the situation resides not merely in the absolute impoverishment of the family, but rather elsewhere – in this case in the application of an unjustly discriminatory principle. But like in Example 2, we need to explain why the refusal to employ children is in this case unjust. It seems reasonable to appeal to the fact that, although there are good reasons to discourage the employment of children, in this case it has the effect of denying some people the only opportunity to provide for themselves the means for subsistence. Appeal to a human right to subsistence interpreted as a negative right is therefore indispensable to explaining why we should reject the application of such a principle in this case.

The point of this example is just to illustrate that the relevant object of deprivation is the opportunity to acquire for oneself and one's dependents the material means for subsistence. This entails that the thieves in Case 1 would not have acted in violation of the human right to subsistence if Family A had some other reasonable means of obtaining the material means for subsistence despite having been deprived of their rightful property. This is, of course, not to deny that that an injustice had occurred. Family A would still have had their property rights violated. However, a violation of the human right to subsistence only occurs, when the right-holder is left with no reasonable opportunity to acquire the material means for subsistence.

(6) The duty not to deprive includes the duty not to deny.

The negative duty correlative to the human right to subsistence is expressed on Shue's account as a duty not to deprive. We have already discussed *of* what it is a duty not to deprive, namely the reasonable and realistic chance at securing the material means for subsistence. In this section, I want to take a closer look at the concept of deprivation.

We speak of deprivation in two ways: active and passive. We can speak of someone depriving someone else of some object. This is the active sense of deprivation. Deprivation is also used as a synonym for absolute poverty. We can say that some people live in a state of deprivation. In the expression of the negative duty correlative to the right to subsistence, the relevant sense of deprivation is the active one. The usual way

of understanding deprivation in this sense is as an act of taking some object away from someone. I argue that it is important that we understand deprivation more broadly as encompassing not only taking away, but also withholding or denial. To illustrate the importance of this point, consider another example.

> Case 4: While wandering the countryside looking for new opportunities, Family E happen upon some land. They ascertain that the land belongs to Family F, and also that Family F own a great deal of land and do not use all of it and have not for many years. In fact, they would hardly notice if Family E planted a small garden on a remote corner of the land. Family E approach Family F and requests permission to use enough land for them to grow what they need to subsist and a little more so that they can afford to pay Family F a small amount for the use of the land. Despite having no other use for the land and having no competing offers for it, Family F refuse to grant Family E use of the land, leaving Family E with no opportunities to acquire access to the means for subsistence.

Family E in this case have not been deprived of anything that they already had. Rather, they have been denied something that they could have had. But just as in Case 2, if the land represents Family E's only opportunity to acquire access to the means for subsistence, then they have a claim to it on the basis of their human right to subsistence. Just as it is impermissible to deprive someone of that to which they have a right, so too is it impermissible to deny it to them.

This recalls the abovementioned distinction between diachronic and subjunctive baselines. On the minimalist account of the human right to subsistence, to absolutely impoverish someone relative to a diachronic baseline is to deprive them of that to which they are entitled. To deny someone access to the means for subsistence is to absolutely impoverish them relative to a subjunctive baseline, but is equally impermissible. An important and difficult question concerns what sorts of actions counts as denial. Say, for example, I accidentally leave my book at your house. If I turn up and ask you to give it back and you refuse, it seems fairly clear that you are denying me my book. But what if I ask you to bring it back to me and you refuse, saying I must come and get it? Are you denying it to me then? What if you borrowed my book and now refuse to bring it back to me?

These questions are relevant to the issue of global poverty since, in many cases, the very poor are not able to simply take, or even to try to take that to which they are, on this account, entitled. In some cases, this is due to weakness or immobility, in others it is

due to lack of education and understanding of their own situation and rights. These questions, therefore, require attention, but I will not pursue them here. Our inquiry can, for the moment, proceed on the basis of a fairly rough understanding of what it means to deny someone access to the means for subsistence.

(7) The duty not to deprive can be violated singularly or multiplicatively.

The examples discussed so far are all examples of singular violations of the duty not to deprive. They involve one identifiable agent depriving persons of access to the means for subsistence. My purpose here is to point out that if we focus only on such violations, we will overlook important instances of unjust deprivation. This is because as discussed above, in order to transgress the duty not to deprive thereby violating the human right to subsistence, an agent must deprive the victim of his only reasonable opportunity to acquire the means for subsistence. Whereas it would not be a violation of the human right to subsistence for Family D to evict Family B from the land in Case 2 if Family B had at least one other viable opportunity to secure subsistence for themselves, if the use of the land is their only available means of remaining above the threshold for subsistence, then depriving them of access to it constitutes a violation of their right. Likewise, the factory-owner's refusal to employ children in Case 3 would be unproblematic, except that in this case it deprives Family E of their only available opportunity to secure subsistence for themselves. Here, however, we encounter a potential problem, namely that it is seldom the case that one agent's action is sufficient to deprive another of their only opportunity for acquiring the means for subsistence. This is brought out in Case 4. We can protest against Family F's denial to Family E of access to their land on the grounds that this is to deny Family E their only opportunity to secure subsistence for themselves. But Family F could respond by questioning why they rather than some other family of property-owners should bear the burden of having to sacrifice some of their land so that Family E can subsist. It does not follow from the requirement that principles of property ownership be sensitive to people's dire need that any given property-owner must sacrifice their property unless they are the proprietors of the only available property. So if all the other land was being used for the purposes of guaranteeing subsistence to its proprietors except part of Family F's, then Family E might be said to have a claim to that part of Family F's land.

Even if this were the case, however, Family F might respond to our protests by pointing out that the only reason that use of their land is the only opportunity for Family

E to secure subsistence for themselves is that the factory owner in Case 3 is stubbornly refusing to hire the eldest child of Family E. 'Why,' Family F might question, 'should we be construed as the ones depriving Family E of their only opportunity to secure subsistence for themselves when the factory owner could hire the child?' Perhaps if it could be shown that there are better reasons for children not to be employed than for proprietors to have full license over their property this could be justified; but there is no clear path to the resolution of such conflicts, and some such conflicts might simply not be resolvable due to the incommensurability of the values at stake.

The purpose of this discussion has been to show that while the human right to subsistence might well have as its correlate negative duties not to deprive others of their only reasonable opportunity to secure subsistence for themselves and their dependents, the assessment and the occurrence of such deprivations will sometimes be complicated by the fact that the deprivation is *multiplicative*. We must take in to account such multiplicative harms lest we overlook instances of unjust deprivation. As we saw in Pogge's example of the two companies who dump waste into the river, although the actions of each company are individually benign and morally permissible, the combination of each company's respective actions causes harm in which both companies are complicit. Although it is true that the neither company's actions would be harmful were it not for the actions of the other company, this does not excuse their actions. This is because there is no more reason for one company to refrain from disposing of its waste in the river than there is for the other (or so we assume here for the sake of argument). As such, the responsibility and therefore the burden must be borne by both companies together. Likewise in the case of Family F and the factory owner, neither can deny their responsibility for depriving Family E of the opportunity to secure subsistence for themselves on the grounds that their actions would not lead to such a deprivation were it not for the actions of the other.

In the absence of other viable opportunities for Family E, it is neither the factory owner nor Family F alone who are responsible for the deprivation, but rather the conjunction of their respective refusals to accommodate Family E. The problem is not that Family F insist on their entitlement to their land. And the problem is not that the factory owner refuses to employ children under the age of 15. The injustice occurs as a result of the conjunction of Family F's denial of land access to Family E and the factory owner's refusal to employ children.

(8) The duty not to deprive can be violated directly or indirectly.

All of the examples discussed so far involve cases of direct violations of the duty not to deprive. They are direct in the sense that the harmful actions of the agents either singularly or multiplicatively have a direct effect on the victims. In this sub-section, I will highlight the fact that the duty not to deprive can also be violated indirectly.

It is important to note in Cases 1-4 above the absence of any reference to laws or social conventions, aside from the brief mention in Case 2 of Family C owning the land in deed. The decisions of the various agents are cast as purely based on principles they personally endorse backed by their own ability to enforce their decisions. This is not very realistic. Consider, then, the following two modified examples:

> Case 2': Family B' are subsistence farmers in a remote area. They have been grazing their animals on the same small tract of land for several generations. This land actually belongs in deed to their neighbours, Family C', who are much better off than they are and who have had no use for the land for many years. The neighbouring farm is eventually passed on to the next generation of Family C' who decide to sell it to Family D'. Family D' decide that they want to make use of the land that Family B' use for grazing. This means that Family B' will no longer be able to keep animals, without which they will slip below the threshold for subsistence. Family B' refuse to vacate the property on the grounds of their human right not to be denied their only reasonable opportunity to secure subsistence for themselves. Family D' call in the local authorities who, on the basis of existing law that grants Family D' unrestricted license to their property, forcibly evict Family B' from the land.

> Case 3': Family E', which consists of a mother, a father, and three children, manage to secure for themselves the material means for subsistence only because the eldest child, who is 14 years old, has been withdrawn from school in order to work at the local factory. The combined income of the two parents is insufficient to provide adequately for the family. One day, upon realizing that the child-employee is only 14, the factory owner fires him on the grounds that there are strictly enforced laws against the employment of children under the age of 15 and he cannot afford to be punished by the local authorities for breach of this law.

Although this allows the child to return to school, the family soon finds itself lacking the material means for subsistence.

If we think that the human right to subsistence can ground constraints on principles governing property ownership and principles of discrimination, then the same must hold for laws governing property ownership and discriminatory laws. As such, the injustice in these modified examples, insofar as we think they involve some injustice, resides in the laws. Now supposing that the laws in these examples are unjust, where does responsibility lie? In Case 2', we might wonder if Family D' act unjustly in calling on officials to enforce an unjust law. And in Case 3' we might wonder if the factory owner acts unjustly in complying with an unjust law. But if Family D' and the factory owner bear any moral responsibility at all for the impoverishment of Family B' and Family E' respectively, surely they are not solely culpable. Those responsible for the imposition of the laws must hold some, if not all, of the responsibility for the impoverishment that results from them.

The same would be true for a modified version of Case 4 – call it Case 4' – in which there are laws against the employment of children as well as laws that favour the property rights of Family F' over the land that Family E' so badly need. Unlike the injustice in Case 4, the injustice in Case 4' is not the result of multiplicative harm, assuming that the same legislative body is responsible for both laws. In this case, as in Cases 2' and 3', the harm is neither singular nor multiplicative, but rather systemic or institutional.

We saw in Chapter 4 that Pogge espouses an institutional account of the human right to subsistence, and human rights in general. It is worth taking a moment here to underscore the difference between his account and the institutional perspective I have in mind. As we have seen, Pogge constrains the scope of the duty-bearers of human rights *conceptually* whereas I am making no such claim. My claim is only that for the human right negatively construed, we will fail to recognize many violations of it unless we take on the institutional perspective. This does not imply that human rights violations in general cannot be interactional; only that we must not neglect the institutional perspective.

Building on Shue's account, I have argued that the negative duty correlative to the human right to subsistence is a universal duty not to act in such a way as to deprive, or be complicit in depriving, others of access to the means for subsistence. I have provided a conceptual analysis of this duty with the aim of providing a framework for identifying

violations of it, and of the human right to subsistence. I specified that what counts as having access to the means for subsistence is having at least one reasonable opportunity to acquire the means for subsistence. Along the way, several important questions have been raised that I have not been able to adequately address here. These include the questions of (a) what the relevant threshold living standard for subsistence is, (b) what counts as a reasonable opportunity to acquire the means for subsistence, (c) whether people can waive the right to subsistence, and (d) what counts as denying someone access to the means for subsistence. Answering these questions may be required in order to ascertain whether a given agent's human right to subsistence has been violated. I have tried to provide some guidelines for thinking about these issues; but we need not provide decisive and complete answers to these questions in order to recognize all violations of the human right to subsistence.

In the next section, I will reply to some objections to the minimal interpretation of the human right to subsistence as I have presented it here, before going on in the next chapter to highlight the main implications affirmations of this right have for our moral reasoning about global poverty.

5.3. Objections to the Minimal Interpretation

In this section, I will discuss two potential objections to the minimal interpretation of the human right to subsistence. My purpose is to show that these objections can be overcome; but discussing them also has the additional value of highlighting some of the important features of the minimal interpretation.

5.3.1. It Deviates Too Far from the Conventional Interpretation

In considering why the minimal interpretation might be rejected, it will be helpful to reflect on why the duty not to deprive has been neglected in the literature. One reason might be that we already understand it sufficiently and so it does not make for very interesting philosophical discussion. I think this is a misguided view. I hope in the previous section to have highlighted the complexities of the duty not to deprive and to raise some difficult questions that must be answered in order for us to have a full understanding of this duty.

Another reason that the duty not to deprive might be neglected is that it is thought that its violation simply does not account for much poverty worldwide. We need to make clear why this might be a problem. There is, I think, something strange about

the suggestion that the number of cases of violations of a right can affect whether or not it is a human right. It seems strange, for example, to suggest that torture would not constitute a human rights violation if very few people were ever tortured. I argue that the human right to subsistence can be coherently interpreted as a right against being deprived of access to the means for subsistence, even if there are very few actual threats to this right. This would not, however, provide a terribly satisfying interpretation of this right. The motivation for much of the literature on the human right to subsistence is to draw attention to the injustice of global poverty and the urgency of remedying the situation. For this reason, it is plausible that the success of an account of the human right to subsistence depends on the extent to which we can trace poverty in the world today to its violation.

But what reason is there to think that the violation of the duty not to deprive does not account for much poverty worldwide? It might not seem to be the case that much poverty can be explained by the straightforward deprivation of one individual by another of access to the means for subsistence. But as I have argued, the violations of the duty not to deprive might be multiplicative or indirect. As long as we focus on instances of singular and direct violations of this duty, we will miss many of the most grievous violations of it. More to the point, however, absent a sharper account of what the duty not to deprive requires, we are not in much of a position to judge the extent to which its violation can account for poverty worldwide. Assessing whether it does is in part an empirical task, but we first need a normative framework. I have started to build such a framework here, but it is far from complete. The point is that to shut down the project of providing such a framework on the grounds that it will not serve us in reasoning about the normative implications of global poverty is question-begging.

I have argued that at least these two reasons for neglecting the duty not to deprive are unsatisfactory and, as such, do not provide reason to reject an interpretation of the human right to subsistence that takes this duty as its focal point. It might nevertheless be argued that, although the minimal interpretation provides a plausible way of avoiding the claimability objection, it strays too far from how the human right to subsistence is generally understood, and therefore fails as a plausible interpretation of this right. As we have seen, the human right to subsistence is conventionally interpreted as a universal right to protection and provision. Interpreting it only as a right not to be deprived is, according to the sort of objection at hand, too narrow. Where masses of people lack any

opportunity to acquire the means for subsistence as a result of natural disaster, they have been deprived, but not by any agent. The minimal interpretation says that they are entitled to take what they require to subsist; but they will most likely be unable to do this. This is likewise the case for all very small children and individuals who are severely disabled. If they are left to die even though assistance could have been provided, the objection holds that according to the minimal interpretation, no human rights violation has occurred.

I want to stress that the minimal interpretation I am proposing is not committed to this. I have provided reason to think that claimability is in fact a condition on the existence of rights, and I have argued against various interpretations of the human right to subsistence according to which the positive duties thought to be correlative to it are claimable. This does not support the strong conclusion that there is no plausible interpretation of the human right to subsistence according to which it correlates with positive duties that are claimable. My point is just that such an interpretation remains to be provided. The minimal interpretation I am proposing, like Pogge's account, need not be taken as an exhaustive account of the duties correlative to the human right to subsistence in order to make an important contribution to moral reasoning about global poverty.

My point is that the claimability objection constitutes a persistent challenge to the human right to subsistence, and should be taken seriously. I have argued that the differences that underlie the debate between proponents of the claimability condition and defenders of the conventional interpretation of the human right to subsistence run very deep. I have argued that a critique of the views that underlie the claimability condition is a worthwhile pursuit, but because this kind of approach tends to take the discussion further and further away from the urgent practical matter of global poverty that has motivated the discussion, my suggestion is that proponents of the human right to subsistence would do well to look for ways in which the practical discussion can be moved forward despite fundamental philosophical differences. As such, the point of the minimal interpretation is largely to provide a critique of the rejection of the human right to subsistence while nevertheless granting the central normative premise of the claimability objection. Incidentally, this also works for the liberty objection discussed in Chapter 2, although I am not inclined to endorse this premise. This leaves open the possibility that the minimal interpretation is a partial interpretation of the human right to subsistence.

The negative duties correlative to the human right to subsistence which are acknowledged by all defenders of this right are frequently overlooked in the literature. My central claim is that in setting aside the duty not to deprive, defenders of the human right to subsistence are overlooking an important contribution to reasoning about the normative implications of global poverty. Agreement on the existence and importance of the duty not to deprive provides a way forward for those who ultimately disagree about very fundamental aspects of moral philosophy. In the following chapter, I will gesture towards some important areas in need of further discussion.

5.3.2. It Fails to Avoid the Claimability Objection

A second line of objection against the minimal interpretation of the human right to subsistence is that it fails to accomplish what it promises. It promises to provide a plausible account of the human right to subsistence that avoids the claimability objection by fulfilling the claimability condition. In this section, I will consider and ultimately reject a reason for thinking that it does not succeed in doing this.

The reason that the minimal interpretation would seem to avoid the claimability objection is that it is generally thought that negative duties are necessarily perfect, and therefore claimable on O'Neill's account. Ashford has, however, suggested that the duty not to deprive is, in many cases, imperfect. This would imply that this duty is not claimable on O'Neill's account of claimability according to which the duty-bearers and the content of their duties must be determinate. As we shall see, on Ashford's interpretation, the duty not to deprive will also struggle to avoid the liberty objection.

Particularly where the deprivations are systemic, Ashford argues that it is sometimes impossible to identify the content of the negative duties that have been violated and the specific perpetrators:

> The negative duties corresponding to these rights [against being deprived of access to basic necessities] may be shared duties that have not been specified and allocated among agents. In such cases, while we can identify a group of agents as sharing responsibility for a large number of violations, we cannot match up specific victims to specific violators and single out the agent(s) specifically responsible for a specific victim's violation.[180]

It is important to keep in mind the distinction between difficult-to-determine and indeterminate. We have seen that O'Neill's concern is not just that the duty-bearers and

[180] 'The Duties Imposed by the Human Right to Basic Necessities', p. 215.

the content of their duties are difficult to determine in the case of the human right to subsistence; rather, her objection is that they are indeterminate in the absence of institutions. Ashford is making the same point about the duty-bearers and content of the duties corresponding to the negative right not to be unjustly deprived of access to the means for subsistence. Her claim is not just that it is difficult to identify causal responsibility in cases of systemic deprivations, but rather that the perpetrators simply cannot be identified for any given victim. This is because she holds that the fulfillment of the negative duty not to collaborate in the imposition of coercive social institutions that deprive people of access to the means for subsistence in many cases requires members of unjust coercive social institutions to engage in institutional reform. But the duty to engage in institutional reform is an imperfect duty in the absence of institutional mechanisms for establishing what is required of each agent, and so absent such institutional mechanisms, it looks as though the human right to subsistence construed negatively is nevertheless not claimable, at least in cases of systemic deprivations. Furthermore, if the duty not to deprive can require its bearers to engage in institutional reform, it is not really a negative duty. As such, it will not satisfy the liberty objection.

I argue that although Ashford is right to point out the complexity of systemic violations of human rights, the difficulties this creates in identifying perpetrators, and the resulting need to adjust the conventional ways in which we think about human rights violations, the duty not to deprive is nevertheless both negative and perfect. This supports the view that a purely negative conception of the human right to subsistence can in fact avoid the liberty and claimability objections.

I argue that when a person's right to not be deprived of access to the means for subsistence is violated systemically, there is a fact of the matter about how each individual participant's actions have contributed to the violation. As we shall see in the next chapter, in many cases the specific role played by any given participant in the systemic violation of one person's right not to be deprived will be extremely difficult to determine. In fact, it might be that, given the resources we have for understanding such connections, it is impossible to determine. But this is not because it is indeterminate. There is a fact of the matter about how one agent's actions affect another through highly complex webs of interconnection, even if we cannot access this fact. This is undoubtedly an important obstacle in practice, but it poses no theoretical problem. The claimability condition only requires that rights are claimable *in principle*, meaning that the duty-bearers

and the content of their duties are determinate. In the case of systemic violations of the right against unjust deprivation, I argue that this condition is fulfilled.

The point I have just made pertains to the identification of duty-bearers after a right has been violated. Ashford, however, is more concerned with how a given agent might avoid violating her negative duty not to be complicit in systemic injustice. This requires avoiding complicity in the imposition of unjust coercive social institutions on others. How is the conscientious individual to act or abstain from acting so as to avoid complicity in the imposition of such institutions? The most obvious answer is to withdraw from those institutions or at least from the unjust aspects of them insofar as these can be singled out and isolated. But as Ashford rightly points out, in many cases, this cannot be reasonably required. For many people, extracting themselves from the social institutions in which they participate would involve excessive burdens. In some cases it is simply not possible given a lack of reasonable alternatives. For example, a great deal of basic material goods are available to residents of the developed world at very low costs on account of their being manufactured in societies where the cost of labour is very cheap. In most cases, at least part of the reason labour is so cheap is because the labourers have no other viable options for supporting themselves and their dependents, and so they are willing to work for less than a subsistence wage and in very poor and sometimes dangerous conditions. Residents of developed countries may agree that this is unjustly exploitative and that they should not support social institutions which put people in a position to be exploited and allow (legally) for their exploitation. Some residents of developed countries might choose to withdraw from these institutions by purchasing only goods that were manufactured under non-exploitative conditions. These goods, however, might be more expensive than those manufactured under exploitative conditions. As such, some residents in developed countries might not be able to afford to purchase only goods manufactured under exploitative circumstances without thereby putting themselves and their dependents at a serious disadvantage. According to Ashford, in order to fulfil their negative duty not to be complicit in the imposition of unjust coercive institutions, people in this sort of situation must engage in institutional reform insofar as this is possible. Engaging in institutional reform, however, involves taking positive steps rather than merely forebearing.

Ashford draws on Pogge's account which characterizes the negative duty relevant to the human right to subsistence is the duty not to impose on others *without compensation*

unjust coercive social institutions.[181] Here we see the distinction between duties and obligations put to use.[182] There are clear cases in which the performance of some positive action, rather than mere abstention is required for the fulfillment of a negative duty. For example, the negative duty not to break promises can require the duty-bearer to perform sometimes quite onerous positive actions, namely those whose performance was promised. In Kantian terms, negative *duties* can entail positive *obligations*. In order for a duty to be perfect, so must the obligations it entails. This is achieved in the case of the promise since the content of the positive obligations entailed by the negative duty not to break one's promises is defined by the promise itself. Following Pogge, Ashford holds that the duty not to be complicit in the imposition of unjust coercive social institutions entails positive obligations. But, she points out, in the absence of coordinated action, the obligation to engage in institutional reform is imperfect. How one should go about engaging in institutional reform is left largely to the discretion of the agent. Engaging in institutional reform can take many different forms. Writing letters to government representatives voicing concerns about structural injustice and ideas for how it can be rectified, donating money to activist groups aimed at political change, civil disobedience, consciousness-raising, and running for political office are only a few ways in which one might go about agitating for institutional reform. Which sort of activity is appropriate will depend on the person at hand and their circumstances.

Insofar as fulfilling one's negative duty not to be complicit in the imposition of unjust coercive social institutions requires engaging in institutional reform, the fulfillment of this duty therefore requires the fulfillment of an imperfect obligation. But since the obligation to engage in institutional reform is imperfect, it is not claimable in O'Neill's sense. Ashford therefore concludes that, insofar as we accept that there is a human right not to be unjustly deprived, individually or institutionally, of access to the means for subsistence, we should reject the claimability condition.

I agree with Ashford that the obligations connected with institutional reform are imperfect until systems are in place for determining who is required to do what. I also

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[181] Pogge, 'Human Rights and Human Responsibilities', p.15: 'The duty in question should(…) be formulated as a duty not to contribute to the coercive imposition of any institutional order that avoidably fails to realize human rights, *unless one also compensates by working towards appropriate institutional reforms or towards shielding the victims of injustice from the harms one helps produce*' (my emphasis). This is because Pogge thinks that in most cases, it is better for the victims of injustice if those involved in its perpetration continue their participation in the institutions while simultaneously trying to reform them.

[182] I mentioned this distinction in Chapter 1, footnote 12. I do not observe this distinction, but it will be helpful here to consider how it might apply.

agree that duties to engage in institutional reform are entailed by the human right to subsistence negatively construed as well as other human rights. However, I argue that these duties do not *correlate* with the negative duty not to be complicit in the imposition of unjust coercive social institutions. The obligation to engage in institutional reform is, I argue, indirectly entailed by the human right to subsistence negatively construed, but it is not correlative to it.

There are two problems with Ashford's account. First, like Pogge's account, it runs together two duties that should really be kept distinct: The duty not to impose upon others unjust coercive social institutions and the duty to engage in institutional reform. I argue that engaging in institutional reform is not the correlate of the duty not to impose upon others unjust coercive social institutions. It might be owed in compensation for the violation of the duty not to impose upon others unjust coercive social institutions; but the fulfillment of the duty to engage in institutional reform is neither necessary nor sufficient for the fulfillment of the duty not to impose upon others unjust coercive social institutions. To conflate these two duties is akin to saying that the duty not to run people over with your car can be fulfilled by duly compensating those you have run over. The violation of the duty not to run people over with your car might justify duties of compensation to those harmed by the violation; but this does not entail that the duty not to run people over with your car is actually a duty not to run people over with your car *unless you compensate them afterwards.*

A second and related problem with Ashford's argument is that it presupposes that all those who are causally implicated in the imposition of a social institution are complicit in its imposition. But complicity and causation are different things. It is widely held that someone who is causally implicated in harm done to another but who could not have done otherwise has committed no injustice. It might turn out that mere causal implication is sufficient in some cases for remedial responsibility anyhow, but this is not what we are interested in here. What we want to know is whether someone who could not do otherwise is in violation of a negative duty not to harm others. It is widely thought not. Ashford is challenging this view by suggesting that those who cannot reasonably withdraw from an unjust institution are nevertheless complicit in the imposition of that institution on others if they are able to engage in institutional reform but choose not to. This, I argue, sets up a false dichotomy according to which a person who cannot withdraw from an institution is either engaging in institutional reform or is complicit in the imposition of the institution. This contradicts the conventional view that

someone who cannot help but be causally implicated in harm commits no injustice. I argue that the conventional view is ultimately right. A person who cannot help but do something cannot be said to have committed an injustice in doing that thing since they lack agency with respect to that action. This, however, is not to say that people should not withdraw from unjust institutions to the extent that they are able. Withdrawal from institutions need not be seen as all-or-nothing – we can disengage from certain aspects of institutions without withdrawing from them altogether. Nor is this to say that there is no requirement on people who cannot withdraw from unjust institutions to engage in institutional reform when they can do so. For reasons I have already discussed, it is highly plausible to think that there are stringent moral obligations to engage in institutional reform. The failure to fulfil these duties, however, might well constitute a serious moral failing, it does not amount to a violation of the negative duty not to deprive people of access to the means for subsistence by being complicit in the imposition of unjust institutions.

The duty to engage in institutional reform is indirectly entailed by the human right to subsistence negatively construed. This is because the reasons that underlie the right not to be unjustly deprived of access to the means for subsistence also support stringent moral requirements on others to work towards the goal of just institutions. As we have seen, there is a range of reasons offered in support of the human right to subsistence, but most refer to the tremendous importance for all humans of having access to the means for subsistence. Where people are systemically deprived of access to the means for subsistence, those who are in a position to work towards the institutional reform necessary to protect them therefore have very strong moral reasons which will in many cases yield duties to do so regardless of whether they are themselves complicit in institutional injustice.

But I have argued that failure to engage in institutional reform does not constitute a violation of the right against unjust deprivation. The fulfillment of this right requires only that, as a matter of fact, everyone forbears from unjustly depriving others of access to the means for subsistence, whether directly or indirectly. I have argued that an agent can only be complicit in unjust deprivation insofar as they have a reasonable choice whether or not to be part of it. If we accept that in some cases withdrawal from participation in institutional deprivations is too burdensome for it to constitute a reasonable option, then there will be cases in which agents participate in unjust coercive

social institutions, but are not complicit, and therefore commit no injustice in continuing to participate.

I have argued that being complicit should be distinguished from merely being causally implicated in systemic injustice. Many agents who are causally implicated in systemic injustice cannot be reasonably required to do otherwise. As such, they are not complicit despite their causal involvement. Mere causal responsibility might, in some cases, be sufficient for holding someone remedially responsible for a bad situation. For example, if I accidentally knock over your drink, even if my action was not forseeable, preventable, or in any way the result of culpable behaviour, it is reasonable to think that I am morally required to replace your drink. It might also be the case in assigning remedial responsibility for global poverty that mere causal responsibility is sufficient in some cases regardless of a lack of complicity. This, however, is not the question we are interested in here. Recall that our interest is in whether the negative duties correlative to the human right to subsistence fulfil the claimability condition. I have argued that they do. But my argument relies on the distinction between mere causal involvement and complicity in institutional injustice, and this distinction implies that some people who are causally implicated are not complicit because they do not have a viable option to withdraw.

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IMPLICATIONS, APPLICATIONS, CONCLUSIONS, AND FURTHER QUESTIONS

On the minimal interpretation, the human right to subsistence is a universally-held moral claim on all moral agents at least not to be deprived of access to the means for subsistence. This does not preclude the human right to subsistence having positive duties as its correlates as well; but I have argued that a focus on the duty not to deprive allows us to circumvent controversy at the level of rights theory and to usefully employ the human right to subsistence in reasoning about the normative implications of global poverty. The purpose of this final chapter is to provide further support for this claim by showing how the minimal interpretation of the human right to subsistence might shape our reasoning about the normative implications of global poverty.

On the conventional interpretation of the human right to subsistence, all poverty constitutes a human rights violation, and all poverty is therefore fundamentally unjust. By contrast, those who reject the human right to subsistence hold that poverty is not a matter of fundamental justice. The minimal interpretation I have proposed remains agnostic with respect to whether poverty *as such* constitutes a violation of the human right to subsistence and instead focuses on cases in which it is the result of a violation of the fundamental duty not to deprive. The advantage of this account is that it allows for progress in the discourse on the normative implications of global poverty despite longstanding disagreement at the level of rights theory. This is because it can (and

should) be accepted as at least a partial account of the human right to subsistence by those who endorse the conventional interpretation, and it can (and should) be accepted even by those who deny that human rights can have imperfect or positive duties as their correlates.

My claim is therefore that the minimal interpretation provides the strongest interpretation of the human right to subsistence because it avoids the claimability objection. I have argued that on the conventional interpretation, the human right to subsistence fails to make a distinctive contribution to reasoning about the normative implications of global poverty. This is because of its focus on the positive duties of protection and assistance which, as O'Neill rightly to points out, are not claimable. I have suggested that the claimability of the human right to subsistence is necessary for it to make a distinctive contribution to reasoning about the normative implications of global poverty, and that, therefore, we should seek an alternative account of the human right to subsistence according to which it is claimable. In the previous chapter, I argued that the minimal interpretation fulfils the claimability condition on account of correlating with a universal negative duty, namely the duty not to deprive. (For this reason it also avoids the liberty objection outlined in Chapter 2). We can identify anyone complicit in depriving others of access to the means for subsistence as being in violation of the human right to subsistence. Although assessments of the violation of this right will not always be straightforward, the point is that the relevant duty-bearers and the content of their duties are determinate – they can, in principle, be *identified* rather than *assigned*.

Although I have argued that claimability is a necessary condition on the existence of a human right to subsistence, it is not sufficient. For example, I argued in Chapter 4 that the human right to subsistence interpreted as a right that others give due consideration to those in need when deliberating about how to act fulfils the claimability condition, but nevertheless fails to contribute anything distinctive to reasoning about the normative implications of global poverty. Although I have suggested that the human right to subsistence must be claimable in order to make a distinctive contribution to reasoning about the normative implications of global poverty, claimability will not guarantee that it will make such a contribution. In addition to making the case for the claimability of the human right to subsistence on the minimal interpretation, my case will be strengthened by evidence of the distinctive contribution that it can make to reasoning about the normative implications of global poverty. In what follows, I will begin by outlining two important ways in which the human right to subsistence on the minimal

interpretation contributes to reasoning about the normative implications of global poverty. I will then discuss an example of an actual case in which the minimal interpretation of the human right to subsistence contributes to shaping our normative assessment.

6.1. Implications

In Chapter 1, I outlined the central concerns in reasoning about the normative implications of global poverty. In this section, I revisit these in light of the minimal interpretation in order to show how the minimal interpretation contributes to reasoning about the normative implications of global poverty. We saw that the main normative implications of global poverty centrally concern which agents are responsible to remedy the situation (remedial responsibility). I also argued that the normative implications of global poverty include what first and third parties are morally permitted or required to do in case second parties fail in their remedial responsibilities. In this chapter, I argue that the human right to subsistence on the minimal interpretation makes important contributions both to reasoning about which agents are remedially responsibility for poverty worldwide and to reasoning about the morally permissible and required actions of first and third parties in case remedial responsibilities are shirked. I will discuss each of these in turn.

(a) Remedial Responsibility

On the minimal interpretation, the human right to subsistence makes an important contribution to reasoning about which agents bear remedial responsibility for poverty. I argue that we can infer remedial responsibility for global poverty from the violation of the duty not to deprive and the capacity to compensate for the resulting deprivations. In order to make the case for this view, it will be helpful to first consider how reasoning about remedial responsibility should proceed. I follow Miller in thinking that there are a number of considerations that may figure in the identification of remedial responsibility.[183] Miller argues that six moral and non-moral considerations may figure in establishing remedial responsibility. These include four backward-looking and two forward-looking considerations. The backward-looking considerations Miller identifies are:

[183] *National Responsibility and Global Justice*, pp. 100-104.

(i) Causal Responsibility: Having contributed in some way to the causal sequence resulting in the outcome in question.

(ii) Outcome responsibility: Being causally responsible in a way that the outcome in question can be credited or debited to the agent.

(iii) Moral responsibility: Being outcome responsible in such a way as to be the proper object of moral blame or praise.

(iv) Benefit: Without having played a causal role in the process leading to the outcome in question, having nevertheless benefited from that process.

The forward-looking considerations that Miller takes to figure in establishing remedial responsibility are:

(v) Capacity: An agent's ability to make a contribution to remedying the bad situation in question. Miller points out that there are two relevant components: effectiveness and cost. When we talk about an agent having the capacity to assist, we are generally concerned with both how effective he will be as compared to other agents, as well as how costly it will be for him as compared to other agents.

(vi) Community: Being part of a community may yield special responsibilities towards other members of that community.

Each of these considerations represents a different way in which an agent can be connected to a particular bad situation in which a person finds herself. Miller argues that remedial responsibility is based on the strength of the various connections that hold between agents and bad situations. According to his 'connection theory' of remedial responsibility, '*A* should be considered remedially responsible for *P*'s condition when he is linked to *P* in one of [the above] ways' (p. 99). An important feature of Miller's connection theory is his denial that there is any logical connection between any of the above considerations or any combination thereof and remedial responsibility. Miller holds that 'we have to rely on our intuitions about the relative importance of different sources of connection' in establishing which agents are remedially responsible. Although this leaves the application of Miller's theory vulnerable to intractable disagreement, he argues that it is the best we can do.

Although I agree with Miller that no single consideration from among the abovementioned considerations alone entails remedial responsibility, I argue that the combination of moral responsibility and the capacity to remedy the situation together entail remedial responsibility. Because the violation of the human right to subsistence constitutes moral responsibility for the resulting deprivation, this will support my claim

that from the violation of the human right to subsistence and the perpetrator's capacity to remedy the situation, we can infer remedial responsibility.

It is worth noting how the dialectic must proceed with respect to the question of whether there is a logical connection between any consideration or set of considerations and remedial responsibility. Much is based on our judgements about reasonable assignments of remedial responsibility. I cannot think of how to go about proving conclusively that we can infer remedial responsibility from any particular consideration or set of considerations. In order to support the claim that some consideration or set of considerations entails remedial responsibility, the best we can do is to explain away any apparent counter-examples. This is indeed how Miller proceeds. Reasoning about whether there is a logical connection between any particular consideration or set of considerations and remedial responsibility thus begins with the assumption that there is.

We can begin, say, by supposing that the capacity to remedy a situation entails remedial responsibility. It is, however, fairly easy to come up with counter-examples to this claim. In many cases, there are multiple agents who have the capacity to remedy a situation, but it certainly does not follow that they all have the responsibility to do so. If both A and B are equally capable of rescuing P who is drowning, but it was A who pushed P into the water, it is A and not B who has remedial responsibility despite B being equally capable of remedying the situation. This suggests that remedial responsibility will not necessarily fall on an agent who has the capacity to remedy the situation. It will not even always fall on the agent with the greatest capacity to remedy the situation. Say, for example, that B is a marginally better swimmer than A in the example above, but both are very much able to rescue P. Or say that A is wearing a very expensive pair of shoes that will get ruined by the water, while B is wearing only a swimsuit. In each of these cases, it still seems that A and not B has remedial responsibility.

The examples in the previous paragraph show that capacity on its own is not sufficient for remedial responsibility; and it turns out that neither is any other single consideration from among the abovementioned considerations. This is because the capacity to remedy the situation is always a necessary condition for remedial responsibility. There would be little point in attributing remedial responsibility to an agent who is incapable of remedying the situation in question.[184] We can conclude,

[184] An important question concerns when an agent can be considered incapable of remedying a situation. Just how inefficient or costly does his contribution have to be in order to exempt him

therefore that no single consideration from among the abovementioned considerations alone entails remedial responsibility. My claim, however, is that moral responsibility for a bad outcome combined with capacity to remedy it together entail remedial responsibility. On the model of reasoning employed above, in order to disprove this, we need an example of a situation in which an agent bears remedial responsibility for a bad situation despite another agent being morally responsible for the outcome and having the capacity to remedy it. Miller provides the following alleged counter-example:[185] Suppose that A pushes P into the river. Whereas A is a weak swimmer, B, who happens to be wandering by, is an experienced lifeguard. Miller's suggestion is that it is at least not obvious in this case that it is A who is responsible to remedy the situation. There is, however, an important ambiguity in this example. It is not clear whether the claim that A is a weak swimmer is intended to express the unlikelihood of A succeeding in remedying the situation, or whether it is just meant to contrast A's relatively small capacity as compared with B's. If A is such a weak swimmer that he would almost certainly fail to rescue P, then we should conclude that A is not morally required to attempt to rescue P. But, as I argued above, if A and B are both equally likely to succeed in rescuing P, A is remedially responsible despite it being perhaps easier for B to carry out the rescue. I take it that Miller has in mind the former interpretation since he says that 'Getting P out of the river seems more important here than enforcing the moral responsibility of the pusher' (Ibid.). This suggests that A is likely to fail in his attempt to rescue P, or at any rate too likely for the risk to be justifiable given the availability of a more capable agent. But then this is a case in which the morally responsible agent seems to lack the capacity to remedy the situation. This, then, only provides a potential counter-example to the claim that moral responsibility on its own is not sufficient for remedial responsibility; and it is not entirely clear that it succeeds in this respect either.

Miller's own wording brings out an important point. He frames the question as one of 'who should carry the *primary* responsibility for rescuing P' (Ibid., my emphasis). Later, however, he characterizes remedially responsible agents as those 'who should shoulder the burden of helping' those who have been deprived. I argue that responsibility for the initial response in remedying a bad situation can usefully be distinguished from responsibility to bear the ultimate cost of remedying the situation.

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from remedial responsibility? I will not address this question here as it does not directly bear on the discussion at hand. We can note, however, that it relates to some aspects of the discussion of feasibility in Chapter 2.

185 *National Responsibility and Global Justice*, p. 105.

Miller conflates these in his account of remedial responsibility. I argue that this makes at least some cases, including the rescue example just outlined, seem more perplexing than need be. Given that the description suggests that there is doubt as to whether A could succeed in rescuing P, it seems fairly clear in this example that B should rescue P. But why stop the enquiry there? Once the disaster has been averted, it seems reasonable to question whether B should bear the ultimate burden of the rescue. Say, for example, that it involved ruining an expensive pair of shoes, or missing a job interview. I argue that the burden in this case should not ultimately be borne by B, but rather by A in virtue of his moral responsibility, insofar as he has the capacity to compensate B.

I agree with Miller that no particular consideration or combination of considerations – including moral responsibility plus capacity – entails remedial responsibility to initially respond to a bad situation (although capacity in the sense of greatest efficiency is likely to ground responsibility for initial response at least in emergency situations). I claim, however, that there is a logical connection between moral responsibility for a bad outcome combined with the capacity to bear the burden of remedying it and the responsibility to bear this burden. In order to provide a counter-example to this claim, we need an example of a case in which an agent bears remedial responsibility for a situation despite another agent being both morally responsible for it and capable of remedying it. An example that comes to mind is the case in which the outcome responsible agent who is also capable of remedying the situation refuses to do so. Insofar as the situation is in dire need or remedy and another agent is capable of doing so, it seems reasonable to suppose that some such agent bears remedial responsibility. This sort of case is particularly relevant with respect to global poverty since poverty is often the result of local factors for which corrupt ruling elites bear outcome responsibility and yet refuse to remedy. Miller argues that in this sort of case, remedial responsibility does fall on other agents capable of remedying the situation (which ones in any given case depends on the various other connections).[186] But keeping in mind again the distinction between remedial responsibility for the initial response and the responsibility to bear the ultimate burdens of remedying the situation, I argue that this does not provide a counter-example to the claim that moral responsibility and capacity together entail the latter. Although it might be the case that agents other than those who bear moral responsibility bear remedial responsibility in case the morally responsible agent refuses to remedy the situation despite the capacity to do so, I claim

[186] *National Responsibility and Global Justice*, pp. 257-258.

that the ultimate burden in such cases nevertheless remains with the morally responsible agent insofar as that agent has the capacity to remedy the situation or to compensate those who do. This is true even if that agent persists in refusing to compensate the agent that initially remedied the situation.

My claim is that we can infer from an agent being morally responsible and having the capacity to either remedy the situation (whether this involves acting so as to directly remedy to the situation or commissioning another agent to do so) or to compensate the agent who initially acts so as to remedy the situation, that that agent is responsible to bear the ultimate burdens of the remedy. Aside from the combination of moral responsibility and capacity, I am inclined to think that Miller's connection model holds. I agree with Miller that in at least some cases in which someone is suffering from severe deprivation, 'assigning remedial responsibility involves applying multiple criteria, which are also somewhat opaque' (p.107). My point here has been to argue that we can infer from the moral responsibility of an agent for a situation in which a person falls below some minimum threshold below which it is morally intolerable that he be left in it, combined with the agent's capacity to remedy the situation that the agent is remedially responsible for that situation at least in the sense that the agent is responsible to bear the ultimate burdens of the remedy.

As I have defined it in the previous chapter, the violation of the duty not to deprive constitutes moral responsibility for others falling below the threshold for subsistence – a threshold that is morally unacceptable to allow people to remain below. If this is right, and we can infer remedial responsibility from the moral responsibility and capacity of an agent, then we can infer from the violation of the duty not to deprive that the violating agent or agents are responsible to bear the ultimate burdens of remedying the poverty that ensues, insofar as they have the relevant capacity. This is therefore one respect in which the minimal interpretation of the human right to subsistence makes a distinctive contribution to reasoning about the normative implications of global poverty: we can infer from its violation and the capacity of the perpetrator to remedy the resulting deprivations that that agent is responsible to bear the ultimate burdens of doing so.

(b) Justified responses to the neglect of duties

A second way in which the human right to subsistence on the minimal interpretation contributes to reasoning about the normative implications of global poverty is with

respect to the sorts of responses on the part of first and third parties when remedially responsible second parties fail to fulfil their responsibilities or threaten to fail to fulfil their responsibilities. I argued in Chapter 1 that the duties correlative to rights are duties of justice, and that duties of justice are *prima facie* justifiably enforceable as such. We can infer from this that any duties to remedy the plight of those suffering from poverty that correlate with the human right to subsistence are duties of justice and therefore *prima facie* justifiably enforceable as such. As we saw in Chapter 3, this is the central way in which proponents of the conventional interpretation think that the human right to subsistence contributes to reasoning about the normative implications of global poverty. I argued, however, that this inference fails with respect to the positive duties thought to correlate to the human right to subsistence on the conventional interpretation because they are not claimable. Although these duties may be sufficiently important as to provide a reason in support of their enforcement, they cannot be justifiably enforced until specific duties are assigned to specific duty-bearers. Because this requires institutions, these duties are not fundamental duties of justice, and do not, therefore, correlate with the human right to subsistence, but rather with a special institutionally-determined right to subsistence. This provides strong moral reasons and, at most, stringent moral duties to create and support institutions that regulate the distribution of duties of assistance and protection; but these duties are not correlative to any fundamental right and therefore are not fundamental duties of justice. They are not, therefore, justifiably enforceable in the absence of institutional arrangements.

The duty not to deprive, by contrast, is a fundamental duty of justice. It stems from the legitimate demand of each person that no moral agent deprive him of access to the means for subsistence. Duty-bearers do not need to be assigned since we can identify all moral agents as bearing the duty not to deprive. When this duty is transgressed, we can identify, at least in principle, which agents are responsible for the resulting deprivation. I argued in the previous sub-section that the responsibility to bear the ultimate burdens of remedying the situation can be inferred from this and the capacity of the violating agent(s) to bear the relevant burdens. I add here that in such cases, namely where remedial responsibility is based on the violation of the duty not to deprive, bearing the burdens of remedying the situation is a duty of justice and is therefore *prima facie* justifiably enforceable as such. The human right to subsistence on the minimal interpretation therefore contributes not only to deliberations about which agents are remedially responsible, but also what sorts of actions are morally permitted on the part

of first and third parties when remedial responsibility is neglected. In particular, the human right to subsistence on the minimal interpretation entails that the use of coercive force is *prima facie* justifiable in ensuring that the duty not to deprive is fulfilled, and to exact compensation when it has been violated.

Note that the human right to subsistence does not itself contribute anything to reasoning about which agents are permitted or responsible to enforce it. This, however, poses no challenge since this is equally true of all other human rights. The right against torture itself entails nothing about who should enforce it. Its existence only contributes to providing constraints on how moral agents can permissibly act and on justifying the use of coercive force in ensuring their compliance. Which agents are permitted to use coercive force in ensuring that the duty not to torture is fulfilled and to exact compensation when it is violated is a separate question. The same goes for the question of which agents are permitted to use coercive force in ensuring that the duty not to deprive is fulfilled and to exact compensation when it is violated. I will not endeavour to address these questions here.

6.2. Applications

In this section I discuss an example of a concrete situation in which the human right to subsistence on the minimal interpretation contributes to reasoning about the normative implications of global poverty. The example concerns the recent massive increase in large-scale land acquisition by foreign investors in developing countries. My aim is not to provide a full-fledged normative assessment of this sort of case, but rather to provide a concrete example of how the minimal interpretation of the human right to subsistence is relevant to reasoning about the normative implications of global poverty.

In the last few years, there has been a boom in the acquisition by foreign investors of agricultural land in developing countries. Although foreign investment in land is not itself new, since 2008 it has been happening on a much larger scale than it had previously. The biggest investors in land in developing countries are Middle Eastern Emirate states and Saudi Arabia, but Japan, China, India, Korea, Libya, and Egypt are also big investors.

A special report commissioned by the UN identifies six factors that contribute to explaining this new trend:

> (a) the rush towards the production of agrofuels as an alternative to fossil fuels (...); (b) the growth of the population by urbanization, combined with the

> exhaustion of natural resources, in certain countries which therefore see large-scale land acquisition as a means to achieve long-term food security; (c) increased concerns of certain countries about the availability of fresh water (...); (d) increased demand for certain raw commodities from tropical countries (...); (e) expected subsidies from carbon storage through plantation and avoided deforestation; and (f) (...) speculation on future increases in the price of farmland.[187]

According to the same report, developing countries have been targeted by foreign investors largely 'because of the perception that there is plenty of land available, because the climate is favourable to the production of crops, because local labour is inexpensive and because the land is still relatively cheap'.[188]

In principle, foreign investment in land in developing countries is not problematic from a human rights perspective. In fact, it represents great opportunity for economic growth, and for improvements in the standards of living of residents. However, it also comes at considerable risk, particularly in light of the lack of regulation or lack of enforced regulation in many countries. Large-scale land acquisition carries a number of moral risks including the potential for the destruction of indigenous communities and traditional ways of life, environmental degradation, and increased foreign involvement in local politics and decision-making. My concern here will, however, be exclusively with the potential effect of large-scale land acquisitions in the developing world on people's access to the means for subsistence. My claim is that the minimal interpretation helps to shape our thinking about the normative implications of poverty in case it results from the large-scale acquisition of land in the developing world by foreign investors. This provides us with a framework for deliberating about the responsibilities of governments, land-owners, and investors, in particular with respect to the justified reactions on the part of first and third parties, and in particular concerning the justified use of coercive force in regulation and in seeking reparations.

Consider, for example, the situation in Ethiopia where, despite having one of the highest rates of severe poverty in the world, the government is offering at least 3 million hectares

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[187] Oliver De Schutter, 'Large-Scale Land Acquisition and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge', Report of the Special Rapporteur on the human right to food, *United Nations General Assembly, Human Rights Council*, 28 December 2009, p. 7.

[188] De Shutter, 'Large-Scale Land Acquisition and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge', p. 6.

of its most fertile land to foreign investors who plan to use the land to grow food exclusively for export. While the government has insisted that the land they are offering is unused, this is hotly contested. According to a policy specialist for the International Land Coalition,

> If land in Africa hasn't been planted, it's probably for a reason. Maybe it's used to graze livestock or deliberately left fallow to prevent nutrient depletion and erosion. Anybody who has seen these areas identified as unused understands that there is no land in Ethiopia that has no owners and users.[189]

In Ethiopia, all of the land is at least partly owned by the government. In many cases, those who occupy land that they need in order to subsist do not have legal title to it. Pastoralists are particularly vulnerable since their livelihood requires that they have access to a lot of land for grazing their herds, and yet much of the land they use appears unoccupied and unused much of the time. When this land is handed over to a foreign investor, the local residents who previously relied on it are, in many cases, given no say in the exchange nor are they offered any compensation. This is not universally true: In some cases, small-scale farmers are given the option to refuse (although it is not always clear the extent to which this is a genuine option). In some cases, small-scale farmers and pastoralists whose land is taken over are offered decently-paying jobs on the new large-scale establishments, and conscientious investors sometimes build new housing, schools, and medical facilities for those affected. These cases are, however, in the minority. In many cases those deprived of access to the land are left without access to the means for subsistence.

The human right to subsistence on the minimal interpretation makes an important contribution to reasoning about the normative implication of these deprivations. On the minimal interpretation, these cases constitute violations of the human right to subsistence. As such, we can infer that the perpetrators are responsible to bear the ultimate burdens of remedying the poverty in question insofar as they have the capacity to do so. We can also infer that there the enforcement of the relevant duties is at least *prima facie* justifiable. The human right to subsistence makes a *distinctive* contribution to reasoning in this and other similar cases in that the same work cannot be done by other normative concepts. While those wielding power to buy and sell land have moral responsibilities to take into account the interests and welfare of those who will be

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[189] Quotation from Michael Taylor in John Vidal, 'How Food and Water are Driving a 21st Century Land Grab', *The Observer*, 8 March 2010 <http://www.guardian.co.uk/environment/2010/mar/07/food-water-africa-land-grab>

affected by the transfer, the human right to subsistence on the minimal interpretation expresses a categorical prohibition on some actions, namely those that result in deprivation of persons of access to the means for subsistence. It is for this reason that I reject O'Neill's conclusion that the right to subsistence should not be included among human rights. Although I am sympathetic to this conclusion with respect to the human right to subsistence interpreted as correlating with positive duties of assistance and protection, to reject the human right to subsistence on the minimal interpretation is to deny us an indispensible normative concept that is highly relevant in thinking about international relations, transnational economic interactions, and global institutional arrangements.

6.3. Conclusions and Further Questions

My purpose has been to offer a defence of the human right to subsistence against what I take to be the most forceful challenge to it, namely the claimability objection. I argued in the first half of this dissertation that the claimability objection poses a more serious challenge to the inclusion of a right to subsistence among human rights than is reflected in the way it has been treated in the literature. I offered an analysis of this objection, and a defence of the claimability condition. I argued, however, that although claimability is an existence condition on the human right to subsistence, we should not conclude from this that there is no human right to subsistence. This neglects interpretations of the human right to subsistence according to which it is claimable. Although I cast doubts on some interpretations of the human right to subsistence according to which the positive duties thought to correlate with it are claimable, I have left open the possibility of an alternative interpretation succeeding in this respect. I have focused instead on the minimal interpretation of the human right to subsistence according to which it is at least in the first instance a claim held against all moral agents not to be deprived of access to the means for subsistence. I have argued that this interpretation is claimable and also that it makes a distinctive contribution to reasoning about the normative implications of global poverty. I have not given a complete analysis of the human right to subsistence on the minimal interpretation; but I hope, nevertheless, to have shown that this provides a plausible interpretation of the human right to subsistence whose implications are well worth pursuing.

The example of large-scale land acquisitions by foreign investors in developing countries discussed in the previous section was intended to illustrate one way in which

the human right to subsistence on the minimal interpretation might contribute to reasoning about the normative implications of global poverty. It also serves to highlight a number of important questions that I have been unable to adequately address within the scope of the present work. For example, one question that remains is how to determine moral responsibility for deprivations. Thinking about the normative implications of poverty that results from the large-scale acquisition of land involves establishing which agents are morally responsible for the resulting deprivation. This will, in many cases, be difficult and controversial. When large-scale acquisition of land by foreign investors results in people being deprived of access to the means for subsistence, the harm is at once indirect and multiplicative. On the one hand, the harm is the result of the failure of the government of those deprived to respect the claims of those deprived to access to the means for subsistence which, in many cases will translate into a claim to land. On the other hand, some responsibility also lies with those purchasing the land from the government. Insofar as it is reasonable to expect them to be aware of the deprivations that will result from the exchange, I argue that foreign investors can be held partly responsible for the deprivation that ensues. A further question concerns whether those who benefit from the transaction bear any moral responsibility for the deprivations. My purpose here is not to provide a full-fledged assessment of this kind of case; rather, it is to draw attention to an important set of questions that requires more attention than I can afford it in the present work.

A further question, as we have seen, concerns which agents are permitted to enforce the duty not to deprive, and under what circumstances. Recall that duties of justice are only *prima facie* justifiably enforceable as such. An important question therefore concerns what other conditions must be fulfilled for their enforcement to be justified, all things considered. I argued in Chapter 3 that while the duty to enforce the duty not to deprive might not itself be a duty of justice in the conventional sense, it is at least indirectly entailed by the human right to subsistence. This is true of other duties as well. Another important question therefore concerns what other agents should be doing to protect against violations of the human right to subsistence.

These are questions that arise from thinking about global poverty at least in part from the perspective of the minimal interpretation of the human right to subsistence. As such, they are matters that can be pursued despite the persistence of the tensions at the level of moral theory that underlie the ongoing debates over the deontic implications of human right to subsistence. This, indeed, is the central appeal of the minimal

interpretation, namely that it allows for progress in the discourse on the normative implications of global poverty despite deep-rooted disagreement at more abstract theoretical levels. This, I think, is a virtue in light of the urgency of the current situation in which thousands of people are preventably suffering and dying each day of poverty-related causes.

BIBLIOGRAPHY

Ashford, Elizabeth, 'The Duties Imposed by the Human Right to Basic Necessities', in *Freedom from Poverty as a Human Right: Who Owes what to the very Poor?*, ed. by Thomas Pogge (Oxford: Oxford University Press and UNESCO, 2007), pp. 183-218.

———, 'The Alleged Dichotomy Between Positive and Negative Rights and Duties', in *Global Basic Rights*, ed. by Charles R. Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009), pp. 92-112

Bates, Stanley, 'Reply to held', *Ethics*, 81 (1971), 343-349

Beitz, Charles, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009)

Bentham, Jeremy, *Anarchical Fallacies*, in *Nonsense upon Stilts: Bentham, Burke, and Marx on the Rights of Man*, ed. by Jeremy Waldron (New York: Methuen, 1987)

Bratman, Michael, 'Shared Intention', *Ethics*, 104 (1993), 97-103

Buchanan, Allen, 'Justice and Charity', *Ethics* 3 (1987), 558-575

———, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2003)

Campbell, Tom, 'Humanity before Justice' *British Journal of Political Science* 4 (1974), 1-16

Caney, Simon, 'Global Poverty and Human Rights: The Case for Positive Duties', in *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor*, ed. by Thomas Pogge (Oxford: Oxford University Press and UNESCO, 2007), pp. 275-302

———*, Justice Beyond Borders : A Global Political Theory* (Oxford: Oxford University Press, 2005)

Cohen, G. A., *Why Not Socialism?* (Princeton, NJ: Princeton University Press, 2009)

Cranston, Maurice, 'Are There Any Human Rights?' *Daedalus* 112 (1983), 1-17

———, 'Human Rights, Real and Supposed', in *The Philosophy of Human Rights*, ed. by Patrick Hayden (St Paul: Paragon House, 2001), pp. 163-173

Cruft, Rowan, 'Rights: Beyond Interest Theory and Will Theory?', *Law and Philosophy*, 23 (2004), 347-397

Cullity, Garrett, *The Moral Demands of Affluence* (Oxford: Oxford University Press, 2004)

De Schutter, Oliver, 'Large-Scale Land Acquisition and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge', Report of the Special Rapporteur on the human right to food, *United Nations General Assembly, Human Rights Council*, 28 December 2009Donnelly, Jack, *Human Rights in Theory and Practice*, 2nd edn (Ithaca, NY: Cornell University Press, 2003)

Dworkin, Ronald, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978)

Feinberg, Joel, *Social Philosophy* (Engelwood Cliffs: Prentice Hall, Inc., 1973)

———, 'Duties, Rights, and Claims', *The Philosophical Quarterly*, 3 (1966), 137-144

Gilabert, Pablo, 'Humanist and Political Perspectives on Human Rights', *Political Philosophy*, forthcoming

———, 'The Feasibility of Basic Socioeconomic Human Rights: A Conceptual Exploration', *The Philosophical Quarterly*, 59 (2009), 659-681

———, 'Basic Positive Duties of justice and Narveson's Libertarian Challenge', *The Southern Journal of Philosophy* 40(2006): 193-216

Gilbert, Mary, *Solidarity and Responsibility: New Essays in Plural Subject Theory* (Lanham, MD: Rowman & Littlefield Publishers, 2000)

Goodin, Robert, *Protecting The Vulnerable* (Chicago: University of Chicago Press, 1985)

Green, Michael, 'Institutional Responsibility for Moral Problems', in *Global Responsibilities: Who must deliver on human rights?*, ed. by Andrew Kuper, pp. 117-134

Griffin, James, *On Human Rights* (Oxford: Oxford University Press, 2008)

Harding, Luke, 'German Court Find Cannibal Guilty of Murder', *Guardian*, 10 May 2006 <http://www.guardian.co.uk/world/2006/may/10/germany.lukeharding?INTCMP=SRCH>

Held, Virginia, 'Can a Random Collection of Individuals be Morally Responsible?', *The Journal of Philosophy*, 67 (1970), 471-481

Hill, Thomas, *Human Welfare and Moral Worth*, *Kantian Perspectives* (Oxford: Oxford University Press, 2002)

———, 'Kant on Imperfect Duty and Supererogation', *Kant-Studien*, 61 (1971), 55-77

Hohfeld, Wesley Newcomb, 'Some Fundamental Legal Concepts as Applied to Juridical Reasoning', *The Yale Law Journal*, 23 (1913), 16-59

Hope, Simon, 'Subsistence and Imperfect Duties', unpublished manuscript, presented at the workshop on Human Rights and Subsistence at the University of Stirling, 4-5 March 2011.

Jones, Charles, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 1999)

Jones, Peter, *Rights* (New York: Palgrave Macmillan, 1994)

Lewis, H.D., 'Collective Responsibility'', *Philosophy*, 23 (1948), 3-18

Locke, John, *Second Treatise of Government*, in *Classics of Modern Political Theory: Machiavelli to Mill*, ed. by Steven M. Cahn (New York: Oxford University Press, 1997), pp. 213-292

Lyons, David, 'The Correlativity of Rights and Duties', *Nous*, 4 (1970), 45–57

MacCormick, Neil, 'Rights in Legislation', in *Law, Morality and Society: Essays in Honour of H.L.A. Hart*, ed. by P. Hacker and J. Raz (Oxford: Oxford University Press, 1977), pp. 189–209

May, Larry, *Sharing Responsibilities* (Chicago: University of Chicago Press, 1992)

———, 'Collective Inaction and Shared Responsibility', *Noûs*, 24 (1990), 269-277

Mill, John Stuart, *Utilitarianism*, ed. By Roger Crisp (Oxford: Oxford university Press, 1998)

Miller, David, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007)

———, 'Distributing Responsibilities', in *Global Responsibilities: Who Must Deliver on Human Rights?*, ed. by Andrew Kuper (New York: Routledge, 2005), pp. 95-115

Mulgan, Tim, *The Demands of Consequentialism* (Oxford: Oxford University Press, 2001)

Murphy, Liam B., *Moral Demands in Nonideal Theory* (Oxford: Oxford University Press, 2000)

Narveson, Jan, 'Welfare, Wealth, Poverty, and Injustice in Today's World' *Journal of Ethics* 8 (2004), 305-348

———, 'Collective Responsibility', *Journal of Ethics*, 6 (2002), 179-198

Nickel, James W., *Making Sense of Human Rights*, 2nd edn (Oxford: Blackwell, 2007).

———, 'Poverty and Rights', *The Philosophical Quarterly*, 55(2005), 385-402

———, 'How Human Rights Generate Duties to Protect and Provide', *Human Rights Quarterly*, 15 (1993), 77-86

Nielsen, Kai, *Globalization and Justice* (Amherst, NY: Humanity Books, 2003)

Nozick, Robert, *Anarchy, State, and Utopia* (Oxford: Basil Blackwell, 1974)

Nussbaum, Martha, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000)

O'Neill, Onora, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996)

———*, Bounds of Justice* (Cambridge: Cambridge University Press, 2000);

———, 'The Dark Side of Human Rights' *International Affairs* 81 (2005), 427-439

———, 'Children's Rights and Children's Lives', *International Journal of Law and the Family*, 6 (1992), 24-42

Pogge, Thomas, 'Shue on Rights and Duties', in *Global Basic Rights*, ed. by Charles R. Beitz and Robert E. Goodin (Oxford: Oxford University Press, 2009), pp. 113-130

———, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd edn (Cambridge: Polity Press, 2008)

———, 'Severe Poverty as a Human Rights Violation', in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. by Thomas Pogge (Oxford: Oxford University Press and UNESCO, 2007), pp. 11-53

———, 'Do Rawls's Two Theories of Justice Fit Together?' in *Rawls's Law of Peoples: A Realistic Utopia?* ed. by Rex Martin and David A. Reidy (Malden, MA: Blackwell Publishing, 2006), pp. 206-242

———, , 'Recognized and Violated by International Law: The Human Rights of the Global Poor', *Leiden Journal of International Law*, 18 (2005), 717-745

———, 'World Poverty and Human Rights', *Ethics & International Affairs*, 19 (2005), 1-7

———, 'Severe Poverty as a Violation of Negative Duties', *Ethics & International Affairs*, 19 (2005), 55-83

———, 'Human Rights and Human Responsibilities', in *Global Responsibilities: Who Must Deliver on Human Rights*, ed. by Andrew Kuper (New York: Routledge, 2005), pp. 3-36

———, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, (Cambridge: Polity Press, 2002)

Rawls, John, *The Law of Peoples: With 'The Idea of Public Reason Revisited'* (Cambridge, Mass: Harvard University Press, 1999)

Raworth, Kate, 'Climate Wrongs and Human Rights', *Oxfam International* (2009) <http://www.oxfam.org/en/policy/bp117-climate-wrongs-and-human-rights>

Raz, Joseph, 'Human Rights without Foundations', in *The Philosophy of International Law*, ed. by Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010), pp. 321-338

———, *The Morality of Freedom* (Oxford: Clarendon Press, 1986)

Rorty, Richard, 'Who are We? Moral Universalism and Economic Triage' *Diogenes* 173 (1996), 5-15

Sahran, Afif, 'The Iraqi Girl Killed for Loving a British Soldier', *Observer*, 27 April 2008 <http://www.guardian.co.uk/world/2008/apr/27/iraq.military>

Sahran, Afif, and Caroline Davies, '"My daughter deserved to die for falling in love"', *Observer*, 11 May, 2008 <http://www.guardian.co.uk/world/2008/may/11/iraq.humanrights>

Satz, Debra, 'What Do We Owe the Global Poor?' *Ethics & International Affairs* 19, no. 1 (2005), 47-54

Sen, Amartya, 'Elements of a Theory of Human Rights', *Philosophy & Public Affairs* 32(2004), 315-356

———, *The Standard of Living* (Cambridge: Cambridge University Press, 1987)

———, 'Rights and Agency', *Philosophy and Public Affairs*, 11 (1982), 3-39

Shue, Henry, 'Mediating Duties', *Ethics*, 98 (1988), 687-704

———. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd edn (Princeton, NJ: Princeton University Press, 1996)

Singer, Peter, 'Famine, Affluence, and Morality' *Philosophy and Public Affairs* 1(1972), 229-243

Skorupski, John, 'Human Rights', in *The Philosophy of International Law*, ed. by Samantha Besson and John Tasioulas, (Oxford: Oxford University Press, 2010), pp. 357-373

Tasioulas, John, 'Taking the Rights out of Human Rights', *Ethics* 120 (2010), 647-678

———, 'Philosophy, Criticism, and Community', *Journal of Applied Philosophy*, 26 (2009), 259-268

———, 'Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps', *European Journal of Philosophy* 10 (2002), 79-100

———, 'The Moral Reality of Human Rights' in *Freedom from Poverty as a Human Right: Who Owes what to the very Poor?*, ed. by Thomas Pogge, UNESCO (Oxford: Oxford University Press, UNESCO, 2007), pp. 75-100

Temkin, Larry, 'Thinking about the Needy: A Reprise', *Journal of Ethics* 8 (2004), 409-58

Velleman, David J., 'How to Share and Intention', *Philosophy and Phenomenological Research*, 57 (1997), 104-117

Waldron, Jeremy, *Liberal Rights: Collected Papers 1981-1991*, (Cambridge: Cambridge University Press, 1993)

Wenar, 'The Nature of Rights', *Philosophy and Public Affairs* 33 (2005), 223-252