The End of Duty

Abstract. Justice is often viewed in terms of seeing to it that right-holders are provided with the goods that they are entitled to. Less attention is given to the other dimension of justice, namely, that of duty-holders. If persons are assigned more duties, or more burdensome duties, than fairness requires, then they are victims of injustice just as much as persons whose rights are left unfulfilled. In this essay, I will argue for certain limits to the duty to assist people in need. My argument does not intend to show that we have no positive duties, but rather that these duties, whether they are of an interpersonal or a global, institutional kind, should be guided by an idea of fairness that pertains to the relations between duty-holders as well as between them and right-holders. I will discuss structural differences between negative and positive duties, as well as formulate a Principle of Contributive Fairness.

Introduction.

Moral arguments concerning human rights often have as their focus the unfulfilled rights, or the violated rights, of various deprived groups: the poor, women, ethnic minorities, homosexuals, and so on. Justice is likewise often regarded as a matter of seeing to it that right-holders are provided with the goods that they are entitled to. Less attention is given to the other dimension of justice, namely, that of duty-holders. If persons are assigned more duties, or more burdensome duties, than fairness requires, then they are victims of injustice just as much as persons whose rights are left unfulfilled.

In this essay, I will argue for certain limits to the duty to assist people in need. My argument does not intend to show that we have no positive duties, but rather that these duties, whether they are of an interpersonal or a global, institutional kind, should be guided by an idea of fairness that pertains to the relations between duty-holders as well as between them and right-holders. I will discuss structural differences between negative and positive duties, as well as formulate a Principle of Contributive Fairness.

1. Rights and Duties.

What are the morally justified limits to our positive duties to assist people in need? Intuitively we may agree that if we can pull a drowning man out of the water at no comparable risk to ourselves, we should do so. However, we may be more reluctant to embrace the idea that we should offer the homeless beggar in the street to come and stay with us in our house – even if that would save him from freezing to death. And while we may accept that we, the citizens of a particular state, owe it to our fellow citizens to contribute to a welfare state that protects rights to education and health care for us all, we may still reject
the idea that we have a global duty to see to it that those in need of education and health care all over the world are indeed provided with this minimum level of welfare.

Are these conflicting intuitions merely a sign of a lack of a principled understanding of our positive duties? Are we simply inconsistent? Or could there be a rational foundation for our unwillingness to extend positive duties beyond certain limits? In this essay, I will argue that there are indeed rational arguments for limiting our positive duties in a way that justifies the different intuitive reactions mentioned above to the cases of the drowning man and civic responsibility on the one hand, and the cases of the homeless beggar and global responsibilities on the other.

A systematic account of moral duties, whether of the negative or positive kind, requires a background in a theory of moral rights, since duties, in the standard case, presuppose rights: A’s duty to B regarding x equals B’s right against A regarding x. (Sometimes A and B may denote one and the same person, since we may well have duties to ourselves, regarding, for instance, the development of certain character traits.) A negative duty is about non-interference: A has a duty to B not to interfere with B’s having or doing x. A positive duty is about assistance: A has a duty to B to assist B in having or doing x.

Now, the justification of moral rights has traditionally invoked certain well-known problems. The idea that such rights are natural has been criticized on the ground that moral rights, unlike arms and legs and other limbs, are not natural properties of human beings, and it is hard to understand in what other sense moral rights can be called “natural”. To invoke a “natural law” or to speak of moral rights as “natural rights” tends to create more problems than it solves, since we now need to find out in what sense nature brings with it laws and rights. Even if we do not go as far as rejecting talk of natural rights as “nonsense upon stilts”, we may well recognize the need for a less obscure way of justifying moral rights.

More recent defenders of moral rights have in fact avoided naturalistic justifications and instead opted for a directly intuitionist type of argument, according to which moral rights and duties are treated as something given, or as something to be discovered, rather than as something that needs and can be given a foundational argument. Thus, David Ross stated that “[t]he general principles of duty ... come to be self-evident to us just as mathematical axioms do.” And Robert Nozick opened his famous defence of moral rights by simply asserting that “[i]ndividuals have rights, and there are things no person or group may do to them (without violating their rights)”.

However, these intuitionist formulations of rights-claims face the objection that, in the absence of a systematic justificatory theory of rights, referring to something less arbitrary than certain intuitions, they will not be able to convince anyone who does not already share these intuitions.

However, there are non-intuitionist ethical theories that provide not only a systematic argument for moral rights but also criteria for resolving conflicts between rights. One such foundationalist theory has been developed by Alan Gewirth, relating moral rights to the necessary conditions of successful agency and the necessary evaluative judgements that follow from being involved in agency. In my following discussion of positive duties, I will rely on Gewirth’s account of moral rights.

According to Gewirth, freedom and well-being constitute the two general necessary conditions of successful agency. From the point of view of an agent, who guides his behaviour in accordance with his intention to realize his purposes, freedom is a procedural necessary condition, referring to the agent’s informed and unforced control of his behaviour. Likewise, well-being is a substantive necessary
condition, referring to the agent’s physical, psychological, cognitive, and material resources and capabilities of action. More specifically, freedom includes that the agent is unhindered by internal or external compulsion or force, that he is not deceived or misinformed, and that he knows what he is doing and acts in accordance with his own unforced choice. Well-being, in the context of agency, includes being alive and in good health, not being subjected to dangerous or degrading treatment, not being the victim of slander or being stolen from, having access to education and the means of supporting oneself.

Now, since it is true for every agent that he wants to be successful in his agency, and that he regards the realization of his purpose of action as something good, he must also regard freedom and well-being as necessary goods.\(^5\) And, since freedom and well-being are necessary goods, the agent cannot accept that other agents interfere with his having freedom and well-being. Hence, every agent must accept the judgement “Other agents ought to refrain from interfering with my freedom and well-being”, where this “ought” is prudential and not moral, representing the agent’s self-regarding claim: “I must have freedom and well-being, and therefore I cannot accept that other agents interfere with my freedom and well-being”. However, this prudential judgement is equivalent to a (prudential) rights-claim: “I have rights to freedom and well-being”. To demand of other agents that they should refrain from interfering with one’s possession of a certain good \(x\) is to claim a right to \(x\) against these other agents. Not to make a prudential rights-claim to freedom and well-being would involve the agent in a self-contradiction, since he would then hold both that freedom and well-being are necessary goods for him and that it would be permissible for other agents to deprive him of freedom and well-being.\(^6\)

On Gewirth’s account, prudential rights-claims become moral rights-claims by means of a universalization of the agent’s sufficient reason for making them. The agent’s sufficient reason for claiming rights to freedom and well-being is that he is an agent with purposes that he intends to realize. But if his being an agent is a sufficient reason for his rights-claim, he must accept that being an agent is likewise sufficient for anyone else’s similar rights-claim. Hence, the individual agent must accept not only “I have (qua agent) rights to freedom and well-being”, but also “All agents have rights to freedom and well-being”, and the latter is a moral rights-claim, referring to the entitlements of all agents and not only to those of a particular individual agent.\(^7\)

According to Gewirth, the rights of all agents to freedom and well-being are positive as well as negative. If a person is unable to secure freedom and well-being for herself, and another person can help her to have freedom and well-being at no comparable cost to herself, this other person is morally obligated to help her. Not to claim positive rights to freedom and well-being when we cannot secure them for ourselves and other persons can help us have them at no comparable cost to themselves, would be equivalent to accepting that it is permissible that we are left without freedom and well-being, and this we cannot do. Freedom and well-being are necessary goods, and just as we cannot accept that other agents interfere with our having freedom and well-being, we cannot accept that they refrain from helping us to have freedom and well-being. Hence, every agent must accept the judgement “Other agents ought to help me to have freedom and well-being when I cannot have them by my own efforts”. Accordingly, every agent “must also accept that he has positive duties to help other persons to attain or maintain freedom and well-being when they cannot do so by their own efforts and when he can give such help without comparable cost to himself”.\(^8\)

2. The Structural Difference Between Negative and Positive Duties.
From Gewirth’s account it would appear as if there is a symmetrical relation between negative and positive duties. Just as every agent is supposed to accept the normative judgement “Other agents ought to refrain from interfering with my freedom and well-being”, every agent is also supposed to accept the normative judgement “Other agents ought to help me to have freedom and well-being when I cannot have them by my own efforts”. However, this symmetrical account obscures that “other agents” have different meanings in the two statements. In the first judgement, concerning negative duties, it necessarily means “all other agents”, since it takes only one agent’s interference with my freedom and well-being to prevent me from having them. But this is not true of the second judgement, about positive duties. Here “other agents” can only mean “some other agents”, since it is sufficient for my having freedom and well-being that somebody helps me to have them. Moreover, while all of us, presumably, are capable of fulfilling our negative duties regarding non-interference with our recipients’ freedom and well-being, not all of us are equally suited to provide the help necessary to maintain or restore other persons’ freedom and well-being when they cannot do so with their own efforts.

We should also note that while negative duties apply to all agents in their dealings with all other agents, positive duties typically apply only to particular agents in their dealings with particular other agents. It could be argued plausibly, for instance, that friends and lovers have stronger duties to help each other than strangers. The same holds for parents and children, and, in certain circumstances, employers and employees, members of a union, believers of the same faith, and fellow citizens. This, then, is a structural difference between negative and positive duties, that while negative duties tend to be universalist in their application, positive duties tend to be particularist in their application.

Hence, the relationship between negative and positive duties is asymmetrical rather than symmetrical. While we all have equally strong negative duties to all other persons not to interfere with their freedom and well-being, it is not the case that all of us have equally strong positive duties to all other persons to help them have freedom and well-being. Only those persons who cannot have freedom and well-being by their own efforts have rights to assistance, and some persons have stronger duties than others to help them.

Now it could be argued that negative duties are just as conditional as positive ones. It is not true, this objection goes on, that all of us all the time have duties not to interfere with other persons’ freedom and well-being. If we for instance find ourselves in a situation in which the only way to avert an unjustified attack on ourselves or on some third party is for us to physically intervene against the assailant, depriving him of his freedom and well-being in the process, we are justified in doing so. Hence, we have negative duties only to innocent persons, and only on condition of their innocence. Thus, just as positive duties presuppose agents who have the ability to help and who stand in a particular relation to their recipients, as well as recipients who actually need help, negative duties presuppose agents who have no just cause for interference and recipients who do not give them such a just cause. However, even if we grant the truth of this observation, it is still important to observe that the conditionality attached to negative duties is structurally different from the one attached to positive duties, and that this difference rather serves to emphasize the conclusion above regarding the asymmetrical application of negative and positive duties.

While the conditionality of negative duties indicate when they do not hold, the conditionality of positive duties indicate when they do hold. The structure of negative duties is of the form “Unless conditions x, y, or z apply, you are under a duty not to p”, where p stands for the object of a negative duty, while the structure of positive duties is of the form “Only when conditions x, y, or z apply, you are under a duty to p”, where p stands for the object of a positive duty. Thus, unless A is about to inflict unjustified harm on
someone, and unless force is needed to prevent A from doing this, you are under a duty not to harm A, and only when B cannot save himself from drowning and only when you can save B at no comparable cost to yourself, you are under a duty to save B. Moreover, as can be seen from these structural descriptions, to have negative duties is the rule, while having positive duties is the exception. We have negative duties unless some exception can be justified, but we have positive duties only under certain circumstances.

That there is such a structural difference between negative and positive duties should not come as a surprise to anyone familiar with the history of moral philosophy. Immanuel Kant’s distinction between maxims the universalization of which we cannot conceive without contradiction, and maxims the universalization of which we cannot will without contradiction, can be considered as an early attempt to justify this structural difference. According to Kant, we cannot even conceive of a universalization of the maxim “Whenever I believe myself short of money, I will borrow money and promise to pay it back, though I know that this will never be done”. This is so, since the universalization “Whenever anyone believes himself short of money, he will borrow money and promise to pay it back, though he knows that this will never be done” will bring with it the end of the practice of borrowing money against a promise to pay back. Hence, there is a contradiction between our maxim and its universalization in the sense that should it be a universal law that everyone should act as we want to act, we cannot act as we want to act. Kant calls this a contradiction in conception, meaning that we cannot even conceive of both acting in accordance with the maxim and having it universalized. And according to Kant this means that our maxim is immoral and that our duty is to refrain from acting on it.

However, when it comes to the man who himself is well off but does not want to help “others who have to struggle with great hardships (and whom he could easily help)”, Kant does not consider the universalization of this position as involving a contradiction in conception, but instead invokes the weaker notion of contradiction in will, which signifies a lack of rationality on behalf of the agent, but not one which involves a logical or conceptual contradiction. It is not as if it would involve the agent in a logical contradiction if he were to universalize the maxim “I will never help other people when they are in need”. This maxim and its universalization “Nobody will ever help other people when they are in need” are obviously consistent with each other. However, to subscribe to this universalization involves the agent in a different kind of irrationality, as he realizes that, at least on occasions, he will need and want to have the help of others:

Now admittedly if such an attitude were a universal law of nature, mankind could get on perfectly well – better no doubt than if everybody prates about sympathy and goodwill, and even takes pains, on occasion, to practise them, but on the other hand cheats where he can, traffics in human rights, or violates them in other ways. But although it is possible that a universal law of nature could subsist in harmony with this maxim, yet it is impossible to will that such a principle should hold everywhere as a law of nature. For a will which decided in this way would be in conflict with itself, since many a situation might arise in which the man needed love and sympathy from others, and in which, by such a law of nature sprung from his own will, he would rob himself of all hope of the help he wants for himself.9

The distinction between contradiction in conception and contradiction in will has implications for the relation between negative and positive duties. A contradiction in conception gives support for negative duties that hold without exceptions, such as “Never make false promises!”; while a contradiction in will
merely rules out support for a wholesale rejection of positive duties, such as “Never help other people!”.
Hence, while we are never allowed to make false promises to other people (according to Kant), we are not requested always to help them. We are merely requested to reject the extreme maxim that we should never help them.

The only requirement as regards the extent to which we should help other people is that it has to be consistent with our will to be helped by others, and this obviously opens for differing interpretations. Hence, we are given a certain latitude as regards how to fulfil our positive duty to help others which is absent in Kant’s account of our negative duty not to act on maxims the universalization of which we cannot even conceive. While negative duties concern actions that are never allowed, positive duties concern actions that at least should not always be avoided. Kant’s account of negative and positive duties also fits John Stuart Mill’s observation that “a person may possibly not need the benefits of others, but he always needs that they should not do him hurt”.10


Having established that the conditionality of positive duties is different from that of negative duties, we still have to deal with the substantial question of when we have positive duties and to whom we have them. We have already touched on two relevant factors, namely, the actual need of our recipients, and the comparable cost to us of helping them. If they did not need our assistance, it would not be true that they could not have freedom and well-being without our help, and then we would not be under a duty to help them. We are not under a duty to help people who are perfectly capable of managing by themselves. If a person is able to secure freedom and well-being for himself and still insists on having us doing it for him, he is actually reducing us to means to his own ends, ignoring that we too have rights to freedom and well-being.

The fact that we too are right-holders is also the reason why the comparable cost to us of helping our recipients to have freedom and well-being matters here. If our claims to freedom and well-being are as good and valid as the claims of our recipients, then the latter cannot justifiably demand of us that we sacrifice aspects of freedom and well-being as basic as the ones they want us to help them have for themselves. We are not morally required to risk our own lives to save the lives of our recipients, nor to make ourselves poor just to provide our recipients with property. (There are exceptions here, when we, as a consequence of special relationships and commitments, acquire duties that may well go beyond a strict equality of rights between agents and recipients. But it is important to note that it does indeed take special conditions of this sort to justify such more extensive duties.)

Now, need and comparable cost do not exhaust the conditions to be considered in a discussion of positive duties. Sometimes it may be true both that somebody is in great need of help to secure his well-being and that we can provide such help at no comparable cost to ourselves, and yet it is not necessarily the case that we have a duty to intervene to provide the help needed. Let us consider two cases, Drowning Man and Homeless Beggar, to clarify this matter further.

In Drowning Man, a man has fallen into a pond with his face down, and you are the only other person present. The man has got his arms entangled in some weeds growing in the water, and unless you pull him out immediately, he will drown. You can pull him out easily and will only run the risk of ruining your shoes in the process.
In *Homeless Beggar*, a man who lost his job a couple of years ago subsequently turned to drinking and drugs, was divorced by his wife, and had to leave his home when he could not pay the mortgage. He is now sitting on the pavement, next to the front door of your house in a prosperous part of town. The night is very cold and unless you take him in, or offer him money to go to a hotel, he will freeze to death. You can do either of these things easily. Your house is big and you will only suffer the minor discomfort of having a not too sober stranger under your roof if you decide to take him in. If you instead give him money to go to a hotel, you will avoid even this minor discomfort, and since you earn well on your job, it will only slightly affect your available resources.

Now, at first glance it might appear as if Drowning Man and Homeless Beggar are quite similar. In both cases a person stands to lose his life unless you intervene, and you can do so at no comparable cost to yourself. Hence, the need criterion as well as the comparable cost criterion are satisfied, and it would seem as if you have a positive duty in both cases to intervene and save the lives of Drowning Man and Homeless Beggar. However, this conclusion rests on the mistaken assumption that just because there are two right-holders who face a serious loss of well-being in your presence, you must be the relevant duty-holder in both cases. According to this assumption, your duty to provide the homeless beggar with shelter is just as stringent as your duty to pull the drowning man out of the water.

This assumption is mistaken, since it overlooks two important differences between Drowning Man and Homeless Beggar. The first difference has to do with *who is the proper duty-holder*. In Drowning Man the features of the situation makes you the proper duty-holder, since your intervention is necessary to rescue the drowning man. If you do not pull him out of the water, he will die. For you not to pull him out of the water in a situation like this would be to act as if he had no right to well-being, or at least no right to well-being that it is worth ruining one’s shoes for. And such a position would be inconsistent with the equality of rights to freedom and well-being among agents that you, as an agent, must accept.

In Homeless Beggar, on the other hand, the features of the situation make it less obvious who is the proper duty-holder. The homeless beggar has chosen to sit down next to your front door. He could have chosen to sit down next to your neighbour’s door instead. In fact, there are many houses in front of which he could have chosen to sit down. Hence, it is not true to say that your intervention is necessary to save the homeless beggar’s life. To be sure, *somebody’s* intervention is necessary to save his life, but in the absence of any prior agreement between you and the beggar there is no reason why you and nobody else should be the only person with a duty to offer him shelter.

There is another morally relevant difference between Drowning Man and Homeless Beggar, concerning *the contents of the right-holders’ rights*. It may appear as if both cases are about the right to life. However, the right to life is derived from the more fundamental agency-related right to well-being. There is a right to life, simply because life is necessary to the well-being that all agents must have in order for them to remain agents. But well-being includes more than life. It refers to all those abilities and conditions that are necessary for any agent’s successful realization of his purposes. If we reconsider our two cases from the point of view of the agency-related right to well-being, rather than from the more specific good of being alive, we can see that Drowning Man and Homeless Beggar are about different kinds of threats to such well-being.

In the case of Drowning Man, the threat to his life is indeed also a threat to his agency-related well-being. He is about to lose his agency-related well-being because he is about to drown. With Homeless Beggar it is rather the other way round. He is about to lose his life because he has already lost other
important aspects of agency-related well-being. If it were not for his being unemployed and addicted to alcohol and drugs, he would not have been a homeless beggar in the first place, and consequently he would not now be exposed to the risk of freezing to death.

Hence, while Drowning Man’s agency-related right to well-being requires that he be pulled out of the water, the same right of Homeless Beggar requires not only that he is given shelter against the cold tonight, but also that he is provided with means to support himself and that he quits his abuse of alcohol and drugs. If he is just given shelter for tonight, he will still be a homeless beggar in the morning. And even if you shelter him permanently in your home, he will still be a homeless beggar, since this is not his home and he is unable to pay for his stay by his own means.

Hence, the objects of Homeless Beggar’s agency-related right to well-being require not only an isolated act of rescue (as in the case of Drowning Man), but rather a combination of supportive socio-economic policies and personal reform. By “supportive socio-economic policies” I mean policies supportive of investment, the creation of new job opportunities, education and work training for all, good infrastructure, a healthy work environment, and other factors that generally increase the opportunities for persons to improve their capacities for purposeful agency by means of their productive work. By “personal reform” I mean the homeless beggar’s development of self-regarding virtues that will enable him to quit drinking and using drugs and make him a reliable person who is capable of benefiting from the job opportunities offered and to make a responsible use of them.

Accordingly, while both cases are about the agency-related right to well-being, this right has different contents for Drowning Man and Homeless Beggar. Consequently, the corresponding positive duties to assist Drowning Man and Homeless Beggar will differ in their contents, and this in turn will affect how we think about the proper way to deal with these duties.

In the case of Drowning Man an isolated act of rescue is necessary to restore his right to well-being, and you, being the only agent capable of performing this act of rescue at no comparable cost to yourself, have a positive duty to do so. In the case of Homeless Beggar, on the other hand, a combination of supportive socio-economic policies and personal reform are necessary to restore his right to well-being. Here the relevant duty-holder is not any individual agent, but rather a collective of agents, including other members of the homeless beggar’s political community as well as himself.

Moreover, from the duty-holder’s point of view, the case of Homeless Beggar is not about a duty to save another person’s life (as it is in the case of Drowning Man), but rather about a duty to assume responsibility for another person’s life. And this is clearly not a duty that should be assigned to just any individual agent, since such a duty confers major restrictions on the duty-holder’s right to freedom, letting another person’s long-term needs set the limits to that right. Only if agents already have committed themselves in a certain way, for instance by becoming parents, or by accepting a job as a body-guard, can they justly be said to have a duty to assume responsibility for another person’s life.

Now, all this does not mean that it would not be a morally good and generous act for any individual agent to shelter the homeless beggar. Of course it would be. But it would not be a duty for any individual agent to do so, and no individual agent would be violating any rights by not sheltering the homeless beggar.

4. Political Communities and the Realization of Positive Rights and Duties.
The reference to a **political community** as a collective of duty-holders in relation to the homeless beggar’s rights above is important. It could be objected that since all agents have both rights and duties regarding each other’s freedom and well-being, the relevant collective would be that of all agents, rather than just that of one’s fellow citizens. However, we need to recognize an important distinction between arguments pertaining to the *justification* of rights and duties and arguments pertaining to their *realization*. To be sure, rights and duties are justified by reference to what is involved in purposeful agency, and all agents must accept that they have rights and duties regarding freedom and well-being. But when it comes to realizing these rights and determining who are the relevant particular duty-holders in relation to certain particular right-holders and regarding certain particular objects of rights at a particular time and place, we need to fall back on political institutions, capable of functioning in these particular circumstances for these particular purposes.

Political communities, with their laws, courts, police forces, welfare policies, schools, and other instruments of public policy, to which all members contribute as tax-payers, workers, civil servants, soldiers, and in various other capacities, are necessary to the realization of rights and duties. This is not to say that all political communities actually fulfil this function. Far from it. Many political communities throughout history have been hostile to the agency-related rights to freedom and well-being, supporting slavery, oppression, and intolerance. But my argument here is only that political communities are *necessary* to the realization of the agency-related rights, not that they are, by themselves, sufficient.

Political communities are not just any gathering of persons within a particular circumscribed territory. They are also *systems for coordinating rights and duties* among these persons. Political communities need not adhere to the principle of equality of rights. In fact, most historical political communities have been hierarchically ordered societies with various legally enforced distinctions between ethnic groups, classes, and sexes. Still, as long as they or their rulers justify their political institutions by reference to the need for legal protection of peace and order, life, prosperity, and property, they embody a conception of a *common good* that makes them something different from a band of robbers or conquistadors, exercising their power just for the purpose of enriching themselves. Of course, rulers may be more or less sincere in their professed recognition of such a common good, but the point is that once they begin to justify their rule in terms of the benefit it offers their subjects, they open up for future extensions of this argument, making the common good the supreme principle of all political action.

Beginning with a minimal version of the common good, aiming at protecting basic aspects of well-being (at least in the negative form of prohibiting attacks on persons and their property), a fully developed version of the common good will include freedom, in the form of democratic citizenship with various participatory rights (such as freedom of expression, freedom of assembly, and freedom of the press), as well as further aspects of well-being, such as education for all. And all versions of the common good require a moral division of labour, according to which members of the community have mutual rights and duties regarding each other’s freedom and well-being. Where such a moral division of labour exists, guided by a conception of the common good, we have a political community.

Now, this system for coordinating rights and duties inherent in political communities is indeed of the utmost importance for the realization of the agency-related rights, since it provides a mutual assurance that all members of the community will do their fair share of the contribution necessary to secure the rights of all members. As a system for coordinating *both* rights *and* duties, a political community provides a guarantee of fairness to right-holders as well as to duty-holders. As a right-holder you can rely
on there being institutions that see to it that you are offered community assistance, should you not be able to secure your freedom and well-being by your own effort (but only if this is indeed the case). As a duty-holder you can rely on there being institutions that see to it that other members also do their fair share in contributing to the community, and that only those who actually need help are the ones who benefit from your contribution, so that you are not “played for a sucker”, that is, taken advantage of as a gullible fool, either having your money transferred to people who do not deserve it, or contributing more than your fair share because others are shirking their duty to do their part.11

This last thing is indeed important for the realization of the agency-related rights. We often tend to focus on the right-holder, thinking of justice in terms of what the community does to help him have his rights realized. Just as often we fail to see justice from the perspective of the duty-holder, who indeed may be willing to do his fair share of contributing to a system of rights to freedom and well-being for all, but who is naturally reluctant to do the shares of other people, and who certainly does not want to see his contribution spent on people who could manage by themselves anyway. We often think of how humiliating it is to have one’s rights ignored by those who are capable of helping at no comparable cost to themselves. Less often do we think of how humiliating it is to be the one who finds his willingness to do his duty exploited by recipients who do not deserve his contribution, or who finds out that he has to contribute more because other people are not doing their fair share.

That is why we need the systems of control provided by a political community to assure duty-holders as well as right-holders that there is justice in contribution as well as in distribution. In the absence of such systems of control, there could be no sustainable realization of the agency-related rights, since there would be no wide-spread motivation to contribute to such a realization. In this way, political communities are necessary to the realization of the agency-related rights.

5. The Principle of Contributive Fairness.

Thomas Nagel, outlining an argument for a political conception of justice, suggests that separate individuals have no motive to contribute to the establishment of a just social order “without the assurance that their conduct will in fact be part of a reliable and effective system”.12 However, Nagel’s argument has a further implication, namely, that rights and duties apply only within a political community and not at a global or international level. According to Nagel, the existence of sovereign states “is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they do not have with the rest of humanity”.13 Nagel goes on to argue that “citizens have a duty of justice toward one another” that “is not owed to everyone in the world, nor is it an indirect consequence of any other duty that may be owed to everyone in the world, such as a duty of humanity”, concluding that “[j]ustice is something we owe through our shared institutions only to those with whom we stand in a strong political relation”.14

Nagel does not deny that we have certain negative duties not to inflict basic harm on members of other political communities, such as killing or enslaving them, but when it comes to the positive duties of socio-economic justice, these only hold between fellow citizens, for the reasons given above.15 I believe we can sum up his (and mine) arguments under a Principle of Contributive Fairness that should guide the extension of positive duties. According to this principle, we have a positive duty to contribute to common arrangements that protect the agency-related rights to freedom and well-being, only if we can rely on the other duty-holders to do their fair share, not leaving us to do their share, and only if we can
rely on the recipients of our contributions to actually need and deserve them, not just letting us do for them what they could and should have done for themselves in the first place. The principle has its basis in the equality of rights of all agents, which implies that no agent should be reduced to the status of a servant or a means to the ends of another. The political community, as a system for coordinating rights and duties, with its various means of control and enforcement at its disposal, is necessary to provide the kind of trust referred to in the Principle of Contributive Fairness.

It should be noted that the Principle of Contributive Fairness applies not only to shared positive duties relating to social institutions, but also to individual agents’ positive duties to individual recipients. We have already introduced the criterion of comparable cost, and this criterion derives its justification from the Principle of Contributive Fairness and its background assumption of an equality of rights of all agents. For instance, an agent has no duty to sacrifice his own life just for the sake of saving his recipient’s life, since that would upset the equality of rights between the agent and his recipient and violate the Principle of Contributive Fairness. Of course, agents can voluntarily assume greater risks for themselves than admitted by the equality of rights of all agents. For instance, an agent can take up a job as a body-guard, thereby also placing himself under a duty to risk his life for the sake of protecting his client, should a dangerous situation occur. But this is still within the application of the Principle of Contributive Fairness, since the agent has voluntarily accepted to make a contribution that is greater than required by the equality of rights of all agents, and this is within his right to freedom to do.

Likewise, parents have more extensive positive duties to their children, and friends and lovers have more extensive positive duties to each other, than is required by the equality of rights of all agents, but this is also in accordance with the Principle of Contributive Fairness, since parents, friends, and lovers by voluntarily entering in certain relationships have acquired certain responsibilities that go beyond the equality of rights that applies to agents in general. In fact, if a parent, or a friend, or a lover did not do more for their children, friends, and lovers, than required by the strict equality of rights of all agents, they would sin against the Principle of Contributive Fairness, since their fair share is indeed larger than prescribed by strict equality.

6. Global Duties?

Now, the Principle of Contributive Fairness, by requiring political communities for its realization, has important implications for questions relating to global or international duties of assistance. Since there is no global institutional mechanism, similar to that of the political community with its means of control and enforcement, that can assure us that we are not doing more than our fair share and that our recipients really need and deserve our assistance, it would seem as if we have no positive duty to aid people in other countries suffering from poverty, malnutrition, famine, illiteracy, diseases, war and oppression in other countries. This conclusion, however, would go against the widely shared belief, expressed by the utilitarian philosopher Peter Singer, that “if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it” and that questions of distance do not matter to this moral principle: “It makes no moral difference whether the person I can help is a neighbor’s child ten yards from me or a Bengali whose name I shall never know, ten thousand miles away.” Singer is, of course, right in pointing out that from the point of view of the rights of the victims, a child starving to death in Bangladesh is as morally bad as a child drowning in my neighbour’s swimming pool. However, what is absent from Singer’s account is the moral perspective of the duty-holder, which cannot be reduced to just a question of the needs of the right-
holder. For instance, while both children have a right to be rescued, the child in my neighbour’s swimming pool has a right to be rescued by me, given my proximity and ability to intervene and the necessity of my doing so. Here proximity does indeed matter (at least in conjunction with ability and necessity), as it turns a morally indeterminate situation (in which we can identify someone with a right, but are unable to identify anyone with the corresponding duty) into a morally determinate one (in which we can identify both a right-holder and a duty-holder). 17

Standing in a causally unique relation to somebody in need and deserving help (as when my intervention is necessary to rescuing Drowning Man), having a special relationship to somebody in need (such as being that person’s parent, friend, or lover), having voluntarily agreed to protect somebody (as in the case of the body-guard), sharing a political community with people in need (being their fellow citizen) – all these are factors that make situations morally determinate regarding who is the relevant duty-holder in relation to particular right-holders and their needs for assistance.

Now, our relation to the starving poor in some distant country is not of a kind that seems to create a morally determinate situation, although there are those who think it does. Thomas Pogge, for instance, has argued that aiding the global poor is actually a negative duty of ours, since their poverty, and the deaths and diseases caused by this poverty, are caused by a global economic order which we, citizens of affluent countries, control and benefit from. We share a moral responsibility for the fate of the global poor by making “an uncompensated contribution to the imposition of social institutions that foreseeably give rise to an avoidable human rights deficit”. 18 Hence, not to intervene to alleviate the deprivation brought on by us is in fact to cause harm, which we are morally obligated to refrain from.

However, Pogge’s argument slides from an empirical premise about unequal outcomes for different nations to a moral conclusion that the global poor have suffered an injustice at the hands of the global rich, for which we, the members of affluent nations, owe them, the members of poor nations, compensation. To be sure, unjust acts of the leaders of affluent nations in the past as well as in the present may be causally relevant to the inequality in effective rights to well-being between the global rich and the global poor today. But this holds as well for the unjust or incompetent acts of the leaders of the poor nations. As Amartya Sen has pointed out, poverty by itself is not sufficient to explain famines and other large scale afflictions of people in developing countries. It is the absence of democracy and political freedom, and governments who have made themselves immune to public opinion, rather than shortage of food or poverty that seem to cause famines. 19

It is failed experiments in socialism (as in Cambodia under Pol Pot and the Khmer Rouge) and local rulers’ indifference to the plight of their starving subjects (as in the case of the Mengistu régime in Ethiopia) rather than a conspiracy of the global rich that undermine the well-being of the populations of developing countries. It is not necessarily a lack of resources, but rather an irresponsible use of the resources that one actually has that causes problem, as when Third World dictators buy weapons instead of investing in health care and education for their peoples. 20

Hence, the existing inequality between the global rich and the global poor is not, by itself, a ground for claiming that every citizen in every affluent country, simply by being such a citizen, is harming every citizen of every poor country. Referring to a vaguely defined “global order” as the culpable factor in this context functions as a structuralist excuse for sweeping attributions of guilt to those who presumably benefit from this order, obscuring facts about how the actions of individuals and governments, in poor
countries as well as in affluent ones, actually affect outcomes.

Now, that the poverty of developing countries cannot be blamed only on their being exploited by the affluent nations of the world does not imply that the latter are completely free of guilt here. When, for instance, Third World dictators squander their nations’ assets on military spending, it is affluent countries like the United States, Great Britain, and France that sell them the weapons and military equipment that they want to buy.\(^{21}\) And this can quite properly be described as contributing to the internal oppression and external aggression that these dictators are responsible for. But the moral duty here would be to cut off this and other kinds of support to undemocratic régimes, rather than to compensate for one’s contributions to the oppression and war brought on by these régimes by assuming the responsibility for feeding and nursing their victims.

It is not, of course, morally wrong to give aid to developing countries. It is a good thing to build hospitals and schools, to feed the hungry and help them feed themselves, to provide safe drinking water, and to give women an education at least equal to that given to men. But to say that it is a morally good thing if and when affluent countries support the well-being of people in developing countries is not to say that it is the moral \textit{duty} of affluent countries to do this. This duty rests with the developing countries themselves. This is the price of independence and sovereignty of a political community, namely, that its members acquire a mutual duty that nobody else has to maintain and develop each other’s freedom and well-being, as well as the freedom and well-being of the community as a whole. The same principle of sovereignty that makes it wrong for other countries to interfere with an independent political community’s freedom and well-being, makes it a responsibility and a duty for the members of that community and their government to protect this very same freedom and well-being.

Of course, one political community could always ask for the help of another political community, should it face obstacles to the realization of freedom and well-being of its members that it cannot cope with on its own, although it has tried to do so to the best of its abilities. And if the political community that is asked for help can assist without suffering a comparable loss in the freedom and well-being of its own members, we may well think that it would only be decent if it did offer some help. But that it would be morally decent to help does not mean that it would be a moral \textit{duty} to help.

Just as individuals, by being of mature age and recognized as autonomous members of their political community, have a duty to themselves and to their community to look after their own freedom and well-being (not becoming addicted to drugs, supporting themselves by means of productive work) and so avoid making themselves a burden for others, so political communities have a duty to manage themselves in such a way that they do not make themselves a nuisance or liability to other political communities. In the case of individuals as well as in the case of political communities, you cannot have both independence and dependence. You cannot at the same time have both an unconditional right to do what you like, free of the interference of others, and a similarly unconditional right to have others assume responsibility for the consequences of your actions and inactions.

This is the limit to positive duties, as set by the equality of those very rights that all duties are derived from. If we all are to be equal in our rights to freedom and well-being, there must also be an equality of duties regarding these goods. If individuals or communities are left free to ignore their self-regarding duties to protect and maintain their freedom and well-being, under the assumption that this is instead somebody else’s duty, then there will be no equality of rights, since some agents will have to support not only themselves but also those agents who find it convenient to be supported without themselves

acknowledging any duty to support neither themselves nor anybody else. Likewise, in cases in which people indeed have a right to be helped by others, and this help requires social and institutional interventions, the duty to provide such help should be shared by all members of the relevant political community in accordance with their ability, and not left with only some good-hearted individuals. In this way the Principle of Contributive Fairness operates to set just limits to our positive duties. This is not to reject positive duties. On the contrary, it is to recognize such duties by placing them within a system of equal agency-related rights and duties regarding the goods of freedom and well-being.

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Notes


13. Nagel, p. 120.


20. In 1994 the cost of military spending in developing countries was $125 billion. For 12% of that cost primary health care could be provided for all, including immunization of all children, elimination of severe malnutrition, and provision of safe drinking water for all. For 4% of that cost, adult illiteracy could be reduced by half; universal primary education could be provided for all, and women could be educated to the same level as men. (UNDP, *Human Development Report 1994*, Oxford University Press, 1994, p. 50.)