

Responsibility for Global Health: Is There a Case for ‘Duty Dumping’?

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Allen Buchanan’s work on health and health care, a selection of which is brought together in the volume *Justice and Health Care*, spans a wide range of topics. The issues addressed in this collection include private health care, rationing of health care resources, questions about trust in physicians, and global health. A particularly compelling aspect of Buchanan’s work, which runs through this volume, is his emphasis on making philosophical discussion relevant for normative questions arising in the real world. Philosophical analysis can help deepen our understanding of concepts such as justice, fairness and legitimacy. However, making this kind of work helpful with respect to the problems and challenges we face in the real world is neither easy nor straightforward: it requires not only that we identify and address additional philosophical and analytical questions, but also that we be willing to gain an understanding of and engage with the relevant empirical issues.

One particular ‘real world’ problem that Buchanan addresses in this collection is the question of what responsibilities particular actors have to respond to health care needs. Justice requires that basic health care needs be met; but whose responsibility is it to ensure that individuals have access to health care? Buchanan emphasises the difficulties involved in determining such responsibilities, and argues that in real world contexts it is not always clear who has an obligation to address particular health care needs. Institutions are required to create and enforce appropriate responsibilities that can fill such ‘responsibility gaps’.

While this issue arises at both domestic and global levels, I focus in this commentary on the global dimension of this problem, which Buchanan and his co-author Matthew Decamp address in the final chapter of the collection. The problem Buchanan and Decamp take on in this chapter is the question of the concrete responsibilities that different actors—such as individuals, states and private corporations—have with respect to the improvement of global health. The focus of this paper is the responsibilities Buchanan and Decamp ascribe to individuals. I suggest that Buchanan and Decamp move too quickly from identifying the importance of institutional change towards the conclusion that this is the objective towards which individuals should direct their efforts. In the absence of sufficient political momentum, the impact of such efforts may be lost. In developing this idea, I suggest that a more constructive version of what Buchanan and Decamp call ‘duty dumping’ can be helpful in filling the ‘responsibility gap’ they identify.

Let me begin by outlining the main steps in Buchanan and Decamp’s argument. The question they address in their paper is ‘who should do what’ to solve problems of global health. They are concerned that, at present, responsibilities are often ascribed to individual actors without adequate justification. In this process of ‘duty

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dumping', obligations are ascribed 'to individuals or institutions, holding them accountable for the adverse health effects of their policies, without offering adequate justification for why particular obligations should be imposed on particular individuals or institutions' (220).

The authors' primary example of duty dumping concerns the provision of anti-retroviral therapy to those affected by HIV/AIDS. With respect to this problem, Buchanan and Decamp suggest, responsibilities have been 'dumped' on pharmaceutical companies that produce anti-retroviral drugs, which are assumed to have 'a duty to supply these drugs to all of those who could benefit from them at prices they can afford' (221). Duty dumping of this sort not only lacks adequate justification, it may also have adverse effects, allowing some actors to shirk their responsibilities and failing to address the root causes of ill health.

Instead of this simplistic process, they argue, three steps are necessary to develop an account of distinct responsibilities of individual actors for improving global health. First, we must identify any determinate responsibilities that currently exist. Second, there is a 'responsibility gap' in the real world; current or yet to be established institutions will be required to create concrete responsibilities that can fill this gap. Finally, all of us have a responsibility to help ensure that the institutions that create such responsibilities exist.

With respect to already existing, determinate responsibilities, Buchanan and Decamp emphasise that it is states that are primarily responsible for ensuring global health. First, states are responsible for addressing health problems that are the result of injustices they commit or support. Second, when interacting with other states, they have an obligation not to support or recognise governments that engage in injustices towards their citizens (225–6). Global corporations, in contrast, currently have rather limited determinate responsibilities on Buchanan and Decamp's account. First, they must avoid actions that have a direct negative impact on health. Second, they must not support governments engaged in activities that harm their citizens' health. Finally, they must not interfere with efforts of states to promote the health of their citizens (232–3).

Institutions can 'create' additional responsibilities that currently do not exist. To go back to the case of anti-retroviral drugs, for example, institutions could revise existing legislation so that drug patents are provided only if drug companies contribute in some way to global health, for example by contributing money to a fund that allows poorer countries to purchase medication for their populations.

Buchanan and Decamp see three main advantages to the ways in which institutions can fill the 'responsibility gap'. First, institutions may be needed to 'translate' abstract theories of justice into concrete policy prescriptions and to choose among different possible 'translations' of such principles. Questions of justice also arise in connection with the processes through which such decisions are made; institutions can come to policy conclusions that are legitimate because they were derived from a fair decision-making procedure. Further, through institutions, the required resources can be created or collected, and the burden of achieving justice can be allocated fairly. Finally, institutions can enforce the duties they create (223–4).

What are individuals' responsibilities for global health?

Where, according to Buchanan and Decamp, does this leave individuals and their responsibilities with respect to global health? Much of the literature on the responsibilities of individuals in affluent countries for

the global poor focuses on money donations to aid agencies. Perhaps most prominent in this context is Peter Singer's seminal 1972 paper, 'Famine, Affluence and Morality'. Singer considers how those living in affluent countries should respond to famines occurring in other countries, focusing on the amount of resources they should contribute to aid agencies.¹ However, while Singer's paper assumed that aid would have straightforward, beneficial effects, the debate about global poverty and injustice has begun to emphasise the complexities of global aid. Such aid may result in harms that may or may not be outweighed by its benefits. Assessing the effects of aid is a complex and controversial task on which there appears to be little guidance from experts.²

In contrast, Buchanan and Decamp offer a very different perspective, which directs our attention away from a focus on monetary aid towards efforts at institutional change. Like many accounts in this debate, Buchanan and Decamp start from cosmopolitan assumptions. This means that individual actors' obligations to contribute to the amelioration of global health problems are not affected by where those others live or what nations they belong to: the fact that health needs are arising in countries other than our own does not reduce the urgency of addressing these needs.

Buchanan and Decamp argue that individuals' basic obligations—obligations of benevolence and an obligation to help ensure that all of us have access to institutions that protect our human rights—do not tell us what exactly individuals are required to do to address global health problems. With respect to individuals' responsibilities for global health, they note that when they act alone, individuals are often ineffective in their efforts to address large-scale health problems. Buchanan and Decamp recommend a different approach for individuals:

Instead of continuing to act independently and inefficiently, they can and should create institutions for health-care research and for the provision of services, thereby coordinating their efforts and achieving great efficiencies of scale, as well as the benefits of the division of labor (223).

Buchanan and Decamp leave open how exactly individuals might go about contributing to the kind of institutional change they envisage. This makes it difficult to assess whether or not efforts at institutional change are in fact going to be more effective than alternative routes individuals might choose to fulfil their responsibilities towards global health. Buchanan and Decamp would like to see individuals focus their efforts on shaping existing institutions or establishing new ones that create determinate responsibilities because they worry about the ineffectiveness of individuals' actions to address global health problems. But it is not clear that individuals' attempts to influence or create institutions actually fare better in this respect. In fact, if individuals' collective efforts are below the threshold needed to achieve institutional change, such efforts may fail to have any impact whatsoever. Thus, the collective action problem Buchanan and Decamp

¹ Peter Singer, 'Famine, Affluence, and Morality' (1972) 1(3) *Philosophy and Public Affairs* 229.

² For helpful discussion of this issue, see Leif Wenar, 'Poverty is No Pond' in Patricia Illingworth, Thomas Pogge and Leif Wenar (eds), *Giving Well: The Ethics of Philanthropy* (Oxford University Press, 2010) 104–30; Keith Horton, 'Aid Agencies: The Epistemic Question' (2010) 28(1) *Journal of Applied Philosophy* 29.

are concerned with is also a problem with respect to individuals' efforts to help create institutions that can establish responsibilities for global health—and here individuals' efforts may be lost completely. If that is the case, more direct actions, such as donations to global health organisations that seek to address health needs directly, are beginning to look a lot more promising: such donations may not achieve large-scale improvements but the likelihood of achieving at least a small change may well be greater than in the case of attempts to make more radical institutional changes. We need to know about the likely results of different kinds of routes individuals could pursue to contribute to the improvement of global health problems before coming to the conclusion Buchanan and Decamp seek to draw.

The more general problem that rears its head at this stage of the argument is that identifying the most desirable scenario of how global health problems should be addressed does not necessarily tell us what individuals seeking to fulfil their obligations towards global health should do.³ Even if we know that having institutions that can create and allocate determinate responsibilities is the most desirable state of affairs when it comes to justice in global health, it does not follow from this that, in the real world, individuals' efforts are best directed towards institutional change. If such efforts are unlikely to be successful, it may be better to aim for more moderate goals that have greater chances of success.

A case for duty dumping?

Concerns about collective action problems surrounding individuals' attempts to achieve institutional change can also give us reason to take a second look at duty dumping. One advantage of the kind of duty dumping Buchanan and Decamp criticise is that it may help us fill the responsibility gap by encouraging private actors, such as corporations, to *assume* responsibilities for global health, rather than wait for institutions to create them. Buchanan and Decamp note that global corporations can assume responsibilities for global health, for example in relation to a particular health problem: 'When corporations explicitly embrace a role in helping to ameliorate a global health problem, as some drug companies have done, they assume new responsibilities and ought to be held accountable for fulfilling them' (233). While they note this as a possibility, they do not explore the opportunities that may be associated with this mechanism through which responsibilities can be created.

This aspect of the argument opens up opportunities for a more constructive understanding of 'duty dumping' than the one Buchanan and Decamp criticise. Companies have discovered that if they take on responsibilities that go beyond what they are legally required to do, this can make their products more attractive to consumers. This includes general philanthropy but also more specific actions, such as enhancing the environmental sustainability of their products or improving workplace safety for their factory workers. We can also imagine that they would assume responsibilities that are more closely and directly linked to particular health needs. 'Duty dumping' makes normative claims about the responsibilities of corporations

³ Ingrid Robeyns discusses a similar problem in relation to the distinction between 'ideal' and 'non-ideal' theory; see 'Ideal Theory in Theory and Practice' (2008) 34(3) *Social Theory and Practice* 341.

and implies that they are falling short of their responsibilities. Public discourse along these lines can exert the kind of pressure on companies that can lead them to assume greater responsibilities.

What would Buchanan and Decamp find problematic about this kind of approach? In addition to concerns that such duty dumping is counterproductive, three more principled concerns about duty dumping emerge from their argument: that it is baseless, that it leads to overly demanding responsibilities being placed on unpopular actors such as global corporations, and that it results in an unfair distribution of responsibilities. To illustrate the first concern, Buchanan and Decamp draw on an analogy:

Duty Dumping seems to proceed on something like a ‘can implies ought’ principle or a principle to the effect that the producers of health-care goods or services have a determinate obligation to provide them to those who cannot pay. But such a principle cannot withstand scrutiny. There is no more reason to believe that drug companies are responsible for providing drugs to all who need them or that for-profit hospitals are to provide care to all that need it, than there is to believe that grocers have an obligation to ensure that no one goes without sufficient food. (221)

While the grocer analogy may seem initially compelling, it also raises problems that Buchanan and Decamp do not address. First, the need for a particular drug is far more specific than more general needs such as the need for food. With respect to the latter, it is often a wide range of actors who would be in a position to provide food or other kinds of aid. Individual drug companies, however, are often in a unique position to address particular health needs simply because they have direct access to the required medical treatment. Further, the cost of their providing this treatment at a reduced price would be significantly lower than it would be for other actors, such as states or donor agencies, to step in and purchase the required drugs at the going rate. Drug companies often argue that high drug prices are necessary to recoup the costs of the research on which the treatment is based and the costs of research that does not lead to effective products. Drug prices are therefore often significantly higher than the direct cost of producing a particular treatment. But there are also broader concerns about Buchanan and Decamp’s quick dismissal of the idea of a ‘can implies ought’ principle. Given the moral urgency of the health needs of the global poor, it would hardly seem unreasonable that anyone who is in a position to help address these needs should do so, roughly in proportion to their ability to help. To return to Buchanan and Decamp’s grocer analogy: if grocers were in a unique position to save individuals’ lives by providing their produce to them at reduced rates at little cost to them, it is certainly not clear that it would be unreasonable or overly demanding to expect that they would make some contribution—perhaps even a very substantial contribution—towards the alleviation of extreme need.

A second concern that Buchanan and Decamp have about duty dumping is that it is likely to result in the imposition of responsibilities that are overly demanding. For example, critics of pharmaceutical companies may claim that such corporations have a duty to do whatever is necessary to ensure that their drugs are affordable to all who need them (221). However, I suggested above that duty dumping can help create an environment in which companies find it advantageous to assume certain responsibilities. Even if we make

strong normative claims about what corporations ought to do, the responsibilities they assume as a result are likely to be less onerous.

Finally, Buchanan and Decamp worry that the distribution of responsibilities resulting from duty dumping is likely to be unfair: states will end up shirking their responsibilities while corporations bear an unfairly large share of responsibilities. They suggest that one of the benefits of having institutions that fill the responsibility gap is that they can ensure that responsibilities are distributed fairly across different agents (224). Unfairness is, of course, always a *prima facie* reason for concern. Ideally, we would like individual agents to bear their fair share of responsibility for global health and no more than that share. However, even if an unfair distribution of responsibilities does result from duty dumping, it is not clear how much we ought to worry about this. If we are uncertain about our chances of successfully achieving institutional change and if an unfair distribution of responsibilities can help us address significant and urgent problems of global health, unfairness in the distribution of responsibilities may well be a price worth paying.

Conclusion

Buchanan and Decamp's paper raises important questions about what individuals should do to meet their obligations towards global health. They are concerned that individuals' efforts often have little impact when it comes to addressing pressing global health issues. They also caution against a rash assignment of responsibilities for global health, which more often than not reflects the unpopularity of actors such as global corporations rather than principled and legitimate judgements about who is responsible for what. Instead, we should focus our efforts on institutional changes, by influencing existing institutions or by establishing new ones so that determinate responsibilities for global health can be created and distributed fairly.

However, I argued in this paper that Buchanan and Decamp move too quickly from their argument for the desirability and advantages of institutional change to conclusions about the responsibilities of individuals. Their worry about the ineffectiveness of individuals' attempts to ameliorate global health needs may also arise—perhaps even more so—for efforts to achieve institutional change. Thus, the superiority of institutional approaches to improving global health does not necessarily mean that institutional change is what individuals should focus on. Even if they cannot address the root causes of global health problems, more direct approaches—such as donations to global health agencies—may have a more significant impact on global health than potentially fruitless efforts at the institutional level. I also suggested that one aspect of Buchanan and Decamp's argument—the idea that actors such as corporations can voluntarily *assume* responsibilities for global health—merits greater attention as a possible method for filling the 'responsibility gap'. To the extent that duty dumping can help us create the kind of environment in which corporations find it advantageous to assume responsibilities for global health, it is an approach worth exploring. The mechanisms through which duty dumping could help to fill the responsibility gap may, of course, raise problems that an institutional approach does not. However, given the importance and urgency of global health needs, it may be more reasonable for individuals to focus their efforts on mechanisms such as these rather than on institutional changes that may well remain elusive.