

Domination and Global Political Justice

Conceptual, Historical, and Institutional
Perspectives

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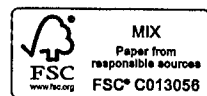
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To Jonathan Trejo-Mathys, in loving memory

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11 Deprivation and Institutionally Based Duties to Aid

Stefan Gosepath

THE PROBLEM: DEPRIVATION

In this world, it is all too often the case that people exist in misery: not just misery relative to others, but absolute misery. Large parts of the earth's population live in poverty; they suffer from diseases; they are victims of natural disasters or cruel wars and the ensuing displacement and depredation; they die in famines, or are deprived of food, of access to basic health care, water, housing, and basic sanitary facilities; or they find themselves subjected to other forms of hardship. These kinds of deprivation threaten the very existence of those people. As a rule, such deprivation constitutes a disadvantage that entitles these people to compensation if the following conditions are met: these persons must have entered into these circumstances through no fault of their own, and they must be unable to extricate themselves from them without extraordinary sacrifices of their own and external aid. The persons in question must be unable to deliberately influence these circumstances, or at least only be able to influence them to an insignificant degree. The restraints circumstances place upon these people must objectively stop them from achieving things that are universally regarded as essential to their lives, including first and foremost the realization of basic human rights.¹ Under such conditions, people are threatened with the violation of basic rights, including physical integrity, security, and subsistence. People who cannot (freely) access a combination of the various goods and abilities sufficient to enjoy these basic rights and to achieve the things we regard as essential to their lives are said to be deprived.

Some scholars who have spearheaded the contemporary revival of the concept of non-domination present non-domination as a first-order principle of (global) justice. They contend that non-domination can capture what is problematic about extreme poverty, destitution, and misery. They argue that the political question, *Who decides about the injustice or justice of*

¹ Cf. Wilfried Hinsch, *Gerechtfertigte Ungleichheiten* (Berlin: de Gruyter, 2002), chap. V; Stefan Gosepath, *Gleiche Gerechtigkeit. Grundlagen eines Liberalen Egalitarismus* (Frankfurt: Suhrkamp, 2004), chap. V.1.5.

a distribution of goods? takes philosophical precedence over the distributive question, *What is a just or unjust distribution of goods?* This paper argues that this approach is mistaken. A focus on preventing arbitrary and pernicious forms of power is too minimalistic. The alleviation of global deprivation is prior to politics and gives rise to the requirement to create and reform global political institutions.

It is not merely arbitrariness with regard to power that matters, but other forms of arbitrariness as well. Circumstances that are generally and reciprocally accepted to be depriving entitle those requiring aid through no fault of their own to support. When confronted with poverty, destitution, and misery—except perhaps for self-inflicted poverty—we have a very clear intuition as to what we should do. Deprived persons are *prima facie* entitled to help from those who are already well provided for.

Even if one agrees that all “decent” people share the idea that deprivation justifies a claim to support, it is still difficult to give a plausible concept of aid in case of need—difficult not just for a random “man on the street,” but also for philosophical conceptions of morality. The answers to the following questions are especially unclear and contentious: 1. Who should help in case of need? Who is responsible for putting a stop to deprivation? 2. Who exactly should one help—just the people nearby or all members of a society, or even those living far away? 3. To what extent should we provide aid to the needy? What should we deny ourselves in order to help others? 4. Are we at all *obligated* to help and if so, in what sense? At one extreme, we might think our aiding the deprived is a morally valuable and desirable action (or motivation to act), but is not a strict obligation. At the other extreme, we might think it constitutes a broad universal obligation owed by everyone to everyone. Between these two poles lies the entire range of interpretations offered by moral philosophy regarding the problem of helping the needy. So those who feel they should help often have no clear idea of whether, why, and to which extent they are obligated to do what. This constitutes the problem of *moral clarity* in aiding the deprived.² We see this lack of clarity as a problem because most people (at least if they are intellectually informed and candid and motivated to do right) seek a clear understanding of what they are required to do when confronted with people in need. Furthermore, as long as the problem is not resolved, there is the danger that people lament the fact that others exist in a state of deprivation but that possibly no one will provide (effective) remedies. In this way, moral ambiguity induces practical apathy, thus increasing the misery of the needy.

In order to at least begin addressing this extensive problem to some degree, I will first argue that the duty to aid the deprived is not merely a charitable one, dependent on the discretion, or the arbitrary will, of the giver (1). Then, before further analyzing the individual duty to aid, I will critically examine

² In addition to this, there are vexatious empirical and practical problems, most of which will not be addressed in this chapter.

whether deprivation is better alleviated or remedied through the duties of corrective justice. I will argue that the perspective of corrective justice is important, but not sufficient when it comes to dealing with deprivation (2). I will then argue that non-domination cannot serve as a first-order principle of justice. It is too minimalistic, since it would not require duties of justice where deprivation exists, but dominating relations and institutions do not (3). Going back to the individual duty to help, I argue that the duties to aid the needy must be assessed according to the situation at hand (4). In order to avoid meaninglessness and morality's excessive demands, one should be able to identify the responsible agents by constructing a shared and, in the last resort, institution-based duty to help (5). The institutional approach in this paper argues that we should create and reform institutions in order to realize the preexisting requirement to alleviate global deprivation. This is a form of “global political justice” that does not start with politics, but ends with global political institutions.

1 CHARITY OR DUTY TO HELP?

The simplest form of moral aid is the kind of poor relief we know from history, practiced by religious institutions and also occasionally by members of the aristocracy. The traditional line of moral justification in this context was based solely on the apparent neediness of those who found themselves in such a situation through no fault of their own. In the West, this idea was related to the (often ecclesiastical) organization of voluntary aid, which in turn rested on the Christian commandment of mercy. This form of moral aid is thus benevolently granted without any kind of claim on the part of the needy. Because the aid is purely voluntary, it can be either bestowed or not, depending on the wealthy's moral sense of responsibility. In its simplest form, one person, the giver, gives something to another person, the recipient, although the giver has no strict duty to do so, and the recipient has no corresponding right and cannot lay a justified claim to whatever it is that is given to them.³ In this way, they resemble someone receiving a present. This kind of giving is motivated neither by a self-interested anticipation of some kind of reward, nor is it motivated (unlike a gift)⁴ by the expectation that

³ A has a claim toward B that B does X if and only if B has a corresponding duty toward A to do X. Cf. Wesley Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1923).

⁴ Theories of the gift and of reciprocity in the tradition of Marcel Mauss claim that one is better able to explain the voluntary sacrifice of time and money as a social initiator of mutual exchange than theories of rational agency that rely on egotism or theories that explain altruism and the underlying norms and values in terms of tradition or socialization. See Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* [1923/1924] (London: Routledge, 1990). Cf. Frank Adloff and Steffan Mau, eds., *Vom Geben und Nehmen. Zur Soziologie der Reziprozität* (Frankfurt: Campus, 2005).

the act will be reciprocated. A present is morally valuable because the giver acts altruistically—i.e., primarily for the good of the receiver—and because the receiver is dependent on the present, since his poverty is such that he cannot work himself out of it. The unsolicited present thus assumes the trait of a benevolent donation.

According to mainstream western (deontological) ethics, charity as individual philanthropy is not seen as a duty, but as something that supererogatorily goes beyond what is strictly required. It is deemed morally good and desirable but cannot be demanded from anyone. Just as we are not required to do everything we could do that is morally desirable, charity is not, according to this conception, a duty, even for all its moral value. Willingness to help those in need as an expression of sympathy with the plight of strangers is indeed considered to be a morally desirable attitude, but is at the same time an entirely voluntary effort, clearly distinguished from the actual duties we owe. According to this conception, then:

The morality of philanthropy in fact requires us to add to justice the salt of love and to engage, out of sympathy with the plight of others, in charity: helpfulness, even generosity. But charity is not owed. As a commendable surplus effort, it deserves a place in the community, since it contributes to the community's wellbeing, but as an entirely voluntary effort, charity cannot be enforced.⁵

There are, however, strong objections to be made against the idea that helping the needy is an entirely optional affair: First, voluntary aid is not, according to that conception, an obligation and thus cannot really be relied upon where deprivation takes place. Second, the criteria of distribution must appear arbitrary to the needy, since the extent of aid depends on the individual's discretion. The benefactor must decide how much to give, when, and to whom. Third, those benefactors feeling responsible may find that the burden of aiding the deprived is quite unevenly distributed. Fourth, finally and most importantly, helping the needy should morally not be regarded as a voluntary affair, but as a duty. In the *locus classicus* of deontological ethics, in Kant's writings on moral philosophy, helping the needy is expressly mentioned as a commandment of the categorical imperative.⁶ The duty to help, alongside the duty not to injure anyone (*neminem laede*), is one of the most important commandments of those modern moral theories that stipulate that certain principles and duties be obeyed for their own sake. The universal duty to aid obliges everyone who has the capacity to do so to use a part of their income and time, which is determined according to their individual capacities, for charitable activities. It demands that we help every

⁵ Otfried Höffe, *Demokratie im Zeitalter der Globalisierung* (München: C. H. Beck, 1999), 89.

⁶ Cf. Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* [1785], edited by Karl Vorländer (Hamburg: Felix Meiner, 1965), 45, 8:423.

needy person, not just the one closest to ourselves, even where we are sure that they will never repay our efforts. This duty to help must be carried out for the purpose of alleviating the misery of those affected, that is to say disinterestedly and exclusively towards this end.

It is true that we usually differentiate between positive duties demanding action and negative duties requiring us to refrain from doing something. We do not feel that the duty to support and assist others entails the same kind of compulsion as the duty not to hurt our fellow human beings. If, however, they are vitally threatened and may be saved through our intervention, the difference between acting and refraining from acting is morally irrelevant. Negative duties, and particularly the corresponding negative rights, demand at least in certain extreme conditions not just to refrain from acting, but to act. Thus the proscription on killing demands more than not killing someone; it requires us to protect people attacked by a third party, where we can do so without a disproportionate sacrifice.⁷

Similarly, we distinguish between perfect and imperfect duties. In the modern age (from Pufendorf to Kant) those duties are termed "strict" or "perfect," which implies the kind of prohibition where subjective desires and ends are disregarded and where it is only demanded that we refrain from actions that would harm others and that would be morally wrong. Those duties, however, are termed "imperfect" which promote the good by constraining subjective ends and desires so as to embody virtues such as mercifulness, charity, and benevolence. In addition, such virtuous actions are considered to be only supererogatory.⁸ The duty to aid is the prototype of an imperfect duty. What distinguishes an imperfect duty (such as the duty to aid) from a perfect duty (such as the duty not to kill, to lie, or to break promises) is, according to a common conception, its incompleteness. While an incomplete, negative duty such as the proscription to kill, prescribes exactly what to do at all times, this is apparently not the case where incomplete, positive duties are concerned: their formulation must necessarily leave open who owes how much and when to whom. Imperfect duties merely establish a normative framework. The interpretation of this framework is left to the non-moral preferences of the actors. Where the duty to aid is concerned, only its application in a specific case will allow one to determine with reference to the specific context who owes what kind of help to whom. But the distinction between perfect and imperfect duties has repeatedly proven to be a difficult one. As the example of the duty to keep promises shows, it is not really possible to maintain the correlation of proscriptions and perfect duties. Moreover, all duties, including the perfect ones, are incomplete, since

⁷ Cf. Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 1st ed. (Princeton, NJ: Princeton University Press, 1980). Shue claims that almost all moral rights, at least all basic rights, have three corresponding types of duties: "I. Duties to avoid depriving. II. Duties to protect from deprivation. III. Duties to aid the deprived" (52). Cf. Ernst Tugendhat, *Vorlesungen über Ethik* (Frankfurt: Suhrkamp, 1993), 351, who follows Shue.

⁸ For a critique of this account, see below.

even they are not (or cannot be) sufficiently specific when prescribing what to do. This too can be demonstrated with reference to the multiple interpretations of the duty to keep promises. For all duties couched in terms of general principles, positive as well as negative, require for their application a capacity of judgment as an additional element which cannot be further specified in terms of rules.⁹

Perfect duties in the sense of indispensable commandments are therefore usually regarded as enforceable duties which do not reward the performance of a duty but sanction its violation. They may be codified as statutory duties as they contain objective criteria that can be phrased as juridical rules and do not saliently require interpretation based on subjective preferences. They are valid independent of whether those subjected to it recognize what is commanded of their own accord. For Kant, however, there are no rights corresponding to those duties to help. Thus, help is neither owed nor enforceable; instead, it is the individual's moral responsibility that is appealed to. Moral duties depending on an unenforceable inner attitude, such as the duty to aid, are not inferior but are nevertheless rated lower because it is not possible to accurately determine exactly what they require. Viewed from the outside, a non-enforceable act of assistance constitutes a merit. From the perspective of the agent, however, Kant considers it as obligatory and claims the agent should feel "duty-bound" to act. Duty in the Kantian framework, however, necessarily entails coercion, either self-inflicted coercion where the motivation to act is concerned (duty of virtue), or external coercion where the consequences are concerned (duty of right). It is moreover by no means clear or even mandatory that perfect duties as opposed to imperfect duties are, or should be, legally enforceable. Thus, there are negative duties that are not usually legally enforced, such as, for example, the prohibition of breaking promises. There are also positive duties that can be legally sanctioned, such as the duty to help, which in some countries is laid down in law. For example, in Germany, the § 323c of the German criminal code ("failure to render assistance") stipulates that every person is obligated to render assistance if the situation so requires. According to this law, assistance is owed in cases of emergency, danger, or distress where this is necessary, can reasonably be expected in the circumstances, and, especially, is possible without significant personal danger or neglect of other important duties.

A specific characteristic of incomplete duties is that they are not owed to anyone in particular. Because they contain no implicit instruction as to whom to offer help, the individual has much greater freedom to decide on this matter. They do not explicitly or implicitly indicate with regard to whom the obligation must be met. To an incomplete duty, there is therefore no corresponding legal claim. Every person capable of helping those in need

⁹ Cf. Onora O'Neill, "The Great Maxims of Justice and Charity," in *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 2001), 219–233, 224f.

has the duty to do so, but because he cannot help all of them he does not owe this duty to each and every one of them. As long as the claimant cannot be identified, there can thus be no corresponding claim to the duty to help. This is where the inherent deficiencies of a purely moral consideration of duties become apparent; it fails to take into account the necessary political institutionalization. The legal and political institutionalization of the duty to aid enables us to attribute to positive duties corresponding claims of certain legal entities. (I will return to this further below.)

Be that as it may, all these distinctions do not alter the character of the moral duty of aiding the deprived; it is neither a personal preference nor supererogatory. Helping is a duty and by no means optional. Despite the Kantian distinction between strict (*unnachlassliche*) duties and wide or meritorious duties of virtue, aiding the deprived is, according to Kant, a moral duty, albeit one of virtue. This goes particularly for those whose affluence enables them to forego certain things in order to help the needy without having to significantly modify their own ambitions in life. Thus, aiding the deprived is a duty and not merely an act of benevolence. This conception is nowadays widely agreed upon.

Moral duties are not all negative duties requiring us to refrain from doing something immoral or unjust. They also comprise the positive duty of helping to bring about moral or just conditions while rectifying existing wrongs—even where no one in particular may be blamed for them. Thus a widely shared intuition stipulates (certain particular differences notwithstanding) that there exists not only a primary and negative duty not to commit a moral wrong, but also a secondary and positive duty to prevent or rectify a morally deficient state of affairs. One may systematically distinguish between two types of reasons for action, no matter what terms are used to denote them, namely primary and secondary moral reasons. Primary moral reasons are those an individual must oblige with since otherwise, they would be behaving immorally. Thus it is not permissible, for example, to steal someone's property (save in exceptional cases); this would be immoral. If a person's voluntary actions predictably lead to certain wrongs, he should be held responsible for them and ought to compensate for them or to see to their removal. Primary reasons commit an individual to preventing or to removing any moral wrongs that are the result of one's own immoral individual or collective actions. A subject is first and foremost morally accountable, i.e., prospectively responsible for the foreseeable consequences of its own voluntary actions. These primary reasons are relatively related to the agent. They imply responsibility if the individual was free, causally responsible for the action in question, accountable, and in a sane state of mind. Unlike primary reasons of morality, secondary reasons are those every person has for helping to bring about a morally superior state of affairs or to eliminate neediness or moral wrongs. These reasons do not pertain to the individual agent but are valid for all those capable of helping to prevent or remove a moral wrong for whose existence they cannot be held directly responsible.

These should be people who are effectively and competently capable of changing institutional structures, practices, or actions based on principles of morality. Thus, where persons find themselves deprived through no fault of their own, and cannot put an end to this without undue sacrifices or outside assistance, this constitutes, according to a generally shared intuition, a secondary moral reason for ameliorating this situation. Every person capable of helping and of (re)establishing a moral situation has such a secondary moral reason—at least where no significant personal costs are involved. This definition of the shared intuition by “reasons of morality” does not answer the question of whether there are any rights of the victims or duties on the part of the potential helpers that would correspond to these primary and secondary reasons of morality. Primary and secondary reasons of morality may differ in significance. In general, personal responsibility for one’s own actions will carry greater weight than the (individual and collective) duty of transforming morally deficient into morally desirable situations, since in the former case the responsibility is a more direct one whereas in the latter case it is of a graded kind. Nevertheless, certain primary moral reasons (such as not stealing chocolate or not being late) can be less urgent than secondary ones (such as saving someone dying of thirst).

The moral requirement of helping the needy demands more from us than we would be prepared to do in the absence of such a requirement. Although we are not motivated exclusively by self-interest, we normally help those most willingly who are closest to us (friends, relatives, and so forth). As far as our immediate environment is concerned, willingness to help may be considered a natural duty commonly displayed by humans.¹⁰ Moreover, we are generally willing to help where we can expect that those requiring our help would in turn help us should the need arise.¹¹ For a specific, confined group, the compliance with the duty to help could increase the total shared welfare. Where the members of a group assume a certain reciprocity in their behavior towards each other and where they may expect compensation in the form of group prosperity, it is likely that the person providing aid in one situation will be at the receiving end in another. Thus, it is a social fact that the duty to aid is nowadays recognized as a moral commandment. Nevertheless, compliance with this duty does not always occur and can even be

¹⁰ According to Hume, this natural virtue derives from the human constitution of sympathy, feeling with the feelings of others. Under conditions of peace and security, sympathy leads us naturally and without consideration of our own advantage to appreciate all those characteristics we normally appreciate in ourselves or our friends. We therefore practice charity as an end in itself, and coercion as a means of furthering it would be counterproductive. Cf. David Hume, *A Treatise of Human Nature* [1739] (Oxford: Clarendon Press, 1978), book 3, part 2, para. 1, and part 3, para. 1.

¹¹ Cf. Claus Offe, “Pflichten versus Kosten: Typen und Kontexte solidarischen Handelns,” in *Transnationale Solidarität. Chancen und Grenzen*, eds. Jens Beckert, Julia Eckert, Martin Kohli, and Wolfgang Streeck (Frankfurt: Campus, 2004), 35–50.

rare. So from a normative standpoint, this commandment is seen as justified and aid is judged to be morally right and required, whereas in practice, this insight does not usually translate into an actual motivation. In terms of action, the commandment is rather ineffective. We are therefore faced with a motivational deficit which arises because we humans are quite cunning when it comes to finding and constructing concrete reasons that purport to exempt us from what we have recognized as being justified in principle, and because the laws rarely require aid or sanction a failure to provide it. To wit, the moral character of the duty to help thus becomes particularly evident where we are not motivated by sympathy or the expectation of a reward, but where we believe that we must comply with the duty to aid for its own sake, and thus also extend it to all those requiring aid, regardless of time, place, and their relationship to the person potentially administering aid. The belief that we must comply points to its characteristic as a moral duty, and this requires a specific justification in terms of moral philosophy.

From the point of view of moral philosophy, both types of moral reasons follow from the principle of justification characteristic of Kantian deontological ethics. Thus, actions or omissions are moral only if, under conditions of liberty and equality, they can be generally and reciprocally justified to those concerned. According to this principle, all circumstances capable of being changed require justification insofar as they (potentially) affect the interests or well-being of others. This is the central argument against the frequently encountered notion that while there are no strong reasons why the status quo (for example, a certain distribution of resources) is just, things are the way they are and therefore they are good because nobody intentionally made them that way. Nobody acted immorally since nobody treated anyone unjustly. The response to this notion is that all existing circumstances require justification in any case, because, and as long as, they may be altered. Moral principles can be applied to all circumstances that are capable of being changed. Consequently, immoral circumstances must be transformed into moral ones where this is possible. The notion that conditions that are capable of being changed are morally relevant means that moral considerations provide us with secondary reasons for transforming immoral conditions into moral ones. This is because moral judgments are prescriptive and not just descriptive. A moral judgment that something is immoral or unjust prompts us to act; simply to leave things as they are would be unjust or immoral. This is why the criterion of changeability is such a far-reaching (and contested) condition of morality.

Before further exploring the justification and organization of the duty to aid, I will, in the two following sections, digress somewhat in order to analyze two different strategies of justification that attempt to circumvent the use of the concept of incomplete positive duties and the problems related to it. These may be strategically useful in arguing for the alleviation of some need, but they do not go far enough.

2 CORRECTIVE AND COMMUTATIVE JUSTICE

Instead of appealing to the universal mutual duty to aid the deprived and consequently finding oneself embroiled in the philosophical and motivational predicaments I have just described, it seems promising to define the group of those obligated to aid in terms of the responsibility for the fact that there is deprivation in the first place. If it can be traced back to unjust conditions or actions, we are not dealing with a positive duty to help, but with a case of corrective and commutative justice. In such a case, the persons primarily responsible for improving conditions are those responsible for their existence, perpetuation, and exploitation. If we are not simply dealing with deprivation but with deficient conditions brought about by unjust actions, then we need not appeal to any positive duties, but simply to the demands of compensatory justice. Their legitimacy is rather uncontroversial and can be generally agreed upon.

One may, for example, plausibly assume that the poverty of the “third world” was brought about by the “first world” via colonialism, imperialism, and the organizational structure of world trade (think of patents, custom duties, credits, market access, monopolies, and so forth). Alternatively (or in addition to that), one may be forced to recognize that the first world continues to cause and to exploit the neediness of the third world. From this would follow that we, as members of the first world, must compensate for this injustice, because we share at least part of the blame.

In order to identify deprivation as being unjust, we would first require an empirical proof as to what caused it. Second, to highlight the unfairness of our dealings with the third world that are responsible for the poor condition it is in, we would be required to define a standard of justice for fair dealings and transactions. This would allow us to determine where and to what extent existing conditions deviate from this normative standard. Most often, this standard is defined in terms of equivalence, meaning that what is given and what is taken in a transaction (of goods) must form a certain equilibrium.¹² For a transaction is fair only where certain initial conditions are given, which must be determined prior to, and independent of, the transaction itself. Thus transactional justice is possible only where every participant already has his fair share of goods and burdens, which he may then trade with those of other participants. A transaction cannot create fair conditions if one of the participants had no legitimate claim to the object of a present or past transaction. Transactional justice thus presupposes a fair distribution of goods. This distribution may in turn be the result of a transaction, but every transactional sequence must be

¹² Cf. Otfried Höffe, “Transzendentaler Tausch—eine Legitimationsfigur für Menschenrechte?,” in *Philosophie der Menschenrechte*, eds. Stefan Gosepath and Georg Lohmann (Frankfurt: Suhrkamp, 1998), 29–48; Höffe, “Soziale Gerechtigkeit als Tausch: ein neues Paradigma,” in *Politik und Ethik*, ed. Kurt Bayertz (Stuttgart: Reclam, 1996), 229–48.

based on a fair initial distribution, which itself cannot be justified in terms of transactional justice, but only in terms of distributive justice. This is why distributive justice takes logical and chronological precedence over transactional justice. Commutative justice is thus secondary to distributive justice.¹³

If the injustice of a situation has been established, commutative and corrective justice require first that those processes that caused it (at least in part) be either terminated immediately or turned into just ones; i.e., others must at least not be actively harmed, and where this does happen, it must be stopped or changed. This prohibition on harming others applies to individuals as well as to states and institutions. Second, from this prohibition there follows the strict, universal, and negative duty not to contribute to the prolongation of these unjust structures.¹⁴ Third, it follows that there is a duty to change them. This duty is neither purely negative, nor can it be performed by individuals alone; it requires collective action. Fourth and finally, the commandment of distributive justice requires that any injury be corrected or, should that not be possible, that those harmed be compensated in one way or another.

The consequences that follow from the prohibition on inflicting harm and from the further requirements of corrective justice are very far-reaching indeed. Much could be gained if we were to apply them conscientiously. Thus, we would, for example, have to put a stop to any dealings with corrupt elites, and we would have to correct any unfair distortions of competition in the world market and adjust them in accordance with the principles of free cooperation.¹⁵

At first, then, the argument in terms of corrective and commutative justice seems advantageous from a strategic point of view, as it promises to lend argumentative support to a far-reaching and valuable goal, namely the alleviation or elimination of poverty in developing countries, without burdening us with the problems of moral philosophy we encounter when arguing in terms of a duty to aid.

But contrary to such appearances, this argument in terms of commutative and corrective justice also comes with a significant burden of justification. For the empirical causes of deprivation are often unclear or controversial. The counterfactual conditional along the lines of “had it not been for colonialism, poor countries would now be better off” may seem plausible in its generality. Concrete causal relationships, however, are much more difficult to prove. The opposite may even seem just about as plausible. Thus in practical terms, it is hardly possible to prove the first empirical premise of this

¹³ Cf. Gosepath, *Gleiche Gerechtigkeit*, chap. I.5.2.

¹⁴ This point is emphasized by Thomas Pogge. See especially Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 1st ed. (Cambridge: Polity, 2002).

¹⁵ Pogge, in *World Poverty and Human Rights*, has made several convincing suggestions to this end.

line of argument with absolute certainty. The criteria for what constitutes a fair transaction between developed and developing countries are similarly subject to controversy. While the criteria and duties of corrective justice may be beyond dispute, this is certainly not true of the underlying standards of transactional equivalence and of initial distributive justice. Here, the burden of justification is similar to the one we encounter when arguing for a positive duty to aid. Moreover, the argument in terms of commutative and corrective justice does specify the type and scope of compensation due. A duty to compensate depends on who caused what to happen to whom; this, I have stressed, is hard to determine. Furthermore, there is the problem of historical justice: victims and perpetrators are not identical to their descendants and therefore it is questionable exactly what the perpetrators' descendants owe to the victims' descendants. For in principle, the demands of corrective justice only apply to injustice committed by oneself. Finally, the demands of corrective and commutative justice must be met regardless of whether the victims are deprived or not. As a matter of fact, it is injustice rather than actual deprivation that gives rise to such demands. Accordingly, corrective and commutative justice does not specifically require anyone to support people in need where their situation is not the result of outside interference (as is the case with natural disasters). In the case of the duty to help, however, the underlying intuition is analytically independent of unfair conditions or historical injustice. Duties of corrective justice differ from duties to aid the deprived not only in terms of justification, but also in terms of where they apply. Furthermore, the intuitions underlying these principles may in fact be at odds with each other. Thus, corrective justice may, for example, require that those who are already better off be awarded some form of compensation, or that their property be protected even though those who are worse off may, as a result, find themselves in absolute poverty. Therefore, principles of corrective and commutative justice cannot, in all circumstances, serve as a replacement for the duty of aiding the deprived.

3 DUTY TO AID – OR DUTY NOT TO DOMINATE?

The claim that it is our universal and mutual duty to aid the deprived is the object of accusations which I shall attempt to repudiate below. The objections are connected with the assumption that the duty to aid the deprived implies an exclusively distributive and resource-oriented understanding of (duties of) justice. Neo-republican¹⁶ conceptions of justice as non-domination, amongst others, argue against this distributive paradigm of justice. These objectors regard justice as a primarily relational, practice-dependent duty not to dominate others arbitrarily. But in my opinion, this

¹⁶ I will speak of neo-republicans as exemplars of this approach, even if that term is too narrow for the wide range of critics I aim to capture.

approach has its own weaknesses, as I shall demonstrate in this section. Above all, it is too minimalistic, which is why it is not a better alternative to the approach taken here.

One of the objections to the universal and mutual duty to aid the deprived is that it is conceived of as part of a distributive paradigm of justice. According to the distributive paradigm, it is the material requirement of justice to ensure a just distribution of those goods which grant all members of society the status of a free and equal person, and which allow them to pursue their autonomously chosen projects within this framework, as long as it does not interfere with another person's freedom. Here, resources, construed as all-purpose goods, constitute the object of distribution. Resources (or "goods") is a general term that encompasses material goods (money, jobs, property), social goods (chances, privileges, prestige), and political goods (rights, authority, liberties). The opponents¹⁷ of the distributive paradigm claim that it presents a misleading "picture" of justice, and that we are trapped in this picture and cannot free ourselves from it, or at least not easily. Instead, they argue for a concept of justice that is primarily concerned with the social status of persons. Here, the mutual recognition of individuals as equals and an adequate power structure are regarded as the foundation of a just order. Distributive justice is held to be an aspect of justice, but not one that is fundamental. Some of the critics agree with theorists of global distributive justice that the duty to aid the deprived is, at least in our world, a requirement of *justice*, as opposed to a mere requirement of *humanity*. Yet they also reject the view that the moral rationale for the duty to aid the deprived is to further realize an ideal of global distributive justice. According to the critics, a perspective centering on the recipient and concentrating on goods and their distribution should not be considered the be-all and end-all; such a perspective would necessarily miss central aspects of justice.¹⁸ By concentrating on goods, we would ignore the essential political element of justice. The critics worry that if the concept of distributive justice were expanded to include non-material things as "goods" in some metaphorical sense, these things would then be treated as if they were static objects rather than as functions of social relations and processes. This in turn would cause us to lose sight of the social structures and institutional contexts that

¹⁷ I am thinking here of various theorists, including Elizabeth Anderson, "What Is the Point of Equality?," *Ethics* 109, no. 2 (1999): 287–337; Rainer Forst, "Two Pictures of Justice," in *Justification and Critique*, trans. Ciaran Cronin (Cambridge: Polity Press, 2013), 17–37; Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1992); Axel Honneth, "Das Gewebe der Gerechtigkeit," in *Das Ich im Wir. Studien zur Anerkennungstheorie*, ed. Axel Honneth (Berlin: Suhrkamp, 2010), 51–79; Samuel Scheffler, "What is Egalitarianism?," *Philosophy & Public Affairs* 31, no. 1 (2003): 5–39; Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

¹⁸ Cf. Rainer Forst, "Two Pictures of Justice."

often determine the patterns of distribution. According to the critics, it is difficult to link these structures and contexts to the distributive paradigm, because the patterns of distribution (such as cultural and symbolic injustice, social rules, procedures, influences, classes, conditions of production and institutions, e.g., the state, the family, and civil society) are not material goods. Consequently, the institutional context in which distribution occurs is neglected or ignored, even though it is often one of the factors determining distributive patterns. In this way, the key political question of who determines the structures of production and distribution—i.e., the question of power—is not sufficiently taken into account, or may even be ignored altogether.¹⁹ In other words, the logic of distribution misrepresents these dimensions by producing a false account of the justice issues in question. Again, it reifies aspects of social life that are better understood as functions of social rules and relations. Moreover, social justice is mainly conceptualized as the structure of a final state of affairs, rather than being related to social processes.²⁰ In this way, subjects are regarded as passive recipients.²¹

The republican idea of non-domination, or more precisely the moral and political imperative not to interfere with others arbitrarily, is an especially good candidate for an alternative approach to justice. As a result of its apparent minimalism, it seems at present to be in the process of becoming a widely accepted ideal for the global political order—i.e., the standard according to which interactions among global actors, and between global and domestic actors, are judged.²²

Two senses of non-domination should be distinguished. I have no quarrel with the first, only with the second. Non-domination in the first, wider sense can be used to characterize the moral point of view in general. As the concept which is opposed to arbitrariness, justice requires a counterfactual and non-dominated discourse as an idealized constructivist and procedural idea to determine what it requires. Non-domination is however often used in a second, narrower sense as a first-order principle of justice. It is often claimed that the principle of non-domination (in this second sense) is what justice requires in the first place (as opposed to distributive justice). The safeguarding of non-domination as a first-order principle of justice has certain implications, above all institutional ones. These theories argue that the political question, *Who decides about the (in)justice of a distribution of goods?* takes philosophical precedence over the distributive question, *What is a(n) (un)just distribution of goods?* They argue that this requires us to rethink things, so that we regard power relations, rather than the distribution of goods, as the fundamental concern of a theory of justice.

¹⁹ Cf. Forst, "Two Pictures," 20.

²⁰ A similar objection can be found in Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), ch. 7.

²¹ Cf. Forst, "Two Pictures," 20.

²² Cf. the other papers of this volume.

However, in this second, narrower sense, non-domination is only the weak, diminished form of justice. As such, it is, at most, the absolute minimum of what we can mutually demand of one another; but it does not nearly suffice to express the full sense and range of the charge of injustice.

Proponents of non-domination usually regard it as the basic principle of justice, since they hold a relational view of justice. Relational views hold that obligations of social justice are only triggered in the presence of relevant forms of social interaction or relationship. Non-relational views, however, hold that these obligations apply to human beings as such, and hence independently of whether they are engaged in any form of social relationship or interaction.²³ Since a relational view holds that justice depends on certain factually and contingently existing circumstances, empirical facts about the factually and contingently existing human relations have an irreducible function in the justification of justice.²⁴

Non-moral facts provide an empirical indication of where the fundamental moral principle of the duty of non-maleficence was violated, how it was violated, and by whom. The harm relation explains where and through what form of social interaction a reparable harm has resulted. However, the duty to repair the harm is based not on empirical facts or relations, but on moral principles. The content, scope, and justification of a political value, duty, or principle of justice depend on the structure and form of the practices (or social interactions) that the value, duty, or principle is intended to govern.²⁵ Accordingly, the relevant relations do not merely consist in factually contingent circumstances, but in man-made social relations, actual modes of interaction, and forms of the regulation of collective issues between people. Examples of relevant relations would be institutional practices such as social cooperation, state coercion, or the existence of a basic institutional structure, as well as cultural practices and relations.

However, non-relational approaches challenge this relational, practice-dependent conception. According to a non-relational view, the existence of problems of justice and the origins of duties of justice (such as the duty to aid the deprived) do *not* depend on existing interpersonal actions or institutional background conditions. For according to a non-relational view, problems of justice exist wherever there are morally advantageous and disadvantageous situations.

As regards these two conceptions of justice, namely the relational and the non-relational approaches, there seem to be two different intuitions, ultimately resulting in two different conceptual explications of justice. According

²³ For the most prominent relational view, cf. Andrea Sangiovanni, "Global Justice, Reciprocity, and the State," *Philosophy & Public Affairs* 35, no. 1 (2007): 3–39; Sangiovanni, "Justice and the Priority of Politics to Morality," *Journal of Political Philosophy* 16, no. 2 (2008): 137–64.

²⁴ Cf. Sangiovanni, "Global Justice"; Sangiovanni, "Justice and the Priority."

²⁵ This is the practice-dependent thesis, cf. Sangiovanni, "Justice and the Priority."

to these two opposed conceptions of justice, we can either understand justice as meaning that one does not suffer from ill, or that one does not suffer from a lack of freedom as a result of domination. Since it is almost certainly impossible to defuse this debate between two partially competing conceptions of justice with a terminological fiat, I should like to take a brief look at the possible reasons for preferring one alternative or the other, and to try to show why non-domination does not suffice as a basic principle of justice.

i) Non-domination as a relational principle of justice only applies to those with whom we are in a relation of domination. According to this principle then, justice would be limited to a situation of domination, where some people already dominate others. Thus, any cases that were free from domination would not require justice. That is counterintuitive. Most of us would hold that we have duties of justice that are independent of, and take precedence over, all social relationships. We also need justice in situations of negative cooperation. A thought experiment often invoked in this context in various forms can help us to grasp intuitively that instances of injustice serious enough to need rectifying may arise even in the absence of social structures or relations.²⁶ We only have to imagine people living on different islands. The islands offer the inhabitants varying living conditions and varying standards of quality of life, and the individuals are variously endowed with capacities such as physical strength, physical talents, or intelligence. Interaction and cooperation between the islands are impossible, but the inhabitants possess precise knowledge about the situation of the inhabitants of the other islands. By chance, it is possible to send boats from certain islands to other islands at high tide; they are carried alone to the shores of the other islands by the wind and the waves. Do instances of deep-seated inequality pose a problem of justice in a scenario such as this? If we follow our reasoned judgments, we probably have to answer in the affirmative. The unequal human and natural resources of the island inhabitants, which they have simply taken on along with the circumstances, without having done anything to obtain them and without being able to do anything about them, present us with instances of serious but alterable inequality. These instances of inequality must therefore be corrected as far as possible. Anyone who intuitively feels that this is going too far should imagine that the inhabitants of one of the islands are threatened with starvation. Is it not a duty of justice to help them, if help is possible? This is the case, even though there exists no social relationship, no cooperation, and no society with common institutions and practices.

²⁶ This thought experiment can be found in Richard J. Arneson, "Egalitarianism and Responsibility," *The Journal of Ethics* 3, no. 3 (1999): 225–47, 226. Cf. Nozick, *Anarchy*, 185, and David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1986). Nozick and Gauthier make use of similar island scenarios in order to illustrate (i) that no one has an obligation to help anyone, if everyone lives separately, and (ii) that the introduction of voluntary trade and other forms of social cooperation cannot generate obligations to help the needy if there are no obligations to give help outside society.

The restriction of considerations of justice to existing relations is therefore, although common, intuitively implausible. It only constitutes a special case of distributive justice, for the just distribution of non-produced resources must also be taken into account. In addition, claims can be made on goods, claims which seem to be legitimated not on the strength of relational dependence, but on the strength of needs. Even within a society, justice is not restricted to justice within cooperative associations. As well as the relational justice within a society, there is also the non-relational justice based on the solidarity among humans.²⁷ Since emergencies are instances of moral harm at least as serious as cases of domination, restricting the grounds for the validity of justice to the sole or central ground of human-made domination is to my mind utterly reductive.

ii) Neo-republicans and other critics see it as an advantage of their approach that they take power seriously as the central aspect of justice. Accordingly, their objection to recipient-oriented theories of justice is that, being non-relational conceptions, they fail to recognize the human-made causes of injustice. By assuming an objective purpose of justice, non-relational theories often lay more stress on the side of those receiving justice. But non-relational conceptions do not by any means have to fail to recognize the causes of injustice. In other words, recipient-oriented and non-relational aspects of theories of justice are not necessarily connected. When criticizing purely outcome-oriented conceptions of justice, it is worth stressing the fact that the causes of injustice should be taken into account, for they can detract from the severity of the injustice. This objection only applies to theories that are exclusively concerned with the end result of distribution. However, there are moral reasons for rejecting such an approach. As it is argued in section 4, it is not only the result of individual actions that is morally relevant; we must also take into account how the result was achieved. The moral quality of the way in which it was achieved plays a role in the moral assessment of the result.²⁸ What is true of individual actions also goes—*mutatis mutandis*—for social distribution. A judgment of justice must take into account the relationship between social institutions and certain social facts (such as distribution).²⁹

²⁷ In contrast, Forst thinks it is not a duty of justice, but of moral solidarity ("Two Pictures," 19).

²⁸ This objection to purely recipient-oriented theories of justice is given particular emphasis by Pogge, *World Poverty*, ch. 1.4. See also Pogge, "Relational Concepts of Justice: Responsibilities for Health Outcomes," in *Public Health, Ethics, and Equity*, eds. Sudhir Anand, Fabienne Peter, and Amartya Sen (Oxford: Oxford University Press, 2004), 135–62, esp. 146f.

²⁹ My view could perhaps be called "relational" in the sense that it can take into account these relationships. I call my view "non-relational" in part because it is not *limited* to human-caused injustice. See below. Compare this to the terminology adopted by Pogge in work after *World Poverty*, such as in his "Relational Concepts of Justice," and contrast it to the terminology adopted by Sangiovanni in his "Global Justice, Reciprocity, and the State."

Many problems of justice are concerned not merely with the patterns or end results of distribution at a certain point in time, but also with the (re)production of an established pattern of distribution over time. The important considerations of the causation and the structural injustices of particular situations can and must be included in a distributive theory of justice. Thus, the distributive paradigm need not be “oblivious to power” (even though it has frequently displayed such tendencies in the past).³⁰ It can and must conceive of justice from a different perspective than that of the “recipient” by following through the political question of which structures determine the production and distribution of goods, and by demanding restructuring as opposed to mere redistribution. However, the distributive paradigm will construe this restructuring as a redistribution of rights, liberties, and opportunities. Including the context of social formation in the evaluation of a particular state of affairs is surely not enough. Rather, as a number of critics have stressed, it is crucial to inquire into the justice of the social processes themselves.

However, non-relational conceptions can, and in my opinion also should, insist that man-made injustice is “only” one possible cause of injustice. Justice reacts to injustice between people,³¹ it is said, and rightly so. But that does not mean that it *only* reacts to man-made injustice. Potential harm, which people could have prevented without excessive morally relevant costs, but in fact failed to prevent, represents a different case of injustice—that at least is my theory. Natural harm that people could not have prevented or eliminated is in any case irrelevant from the point of view of a theory of justice. The responsibilities and the distribution of corresponding duties for the elimination of the injustice differ according to the cause of the injustice. Thus, it is crucial to take into consideration the sources of the injustice to be dealt with and to distinguish between them. But this is not to speak out unequivocally in favor of relational approaches, even if it is true that some non-relational approaches, namely the purely outcome-oriented approaches, make the mistake of overlooking the distinction between the sources of injustice.

iii) Neo-republicans do not deny that we may also have some moral obligations (namely, duties of humanity) towards all human beings over and above the obligations we have towards those with whom we are in a relation of domination. But, they claim, justice is triggered by circumstances of justice (sometimes called grounds of justice) that are different from circumstances of morality. The circumstances of justice are defined by structures of domination that postulate that justice has to start *ex negativo* from an existing malfunctioning practice. Thus, on this account, principles of justice serve as

³⁰ This is the objection of, among others, Forst, “Two Pictures,” 34–35.

³¹ “The circumstances of justice are in the first place . . . the circumstances of injustice: they are circumstances which generate the problems for whose resolution justice is needed” (Onora O’Neill, *Towards Justice and Virtue* [Cambridge: Cambridge University Press, 1996], 98–99).

principles of rectifying or corrective justice, principles that put wrongful acts and structures right. Such principles of rectifying or corrective justice are, however, only derivative. As I argued in the previous section, the principle of corrective justice is of secondary significance, because it ultimately serves only the maintenance or reestablishment of a situation, whose original creation was a precept of the principle of distributive justice. It is in principle necessary to possess a positive formulation of the correct principle or ideal of justice in order to be able to judge where injustice lies, on the one hand, and on the other hand, how it could be made good.

iv) Neo-republican theories stipulate non-domination as the only real principle of justice, regarding the others as mere principles of morality or humanity; since duties of justice have a particular strength and urgency which are not granted to all other moral duties, the principle of non-domination is also regarded as stronger than, for example, the principle of aid. It is, however, debatable how the strength and urgency of the principle of non-domination is to be conceptualized as compared with that of the principle of aiding the deprived. Relational views attempt to conceive of duties of justice as perfect or specific duties, which only hold with respect to those with whom we share a common practice. However, this aspect only arises if we conceive of them as negative duties to prevent or make good any injustice for which we are responsible. As negative duties, their validity is strict and perfect. However, reducing justice to negative duties in this way seems to be objectively inappropriate. The non-relational views seem to me more plausible in this respect; from a non-relational point of view, duties of justice, just like moral duties, can instead be general and imperfect duties, which we owe only to unspecified others.

v) It sometimes seems that the non-domination approach does not distinguish sharply enough between justice (or freedom), on the one hand, and legitimacy on the other. From my perspective, the “primary question” has to be one of legitimacy rather than of justice. The fundamental, and in that sense primary, question is concerned with the justification (i.e., legitimation) of any power relation: when and where is the exercise of any kind of political, economic, and other forms of power legitimate? The basic requirement to justify any power relation³² is in itself a moral duty and concerns all types of actions, even those we would not usually place in the context of justice, such as humanitarian aid. Power not only constitutes a problem within the context of justice, but also beyond the sphere of justice. Thus, power is not a specific ground of justice but a ground of morality in general. That is why it cannot be the first question of justice³³ but is the fundamental question of morality of which freedom and justice are only parts, albeit central ones.

vi) While a critical theory of justice will always take as its point of departure a factual political order in which the oppressed demand a justification

³² See Forst, “Two Pictures,” 34.

³³ As Forst claims in “Two Pictures,” 34.

of their situation, such a theory must still rely to some degree on idealization. For if factual relations cannot be justified reciprocally and universally, the theorist must demand that the political order (i.e., the distribution of power) be changed. This in turn leads to the abstract question (one that is often unjustly frowned upon) of how the social world should be organized if justice is to prevail, and how the status quo must be altered to achieve this. Thus, the critique of actual justifications will always necessarily rely on a concept of true, or at least better, relations of justification. An elaborate theory of justice cannot then be avoided if one wishes to retain a critical standard for evaluating existing social and political deficiencies.

vii) Like liberal autonomy, non-domination speaks to the equal capacity of individuals to command the attention and respect of others. Since neo-republicans prioritize freedom as their central political ideal, they are tempted to forget that liberty alone most certainly cannot be the highest value, but must be considered in the context of justice. “Natural” liberty is curtailed in the name of equality and justice. A right to adequate, subjective realms of freedom cannot be stipulated without recourse to distributive equality, because freedom and its corresponding rights constitute an application of the concept of distributive equality. The characteristic feature of liberty is concerned with the question of what is valuable. A (certain) concept of liberty thus constitutes (part of) the content of equality. Furthermore, the decision to address the destitution of people primarily as an afterthought to the freedom of citizens is inappropriate, since we ought to presume that other individuals care as much about their lives, needs, and freedom as we do about ours.

viii) Non-domination as a central concept of political theory has—at least in the eyes of neo-republicans—the advantage of being closely connected with the idea of democratic self-determination. But we must “mind the gap!” It seems self-evident, if problematic, to derive an argument in favor of self-government from the principle of justification. From these premises of autonomy and consensus, one could be tempted to conclude that to be self-governing in the political realm entails participation in democratic discussions and enables decision-making under certain conditions. The main difficulty with this schematic argument should, however, be clear: it is strongly dependent on the possibility of consensus. Constructed in this way, the argument neglects the crucial phenomenon of disagreement or dissent. This is no accident. There is, in fact, considerable tension in this theory between the idea that an individual must be free to govern autonomously the world he or she shares with others and the claim that he or she must also grant every other citizen the same freedom. Democracy would thus seem to be incompatible with individual self-government. The argument fails to provide a philosophical justification for democracy as it is practiced in real societies, which make widespread use of majority rule.

I do agree with the neo-republican theorists in this important way: institutions and practices matter. However, the neo-republican theorists would

not generally demand the creation of institutions where dominating relations and institutions do not already exist. Later in this chapter, I outline an institutional approach that is not based on the prior *presence* of power, but on the creation of institutions (or “power,” if you like) to fulfill preexisting duties. This comes from the need to clarify and specify the duty of aid.

4 DEGREES OF OBLIGATION

Let us first return once more to the obligation to aid the deprived. How can this duty be justified and specified in the context of moral philosophy?

Peter Singer has made the best-known argument in favor of an obligation to help, an argument that is nevertheless controversial.³⁴ Singer’s position is a rather distinctive one in that he forcefully argues for significantly more individual aid for those in need than we are ordinarily prepared to give.

Without assuming a consequentialist approach, Singer’s argument in favor of an obligation to aid proceeds as follows:³⁵ (1) If we can prevent something bad without sacrificing anything of comparable moral significance, we ought do it. (2) Absolute poverty is bad. (3) There is some absolute poverty we can prevent without sacrificing anything of comparable moral significance. (4) We ought to prevent some absolute poverty.

Intuitively, the greatest problem with Singer’s conclusion has to be the excessive moral demands and the instrumentalization of the helper’s life it entails. If, according to the argument, you must give as much as you can possibly give without becoming helpless yourself, and if this continues until the problem of worldwide poverty is solved, then it follows that you must devote your life to helping others, and there is hardly any room left for living a good life. This seems to be an excessive moral demand—the expectation is simply too high. This is not a problem when it comes to saving a single child drowning in a nearby pond, because that help is limited. To avoid the danger of excessive moral demands and instrumentalization, as well as to avoid stretching the duty to aid beyond what is reasonable, it must be possible to assign limits and/or threshold levels for obligations beyond which no more help is owed.

Arguments like the ones of Singer and others focus solely on the ability of the potential helper and the need of the people suffering. They thus lose sight of other morally relevant aspects of their situation. The victims’ own

³⁴ Cf. Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1999); Singer, “The Singer Solution to World Poverty,” in *Writings on an Ethical Life* (New York: Harper Perennial, 2000), 118–24. A similar argument is made in Peter Unger, *Living High and Letting Die: Our Illusion of Innocence* (New York: Oxford University Press, 1996). Another piece in support of Singer is Garrett Cullity, “International Aid and the Scope of Kindness,” *Ethics* 105, no. 1 (1994): 99–127. See also, on a more general level, Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Oxford University Press, 2004).

³⁵ Cf. Singer, *Practical Ethics*, 294.

personal responsibility is not adequately considered. There is, primarily, an obligation to aid the deprived if they bear no responsibility for their situation and if they cannot extricate themselves from their situation without external help or excessive personal sacrifices. Both limitations of the duty to aid are neglected in this argument, although they are of essential importance to our moral intuition about this obligation.³⁶ If a person is in need, then this circumstance justifies demands for external help, unless the situation is a consequence of their own free decision. Every person has a right to decide what happens to him. This, however, means that people also have a responsibility to bear the consequences of their self-determination. We ascribe to each other responsibility for our actions and our lives and we prevent each other from evading responsibility for the consequences of our decisions, from burdening others with the costs, or from blaming the circumstances. Within a “regime of justice” that guarantees universally valid, liberal, and equal rights for every citizen, every individual has the right and the duty to live a life of personal responsibility and self-determination. Justice ensures among other things conditions of personal autonomy, political freedom, and democratic self-determination. It follows that individuals have the duty to help themselves. A duty to help others who can help themselves without any great sacrifices cannot be justified. Such extensive demands expect too much. Autonomy and freedom are at once a right and an obligation. Agents must bear the consequences of their autonomous actions, if the starting conditions of all those concerned are fair. The individual capable of changing them is primarily responsible for the correction of unjust circumstances, no matter how they came about. However, this duty to help oneself only exists within otherwise just and fair conditions.

Similarly lacking is a consideration of the role of institutions as a framework for morality and justice. The question of a structural relation between wealth and poverty is relevant for the moral evaluation of deprivation. As we have seen in the second part, the moral situation changes if it can be traced back to unjust conditions or actions. In cases such as these, whoever is responsible for establishing, maintaining, and exploiting conditions of deprivation is also primarily responsible for improving them. This moral demand follows from corrective justice, not from the obligation to aid. Only when the primary obligations of corrective justice are not (or cannot be) met, must others (ultimately the global civil society) subsidiarily step into the breach.³⁷ At the same time, not enough attention is paid to structures and institutions as conditions for a sensible implementation of aid.³⁸ For

³⁶ Cf. Gosepath, *Gleiche Gerechtigkeit*, V.1.2.

³⁷ Cf. *Ibid.*

³⁸ Cf. Andrew Kuper, “Global Poverty Relief: More Than Charity,” in *Global Responsibilities: Who Must Deliver on Human Rights?*, ed. Andrew Kuper (London: Routledge, 2005), 135–72; Peter Singer, “Poverty, Facts, and Political Philosophies: A Debate with Andrew Kuper,” in *Global Responsibilities: Who Must Deliver on Human Rights?*, ed. Andrew Kuper (New York: Routledge, 2005), 173–81.

instance, the monetary aid can trickle away because it is misappropriated due to social and political local structures that are lacking or corrupt. This is why, in some cases, aid should take the form of building structures and institutions rather than assistance for singular cases.

By suggesting that rich individuals ought to transfer some of their resources to the deprived, this approach accepts the existing (global and/or local) distribution of holdings. This is because the moral considerations of an individual duty to aid concern what one ought to do with one’s *own* resources in order to relieve human suffering. This, in turn, means that any claim about what is owed to the deprived makes an assumption about the just distribution of entitlements. Determining what and how much someone should give someone else in need assumes a baseline set by justice. For only when it has been settled what is ours by right, can it be determined what we are allowed to do with our goods, or what we ought to do with them.³⁹

Thus, the Singerian individual obligation to help is badly formulated, especially regarding the questions of who is addressed, what can reasonably be expected, and how the aid for those in need is grounded in institutions. I will now attempt to answer at least some of these objections and to modify the constitution of the obligation to help in a way that results in a more plausible and reasonable duty to collectively construct political institutions to meet a shared obligation to help.

A person’s obligation to aid the deprived varies in degree depending on the situation. One should bear in mind at least five considerations that determine who is obligated to aid and which kind of specific obligation is at stake. *First*, one must judge a given situation to be either good or bad. Let us assume that there are self-evident criteria for morally evaluating situations and that according to these criteria, we are dealing with a bad situation, e.g., with deprivation. If the situation can be changed, then the state of affairs is not simply bad, but also morally wrong in the sense that it has to be corrected. Assuming that we are confronted with such a moral wrong, the following considerations are important for a moral evaluation, such as praise or criticism, as well as for assigning responsibility and moral reasons for action. Although all changeable states of affairs provide secondary moral reasons for action, assigning responsibility for such action requires that we ask how the moral wrong came about, what kind of influence the individual in question can bring to bear on the situation, which social relations connect those in need to the potential helpers, and which abilities and possibilities are available to the potential helpers. While the first consideration concerns the moral evaluation of the situation itself, a *second* consideration would be to ask whether the morally wrong situation was or is caused by someone, and if so, by whom and how. A *third* consideration would be the question

³⁹ Brian Barry, “Humanity and Justice in Global Perspective,” in *Global Justice: Seminal Essays*, eds. Thomas Pogge and Darrell Moellendorf (St. Paul, MN: Paragon House), 179–209, 206f.

to what extent the wrong could or can be corrected by the individual in question, and which agents possess the best abilities or possibilities to help. A *fourth* consideration must be included in this evaluation: what are the social circumstances and do those who are capable of correcting the wrong benefit from these circumstances? The circumstances then suggest a *fifth* consideration, namely the relationship between the potential helpers and the potential receivers of aid. The following example should illustrate this point:

There are children in this world who go hungry. Their hunger is a moral wrong and amounts to deprivation, because it is a bad, but correctable, situation which is unfairly inflicted on the children. A natural disaster, such as a tsunami, which causes misery and hunger, cannot be morally wrong or unjust, since it was not directly or indirectly caused by man and it could not have been prevented. However, the consequences of such a disaster, such as poverty or hunger, can be morally wrong—depending on whether they could have been avoided through better prevention (for example, through an early warning system or safe houses) or alleviated through relief efforts. To evaluate actions, it is not enough to judge the moral quality of their outcomes. One must also always pay attention to the way these events or states of affairs came about. If the hunger was caused by the parents' neglect of their child, then primary moral reasons were violated and it is the moral duty and responsibility of the parents, who should not have allowed this to happen in the first place, to at least at this point help their child.

However, deprivation is more reprehensible if those present fail to prevent it, although they could have done so. Hunger is even more objectionable if the society in question allows it—for example, if parents cannot be prosecuted for neglecting their children's needs—and yet more so if a society demands it. Thus, the action's outcome (the perspective of the ethics of responsibility) is not the only relevant consideration for a moral evaluation; the intention of the agent is also crucial (the perspective of the ethics of conviction).⁴⁰ The type of source and its moral quality play a role for the moral evaluation of the result. This holds true not only for primary but also for secondary moral reasons. When evaluating secondary moral reasons, one must therefore ask why those capable of acting actually do so or why they choose not to.

What is true for individual actions (or their omission) must *mutatis mutandis* apply to social institutions and social circumstances that are the result of social actions or their omission. Thus, the influence a social institution has on the quality of life of the persons in question cannot be the sole basis for the evaluation of said institution. If, in a given society, the risk of dying in

⁴⁰ However, purely consequentialist ethical theories deny or implicitly ignore this deep-seated intuition. They evaluate actions only according to their results, just as purely contractarian moral theories, which understand social institutions from the perspective of rational future members of society, focus exclusively on the quality of life in the regime they want to assess.

a car crash is about the same as the risk of dying due to a violent incident, an exclusive focus on this result might suggest that the consequences of traffic and violence are of the same moral quality; this, however, would be absurd.⁴¹ A high risk of dying due to a violent attack is generally thought to be a graver deficiency of justice, and more deserving of an institutional solution, than the equally high (or even much higher) probability of dying in a car crash. Evidently, the various ways in which social institutions can influence a person's quality of life need to be considered. Another consideration for the moral evaluation of avoidable deficiencies in the quality of life is the type of institutional influence, regardless of its size.⁴²

If the way a wrong came about and the reasons for individual or social action or non-action constitute the second evaluative consideration, the extent to which one might individually or collectively influence this result constitutes a third consideration. The allocation of positive obligations to help also depends on the agent's corresponding abilities and his potential to actually help the deprived. Stronger, secondary moral reasons to help in cases of need exist, depending on the extent to which, and the ease with which, the wrong can be avoided or corrected (for example, hungry children can be fed)—and the same is true for moral censure where aid is withheld. The more potential and abilities an agent has, the more likely he is to be a potential helper. After all, only this consideration can ensure that aid is as effective as possible, and one can generally assume that aiding the deprived will be less taxing for someone with more abilities and potential. The cost to such a person is less than it would be to someone who is equipped with fewer abilities and less potential.⁴³ The less influence an individual person has, the weaker the secondary moral reasons are. Thus, they are generally

⁴¹ Pogge stresses this repeatedly; cf., for example, Pogge, *World Poverty*, ch. 1.4. However, the question whether there obtains background injustice plays a role here. There can for example be blameworthy actions lying behind traffic accidents. There is a very high rate of roadside accidents in Africa because there are no sidewalks and because so many people are so poor that they must walk.

⁴² Pogge ("Relational Conceptions of Justice," 156–57, italics in original) distinguishes six scenarios that are arranged in order of the deficiency of justice, using the specific example of a deficiency of nutritional foodstuffs. (1) The deficit is "*officially mandated*, paradigmatically by the law." (2) The deficit results from "*legally authorised* conduct of private subjects." (3) The deficit arises when "*social institutions foreseeably and avoidably engender* (but do not specifically require or authorise)" the deficit through the conduct they stimulate. (4) The deficit arises "from private conduct that is *legally prohibited but barely deterred*." (5) The deficit arises from "*social institutions avoidably leaving unmitigated the effects of a natural defect*," such as when persons with a treatable genetic defect avoidably lack access to treatment that would correct this. (6) The deficit arises from "*social institutions avoidably leaving unmitigated the effects of a self-caused defect*."

⁴³ It is possible that one of these two reasons, efficiency and cost, points to one group or person and the other to another: they do not always suggest the same group or person as the best possible helper, as David Miller has remarked. See Miller, "Distributing Responsibilities," *The Journal of Political Philosophy* 9, no. 4 (2001): 453–71, 461.

weaker in complex social situations than in less complex ones, because the former are harder to influence.

A fourth element to consider is the kind of social circumstances that determine which secondary moral reasons we need to take into account when establishing a scale of priority of responsibility for a given situation. If we find ourselves in the kind of situation in which someone's deprivation is indirectly caused by the better circumstances of others, this makes a difference for the evaluation of our reason for acting. If the situation is embedded in social or intersubjective circumstances that cause the deprivation, or at least maintain it, because those better off benefit from it, then this constitutes a context of power or unjust distribution that in itself requires special justification. If circumstances are unjust, someone ought to change them. Those who create such a situation, support it, or benefit from it are primarily responsible for correcting the wrongs arising from it. If someone is in need because she suffers under structures of unjust rule or distribution, exploitation and unfairness, which benefit—possibly very indirectly—those who, for example, obtain cheap goods because of conditions on the world market, then there is clearly a duty of justice and a corresponding responsibility to establish just institutions for rulers as well as for subjects, and for those who benefit, as well as for those who are disadvantaged. This is a question of justice, which means that one person or persons owe it to others to end these injustices. Those who benefit from existing, unjust social conditions violate the negative duty not to harm anyone by not improving the conditions according to their possibilities.⁴⁴ Because of their context, the reasons and the obligation to aid address all those who benefit, and they are weightier than the general moral obligations to aid the deprived. In some cases, such as natural disasters or displacements, in which a group of people neither created the existing injustice nor benefits from it, but simply coexists with it and would be able to help, those who can help have secondary moral reasons to do so. (The exact nature of these reasons still needs to be explored.) However, in this case the responsibility to help is not based on practice-dependent reasons of justice, but on practice-independent reasons of justice. We are dealing with a morally wrong situation and thus one that ought to be corrected. It is not a situation of unjust dominion or distribution; rather, it is a question of accidentally passing by and being able to help. However, the morally wrong failure to help in such a situation can quickly bring about advantages that lead to a situation of unjust dominion or distribution. If this happens, the situation rapidly becomes a wrong in which one is somehow involved, which in turn changes the type of obligation to help, since most persons either benefit from the existing situation or suffer under it. When evaluating and weighting the secondary moral reasons one must therefore also consider the type of causal connection between social institutions and the consequences for the individual. And the question which type

⁴⁴ See Pogge, *World Poverty*.

of causal connection it is naturally has consequences for the responsibility of the individual.

A fifth consideration states that while all those concerned are equally obligated to comply with the negative obligations, the obligation to aid the deprived addresses (justifiably) primarily those who share a community and ties of solidarity with the victims in some broad sense, be it a shared tradition, religion, identity, conviction, love, friendship, or family relation, or those who are somehow “closer” to the victims, thus more immediately experiencing their need, which leads to them feeling more strongly obligated to help these concrete others. This “closeness” and the common ties create a special obligation of those linked to the victims, which explains why they (ought to) feel particularly obligated to help. The “closeness” and the common ties are thus an amplifier of the general, secondary moral reasons to help those in need.

Thus, we are responsible both for our actions and our omissions. The extent of our responsibility depends on how good or bad the situation is; on who created the situation in question, how and why; on the extent to which someone can help, as well as who and how; and on the question of whether we are dealing with a shared, institutionally complex situation. In an ideal case, all five considerations point to the same person or persons as being most responsible for help, but if they should diverge they must be balanced against each other in the context of the action in question.⁴⁵

5 CONCERTED AID EFFORTS THROUGH COLLECTIVE CONSTRUCTION OF POLITICAL INSTITUTIONS

According to the above, moral agents are generally responsible in a weak sense and to varying degrees for all things they can influence (or could have influenced) with their actions. If one accepts this position, one must turn to the question of attributing this general responsibility for correcting wrongs to certain persons (or groups). If persons as members of groups are also responsible for the correction of wrongs they did not cause, who exactly should be the one to act? The principles of morality or justice must always refer to identifiable individual subjects who must be specified in the moral principle in question.⁴⁶ The difficulty lies in the identification of the persons who are concretely required to correct what is found to be morally wrong or unjust. In some cases there are a number of persons who would be able to act accordingly, and to some of them a special responsibility must be attributed; in other cases, the task of tackling deprivation places excessive demands on individual persons. In both cases, the obligation is in

⁴⁵ For this account, cf. Miller, *Distributing Responsibilities*.

⁴⁶ Cf. Onora O'Neill, “Agents of Justice,” in *Metaphilosophy* 32, no. 1–2 (1989): 180–95.

danger of eroding, because nobody actually acts, although everybody agrees that action is needed. It is morally unacceptable to be confronted with real, massive deprivation and misery that could be eradicated and then to simply allow it to continue and implausibly claim that no one is responsible for helping. Instead, one must ensure that at least in extreme cases of emergency the responsibility to help can always be attributed to someone. It is not a question of rights: they are always empty if no actual addressees for the obligation to implement them are named. Rather, the question is how to identify the right responsible agents out of the large contingent of persons who, according to secondary moral reasons, are able to meet the obligation and have the duty to aid.

Now, who should be the one to help? Who specifically is obligated? The addressees of moral obligations are first of all us as members of the comprehensive community of all human beings, and this means us as individuals and all of us together; and as such, we are primarily required to respect the subjective moral rights of others and to act accordingly. According to the classic model of personal responsibility, the individual human being is the subject of responsibility.⁴⁷ Individuals have the responsibility and the obligation to establish just conditions. Individuals are primarily the subjects of responsibility, first and foremost for their own actions and omissions. As individual persons, we must accept responsibility for our individual actions and their results insofar as we can change them to the best of our knowledge through our actions or inactions. This is required by the moral principle of subsidiarity, according to which individuals are primarily responsible for achieving what is in their power, instead of relying on the community.⁴⁸ The individual has an obligation, as well as a right, to personal responsibility and self-help.

Clearly, individual attributions of responsibility are not sufficient for all cases of responsibility for morally deficient circumstances that are capable of change. To demand that individuals by themselves establish just conditions (everywhere and at once) is often excessive. The individual moral responsibility for the correction of wrongs must be restricted.⁴⁹ For practical reasons alone a general individual obligation to help could not be met—after all, no one can correct all that is amiss by themselves. This holds for institutionally unregulated contexts, such as large parts of the world order, as well as for those specifically political spheres of justice that concern the basic orders of society; that is to say, their most fundamental institutions, in particular their constitutions guaranteeing fundamental rights and their

⁴⁷ See Stefan Gosepath, "Verantwortung für die Beseitigung von Übeln," in *Verantwortung in der Zivilgesellschaft. Zur Konjunktur eines widersprüchlichen Prinzips*, eds. Ludger Heibrick and Alfred Hirsch (Frankfurt: Campus, 2006), 387–408, 388f.

⁴⁸ See Gosepath, *Gleiche Gerechtigkeit*, ch. III.6.1.

⁴⁹ See Stephan Schlothfeld, *Individuelle oder gemeinsame Verpflichtung? Das Problem der Zuständigkeit bei der Behebung gravierender Übel* (Paderborn, DE: Mentis, 2008).

most important social and economic relations.⁵⁰ In the context of such a basic order, the boundaries of the individual's personal sphere of influence are dependent on what others do. An individual obligation to help in case of need would also be an excessive moral demand for individuals who should be able to organize their lives autonomously according to their "basic projects" and in accordance with equal chances and liberties for everyone. After all, the autonomous organization of the agents' lives is a moral value that is important enough that we have a legitimate interest in affording them the (necessary) space. This is another reason why the individual moral responsibility for removing unjust grievances must be less extensive.

Therefore, individuals by themselves cannot be completely responsible for correcting everything that is amiss; they may however contribute something towards improving things. This duty to help those in need addresses all members of the moral community of human beings and demands of them in their capacity as "citizens of the world" to create institutions which may effectively put a stop to such violations of rights, for (all) individuals collectively share a common moral responsibility.⁵¹ Because such deprivation can be remedied only through the (coordinated) actions of many, this is a communal task. Thus, in such a case, a collective of individuals is responsible, although it is dependent on the individual members and their shared or partial responsibility.

But the responsible collective in question is not necessarily one of perpetrators or of culprits. It is not only those causing injustice who have the duty to alleviate or correct it. Because in many cases injustice is not brought about through culpable causation and because individuals are often not up to the task of rectifying an injustice, those who are capable of doing so at an acceptable cost have the duty to aid. This position allocates the responsibility to help in a crisis to individuals as a collective, even though these individuals do not have a "causal responsibility."⁵²

Ideally, this shared responsibility is one that responsible citizens and individuals impose upon themselves; i.e., they accept responsibility wherever they can (already) be held accountable for moral reasons.⁵³ Where there is no straightforward answer to the question of moral accountability, citizens will come to realize the complexities of assessing responsibility for

⁵⁰ Cf. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), §2.

⁵¹ For the argument that there are "mediated" positive duties that correspond to the moral duty to help the needy, cf. Henry Shue, "Mediating Duties," *Ethics* 98, no. 4 (1988): 687–704; Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 1st ed. (Princeton, NJ: Princeton University Press, 1980).

⁵² For this somewhat ill-chosen term for a certain type of responsibility, cf. H.L.A. Hart, "Postscript: Responsibility and Retribution," in *Punishment and Responsibility* (Oxford: Oxford University Press, 1968), 211–30.

⁵³ Cf. Klaus Günther, "Verantwortlichkeit in der Zivilgesellschaft," in *Das Interesse der Vernunft*, ed. Stefan Müller-Dohm (Frankfurt: Suhrkamp, 2000), 465–85.

deprivation, and will solve the problem of excessive demands, on the one hand, and a lack of specific content, on the other, by reflecting on the concept of responsibility, as well as on the corresponding criteria and the rules of their application. In a social procedure of decision-making and reflection, citizens may then formulate different context-sensitive criteria for cases where the attribution of responsibility is problematic. Such criteria may not be construed completely arbitrarily if there are primary moral reasons pointing to a specific responsibility. If, for example, certain persons were involved in creating injustice, it is their responsibility to correct it. In many countries, however, it has now become common to construe legal concepts of accountability that may be applied to cases where the condition of responsibility is met only in a weak sense or not at all.

The two most important examples are probably, first, the attribution of liability, where a society decides who is liable for possible damages on the basis of moral considerations and criteria of efficiency, and second, the attribution of blanket responsibility for certain spheres of life, regardless of any actual culpable behavior.⁵⁴

One could, I maintain, structure this collective responsibility for the correction of injustice along the lines of the concept of liability. We all have a considerable interest in mechanisms designed to prevent damages (preemptive effect of liability regulations) and to correct them or compensate for them in case damages do arise. This is why we together as a society should agree on such mechanisms (i.e., we should do so for moral reasons). In this scenario, a group may be held collectively responsible even though not all of its members share the blame.⁵⁵ This is a case of vicarious liability without partial responsibility. Collective liability for risk or absolute liability (instead of tortious liability) means to be held responsible for the actions of others. In the case of responsibility or liability for injustices it is often not possible to assign distributive blame to a group; i.e., the blame cannot be allocated among its individual members. Thus, the group should be held responsible for correcting such wrongs, precisely because they cannot be imputed to the individual members. There is only one possible way of fulfilling this duty, and that is through effective cooperation. This is why collective liability in the last resort

⁵⁴ In the second case, we may think of a certain kind of liability (in German called *'Zustandshaftung'*) where the proprietor of an object is responsible for averting any danger that might stem from it by virtue of his power of disposal, or of a minister's political responsibility for his department within the sphere of his competence and duties ('ministerial responsibility'). Cf. Werner Krawietz, "Theorie der Verantwortung—neu oder alt? Zur normativen Verantwortlichkeitsattribution mit Mitteln des Rechts," in *Verantwortung—Prinzip oder Problem?*, ed. Kurt Bayertz (Darmstadt, DE: Wissenschaftliche Buchgesellschaft, 1995), 184–216, 202f.; Reinhold Zippelius, "Varianten und Gründe rechtlicher Verantwortung," in *Verantwortlichkeit und Recht*, Jahrbuch für Rechtssoziologie und Rechtstheorie 14, ed. E. J. Lampe (Opladen, DE: Westdeutscher Verlag, 1989), 257–66, 261f.

⁵⁵ Cf. Joel Feinberg, "Collective Responsibility," *The Journal of Philosophy* 65, no. 21 (1968): 674–88.

creates a duty to cooperate (prospectively to provide for possible risks and retrospectively to cope with the shared responsibility for man-made wrongs and injustices), a duty to come together to engage in collective action, and a duty to create institutions to collectively manage common responsibility.⁵⁶

In order to account for the individual distributive (joint) responsibility in an initially randomly composed group, a responsibility which at the same time opens up the possibility of effectively putting an end to injustices without overly burdening the individuals, it is necessary to institute a coordinated collective based on principles of fairness. If a randomly composed group can transform itself into a collective which is capable of acting and of developing procedures of decision-making in a situation in which rational human beings should have a clear understanding of the moral nature of the action required, then such a group can be said to be responsible.⁵⁷

A group organized according to these principles meets the criteria for moral responsibility we routinely apply to individuals.⁵⁸ (i) The group is formed on the basis of a general consensus of all participants. In order for them to act collectively, the group must first make a concerted decision about its aims and intentions. The ensuing consensus constructs the plural subject of action. (ii) A group may act voluntarily, on the basis of a free agreement of its members, or it may act under duress. Where the group's action follows a collective decision, taken without external constraint, it may be considered voluntary. (iii) Knowledge of the group's moral norms may be assumed since the group members' joint definition of the shared aims presupposes their moral values and constitutes the group's moral framework. (iv) By creating an internal organization and a decision-making procedure, the collective enables itself to reach communal decisions and coordinate the actions of its members, to implement effective measures correcting any existing wrongs, and to allocate individual duties that do not overburden the individual members. If in this way a group can meet the criteria for moral responsibility, there exists the possibility of genuine collective responsibility. With its structure of organization and decision-making, the group may be seen more as a kind of corporation which is treated, according to legal and everyday principles, as a responsible corporative agent with "corporative intentionality" analogous to natural persons.⁵⁹

⁵⁶ Gunter Teubner, "Die unsichtbare, 'Cupola'. Kausalitätskrise und kollektive Zurechnung," in *Kausalität und Zurechnung. Über Verantwortung in komplexen kulturellen Prozessen*, ed. Weyma Lübke (Berlin: de Gruyter, 1994), 91–143, 118.

⁵⁷ Cf. Virginia Held, "Can a Random Collection of Individuals be Morally Responsible?," in *Collective Responsibility*, eds. Larry May and Stacey Hoffmann (Lanham, MD: Rowman & Littlefield, 1991), 89–100.

⁵⁸ Cf. Margaret Gilbert, "The Idea of Collective Guilt," in *Sociality and Responsibility: New Essays in Plural Subject Theory* (Lanham, MD: Rowman & Littlefield, 2000), 141–52.

⁵⁹ Cf. Peter A. French, *Collective and Corporate Responsibility* (New York: Columbia University Press, 1984). Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16, no. 3 (1979): 207–15.

Neo-republicans also speak of the construction of corporative agents.⁶⁰ However, the neo-republicans see the question of politics, of “who” decides, as the problem; they see politics as both the question and the answer. My institutional approach sees the political construction of a corporative agent—a *who*, so to speak—as an answer for how to apportion responsibility for alleviating need.

The collective does not necessarily need to be an established and institutional entity to be able to engage in responsible action. Loose aggregates of people may be considered as candidates for assuming collective responsibility if they meet the above conditions. This is particularly relevant where deficiencies requiring collective action exist, but where responsible institutional collectives have not yet been firmly established, such as in the case of world poverty. In order to account for the particular individual (joint) responsibility, a collective must be established according to principles of fairness which can, in a continuous and steady manner, effectively put an end to the existing wrongs. Based on previous experience, we can say that a state-like structure would best meet the requirements for a solution of the problem of coordinating shared responsibility. Various alternatives are however presently emerging and are being discussed as part of the concept of “global governance.”

Once an effective collective is established, possibly taking the shape of a state-like organization, one would expect it, as a rule, to guarantee the individual adherence to primary moral reasons by means of legal sanctions, as well as to regulate the individuals’ commonly shared responsibility with the purpose of bringing about justice. Thus, one advantage of collective liability is that the compensation for deficiencies is made easier. The second advantage is that responsibility and liability become internalized. For, legal rules of liability aside, we wish to achieve, and should achieve, a situation where certain individuals feel responsible,⁶¹ accept, and, if possible, internalize the arrangement. Only then can we achieve a viable social practice effectively regulating responsibility. A third advantage is that, ideally, agents begin adjusting their risk calculation and thus improve the level of foresight.

A more precise definition of the individuals’ duties is, however, required if we are to know exactly who is responsible for what. Furthermore, because the group members together defined their goal, the group is responsible for the actions undertaken in achieving it. The collective responsibility is thus distributed among members in the form of subtasks. Therefore, collective responsibility is not a substitute for individual responsibility; instead, the former complements the latter with an additional element; i.e., that amount of joint responsibility assigned by the community of responsibility. The group members meet their shared responsibility by reasonably allocating

⁶⁰ See Philip Pettit, “The Republican Law of Peoples: A Restatement” (this volume), and various works cited there.

⁶¹ Cf. Miller, “Distributing Responsibilities,” 469.

their duties in the form of a social and moral division of labor, whereby individuals are either evenly taxed or only a few people are assigned tasks for which they are adequately compensated. Thus, when specifying individual responsibilities, a certain degree of reindividualization of collective liability is involved by which the group determines the internal measure for the distribution of burdens. We have thus, as indicated above, a situation where a cooperative agent is created through a conscious social effort.⁶² Finally, the creation of collective responsibility presents itself as follows: In a first step, actions, rights, and obligations are ascribed to the collective agent as such. In a second step, profits and losses (metaphorically speaking) are individually allocated among the members according to their causal, moral, and functional responsibility, as well as to criteria of effectiveness and personal bonds. It is here that different criteria can be combined and weighed against each other. It thus makes sense from a moral point of view to maintain that causing injustice is the most important measure for the attribution of responsibility.⁶³ Only where this cannot be applied exclusively because the moral demands on the culpable individual become excessive should different criteria be applied, such as how much individuals contribute to the risk of exacerbating injustices, or how far they tolerate injustice or profit from it. The criterion of ability may also be applied. Where even this is impossible, all members should assume an equal share of responsibility. A two-step procedure such as ours is attractive because it combines the advantages of collective liability with the incentives of an individualized approach. Collective liability ensures that the victims of moral wrongs receive compensation even where no individual causation can be determined; the individual distribution of this approach generates an individually assignable share of the duty to alleviate injustices. Third, in recognition of the joint responsibility, a system of insurances should be introduced along with a statutory duty to insure. This generates a reasonable and fair allocation of individuals’ rights to protection from moral wrongs. Where people are generally willing to participate in such a scheme, the burden for the individual member can be kept to a relative minimum, and no excessive moral demands are made. Where people are not prepared to enter into this scheme voluntarily, the coordinated collective must resort to sanctions in order to ensure that all members satisfy their fair share of the collectively shared responsibility for fair conditions.

The starting point of our inquiry was a problem of *moral* philosophy concerning the duty of correcting global deprivation. It was argued that charity

⁶² Cf. Teubner, “Die unsichtbare,” 127.

⁶³ For this principle, cf. Christian Barry, “Understanding and Evaluating the Contribution Principle,” in *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, eds. Andreas Føllesdal and Thomas Pogge (Dordrecht, NL: Springer, 2005), 100–35; Christian Barry, “Applying the Contribution Principle,” *Metaphilosophy* 36, no. 1–2 (2005): 210–27.

is not sufficient; rather, there is a basic duty to help those in need. The problem of global deprivation cannot be adequately addressed in terms of moral philosophy without drawing on this idea of a basic duty; even principles of corrective justice do not solve the underlying problem. Instead of holding, as Singer does, that every relatively well-off individual is globally responsible for aiding the deprived until he/she would have to sacrifice something of similar moral significance, we must consider the individual situation and differentiate the individual duty accordingly. Like Singer, and unlike the neo-republicans discussed in section 3, I *start* with the requirement to alleviate need. However, like the neo-republicans, and unlike Singer, my approach does have an important focus on politics and institutions. In my approach, what is fundamental to justice is not the *question of politics*, but the duty to alleviate need. However, this duty cannot be realized without the *political construction* of shared responsibility. The addressees of the duty to help are all relatively well-off individuals who share a duty of aiding the deprived. In order to live up to this responsibility, they must come together and create shared political institutions that will allow them to help as part of a concerted effort that will nevertheless accord each individual his/her fair share of what is due, and that will also have the means of enforcing such demands. This political construction of shared responsibility enables us to specify the addressees of the duty to aid, as well as to solve problems of coordination and of excessive demands. We may therefore hope that global deprivation will actually be eliminated, or at least significantly alleviated.

6 CONCLUSION: IDEAL THEORY, POLITICS, AND GLOBAL REFORM

In ideal, just, institutional circumstances, the criteria of responsibility, reasonableness, permissibility, and a chance of succeeding are all fulfilled. In ideal institutional circumstances, human rights protection would be guaranteed as well as feasible. Human beings would be equipped with basic goods, and this state of affairs would also be institutionally secured.

But as good as this may sound, there still seems to be a serious problem for this institutional approach.⁶⁴ According to my proposal, the indeterminate positive duty to aid needs to be converted into a determinate role, which the responsible institutional collective assigns as a subtask to each group member within the scope of a collective liability. In this approach, the individual positive duty to aid is transformed into the joint responsibility to create and maintain suitable institutions for the common joint responsibility to eliminate serious need on the principle of the division of labor. The

⁶⁴ Cf. Elizabeth Ashford, "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. Thomas Pogge (New York: Oxford University Press, 2007).

important intuition behind the institutional approach defended here is that duties to help, which precede any institutions, cannot be properly implemented without institutions identifying, in legitimate and efficient ways, duty-bearers and right-holders instantiating their demands. The institutions should be created precisely in order to articulate the specific implementation of the otherwise imperfect duties in non-ideal circumstances.

The general institutional setup makes a difference to the individual degree of duty. Thus an efficient institutional allocation of duties can contribute to the fact that individual contributions to help support people in need are determinate rather than indeterminate. Furthermore, the individual reasonableness of the fulfilment of duties can change dramatically when duties are allocated by an institution and it is guaranteed that everyone's duties are fulfilled and all burdens are fairly distributed. In ideal institutional circumstances our duties towards the poor could be both reasonable and clearly determined.

In the ideal institutional circumstances of just institutions it is first of all our natural duty to comply with whatever the institutions may ask of us. Second, we should support the institutions. For the purposes of these natural duties of justice we must also support the institutions even when we ourselves have not profited from them and are not in any other way involved in them. Third, we should further the realization of just regulations not yet in existence. This means that in non-ideal institutional circumstances it is our natural duty "to further just arrangements not yet established," as far as is reasonable.⁶⁵

Now it is possible to object to this approach on the grounds that it merely transforms the imperfect moral duty to help individually into an imperfect moral duty to construct and support political institutions collectively. As an incomplete duty it must necessarily leave open who owes how much when and to whom. After attempting to solve the indeterminacy of duties to aid by collective institution-building, the institutional approach would then find itself faced with a further collective action problem: who is to do what to create the necessary institutions capable of effectively organizing common aid?

But the situation for the institutional approach is not quite as bad as the above objection makes it seem. In the institutional approach to duties to aid we have three duties: a) If an institutional scheme fulfilling the collective responsibility is in place, everyone should support it. b) If that scheme is absent, everyone has a natural duty to help create it. There are then two duties depending on the circumstances: we should support institutional schemes implementing collective responsibility to aid the deprived if they exist, and help create them if they do not. c) Only if no institutional solution is possible is it necessary for everyone to fulfill individually his/her moral duty to help in states of need.

⁶⁵ Cf. Rawls, *Theory of Justice*, 119.

The first question to be answered then is whether the necessary institutions that could effectively organize aid exist. The question requires of course more detailed analysis than I can provide here. But let it suffice for the moment to point out that these kinds of institutions of organized, collective responsibility do of course exist on a national level, namely states. It is true to say that they tend to carry out their responsibilities rather inadequately, or, worse still, do not even regard their common moral responsibility to provide aid in cases of need as one of their primary tasks. It is however clear what we as citizens are to do in this instance, which on a national level is in effect a typical one: for moral reasons we should use our political, democratic powers of influence to make our states and their governments do justice to our common responsibility to provide aid. If we live in a tolerably functioning, sufficiently democratic state, as most citizens in the "Global North" do, this task is feasible. Since the politico-democratic influence exerted in these countries is organized by political institutions, elections, and political groupings such as parties, non-governmental organizations (NGOs), and so forth, the possibility that some citizens remain apathetic does not necessarily diminish the powers of influence of those who are willing to fulfill their moral duty to reorganize the existing political system. The complacency problem typical of non-ideal circumstances can therefore be passably surmountable, if halfway functioning political institutions are in place. It is enough if a sufficiently large number of citizens (think of the morally elite, of charismatic politicians with a moral conscience, or of ethical revolutionaries) are adequately motivated to exert their influence on political organizations and make them fulfill their common moral responsibility to provide aid in cases of need. Once more it becomes clear that the nature and degree of our moral duty to reorganize the political system varies (like the duties to aid) according to the powers of influence of the individuals concerned.

At this point, it may seem that I have reached the conclusion that influence and power are key to justice—something I earlier disavowed. But this mischaracterizes my position. I have said that politics—the *question* of who *decides politically*—is not the basic question of justice. There are other, more fundamental questions of justice. One such problem is how to realize the requirement of the basic duty of aid. Further, there is the lack of clarity regarding what these duties entail. To specify this, we need to have political institutions that allocate duties. The further problem, just mentioned, is that (at least some) actors then have a duty to form and reorganize such political institutions. The actors' power to have political influence changes the character of one's duty to engage in political reform. But, *pace* the neo-republicans, it is not only the presence of arbitrary power and influence that begins the question of justice. The duty of aid would be relevant if political institutions or domination did not exist. Political influence and power are relevant to characterizing individuals' duties of justice. But what matters is the presence of political possibility, not domination.

On an international level matters are more complex. It is true that there is for the most part still a lack of robust, state-like, international institutions

capable of securing the fulfilment of our collective duties to help. Equally, though, global economics is largely controlled by the international organizations, such as the World Trade Organization, the International Monetary Fund, the World Bank, and the United Nations. These international institutions depend, if they are to function, on the authorization and enforcement provided by nation-states. The structure of our cooperative global economy was created by our states as a complex hierarchical system of global governance, which is maintained up to this day to the advantage of the citizens of the first world. This can be seen in the globally coordinated operations to save the world's financial and banking system. If this account is even roughly correct, it should be clear that even in the international sphere the new establishment of institutions matters less than the absolutely essential reconstruction of the already existing system. Such institutions seem to many of us illegitimate if they are not reformed in such a way that their procedures involve more democratic accountability and their outcomes become more equitable. A reform of the global economic system towards a system that would recognize and guarantee socioeconomic human rights seems feasible insofar as it is in principle politically doable, if only for the reason that the present morally corrupt system could be created by the will of powerful political agents. However, even if they could be stable once created, it may be unrealistic to expect that political agents with the right kinds of moral motives pursuing their reform will succeed in doing so. For on an international level the powers of influence are considerably more limited, because there is only a very indirect kind of controlled exertion of influence along the established political channels. However, where there is a will, institutional reform on an international political and economic level is possible. It is in principle also possible for us to put the fight against poverty on the agenda and prevail through protest, critical publicity, blaming and shaming, pressure on our national governments, etc. This hardly needs emphasis. This moral duty to exert political influence on the reform of international organizations is, however, unfortunately accompanied by the complacency problem.

Even if this and other questions have yet to be answered, I hope that it has become clear that the institutional approach to duties to aid in cases of need which I have proposed here is not ideal theory in a bad sense, but offers instead viable recommendations—recommendations, that is, that are both achievable and desirable, as far as we can judge in the circumstances we find ourselves in at present, or are likely to find ourselves in the not-too-distant future.

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12 Antipower, Agency, and the Republican Case for Global Institutional Pluralism

Terry Macdonald

INTRODUCTION

One notable contribution made by recent work in republican theory has been its push to shift the focus of normative political analysis away from *the structure of institutions that distribute social goods*, and towards *the structure of power relationships* among individuals and groups within a social order. The republican political ideal prescribes combating power within social relationships that takes a particular pernicious form—generally called “arbitrary,” or “alien”—in which control is exercised by one actor over another without appropriate political endorsement or contestability.¹ This focus on power within republican theory equips it well to contribute to contemporary debates about institution-building in the global domain, where dynamics of power relationships are prominent features of the political landscape.

Republican theory’s contribution to debates about international institutions has been constrained, however, by the fact that its normative institutional principles have mostly been applied to structures and policies of constitutional sovereign *states*. Few are persuaded that the same institutional models that enact republican ideals at the level of the state could effectively or legitimately be replicated straightforwardly on a global scale. Yet there is no straightforward way to apply republican institutional principles to some global institutional subject—analogue, say, to the application of some established principles of socioeconomic justice to a global, rather than a statist, “basic structure” or “institutional scheme.”² A key reason for this is that republican state institutions are often characterized as themselves *constitutive of* the normative ideal of non-domination, as

¹ See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999); Pettit, “A Republican Law of Peoples,” *European Journal of Political Theory* 9, no. 1 (2010): 70–94. Cf. Pettit, “The Republican Law of Peoples: A Restatement” (this volume).

² See for example Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989).