

Real World Justice

Grounds, Principles, Human Rights, and Social Institutions

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Chapter 17

Severe Poverty as a Human Rights Violation — Weak and Strong*

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1. Introduction

From a philosophical point of view, the UNESCO project “Poverty and Human Rights” may be seen as an attempt to explain the idea of morally unacceptable poverty in a way that makes acquiescence to dire poverty a violation of human rights. Though many agree that severe poverty is a serious moral evil, it is as yet unclear whether severe global poverty can be generally perceived as constituting a human rights violation. Witness the ambiguous language used by the United Nations and their representatives when addressing the issue of poverty and human rights.¹ In 1992, the UN General Assembly recognized in Resolution 134 that “extreme poverty” is a “violation of human dignity” which, depending on circumstances, may “constitute a threat to the right to life” (General Assembly Resolution 134, December 18, 1992). However, a possible threat to a human right does not yet amount to a violation of it, and it is worth noting that the term “violation of human *dignity*” has been chosen instead of the rhetorically stronger phrase “violation of human *rights*.” That “extreme poverty” violates human dignity is reaffirmed in numerous statements of the UN Commission on Human Rights (see, for instance, the resolutions 1993/13 and 2001/31). In the 1993 resolution, the Commission also maintained that the elimination of

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poverty and the full enjoyment of all human rights are “interrelated goals” and that there is “a contradiction” between the existence of extreme poverty and the duty to guarantee full “enjoyment of human rights” (Commission of Human Rights Resolution 1993/13). This statement may be understood to imply that severe poverty violates human rights, but it does not say so explicitly and it remains ambiguous.² The 2001 resolution of the Commission on Human Rights reaffirms that “extreme poverty violates human dignity” and recalls that the elimination of poverty and the full enjoyment of human rights are “interrelated.” It adds, however, that the right to life includes an “existence in human dignity with the minimum necessities of life.” Although this may be seen as another step forward, it still falls short of an explicit official recognition (Commission on Human Rights resolution 2001/31). Finally, on October 17, 2002, the International Day for the Eradication of Poverty, UN Secretary General Kofi Annan “recalled” in a message “that poverty is a denial of human rights.” To our knowledge, this is as close as the organs and representatives of the UN get to unambiguous statement that severe poverty constitutes a human rights violation (UN Press Release SG/SM/8431 OBV/297).

2. Some remarks on motivation

Before we make explicit the conception of rights we favor for an analysis of the idea of severe poverty as a human rights violation, we should perhaps pause for a moment and ask after the motivation for doing so. Why should we care whether severe poverty counts as a human rights violation? Why is its recognition as serious moral evil not enough? One reason may be the desire to shape up our political rhetoric in order to make it a more effective tool to persuade people that dire poverty is not only a serious evil but that there is an urgent moral duty to eradicate it here and now. The classical human rights (e.g., the right to life, liberty, and security of person or the right not to be subjected to torture or cruel and unusual punishment) are by now widely accepted as universal standards of individual conduct and political action. Most people nowadays think that the violation of these rights is a serious moral wrongdoing, and this belief enhances their willingness to change things for the better. If the emotionally loaded notion of a human rights violation could be shown to apply to the non-fulfillment of

² In the same year, the World Conference on Human Rights (June 14–25, 1993) declared in Vienna that the “existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights” and that “extreme poverty ... constitute[s] a violation of human dignity.” *Vienna Declaration and Program of Action*.

claims arising from morally unacceptable want, this would certainly bolster the willingness of people who care about human rights to fight poverty. Another reason to think about poverty and human rights along the lines of the UNESCO project would be to find out more about our duties towards those in dire need and about the specific kind of moral wrongdoing that is involved in tolerating the existence of poverty.

Both motivations are perfectly reasonable. Yet, there is reason to be skeptical about the idea of shaping up our political rhetoric. Even if successful, this may prove to be a mixed blessing. Any attempt to broaden the sphere of possible human rights violations so as to cover not only the so-called first generation rights but also valid social and economic claims has to rely on a broader understanding of the concept of a human right. However, as we shall see, the requisite widening of the concept of a human right has a price tag. It introduces considerable vagueness and uncertainty concerning the identity of the corresponding duty-holders and the precise content of their obligations. This indeterminacy is likely to weaken the concept's motivational impact considerably — my belief that someone should do something to help seems perfectly compatible with my not doing anything. On the other hand, removing this indeterminacy requires such serious and far-reaching cooperative efforts on a global scale (see section 6) that it may appear somewhat utopian at the present time. Still, in view of the urgency of the problem, reaching a lasting consensus concerning the theoretical and practical consequences of recognizing severe poverty as a human rights violation is certainly worth the effort. The lessons to be learned will, in any case, be instructive and useful for a more thorough understanding of the mechanisms and institutions required if human rights are put to concrete work for the benefit of their holders.

3. Regulative force and the relationship between rights and duties

What is presupposed by the idea that severe poverty constitutes a violation of human rights? First and obviously, it must be the case that persons living under conditions of severe poverty have a human right *not* to suffer severe poverty. We may understand article 3 of the *Universal Declaration of Human Rights* of 1948 to grant such a right if we take the right to life, as seems natural, to include a right to the means of subsistence.³

³ This is assumed by Rawls (1999: 65n) who mentions Shue (1996) and Vincent (1986) in support. It finds institutional backing in Resolution 2001/31 of the UN Commission on Human Rights from which we have quoted above. Article 25 of the *Universal Declaration*

Secondly, since there can be no violations without a violator, there must be somebody directly or indirectly responsible for the destitute condition of the right-holders. This, third and finally, requires the existence of sufficiently specific duties or obligations (we will use these terms interchangeably) associated with the right in question, such that not to act upon them is to violate it. Consider again the family of rights guaranteed by article 3 of the *Universal Declaration*: “Everyone has the right to life, liberty and security of person.” Here we have three fundamental values life, liberty, and security of person, and we have the idea of protecting them by requiring that others perform, or abstain from, certain actions. To say that someone has such a right is thus to imply that at least one other agent has certain obligations corresponding to that right. Violating it consists precisely of a failure to act upon at least one of the associated duties.⁴

That violating someone’s right presupposes both, the existence of a right as well as the existence of a duty that has not been discharged, is hardly more than a conceptual truism. Moreover, it seems highly plausible to assume that it must be possible (at least in principle) to violate a right. If so, however, all rights have to be closely associated with duties whose breach constitutes their violation. An argument to the same conclusion focuses on the protective function of rights. The very point of having a right lies in the protection it affords for the well-being of its holder. It does so by imposing duties on others. What makes rights such valuable commodities for their holders in the first place is the immediate consequences they have for the behavior of others towards the right-holder — what they may and may not do to her. This is the feature H. L. A. Hart calls their “peremptory force.” A right possesses peremptory regulative force since having it cuts off further deliberation by its addressees about how to treat the right-holder with respect to the content of that right.

also seems to imply a right not to suffer severe poverty: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services.”

⁴ Hence, proceeding from the human right stated in article 3 of the *Universal Declaration*, we may promptly arrive at the prohibition of article 4, “No one shall be held in slavery or servitude,” which imposes on everyone negative duties of not holding other human beings in slavery or servitude. Or, take the human right of equal recognition as a person before the law (article 6) and of equal protection of the law (article 7), and you readily derive not only the prohibitions of article 9, “No one shall be subjected to arbitrary arrest, detention or exile,” imposing certain negative duties on courts and state agencies, but also positive duties of public recognition and protection. Violating a human right, in this context, means the non-fulfillment of rather clear-cut negative or positive duties that go along with this right and account for its respective regulative force.

The “classical” theory of rights we favor takes the aforementioned points very much for granted, at least for the paradigmatic cases of rights.⁵ The tight relationship it assumes between rights and duties is an attempt to vest rights with a maximum of regulative force. The demand that rights *must* have direct consequences for the behavior of others is given a *logical* interpretation: “must” is interpreted as logical necessity and “consequences for the behavior of others” as referring to duties towards the right-holder. Thus, the peremptory regulative force that allows rights to fulfill their protective function is taken to have *logically conclusive* force. Someone’s having a right does not give its addressee just another, perhaps negotiable, reason to be considered while deliberating about how to treat the right-holder. Everything else being equal, if A has a right against B, then B has no choice but to perform the duty associated with A’s right. Having such a right-based duty is more than merely “having a good reason” to do something. It is more since not acting on the implied duty is to violate the corresponding right, whereas good, but inconclusive reasons can be overridden by better reasons without necessarily wronging anyone.⁶ It is because of their protective function that classical rights theorists insist that rights are essentially interpersonal in the sense of being directed *towards* or *against* some (at least one) other person, namely, a duty-bearer. The classical general form of a simple right is “A has a right to X against B,” and it is taken to imply, as matter of logical necessity, the existence of a corresponding duty: “Necessarily, if A has a right to X against B, then B has a duty to X towards A.”⁷

⁵ In the literature, the names “rights to a service” or “rights of recipience” can be found for this central type of right, but today it has become standard to use Wesley N. Hohfeld’s term “claim-right.” Since the right not to suffer severe poverty seems to be a clear case of a claim-right, there is no need to take other types of rights (Hohfeldian liberties, powers or immunities) into consideration. Thus, we follow Hohfeld in using “right” throughout this paper to refer exclusively to rights-in-the-strict-sense, i.e., claim-rights.

⁶ This does not prejudge the question whether, and under what circumstances, the addressee may be justified in disregarding the duty and violating the right. In situations of irresolvable conflicts between rights, if they are possible, we may have no choice but to wrong right-holders for the sake of other, more important rights or values.

⁷ Note, first, that it is not part of the classical view, as we understand it, that the implied duties must be enforceable. The insistence on enforceability seems to us to have its source in questionable sanction theories of duty that seem to be at odds with the existence of moral (and possibly even some legal) duties that cannot be properly enforced. It is in any case not the existence of institutionalized enforcement mechanisms that gives practical importance to rights in the first place, but the individual and social recognition of the implied duties. There is no denying that established institutions and recognized practices typically enhance the regulative force of (moral) rights. Indeed, they are, practically speaking, prerequisites of any form of social order that effectively protects the moral rights of individuals. Nevertheless they are, according to our view, not constitutive

It is important to keep in mind the motivation behind the strictures built into the classical concept of a right for the proper assessment of a recent challenge posed to it by Neil MacCormick, Joseph Raz and Jeremy Waldron, among others. Their main contention is that it is wrong to assume a *necessary* connection between rights and duties. Instead, they argue, it should be replaced by a considerably weaker and merely contingent link according to which rights are reasons that “justify holding some other person or persons to be under a duty” (Raz 1986: 166). This attitude of “holding others to be under a duty” is disjunctive: it is either to believe that others already have that duty or that they do not have it yet, but that it should be imposed on them (ibid. 179). According to Raz, the classical view has been decisively refuted by Neil MacCormick who has “convincingly argued ... that rights can exist independently of duties” (Raz 1970, Postscript, 225). Waldron agrees that the view to be found in the works of Hohfeld, Feinberg and Hart “is no longer reputable. Neil MacCormick has shown that even in technical legal relations, the determination of who has a right often precedes the determination of who has the corresponding duty and in some cases may even form part of the reason for assigning duties” (Waldron 1993: 16). Since this is not the place to enter this intricate controversy,⁸ two brief remarks must suffice to indicate why we nonetheless remain faithful to the classical view. First, to hold with MacCormick “that rights can exist independently of duties” is to believe in the possible existence of rights which by themselves offer at best a very diluted form of protection for their holders. These rights without implied duties seem to be no more than interests to be taken into

elements of the concept of a right. Second, this conceptual implication from claim-rights to duties should not be confused with a considerably stronger and highly controversial thesis that generalizes from claim-rights to rights tout court and asserts also the opposite implication, from duties to rights in general. In the literature, this more ambitious thesis is often discussed under the title “the correlativity of rights and duties,” and can be stated as follows: “Necessarily, A has a right to X against B *if and only if* B has a duty to X against A.” According to Paul Sieghart, the correlativity thesis not only underlies international human rights law: “In all legal theory and practice, rights and duties are symmetrical ... if I have a right, *someone else* must have a correlative duty; if I have a duty, *someone else* must have a corresponding right” (Sieghart 1985: 43). But despite Sieghart’s assurance to the contrary, the “right to left” implication from legal duties to legal rights is, at least in this unqualified form, doubtful and highly controversial. Many lawyers hold that having a legal duty towards someone is a necessary, but by no means a sufficient condition for someone’s possessing a corresponding legal right. Moreover, *moral* theory and practice seems to allow for “imperfect” moral duties towards others without those others having corresponding rights. Candidates for such imperfect duties are duties of charity and benevolence toward everyone. However, for our purposes in this paper we do not have to answer the question whether there are duties without corresponding rights.

⁸ For some good responses to Raz and MacCormick from a classical point of view, cf. the contributions by Matthew Kramer and Nigel Simmonds in Kramer et al. 1998.

consideration but not necessarily acted upon. In view of their almost complete lack of regulative force, it is hardly a consolation for these right-holders that their rights “form part of the reason for assigning duties” by some authority (who?) at some point in the future. As John Maynard Keynes pointed out, at some point in the future, we are all dead. Second, Waldron is wrong to suggest that the classical view is somehow committed to denying that “the determination of who has a right often precedes the determination of who has the corresponding duty.” To ignore this obvious fact would indeed be odd. We certainly often do know that someone has a right without knowing who has the corresponding duty — and we may perhaps never find out. But there is nothing in the classical view that suggests otherwise. Those who defend that view are only committed to holding that *there is someone* with a corresponding duty, not that they actually know her by name and address. In any case, if severe poverty is a human rights violation, there must already be duties associated with the relevant right. And if this is so, it must be permissible to inquire after the bearers of those duties. As we shall see in more detail later, this question gives rise, in particular with respect to human rights to positive services, to what we call the “allocation problem”: the problem of identifying the relevant duty-bearers and of specifying their concrete duties (see section 6 below).

Thus, our preference for the classical view of rights is not an attempt to legislate first how the term “right” has to be used and then to ask where this leaves us with severe poverty. We agree with Waldron that “we must take care not to put the analytical cart before the substantive horse. Our concept of a right is loose enough to be defined in a way that accommodates what we want to use it to say” (ibid. 16). The question, however, is not only what we want it to say but also what we want it to do for us. That is, we want rights to function as protectors of the well-being of persons. We take this to be an essential ingredient of the substantive issues involved and find it hard to see how rights can play this role unless they have some intimate and, indeed, necessary connection with duties.

4. The right not to suffer severe poverty as a universal, but special moral right

Besides its well-motivated insistence on strong regulative force, the classical theory has further advantages for an analysis of the idea of severe poverty as a human rights violation. Understood broadly enough, it allows for a unified general account of rights that covers legal rights well as moral rights, complex rights as well as simple rights. Perhaps like most philosophers, we think of human rights primarily as moral rights that may at

the same time be legal rights in so far as they are part of international and domestic law. We take the difference between legal and moral rights to lie solely in their respective justifications. Legal rights are justified with reference to legal principles; moral rights by appeal to moral principles (cf. Feinberg 1970). In particular, what makes a right a *moral* right is the fact that ascribing it can be justified with exclusive reference to the value basis at its core. That is, people have moral rights because of the importance of the core value for their well-being as human persons. The claim that human rights are *universal* moral rights may then be explained as follows: they are (a) universal in the sense of having a value basis whose values (e.g., life, liberty, security) are of such significance for a worthwhile human life that their protection normally⁹ cannot be reasonably denied to any human being. In virtue of their universal value basis, human rights are (b) universally valid claims, i.e., valid claims all individuals have to certain goods. They are universal in the sense that every person has these rights. We shall discuss the question whether the claims of need arising from severe poverty should be acknowledged as universal moral rights in the next section. In this section, however, we would like to point out some general formal features of this type of right that we believe to have significant consequences for their recognition and analysis.

Perhaps most important, a right not to suffer severe poverty would be a “positive” claim-right. That is, the obligations associated with it are not only negative and passive duties of non-interference but will often require positive and active assistance from their addressees. As is well known, however, these demands pose special problems. One of them arises from the fact that typical formulations of human rights, as they can be found in the *Universal Declaration* and elsewhere, do not expressly mention the bearers of the corresponding duties. We shall later (in section 6) discuss and reject the view, popular among international lawyers, that they are exclusively directed against “the state.” As *moral* rights, however, it appears more plausible to regard some universal rights as holding against *everybody*, whereas others seem to be directed only against *some* natural and non-natural agents. Independent of the problem that concerns us in this paper, there is an important general distinction to be drawn between rights *had by everybody or somebody* and rights *held against everybody or somebody*,

⁹ “Normally” because there are situations in which the protection and realization of human rights values cannot be secured for all individuals. Sometimes there are trade-offs to be made between protecting and realizing these values for different individuals. In this context the term “normally” refers to a paradigmatic situation that meets certain feasibility conditions in order to explain the meaning of universal validity regarding human rights; it must not be taken as implying any empirical claims about how often such situations actually occur.

where “somebody” has its usual logical sense “at least one, perhaps all.” We mark this distinction by calling a right “universal” if and only if everybody possesses it; but it is a “general” right if and only if it is held against everybody.¹⁰ This allows for the possibility of non-universal, but general rights as well as universal, though non-general, i.e., special rights. However, since it is normally taken to be characteristic of human rights that every human being has them, non-universal rights do not qualify as human rights. Moreover, propositions of the form “A has a right against everybody (or somebody)” are complex in a way simple propositions of the form “A has a right against B,” where “B” is a singular term, are not. The classical theory offers a unified reductionist account of the dichotomy between complex and simple rights by reducing complex rights to simple rights. According to the classical theory, rights held by or against more than one individual turn out to be disjunctive or conjunctive multiplicities — logical sums and products — of simple rights relations between exactly two individuals.¹¹

The significance of these distinctions between general and special universal rights on the one hand and complex and simple rights on the other for our problem is as follows. A human right not to suffer severe poverty seems to be a special right. In this type of right, all of us are *candidates* for the corresponding duties, but only some of us are actually bound. Because of the referential opaqueness of the term “some,” however, human rights of this kind give rise to what we call “the allocation problem,” i.e., the task of identifying the relevant duty-bearers and of specifying their concrete obligations. Solving it requires that we provide for the complex right not to suffer severe poverty a reductionist analysis in terms of a logical sum of simple rights between exactly two individuals. We shall say more about this process in section 6. At this point, we merely wish to stress its significance for the recognition of positive human rights like the right not to suffer severe poverty. It lies in the fact that universal complex rights to abstract values against anonymous “somebodies” have at best weak regulative force unless they are supplemented by a determination of their concrete addressees with their specific active duties. In the course of this process, A’s abstract and weak right against somebody is dissolved, as it were, into a multitude of concrete and strong rights between the right-holder and (ideally) one other agent with specific active duties towards her. Thus, the necessity to solve the allocation problem is the necessity to bestow strong regulative force on a weak and abstract right.

¹⁰ For a clear view of this distinction and its importance, cf. Koller 1998; for neglecting it and the resulting confusion of doing so, cf. O’Neill 1996: 129ff.

¹¹ An example of the kind of analysis we have in mind is Hohfeld’s proposal to analyze (complex) rights *in rem* in terms of (simple) rights *in personam* (cf. Hohfeld 1923: 72). However, Hohfeld’s account may need some refinement.

The abstract characterization of a right not to suffer severe poverty and the consequences of its recognition will become more concrete in the rest of this paper. Moreover, we have accumulated some intellectual debts that we shall begin to discharge in the next section with a discussion of the question whether, and in what sense, there is a universal moral right not to suffer severe poverty in the first place.

5. Claims of need

It is controversial whether severe poverty can be seen as constituting a human rights violation *in sensu strictu*. There is widespread agreement, however, that it is a serious evil that cannot be tolerated, and that people suffering from severe poverty have valid claims to the assistance of others who are better off, assuming that it can be provided at moderate cost. The existing disagreements about claims of need and their moral basis, however, seem not to be about the question whether there are any valid claims of need and corresponding positive duties of assistance at all. Most reasonable people grant this. Rather, the disagreement seems to concern the allocation problem, namely, the problem of identifying the relevant duty-bearers and the assignment of their specific obligations.

But what are valid claims of need and what is their connection with rights? Perhaps we should begin by making explicit the main elements of our understanding of human rights as moral rights: there is, first, a fundamental human value the right is meant to protect for the right-holder. It is at the core of every human right, and it forms what we call its *value basis*. Often this value basis is merely alluded to in a very abstract way, as in loose talk about rights to “life, liberty and security of the person.” Second, the value basis is the source of *claims* that arise from that value. And finally, there are the *duties* implied by the right, which are a necessary condition for its existence. The claim arising from a value remains weak as long as it fails to imply concrete duties against identifiable duty-bearers. Therefore, for such abstract claims to qualify as strong rights against agents with clear-cut duties, we have to solve the allocation problem and determine who they are. In this process, the abstract hints at values are replaced by descriptions of valuable actions. The abstract claim to “life,” for example, thus becomes a moral claim that others perform certain actions that protect the claim-holder’s life.

For the purpose of moral argument, we can define severe poverty as a condition of *morally unacceptable want* that gives rise to specific *claims of need* whose fulfillment is a matter of high moral urgency. Article 25 of the *Universal Declaration* gives us a rough idea of the content of these claims: “Everyone has the right to a standard of living adequate for the health and

well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” Indeed, we may explain “morally unacceptable want” or “severe poverty” in terms of the claims of need it gives rise to. People living in severe poverty are lacking adequate food, clean water, clothing and shelter, basic medical care, and elementary security. The reason severe poverty is morally unacceptable is precisely that human beings have a claim to at least a minimal provision of these goods. However, severe poverty is a threshold notion. It is a necessary (though perhaps not sufficient) condition for valid claims of need that an individual’s provision with these goods falls below a critical threshold with the threshold’s being fixed by the requirements of a minimally decent life. In this regard, claims of need are close relatives of Henry Shue’s “basic rights.” They express “everyone’s minimum reasonable demands on others” (Shue 1996: 19).

Grammatically speaking, “to need something” is transitive. We need things *to* do or *to* achieve other things. Hence, claims of need have a teleological structure, their *telos* or aim being the realization of certain values. Valid claims of need are value-based in the following sense: the goods or services they are claims to are necessary for a minimum realization of values deemed essential for a minimally decent life for the claimants. Typical values of this kind are the values of personal agency (i.e., the capacities necessary for rational action and social cooperation), sufficiently good health and physical condition, self-respect, and social recognition. For the purpose of our main argument in this paper, it does not matter much how we specify these values and which values we put on the list. It suffices to think of a minimally decent life as a life in which certain familiar values are realized to an extent that meets a (admittedly indeterminate) critical threshold. Moreover, in order to justify poverty-related claims of need, we do not have to assume that the values defining a minimally decent life are the same all over the world. Nor is it necessary to assume that people everywhere need the same kind of goods to realize these values in a minimally adequate fashion. We do not have to rely on the Rawlsian premise that there is a fixed number of *basic goods* which all individuals need in order to develop and exercise the basic capacities constitutive of their moral personality and elementary well-being. Nor do we have to presuppose a list of *basic capabilities* (as Amartya Sen, 1985a and Martha Nussbaum, 1992 and 1993, conceive of them, including personal capacities and social opportunities) which universally define the conditions of individual well-being. Indeed, the very assumption that there are universally desirable goods or capabilities that all human beings need for a good life is questionable. It seems possible to describe for any candidate for such a list a rational (but perhaps highly idiosyncratic) individual life plan that — in a given non-

degrading cultural and social setting — can be carried out without the good in question, and which perhaps even requires its absence. However, to deny that there is something that every person needs as a matter of elementary well-being does not imply the denial that everybody needs *something* in order to have a minimally decent life. All we have to presuppose for valid individual claims of need is that it is possible to identify for every person some goods that, *given her particular cultural, social, and individual circumstances*, are necessary for a minimally decent life as she conceives of it. It is these goods, then, that are the objects of a person's valid claims of need. Depending on the (cultural, social, and individual) circumstances of a person's life, different things may be practically necessary.

More specifically, what is practically necessary depends on whether the need for those goods is merely instrumental and contingent for the realization of the values of a minimally decent life or whether it is constitutive and conceptually necessary. In the first case, we have a means-end relation between the goods needed and the values to be realized, as between adequate food and good health. The values at stake can be described independently from the means of their realization. Specifying the relevant claims of need, in this case, is a matter of choosing causally adequate means for realizing an independently specifiable end under given factual circumstances, and different circumstances may require different means. In the second case of a conceptual or constitutive relationship between the values of a decent life and the goods necessary for their realization, however, the values at stake cannot be described independently from the goods or services needed to realize them. To have such goods *means* (at least partially) to realize the values and vice versa. Take, for instance, the value of social recognition that we mentioned above as one of the values of a decent life, or the good of being recognized as “a person before the law” claimed as a human right in article 6 of the *Universal Declaration*. Recognition as a person before the law is instrumentally valuable in many ways because it provides individuals with social protection against others and against arbitrary treatment by courts and other agencies of law enforcement. As far as the value of social recognition is concerned, however, recognition as a person before the law is not a merely instrumentally valuable good. It is part of what it *means* to be socially recognized in minimally adequate ways. Depending on the cultural and social context, different legal specifications of what it means to be recognized as a person before the law may seem “practically necessary” for a minimal social recognition. In a liberal democracy nothing short of full equality before the law can be minimally adequate, whereas in other societies something less than full equality may meet the standard of minimal

decency (cf. Rawls 1999, part II, on the criteria of a decent society as opposed to the criteria of full liberal justice).

How, then, can we decide for a given person in a given cultural and social setting which goods or services are practically necessary for a minimally decent life in a particular setting? How do we find out which claims of need are justified or valid? A general account of how to answer these questions with regard to claims of need is given in Hinsch 2002, chapter 6. For the purpose of this paper, however, it is enough to point out that the most elementary claims of need deriving from severe poverty — claims to subsistence and basic security — must certainly be valid claims, if human beings have any valid claims at all. Even if a minimally decent assignment of food, water, clothes, shelter, medical care, security, and social recognition may not be something everybody needs regardless of the chosen life plan, it is obvious that for those of us who do not pursue potentially suicidal life plans, a minimal provision of these goods is an indispensable prerequisite. Being in need of these most basic goods and not being able to provide them for oneself qualifies as a situation of morally unacceptable want that demands public recognition and gives rise to claims of need the fulfillment of which is a demand of basic justice.

One last remark before we turn to the allocation problem in the next section. It is sometimes suggested that at least some of the people living in severe poverty are themselves responsible for their plight. If that were so, it would seem as if their situation could not lead to valid claims against others. Self-reliance, it may be pointed out, is an important value and it is hard to deny that much of the globally existing poverty (though not, of course, all) is primarily due to factors within the poverty-stricken countries of the so-called Third World themselves. Why, then, should citizens living in better-off countries recognize any obligation to respond to claims of need beyond their own political communities? Responsibility has a retrospective, backward-looking and a prospective, forward-looking dimension. Retrospectively it is concerned with how a situation came about as the causal result of a series of individual and collective actions in the past. Prospectively the question is who can do something to change it for the better irrespective of who brought it about. Thus, a person may be (prospectively) responsible for the continuation of a situation because she is in a position to provide relief even though (retrospectively) she did nothing to cause it in the first place. We shall confine ourselves to two brief remarks on retrospective responsibility. Firstly, the severe poverty existing in the Third World today has a complex causal history that includes a period of violent colonial exploitation of Third World countries by the colonial powers from the fifteenth century until the middle of the last century. In view of this historical background and the predominant responsibility of the Western industrialized countries for the

post-World War II international economic system, the claim that those living today in the Third World have actually forfeited their claims to assistance lacks credibility. It is certainly impossible to forfeit *all* your claims of need against others just because you are *partially* responsible for your own mischief. Secondly, even to the extent that some of the (retrospective) responsibility lies within the poverty-stricken countries themselves, it is primarily corrupt and kleptocratic elites that must be blamed and not their victims. Moreover, we must take into consideration that many of those who suffer the worst had yet no chance at all to forfeit any claims on others for the simple reason that they are innocent children.

In determining the scope of valid claims of need deriving from the globally existing severe poverty, responsibility matters mainly because of its prospective dimension. One of the fixed points of our considered judgments on need-based claims and duties of assistance is that, to the extent a person in need is capable of helping herself, she does not have valid claims on others. However, we agree with Henry Shue that the discussion about the validity of the claims of those who are healthy and can work to get themselves out of misery is largely academic and without much practical relevance. As Shue rightly points out, most “of the malnourished ... are probably also diseased, since malnutrition lowers resistance to disease, and hunger and infestation normally form a tight vicious circle. Hundreds of millions of the malnourished are very young children. A large percentage of the adults, besides being ill and hungry, are also chronically unemployed, so the issue of policy toward healthy adults who refuse to work is largely irrelevant” (Shue 1996: 23). It is a truism that external help cannot be a substitute for the self-governed productive activity of those who live in poverty. All it can do is provide a basis and support for self-help. Nonetheless, there is a morally significant difference between those who need help to help themselves and those who do not.

By way of concluding this section it can be said that there are valid moral claims of need deriving from severe poverty that have to be met by those in more fortunate circumstances. Indeed, all those capable of helping are candidates for a natural duty of assistance. We owe the fulfillment of this duty to others simply because they are human beings in a situation of unacceptable want. As natural duties, they are binding on us irrespective of existing personal or institutional relationships. This implies, among other things, that these duties go beyond borders (to use a phrase by Stanley Hoffman) and address claims of individuals we may not even know about and may never meet in person. It can be said, then, that severe poverty is a violation of basic human rights in the sense of being a condition in which morally valid claims of need remain unfulfilled, e.g., those claims expressed in article 25 of the *Universal Declaration*. However, as we have seen in

section 4, abstract claims, however urgent, have only weak regulative force unless they are supplemented by a determination of their addressees and their specific duties. Normally, situations of morally unacceptable want can be dealt with in various ways involving different agents. As a consequence, a mere description of an existing situation of want and of the abstract claims of need arising from it remain much too vague to give us any specific idea of what has to be done by whom in order to meet the valid claims of need deriving from global poverty.

6. The allocation problem

Given their usual formulations, many human rights neither lend themselves easily to a determination of the duty-bearers involved nor of their duties. This is a point Onora O'Neill and others have often made (cf. O'Neill 1996, chapter 5.2 and 2001; Feinberg 1970; see also Stepanians 2005).¹² Take again the rights guaranteed by article 3 of the *Universal Declaration*: "Everyone has the right to life, liberty, and security of person." This formulation leaves little doubt as to who the holders of the right to life, liberty, and security are. In our terminology, all three are universal rights held by every human being. But who are their addressees, the bearers of the corresponding duties? And what is the exact content of the duties that counts as fulfilling them? For classical rights-theorists, who regard rights essentially as relations between at least two persons, such formulations are in a serious way incomplete.

The obvious way out is to supplement these formulations with a term for the missing addressee. According to many legal theorists, nothing is easier. At least for the human rights acknowledged in international law, they say, the addressee is a legal person by the name of "the state" (cf. Sieghart 1985: 43). If this is correct, the supplemented version of article 3 of the *Universal Declaration* reads: "Everyone has the right to life, liberty, and security of

¹² The point has to be stated with care, however. Contrary to O'Neill's suggestion (1996: 129ff), it has nothing to do with the rivalry among classical rights theorists between champions of the "choice" or "will" theory on the one hand and the "interest" or "benefit" theory on the other. O'Neill adopts, without argument, a choice theory of rights and does not address the well-known difficulty, explicitly acknowledged by its most prominent modern defender H. L. A. Hart, that the choice theory is incompatible in principle with the existence of inalienable rights (cf. MacCormick 1977: 195ff). Since at least the fundamental human rights are generally regarded as inalienable, it is misleading to object to positive human rights on the ground that it is in their case unclear against whom one has the power to waive these rights. A short answer to *this* problem is simply that such fundamental rights involve no powers of waiver.

person *against the state*.” There is much to be said in favor of this view. First, there are important human rights that only states or state agencies can honor or violate in the full sense. This is true for all rights whose content cannot be explained without reference to state agencies or state-like institutional arrangements like due process and habeas corpus rights, or rights to political participation. Secondly, if we line up behind Henry Shue (1996: 193n) and John Stuart Mill and hold that a right is something “which society ought to defend me in the possession of” (1861, chapter 5), it becomes obvious that human rights imply claims against the state, given the factual need of enforcement and of coordinated social action aimed at upholding human rights. Finally, even with regard to those rights that imply primarily negative duties of non-interference (not to kill, not to rape, not to torture, not to starve, etc.), there arise what Shue calls “default duties” of protection and aid that must be discharged if the corresponding rights to life, security and subsistence are to be sustained (Shue 1996: 170–8, *passim*). Again, given the need for coordinated social action to support these rights, states and state-like institutional arrangements are natural addressees of human right claims.¹³

However, from an analytical point of view the exclusive focus on states, social systems, and peoples rather than on individuals in constructing a normative theory of human rights is unfortunate. There is no denying that states are important, perhaps even primary addressees of human rights, but it is highly implausible to regard them as the only ones. Indeed, the very notion of the state as having duties to uphold the rights of its citizens suggests that also non-state agents have duties derived from these rights. Moreover, in our world there is no such thing as “the state,” but a plurality of states. Which is the one against whom everyone has the right to life, liberty, and security? Is it the state in which the right-holder is a citizen? Or perhaps the state on whose territory the right-holder happens to be? Or do *all* states that have signed the *Universal Declaration* have the corresponding duties towards every right-holder? Even if international lawyers have clear answers to these questions, as they certainly do, it is obvious that not only states are capable of violating or honoring human rights. Is it really plausible

¹³ That states and state agencies are the primary addressees of human rights seems also to be Rawls’s (1999) view, except for the odd terminological distinction he makes between “states” and “peoples.” Following Rawls, human rights have the role of setting limits on a *government’s* internal sovereignty and its right to self-defense (ibid. 27, 42). Outlaw *states* figure in the book as the most prominent example of human rights violators (ibid. 37, 81) and it is said that *social systems* violate or recognize human rights (ibid. 65, 68). Principle eight of Rawls’s Law of Peoples requires *peoples* to honor human rights (ibid. 37). Unless we have missed something, there is no passage in *The Law of Peoples* where Rawls talks about individuals as addressees of human right claims.

to assume that no individual and no organization, party, or corporation can ever violate a human right, and that this impossibility is part of the very *concept* of a human right? Even if this were true by definition for the legal concept, as it is understood in international human rights law, it is certainly not true for human rights as moral rights. If states were the exclusive addressees, no non-state agent could ever have a human rights-based duty to intervene if a particular state violates the human rights of its citizens. In particular, the citizens of this state could never be under a duty to change the ways of their government. Note that they would not even have such a duty if they could easily do so. This strikes us as absurd.

It makes more sense to regard *all* agents (individual, collective, corporate, or institutional) who are capable of violating the human rights as being *prima facie* within the scope of human right claims.¹⁴ If so, however, we are confronted with the problem of identifying the relevant duty-bearers and of specifying their duties. That is, we face the allocation problem. It does not arise with regard to the *negative* duties of non-interference derivable from human rights. For example, the right not to be tortured implies that *we all* have to abstain from torturing anyone. There is no question about who the duty-bearers are and what they have to do since these rights are at the same time universal (everybody has them) and general (they hold against everybody). The allocation problem arises for special human rights, i.e., rights that are selective in the sense that they bind only some of us. Take, for example, the rights to subsistence which are relevant to the problem of severe poverty. Even though they constitute universally valid claims of need, not everyone is obligated to provide the required means of subsistence for every other person. Nevertheless, someone (at least one of us) is under a duty to do so — and the question is who. Once more, a natural answer is: the state. While it is a mistake to think of states as the exclusive addressees of human rights, it is clear that the practical exigencies of an effective fight against severe poverty ensure that states and state-like agents play a vital role. Wherever severe poverty occurs on a large scale, its

¹⁴ There are further important reasons not to start an analysis of human rights with a focus on collective and institutional agents and to begin rather at the elementary level with individuals and their rights and duties. Collectives like “peoples” or “the international community” are often not capable of coordinated rational action because of the well-known problems of collective action that derive from incomplete information among the members of a group and prisoners-dilemma like social settings. Assuming that *ought* implies *can*, a consequence of these collective action problems is that collectives as such cannot be duty-bearers and, hence cannot violate human rights either. This follows from our analysis of what it means to violate a human right in section 3. Still, governments and states as organized (corporate) agents are normally capable of rational collective action (indeed, that is what they are about) and also of protecting or violating the human rights of their citizens. But they cannot be the only agents of this kind.

eradication requires massive collective efforts and coordinated social action that only states and state-like arrangements are capable of organizing in an effective manner. States and state agencies are indeed crucial for a satisfactory solution to the allocation problem. However, we cannot just leave it there. After all, states may fail to protect the human rights of their citizens either because they are too weak or because they do not care. In both cases, valid claims of need remain unfulfilled and the question of responsibility arises again. In order to solve the allocation problem fully, we need an account of how to assign those duties that arise when primary duty-bearers fail (or can be expected to fail). At this point, it is important to recognize that the duties implied by valid claims of need are “natural” duties in the sense that their fulfillment is owed to others simply because they are human beings and not because of the existence of particular personal or institutional ties between right-holders and duty-bearers. Since they are natural duties deriving from unfulfilled urgent claims, they are not confined to the fellow citizens of those in need.

From a global perspective, the main problem for a fair allocation of duties deriving from severe poverty is this: in view of the scale of severe global poverty and given the fact that states frequently fail to provide for even the minimal needs of their citizens, at least the assignment of default duties has to transcend borders and involve international cooperation on an unprecedented scale. However, if the fulfillment of valid claims of need requires large-scale social cooperation (not to mention *worldwide* cooperation), it is not possible to allocate the corresponding duties to individual and corporate agents exclusively on the basis of those claims. As we have seen, the right not to suffer severe poverty implies merely an abstract and weak natural duty with little regulative force against an indeterminate group of people. A more complete and workable specification of these duties can only be achieved via institutionalized schemes of cooperation that assign specific duties to particular agents and thereby turn indeterminate natural duties into specific conventional ones. In comparison with the natural duties they derive from, these institutionally defined conventional duties of assistance have a much stronger regulative force. Assuming a sensible social division of labor, different agents will have different responsibilities and tasks in the collective effort of meeting the valid claims of need of severely impoverished people. This shows that whether a claim of need imposes specific duties on determinate agents is largely a question of factual and institutional context. The moral claims of a person in a car accident on a deserted highway impose rather specific duties on me *if I happen to be the only one present at the time*. In contrast, if there were other people with me, my duties would be considerably less clear. Similarly, the moral claims of orphans who are in need of a decent

upbringing are by themselves not claims against any specific individual with the responsibility to take care of them. Given an appropriate scheme of social institutions like guardian courts and orphanages, however, these claims may impose rather specific (legal, and also moral) duties on judges, guardians, and others.

A satisfactory solution of the allocation problem may therefore seem to be a natural-duty-cum-fair-cooperation approach. Duties deriving from valid claims of need are natural duties of mutual assistance. We owe the fulfillment of these duties to others simply because they are human beings, irrespective of our relationship to them and independent of existing schemes of social cooperation. Given the global scope of severe poverty, however, discharging these duties requires social cooperation with an efficient and fair division of labor. Therefore, it seems natural to assume that everyone has exactly those duties and responsibilities which an efficient and fair system of cooperative help would assign to her. Since the obligations such a system would allocate depend on specific social arrangements, they would be (not natural but) *conventional* obligations, whose normative force derives, however, from the natural duties of mutual assistance they supersede.

Unfortunately, this solution works in ideal theory at best and under the assumption of full compliance, but not in the real world. First, we simply do not know what an efficient and fair system of cooperative help would require us to do. It is difficult, if not impossible, to imagine what such a global system would look like under realistic conditions. Second, in reality we may have to do more or less than the “fair share” assigned to us under an ideal scheme of cooperation. If others do less than their fair share — e.g., if they act as free-riders in a public good scenario — we may be obliged to do more. And if others, say, out of sympathy and compassion, do more than their fair share, we may not even be obligated to do ours, since the relevant claims of need have already been met. Hence, the ideal of an efficient and fair scheme of global cooperation does not give us sufficient guidance as to what specific duties and responsibilities derive from the claims of need of others.

A different approach is adopted by Leif Wenar (2003b). Wenar does not move from the top of a global scheme of cooperative help down to the bottom of specific individual duties. Rather, he proceeds from an economic principle for the piecemeal (bottom to top) establishment of an efficient scheme of cooperative help. Wenar argues for a minimal cost-provider approach towards the fulfillment of valid claims of need. Economically speaking — and economics really has a point here — this may seem very plausible indeed. Only economic efficiency will render it possible to succeed in the fight against global poverty. However, there are serious difficulties with the employment of a minimal cost-provider principle for the allocation of specific duties deriving from valid claims of need. First, there are cases in

which it would be clearly unfair to assign duties of assistance consistently to agents who can provide the necessary help at minimal cost. Take, for example, parents who are old and sick and in need of help from their children, and suppose that one of their children lives close by and the other far away. Does this mean that the responsibility of caring for parents always (and perhaps exclusively) falls on the child who lives close by if she can provide assistance at minimal cost? Second, costs are not a naturally fixed quantity. They are highly sensitive to local circumstances and institutional context and vary accordingly. In any case, existing institutional arrangements will strongly affect the determination of who actually is capable of helping and who can help at minimal cost.¹⁵ The minimal cost approach would only seem appropriate if we were already working within a comprehensive institutional framework that ensures fair results from employing a minimal cost principle. In other words, we would need something like a fair institutional background of burden sharing. This, however, brings us back to the problem connected with the natural-duty-cum-fair-cooperation approach, namely, that the idea of a fair social scheme of cooperative help provides insufficient guidance concerning the distribution of specific duties under realistic conditions.

At this point, we have to face the possibility that there may not be an ideal theoretical solution to the allocation problem. There is, however, another alternative: pragmatism. It is much less ambitious than the natural-duty-cum-fair-cooperation approach since it does not aim at a comprehensive theory for the morally adequate allocation of duties deriving from unfulfilled claims of need. It, too, is highly dependent upon factual circumstances and already existing institutional and organizational arrangements, regardless of whether they yield ideally fair and efficient distributions of specific duties of assistance. Pragmatism looks at local circumstances and established institutions and organizations that can provide at least some of the necessary help — states, multilateral institutions, corporations and NGOs. It then asks what is required in terms of individual support to fulfill one's (highly unspecific) natural duties of mutual help, given the existing circumstances and arrangements. According to this pragmatic approach, the task of moral philosophy turns into something modest and manageable. It is primarily concerned with defending the claim that we indeed have the specific moral duties of assistance assigned to us by

¹⁵ Those who already have to pay high taxes to support their needy fellow citizens may not have much money left to help others in more distant places. Or, if a system of social security is already set up in one country, the citizens of this country may, because of economies of scale, be the minimal-cost providers to their neighbors. This may be so even if — from a *common sense* point of view — they would not seem to be responsible, for instance, if their neighbors could help themselves albeit at higher costs.

moral pragmatism, and with fending off the objection that there are no such things as rights to positive services, or that there are no valid claims of need deriving from global poverty at all.

7. Conclusion

In what sense and under what conditions, then, is severe poverty a human rights violation? We suggest a distinction between a weak and a strong sense of a human right not to suffer severe poverty. Severe poverty is a condition of morally unacceptable want, which gives rise to weighty claims of need against others. However, those claims qualify only as weak human rights as long as they take the highly abstract form of claims against “someone” (i.e., at least one, possibly all) with unspecified duties. Their weakness consists in the fact that they have only weak regulative force and little motivational impact and thus fail to compel specified persons to act in a determinate manner. The transformation of a weak and abstract human right not to suffer severe poverty into a strong and concrete right requires a solution of the allocation problem, namely, the actual assignment of concrete duties arising from poverty-related claims of need to specified agents. Ideally, the first step is to replace the opaque reference to “someone” in “A has a right not to suffer severe poverty against someone” with a complex disjunction that contains transparent singular terms of possible duty-bearers: “A has a right not to suffer severe poverty against B, *or* A has a right not to suffer severe poverty against C, *or* A has a right not to suffer severe poverty against D, etc.” Next is the identification, through a fair procedure, of the agent or group actually bound by A’s right not to suffer severe poverty as a matter of justice. We have emphasized that any plausible and workable assignment has to take into account existing networks of cooperation, social institutions, and other factual circumstances. As a result, the abstract natural duties arising from severe poverty against an anonymous group of persons will be superseded by assigned conventional and finally legal duties of determinate agents. Hence, by specifying duties towards those who live in dire poverty, we move away from a moral to a juridical understanding of human rights and human rights violations. However, it may be felt that in terms of motivational power — and also in terms of the weight of moral disapproval — a big difference still remains between saying that torture is a human rights violation and saying that failing to participate in an organized effort to eliminate global poverty (which comprises millions of people) is to violate human rights.