

# World Poverty as a Problem of Justice? A Critical Comparison of Three Approaches

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**Abstract** With regard to the problem of world poverty, libertarian theories of corrective justice emphasize negative duties and the idea of responsibility whereas utilitarian theories of help concentrate on positive duties based on the capacity of the helper. Thomas Pogge has developed a revised model of compensation that entails positive obligations that are generated by negative duties. He intends to show that the affluent are violating their negative duties to ensure that their conduct will not harm others: They are contributing to and profiting from an unjust global order. But the claim that negative duty generated positive obligations are more acceptable than positive duties is contestable. I examine whether Henry Shue's model that is integrating negative duties and positive duties is more convincing concerning the foundation of positive duties to protect others. I defend the idea that there are positive duties of justice. This approach can integrate an allocation of positive duties via responsibility and maintain the advantage of an independent foundation of positive duties.

**Keywords** Negative duties · Pogge · Positive duties · Shue · Subsistence rights · World poverty · Global justice

In this paper, I want to critically examine the idea that some forms of world poverty can be understood as outcomes of structural injustice that violates subsistence rights that should be guaranteed by institutions. In the first part of my paper I will present the crucial points of this discussion by introducing two alternative approaches: (a) classical liberalism with the idea of corrective justice, and (b) utilitarianism with the idea of individual positive duties. In the second part, I will introduce Thomas Pogge's recent attempt to show that positive obligations arise for the affluent inhabitants of industrialized countries to compensate for the violation of a negative duty not to harm the poor by imposing an unjust global economic order on them. But as a detailed debate has shown, Pogge's claim that our duties with regard to the poverty problem are primarily negative is not convincing. I want to defend the idea that positive duties of protection and assistance are important duties

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necessary to fulfil the rights of the poor to subsistence, and insofar as they are owed to the right-bearers, they are duties of justice. Therefore, in the third part of my paper I will examine Henry Shue's complex model that integrates positive and negative duties. Shue intends (a) to give up the classical distinction between positive rights and negative rights in order to consider subsistence rights as basic rights, and (b) to establish three kinds of duties in order to make it possible to enjoy the substance of those rights. I will discuss two objections to Shue's theory. In section four I will argue that his analogy between the right to subsistence and the right to security is problematic with respect to corresponding duties to aid. By considering duties to aid to be default duties that compensate for former rights-violations, two problems are introduced: First, there are cases of missing subsistence that are not the result of rights-violations. So there seem to be direct positive duties to provide for subsistence that lead to an allocation problem. Second, if the parties responsible for former violations of subsistence cannot be brought to compensate, other parties must step in or the right will remain unfulfilled. In section five I will defend an institutional allocation of positive duties via contribution and capacity that would guarantee a fair burden sharing as belonging to global economic justice.

## 1 Two Approaches to World Poverty

I will now introduce two approaches to the problem of world poverty that follow two different, but significant, moral intuitions. The first one, the corrective-justice-intuition, follows the *principle of responsibility*. He or she causing an evil to someone else has to be called to account for it. The second one, the Samaritan-intuition, follows the *idea of capacity*: we should prevent evil if we can. Above all, we should help others in emergencies that are life-threatening.

### 1.1 World Poverty as a Problem of Corrective Justice?

Let us start with classical liberalism as an illustration of the first intuition. In the philosophical discussion about world poverty we can make a distinction between two questions. Firstly, who or what caused it? And secondly, how can it be reduced and who is obliged to do so? Some theories that consider world poverty to be a matter of justice draw a connection between the two questions: the persons or nations that caused world poverty in an unjust way are responsible for its emergence and therefore obliged to solve this problem. Here we are talking about corrective justice. This position implies that poverty is only a moral problem if it was caused by unjust actions such as colonialism, enslavement, exploitation, etc. (e.g. Hoeffe 1999, p. 418). The duty to compensate only refers to those deprived as a result of unjust acts on the one hand, and to those having committed these unjust acts on the other. The classical model of corrective justice is based on an ex post compensation for a violation of negative rights. I will call this the *compensation-of-evil-thesis* (CET). It goes back to what we can call the *harming-by-action thesis* (HAT) that consists in the violation of a negative duty.

Applied to the problem of world poverty, this concept is inadequate because it is too narrow. When talking about the violations of rights, it concentrates on classical negative rights such as rights to property, security or integrity of life and body. This position not only asks a nearly unsolvable question – how to ascribe responsibility in the case of injustices that happened a long time ago – but also attributes responsibility in cases of injustice that are not clearly the exclusive causes of current poverty. Above all, corrective justice-theory

treats poverty as a side-effect of violations of negative rights, but not as a problem in itself: there is neither a direct duty to reduce or even eradicate poverty nor to help the poor.<sup>1</sup> And there is no right to receive help simply because you are poor. From a libertarian perspective, helping is mostly seen as supererogatory since libertarians consider the idea of positive rights and corresponding duties that would lead to a redistribution of wealth to be unjust. In short, we can say that this approach is confronted with two main problems: First, poverty is not seen as a problem in itself. It is only unjust if it results directly or indirectly from former violations of negative rights. Furthermore, classical libertarian concepts like Nozick's entitlement theory of justice tend to re-establish the status quo ante of property rights without calling into question whether this status quo is favourable to the fulfilment of positive human rights, like social and economic rights (e.g. the right to subsistence). Second, even if it were true that all poverty resulted from violations of negative rights, the only duty that would exist would be for the violators to stop the violation and to compensate for their injustice.

On the other hand – and this result is very important – corrective-justice-theory tells us that the compensation for violations of rights which are required by corrective justice should not be referred to as help. And this point is of course correct. If someone has been robbed of all his fortune and some of his bones have been broken, he may be in a helpless state. However, if the person who has done this to him is obligated to pay for his recovery and to return all the stolen goods, we would not refer to these actions in terms of “helping,” but as the least she must do to compensate for the rights-violations she committed. But what about the duties of third persons who were not involved in the beating? Don't they have a duty to help the injured person, to save her, even if someone else caused the problem?

## 1.2 Samaritan-duties as an Answer to World Poverty?

While corrective-justice-theory concentrates on the first question—who or what caused poverty – theories of help concentrate on the second question mentioned above. They ask how world poverty – taken as a serious moral problem – could be reduced. This does not lead to the question of who caused it, but who could efficiently do something about it. Especially Peter Singer (1972) and Peter Unger (1996) took a utilitarian point of view and emphasized that every individual who has the capacity to save others from dangers to their lives (like absolute or severe poverty) is obliged to do so, no matter how or by whom the poverty was caused. And here is the parallel to the classic Samaritan case: The Samaritan helper is not previously involved in the evil done to the man he saves. Although the injured man is assaulted by others, namely the robbers who beat him up, the Samaritan helps the man. Consistent with the intuition that the Samaritan is morally obliged to help the man, Singer and Unger point out that the fulfilment of our duties not only consists in refraining from hurting others actively (by violating their negative rights), but also entails helping others if we can.

An omission of help can be considered to causally contribute to the damage to the person that is not helped. I will call this the *harming-by-omission-thesis* (HOT). Like other Utilitarians, Singer and Unger do not see a morally relevant difference between acting and omitting. Refraining from saving somebody is not on a par with murder but “on a par with killing someone as a result of reckless driving” (Singer 1972). This is the *equivalence-of-evil-thesis* (EET).

<sup>1</sup> Therefore, even if the compensation for negative rights violations were possible via fair and clear determination of duty-bearers, it would be contingent if the restitution of the status quo ante would significantly reduce or even eradicate poverty.

The duty to help the poor arises from the life-threatening emergency of the needy on the one hand, and the ability to help on the other. Singer explains this duty by the following helping principle: “[I]f it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it” (Singer 1972, 231). Let us call this the *prevention-of-evil-thesis* (PET). I will use Singer’s own example to point out the differences between the two positions described above. Imagine you are on your way to work. You notice that there is a small child drowning in the nearby shallow pond. There is no one else around. If you refrain from intervening, the child will die. Are you obliged to help? From the viewpoint of corrective-justice-theory there is no reason why you should be, because you have not unjustly caused this danger to the child. The *compensation-of-evil-thesis* (CET) does not work here because you have not harmed the child by acting in a way that caused the danger to him (HAT). There might be a weak positive duty to help, helping may be nice, but if you do not help you do not harm the child because you do not violate a negative right of the child. Maybe there is not even a weak positive duty, but helping is an arbitrary act beyond duty. To put it the other way round, the child has no right to your help.<sup>2</sup> Singer might reply that you must help; otherwise your behaviour will be one of the factors that caused the death of the child.<sup>3</sup> If you do not help, you are harming the child by omission according to HOT. Singer might still insist that you ought to help each time mom and dad are violating their parental duties and the child is in danger. More than that: you should help all human beings who are in danger, including all of those who are suffering from severe poverty, as much as you can. If you do not help as much as you can, you cause the evil to continue to exist, which is almost as bad as causing the evil in the first place (EET). The difference that libertarians make between negative duties not to harm others (and corresponding negative rights) that take priority over positive duties to help others that are considered as weak, incomplete, or even supererogatory, is eradicated by Singer’s rejection of the moral difference between *harming by omission* and *harming by action*. According to the *equivalence of evil thesis* (EET) we are as much responsible to prevent evil by acting as by omitting.

Of course there is the objection to Singer’s – and particularly Unger’s – position that those individuals who could help in the case of world poverty would be completely overloaded. To consider individual helping as the only cure for world poverty would be (a) unrealistic, because the people who could help will never agree to dedicate their whole life to helping, (b) unfair to those who help as long as there are no institutions in place to provide for a fair distribution of the burdens of helping, (c) ineffective as long as the causes of poverty are not examined and reduced, and (d) unfair to those whose help is a compensation for injustice committed by others. This is also the most compelling reason to reject EET, because it implies that a bad Samaritan who does not help the victim of an assault is almost as bad as the person who committed the crime in the first place. The most serious shortcoming facing the application of the Samaritan intuition as an individual helper to the problem of world poverty is that it tries to cure only the symptoms without reflecting on its causes.

<sup>2</sup> There has been a long discussion about this point that reflects the different positive laws in different countries as well as the underlying moral intuitions. On the one hand, the English Common Law follows the libertarian intuition that a bystander cannot be punished for not helping the child. (Cf. Murphy 1980, p. 168, n.6; for a critique see Feinberg 1985 and Stepanians 2006.) On the other hand, German legislation (as well as the law of Belgium, France, Greece, Italy and other European countries) refers to “Unterlassene Hilfeleistung” (failure to render assistance in an emergency) as a fact constituting an offence (323c StGB). And that makes it possible to legally punish the Bad Samaritan.

<sup>3</sup> For the causal efficiency of omissions see also Birnbacher 1995, chapter 3.

### 1.3 Two Kinds of Emergencies

Singer's and Unger's position is partly based on the second of our basic intuitions: the Samaritan intuition that we should help when there is an emergency. Now why would almost everybody say that it was absolutely unacceptable not to help the child but permissible not to help the needy in the least developed countries?<sup>4</sup>

The answer I want to propose is that we are dealing with two different kinds of emergencies.<sup>5</sup> Let us start from the two different definitions of emergencies that the Oxford dictionary provides us with: emergency is "1. a sudden state of danger, conflict, etc. requiring immediate action." Here we can think of a state of danger that results from accidents or assaults that are – at least in "developed" countries with functioning institutions and some welfare-system – exceptional cases. Victims require help in the sense of "immediate action," but not in the sense of permanent care or structural changes. For the needy person, a temporary danger to security or health exists, and for the helper there is a single action that will lead back to the previous, unproblematic status quo of the person being helped. Let us call this

*emergency*<sub>1</sub>: a sudden and unforeseeable state of danger that requires (1) immediate action that will (2) almost certainly lead to a re-establishment of an unproblematic status quo (3) without entailing significant costs to the individual helper.

That kind of emergency is also referred to as "easy rescue," at least as far as the performance of the first-aider is concerned. It is true for emergencies of this first kind that we do not have to seriously change our lifestyle in order to help.

Emergencies of a second kind are comparable to the first insofar as the life of a person is threatened. However, this threat does not occur in exceptional circumstances and is unforeseeable, but is foreseeable and avoidable by structural changes. Emergency in this second sense can be interpreted as a permanent state of deprivation, which might result from a situation that calls for structural changes. People who are suffering from severe poverty are in a medical condition of malnutrition or disease caused by poverty that requires "immediate treatment," but they are not in "a *sudden* state of danger." The condition they are in, severe poverty is life-threatening all the time, as opposed to suddenly becoming dangerous. To save people from permanent emergencies might entail much higher costs to the helper in terms of time, money and maybe also competence. Let us call this kind of emergency

*emergency*<sub>2</sub>: a permanent, foreseeable and avoidable state of deprivation that requires (1) immediate treatment and (2) a permanent change of the conditions that led to the danger, and the establishment of a status quo without danger. This might (3) be most efficiently coordinated by institutions.

With regard to the poverty problem the improvement of the conditions may only be achievable by a collective effort. The Samaritan model does not fit the cases of *emergency*<sub>2</sub>,

<sup>4</sup> A standard objection against Singer's argument is that the poverty-case leads to an overcharge for the duty bearer, what we would have to sacrifice in order to help as much as we can is "of equal moral importance," above all the ability to lead one's life autonomously. (For a defence of his and Unger's argument cf. Singer 2002, pp. 186ff.) Especially Unger's approach, which does not envisage any threshold for helping, could lead to an instrumentalisation of the helper. (For this aspect see Birnbacher 1995, p. 282 and Lewis 2000.)

<sup>5</sup> The dissimilarities between the drowning-child-case and the poverty case with respect to the relevance of distance have been examined by Kamm (1999; for a defence of his position see Singer 2005). For a detailed discussion of the dissimilarities between the two cases see also Mieth 2007, pp. 716ff.

but only those of *emergency*<sub>1</sub>. Because *emergencies*<sub>1</sub> are mostly unforeseeable, institutions can only establish a fair burden-sharing of the costs for curing a person, e.g. her hospital bill. But even the best institution cannot replace the individual helper, performing first aid, calling the ambulance, saving the child from drowning. On the other hand, *emergencies*<sub>2</sub> can only effectively be dealt with by institutions.<sup>6</sup> Individual helping is the adequate model for Samaritan duties that refer to *emergencies*<sub>1</sub>: sudden and unforeseeable states of danger, but it is not the adequate model to eradicate severe poverty, which clearly falls under the different case of *emergency*<sub>2</sub>. If poverty can only be eradicated by structural changes, that is an improvement of the status quo described as *emergency*<sub>2</sub>, then it should be eradicated by institutions. Ought implies can and individuals cannot eradicate poverty if we follow what we can call O'Neill's *principle of obligation from capability*: "both institutions and individuals can have obligations if but only if they have adequate capabilities to fulfil or discharge those obligations" (O'Neill 2005a, p. 251). And since individuals do not have the capability to eradicate poverty we cannot consider them as being obligated to do so.<sup>7</sup> According to O'Neill, individuals have only imperfect duties of assistance that are special duties in a restricted range. These duties are imperfect in a Kantian sense, i.e. there are no corresponding rights. They are duties of virtue that are underdetermined because they leave it open how much we should give and whom we should render assistance to. On the other hand, individuals as well as institutions do have strong, perfect and enforceable duties of justice against all others to avoid harming them (for a defence of the Kantian position see O'Neill 1996).

## 2 Corrective Justice II: The Revised Model

As we have seen so far, the Utilitarian model is confronted with the overcharge-objection because it concentrates on individual helping, while the classic corrective-justice-model is confronted with the objection that it does not consider poverty as a problem in itself. Nevertheless, there have been attempts to formulate a revised model of corrective justice in order to address the problems mentioned. The most prominent effort was made by Thomas Pogge. He argues that the analogies drawn by Singer and Unger are misleading because they are based on "the tacit assumption that we are not contributing to the distress we are able to alleviate" (Pogge 2002, p. 236, nn 180). We can apply the Samaritan intuition to the drowning-child-case but not to the problem of world poverty because we are not causally involved in the distress of the child, whereas as members of the affluent countries, we are

<sup>6</sup> Joel Feinberg has made a similar point by differentiating between the drowning child case and the case of a beggar endangered by starvation. While he proposes "to defend a bad Samaritan statute" in the drowning child case, he would prefer "a state system of income maintenance to handle the hungry mendicant cases" (Feinberg 1985, p. 228).

<sup>7</sup> "Individuals cannot be obliged to resolve the problems of world hunger, or to grow wings and fly" (O'Neill 2005a, p. 251). I agree with this point but we have to add that individuals might be obliged to diminish poverty because they have the capability to lessen some of the suffering of the poor (as opposed to eradicate poverty or to "resolve" the problem). Many theorists have proposed that individuals have the duty to establish institutions that will protect social rights and allocate duties efficiently (cf. Orend 2002, p. 145 or Ashford 2006). But depending on the circumstances the capability-problem might reappear. How exactly is one individual able to fulfil this duty? What actions are required? Is electing the right party enough? What if the aim to establish just global institutions is not part of the program of any political party you could vote for? What is then required: the foundation of a new political party? Civil disobedience? Donations to NGOs? How much engagement can reasonably be expected?

causally involved in the distress of the poor.<sup>8</sup> So Pogge seems to take over the *harming-by-action-thesis* (HAT) from the libertarian version of corrective justice while he rejects Singer's *equivalence-of-evil-thesis* (EET) and the *harming by omission thesis* (HOT) since he agrees "on this point, with libertarians [...] that the distinction between causing poverty and merely failing to reduce it is morally significant" (Pogge 2002, p. 13). Pogge presents two common prejudices concerning world poverty:

- (1) The *innocence-thesis*: The "factual claim [...] that we are not harming the global poor by causing severe poverty, but merely failing to benefit them by not eradicating as much severe poverty as we might" (Pogge 2002, p. 12).
- (2) The *priority-thesis*: The "moral claim [...] that, while it is seriously wrong to harm the global poor by causing severe poverty, it is not seriously wrong to fail to benefit them by not eradicating as much severe poverty as we might" (Pogge 2002, p. 12).

Pogge wants to show that the common empirical claim (1) is false while he accepts the moral claim (2) by rejecting HOT and EET.<sup>9</sup> So Pogge cannot interpret causing severe poverty as harming by omission "by not eradicating as much severe poverty as we might." This means that he has to show that the members of the affluent countries *cause* poverty by harming foreigners according to HAT. Pogge seems to think that showing that we are causally connected to the deprivation of the poor will give us a stronger reason to eradicate poverty than Singer's argument, which leads to a weaker claim if we accept (2). Pogge's implicit moral intuition is that we have stronger duties to compensate for evils we caused than to prevent others from evils. Following the line of the classic corrective justice intuition he claims that his argument "conceives, then, both human rights and justice as involving solely negative duties: specific minimal constraints – more minimal in the case of human rights – on what harms persons may inflict upon others" (Pogge 2002, p. 13). What Pogge tries to show is (1a) that the existing global order is causing poverty because of its injustice and (1b) that "our governments, hence we, bear primary responsibility" (Pogge 2002, p. 13).

Let us have a look at (1a) first. World Poverty is then a problem of *compensation of evil* (CET) and not of *prevention of evil* (PET). "We must stop thinking about world poverty in terms of helping the poor" (Pogge 2002, 23, cf. Pogge 2005a, b). In Pogge's model, the compensation of evil is not considered as an ex post compensation like the classic corrective justice model proposes, but as a simultaneous compensation. The reason for this compensation is that we are imposing an unjust global economic order. It is unjust through the violation or in Pogge's language the unfulfillment of (positive) human rights. The main idea is that those who are profiting from this order (and or are also shaping and upholding it) should compensate those who are suffering from this order in order to make up for their losses.

There has been a lot of scepticism about whether Pogge's empirical thesis that the existing global order is causing poverty is correct.<sup>10</sup> I cannot discuss this point here. Let me simply assume that Pogge's point (1a) is convincing in the sense of the weak thesis: that the

<sup>8</sup> Pogge gives Singer the credit that his argument even reaches those who think that "the persistence of severe poverty is due solely to domestic causes. But catering to this empirical view, Singer also reinforces the common moral judgement that the citizens and governments of the affluent societies, whom he is addressing, are as innocent in regard to the persistence of severe poverty abroad as" the helper in Singer's drowning child case "is in regard to the child's predicament" (Pogge 2005b, p. 265).

<sup>9</sup> Pogge agrees here with the defenders of the priority-for-compatriots-idea who also reject EET by claiming that "failing to save lives is not on a par with killing" (Pogge 2002, p. 12).

<sup>10</sup> For a defence of his position see Pogge (2005a, b).

global order contributes to world poverty<sup>11</sup>. But even if it is plausible that the global order, e.g. by closing the markets for the participation of developing countries, contributes to maintaining poverty, it is much harder to show that *all poverty* results from an injustice of this kind. What about cases of poverty resulting from natural factors? It seems that either Pogge has to admit that we have no stringent negative duty to compensate for poverty resulting from natural causes like natural disasters, or he has to give up the idea that our duty to eradicate poverty is purely negative.<sup>12</sup> Pogge proposes “to call negative any duty to ensure that others are not unduly harmed (or wronged) through one’s own conduct and to call positive the remainder: any duty to benefit persons or to shield them from other harms” (Pogge 2002, p. 130). If this definition of a negative duty is supposed to make sense, we need an independent definition of what harming means.<sup>13</sup> It seems plausible to draw a distinction between worsening the situation of someone compared to his situation without one’s interfering, and failing to improve someone’s situation compared to his situation without one’s interfering. Harming could then either be referred to (a) as unduly worsening (according to HAT) as opposed to unduly failing to improve, or in the rejected sense (b) as unduly worsening according to HAT as well as unduly failing to improve according to HOT. In case (b) we are back to Singer defending EET while in case (a) we can maintain the *priority-thesis* that negative duties are more stringent than positive ones. The *priority-thesis* is only plausible if there is a significant difference between positive and negative duties. And this means that with regard to harming, the violation of a negative duty must be described according to HAT and not according to HOT. And indeed Pogge at first sight rejects the “consequentialist” (as opposed to libertarian) notion that the global order is unjust because “there is a feasible institutional alternative under which such starvation would not occur” that it does not implement (cf. Pogge 2002, p. 13). This non-implementation would be the violation of a positive duty and follow from the rejected HOT and EET. But later Pogge does make exactly this point himself: “There is considerable international economic interaction regulated by an elaborate system of treaties and conventions about trade, investments, loans, patents, copyrights, trademarks, double taxation, labor standards, environmental protection, use of seabed resources and much else. In many ways, such rules can be shaped to be more or less favorable to various affected parties such as, for instance, the poor or the rich societies. Had these rules been shaped to be more favorable to the poor societies, much of the great poverty in them today would have been avoided” (Pogge 2005b, pp. 263f.). By not supporting the implementation of this alternative order, and therefore not averting the continued existence of poverty, we are harming the poor.<sup>14</sup> The failure to implement a more adequate order goes

<sup>11</sup> Alan Patten (2005, p. 24f.) has shown that Pogge does avoid the strong thesis that poverty is only caused by global factors, excluding domestic factors (cf. Pogge 2002, pp. 49, 112, 115). The strong thesis of “explanatory globalism” would be empirically implausible (cf. Satz 2005, p. 49 and Patten 2005, p. 24) but the weak thesis cannot show that poverty should be *eradicated* (as opposed to diminished) by those who are responsible for the global factors because it cannot attribute all instances of poverty to those global factors.

<sup>12</sup> For a very convincing critique of the thesis that the duty to eradicate poverty is solely negative see Gilbert (2004), Cruft (2005), and Satz (2005). Replying to his critics, Pogge says that there are of course positive duties, but that he does not need them for his argument (Pogge 2005a, b p.75).

<sup>13</sup> Otherwise the significance of the difference between negative and positive duties will be lost. This would be the case if we said that the violation of any duty (positive or negative) means harming the corresponding right-bearer.

<sup>14</sup> Defending his book, Pogge makes this point of feasible avoidance even stronger and more explicitly. (Cf. Pogge 2005a, pp. 55; 60, 62 and more often.) This seems to follow the *prevention of evil thesis*. Furthermore he points out that one of our faults consists in *letting* our governments harming the poor by *allowing* them to shape the unjust global order. (Cf. Pogge 2005a, b, p. 65) This sounds like *harming by omission*.



back to *harming by omission* and not only to *harming by action*. If there are positive human rights to subsistence we are unduly failing to improve the situation for the global poor by maintaining the unjust status quo that allows those rights to remain unfulfilled. As we can see, Pogge refers to this as harming by following the *harming-by-omission-thesis* (HOT). From this we can conclude that the *priority-thesis* ceases to be convincing any more if we define harming as broadly as Pogge does. Pogge reinterprets corrective justice in a way that a classical libertarian would not accept because it does not aim at a restitution of the status quo, but requires a rearrangement of the status quo, which means to change it.<sup>15</sup> Nevertheless it is just this point where Pogge is right, as my analysis of the two kinds of emergencies has shown. If my analysis is sound and we must conceive of severe poverty as an *emergency*<sub>2</sub> that does not require a continuation the status quo but to change it by establishing a status quo free from severe poverty, Pogge's demanding concept of justice is an adequate one, but his description of his model as consisting solely of negative duties in a libertarian sense is misleading. Nonetheless, from this we should not draw the conclusion that Pogge's idea of economic justice is wrong. Instead, as we saw above, libertarianism is not convincing because it is unable to consider poverty as a problem in itself. In contrast to libertarianism we can only develop an adequate understanding of the problem of severe poverty if we understand it as an *emergency*<sub>2</sub>: a permanent state of deprivation that leads to foreseeable and avoidable threats of premature death by poverty-related causes like malnutrition and other preventable diseases. But the duty to protect people from being deprived of subsistence, i.e. the duty to protect

<sup>15</sup> For this point see Nozick's well-known critique of Rawls' theory of justice. He describes any (re) distribution that goes beyond the reestablishment of the status quo as unjust (1974, p. 168). In Onora O'Neill's words: "The central demand of libertarian justice, whether national or transnational, is: do not redistribute" (O'Neill 2005b, p. 127). One point I cannot discuss here in detail is if and how the Lockean proviso that would restrict acquisitions in a state of nature by the condition of leaving "'enough and as good' for others" (Pogge 2002, p. 137, referring to Locke 1960, Sections 27 and 33) could force libertarians to modify Nozick's entitlement theory of justice. In this case, there might be a tension between just acquisition of property X according to the Lockean proviso at t1 and just transfer of property X at t2 if we look at the distribution of property at a later point of time, i.e. t3. The question is: given that the original acquisition of X from A was correct at t1 in the state of nature (since the others at t1 got "enough and as good" so that the Lockean proviso was not violated) and the transfer of X from A to B was correct at t2 – would a libertarian then be forced to say that at t3 C who does not have "enough and as good" as B would have a right to some of X because at t3 the Lockean proviso is violated by B if he recommends all of X for himself from the entitlement theory of justice? (Cf. Nozick 1974, pp. 149–151 and the discussion of the proviso pp. 178–182.) I don't think that Nozick's historical entitlement Theory would recommend redistribution from B to C. His examples are different. If A owns all the water holes in the desert (or owns one and the others dry up) he might be forced to let C drink, because his own rights can be "overridden to avoid some catastrophe" (Nozick 1974, p. 180). What we are talking about here is a scenario of *emergency*<sub>1</sub>: acute deprivation of C. But the poverty problem is different as we saw above. It cannot be solved by the idea that owner rights are overridden at some exceptional point in time. Rather, Pogge says that a distribution that does not avoid poverty while there is a feasible alternative is unjust. So in Pogge's interpretation (as opposed to Nozick's), the proviso is a principle that "focuses [...] on the structure of the situation that results" from the distribution of property what Nozick denies (Nozick 1974, p.181). In my opinion, Pogge goes clearly beyond Nozick but he does not go as far as Rawls' difference principle that recommends *maximizing* the position of the worst off. Pogge's position seems to resemble that of Alan Gewirth (1987) with respect to the idea that an order is minimally just if and only if basic human rights (the access to basic goods) are secured. And this means in terms of Gewirth's theory that B (who has more of X than she needs) does not have a right to all of X as long as the needy C has a right to basic goods (that is unfulfilled at t3) and cannot attain them by her own efforts. B has the duty to share in providing the basic goods for C she has a right to by transferring that part of X to C that she has a right to and B has no right to. But in Gewirth's theory B's duty to provide C with X to the degree C has a right to X is of course *positive*. (Cf. Gewirth 1987, pp. 66ff.) And here lies the difference between Pogge and Gewirth: Pogge concentrates on the indirect negative duty not to take part in shaping and upholding unjust institutions without compensation whereas Gewirth directly concentrates on positive human rights and correlative positive duties.

people from poverty, is not adequately described as a negative duty to refrain from direct and active deprivation because it is also positive, requiring protecting, providing or redistributing actions. In Pogge's theory, protecting actions occur as compensating obligations generated by our violation of the duty not to contribute to or profit from the unjust international order that is harming the poor.<sup>16</sup>

However, this idea has two shortcomings. First, there must be an independent foundation of positive duties to protect rights. It does not make sense to explain them exclusively as compensating obligations for former violations or profiting from violations.<sup>17</sup> Second, it seems to be a different point to show that even if the global order is contributing to poverty (1a), then it follows that we as individuals are responsible for it (1b).<sup>18</sup>

I do not contradict Pogge's description that the global order is unjust. Nor do I contradict his claim that we from the affluent countries are contributing and benefiting. But I am sceptic about his claim that "negative duty generated positive obligations" are "much more widely acceptable than stringent positive duties" (Pogge 2005a, p. 69). And this claim is crucial for his argument. (Cf. *ibid.*) What makes negative duties (and the positive obligations generated by them) "much more widely acceptable"? Why does contribution to evil give us a more significant moral reason to fulfil positive obligations (in order to compensate for past evils or in order to prevent further evil?<sup>19</sup>) than capacity to prevent evil does? Pogge does not provide us with an explanation for the popularity of the priority thesis. Usually, the priority of negative duties is explained by the following advantages: (a) they are universally applicable. (b) They are enforceable. (c) They require controlling one's own behaviour by refraining from harmful actions and do not depend on the neediness of others. (d) They are more likely to be accepted since their fulfilment is less costly and since they are more compatible with maximal liberty.<sup>20</sup> It seems that it is easier to omit the violation of a negative duty than to fulfil a positive duty. Under normal circumstances we have more control over the compliance with negative duties because they do not depend on factors we cannot influence like the child's falling into the pond in Singer's example. Furthermore it seems clearer what negative duties require since positive duties often leave

<sup>16</sup> Pogge's idea is that negative duties can generate "specific moral reasons for action: obligations." The negative duty is that we must not "harm others by cooperating, without compensating protection and reform efforts, in imposing on them an institutional order that foreseeably gives rise to avoidable human rights deficits. This is a generative duty that, in conjunction with our cooperation in imposing an institutional order that foreseeably gives rise to avoidable human rights deficits, generates obligations to make compensating protection and reform efforts for those whose human rights remain unfulfilled under this order. These are positive obligations. They require each of us to make up for our share of the harm we inflict together – by shielding its victims or by working for institutional reforms" (Pogge 2005a, b, p.68).

<sup>17</sup> This point is made by Debra Satz (2005).

<sup>18</sup> For a discussion of individual responsibility according to the contribution principle see Shei (2005). For a critique of Pogge's position see Satz (2005) and his response (Pogge 2005a, b, pp. 74–83).

<sup>19</sup> For a defence of the contribution-principle against the conjecture that it is only backwards-looking see Barry (2005, pp. 112–117).

<sup>20</sup> This aspect is expressed very clearly by Barry with regard to defending the contribution-principle: "It recognizes people's interests in autonomy – the freedom to define for oneself a conception of the good life and being left free to pursue it – because it does not demand that agents disrupt their plans whenever, for example, they are well placed to alleviate the acute deprivations of others. It can thus be seen as linking two attractive normative ideals – that people should bear the costs of the burdens that they impose on others and that there should be, as Nozick (1974) has put it, a 'presumption in favour of liberty'" (Barry 2005, 110). Birnbacher speaks of the costs for the acceptance of duties to act: they are the more heteronomous (and therefore costly in a way the agent cannot control) the more they depend on factors the agent cannot control such as distress caused by others or by nature (Birnbacher 1995, pp. 270; 279). At first sight, according to capacity we might have much more duties than according to contribution.

open which actions they impose on us. Usually the compliance with negative duties seems to be available at no costs because they require only forbearance, not positive action.

But I think that those properties usually ascribed to negative duties do not apply to Pogge's negative duty "not to help create and not to collaborate (without making compensating efforts) in the maintenance of any social order that is less than perfectly just" (Pogge 2002, p. 136). Now let us have a look at what Pogge describes as the violation of this negative duty by *letting* our governments "shap[e] and uphold" an unjust economic order in our name. More precisely, we are "*contributing to, or profiting from, social factors that exacerbate severe poverty abroad*" (Pogge 2005b, p. 273, emphasis in the original).<sup>21</sup> But how can the average inhabitant of western society refrain from profiting from this order? The duty not to harm others seems not identical with the duty to ensure that one's conduct excludes indirect harming or profiting from harming. Maybe we could refrain from legitimating our governments to shape and uphold an unjust international order by leaving the country (cf. Pogge 2002, p. 66). For most of us, this would be much more challenging than refraining from actively killing others. It could be as costly for us as Unger's idea that we should change our whole lifestyle in order to help. Since ought implies can we also have a problem with the fulfilment of the duty not to harm others by avoiding participating in or profiting from unjust institutions. Furthermore, refraining from harming or refraining from profiting from harming might not be the aim of Pogge's argument (cf. Pogge 2002, p. 66). Pogge's idea is a more active one: we should "take compensating action" in order to "help protect the victims of current policies and institutions" (Pogge 2002, p. 144) and to "initiate appropriate changes in national policies or global institutions – for example by publicizing their nature and effects and by developing feasible paths of reform" (Pogge 2002). But Pogge's foundation of these compensatory duties depends on how much individuals are harming the poor. "The word 'compensate' is meant to indicate that how much one should be willing to contribute toward reforming unjust institutions and toward mitigating the harms they cause depends on how much one is contributing to, and benefiting from, their maintenance" (Pogge 2002, p. 50). But it does not become clear what exactly harming means: which negative duties are violated? Aren't there also positive duties violated that Pogge refers to as harming? Doesn't Pogge's idea of economic justice including the idea of positive human rights already imply positive duties? The admission of profiting may give us a stronger reason to fulfil positive obligations of protection and aid than the illusion of not being involved. But Pogge's negative duties that generate them have most of the qualities that are usually ascribed to the problematic status of positive duties. They are underdetermined because it is not clear which actions or omissions they require. Their fulfilment can be extremely costly. Their fulfilment requires active information and political engagement. The compensating obligations depend on factors the agent might not be able to control efficiently (e.g. certain kinds of being benefited by the global order). Furthermore the positive obligations following from the negative duties do not seem to be "stringent". It is not easy to determine what and how much they require. All these problems considered it seems not so favourable any more to concentrate on negative duties.

<sup>21</sup> The difference between contributing and profiting is carefully examined by Anwander (2005). He comes to the conclusion that there is a significant moral difference between "the descriptive claim" that we are *passively being benefited* by the global order and "the normative claim that by benefiting we are violating a negative duty" which makes most sense if "understood as actively seeking to take advantage of" (Anwander 2005, 43, emphasis in the original).

In contrast to Pogge and following the proposals of his critics I will try to describe poverty as requiring the fulfilment of both, positive and negative duties. I will examine whether Henry Shue's model is more convincing.

### 3 The Combined Model: Negative and Positive Duties?

#### 3.1 Positive Implications of Security Rights

Now let me take a look at the solution to the problems mentioned above proposed by Henry Shue's theory. Shue's main idea is that: "A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats" (Shue 1996, p. 13). His first task is to show, contra to libertarianism, that even if the substance is security (a classical negative right), its enjoyment implies negative *and* positive duties:

- I. (Negative) duties to avoid depriving. (Individuals and Institutions)
- II. (Positive) duties to protect from deprivation. (Institutions)
- III. (Positive) duties to aid the deprived. (Individuals and Institutions) (Shue 1996, p. 52)

I will apply this theory to the classical Samaritan-case<sup>22</sup> as an example. Henry Shue's conception provides us with a model that makes it possible to reinterpret the story in terms of rights and duties. If the man who fell into the hands of the robbers has a right to physical security, everyone else has the corresponding negative duty not to harm him. But our case shows that "the actual enjoyment of a substance," security, cannot be provided by the classical concept of negative rights alone, because once the man is harmed the protection of security as a substance of a right implies that he get help to re-establish his physical integrity. So from this point of view, helping compensates for the results of right-violations in a double sense: first, it compensates for the actual violation of the man's right to security, and secondly it compensates for the lack of institutions that efficiently protect against standard threats such as robbery (cf. Shue 1996, p. 13). Thus in Shue's theory, there are duties to help but their status is only secondary or tertiary. In the first place, more should have been done in order to prevent assaults. A right implies, as we saw above, three kinds of corresponding duties: *duties to avoid* (in our case harming the man) that apply to anyone (level I), *duties to protect* (in our case: to make the streets secure, to prevent robberies, to find criminals and to punish them) that apply to institutions and their special representatives (level II), and *duties to aid* that compensate for violations on levels I and II that apply to individuals or institutions (level III).

So we can retell the story as follows: the robbers did violate their negative duty to avoid harming the man (violation on level I by action). The institutions of the Roman province of Judea did not protect the man from this deprivation (violation on level II, by omission). The Priest and the Levite did violate their duties to help (violation on level III, by omission).

<sup>22</sup> "A man was going down from Jerusalem to Jericho, when he fell into the hands of robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he travelled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, took him to an inn and took care of him. The next day he took out two silver coins and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have'" (Luke: 10:30–35).

The only right of the man that somebody really honoured was his right to get help: the Samaritan fulfilled his duty to aid. But should we consider the duty to aid as a compensation for the former violations? That does not seem correct, since the Samaritan was not involved in harming the man, nor did he profit from the robbers' harming of the man. The question in comparing Shue and Pogge is whether the Samaritan has a better reason or a stronger duty to help the man if he is considered to profit from the harm done to the man e.g. by sometimes making deals with robbers or by contributing to institutions that do not efficiently prevent robberies. But what would his duty then be: to stop supporting the robbers or to stop contributing to the unjust institutions or to help their victims?<sup>23</sup> In any case, Shue's thesis that classical negative rights like security imply positive actions on levels II and III is only convincing if these positive duties can be ascribed to third parties. Only if it is true that the (potential) victims of violations of negative rights have a right to protection and to aid Shue has successfully shown that negative rights imply positive actions like building institutions, paying taxes, etc., or eventually helping on level III if the two other levels fail to protect the substance of a right. The duty-bearers of protection and aid are not the former rights violators. The robbers might be forced by the protecting institution to compensate for their violation of a negative duty but the independent duty of the institution is positive. *Society* must restore the substance of the right "if avoidance and protection both fail" (Shue 1996, p.53). Society can prosecute the robbers and force them to pay the bill of the innkeeper. Or society can share the costs for the recovery of the man in order to relieve the Samaritan from paying the innkeeper. If we want to apply this idea to the global level, we are confronted with the problem that there is no global society. As Shue points out later, the question of positive duties can be a question of solidarity beyond borders. His idea is that "those who, as luck will have it, turn out to be relatively fortunate and secure will protect, in certain specific ways, those who turn out to be threatened and vulnerable, in certain specific ways." (Shue 2005, p. 227) So here Shue seems clearly to refer to the capacity-idea and not to Pogge's idea of compensation for contribution to an unjust global order.

### 3.2 The Right to Subsistence

Shue's second task is to show that there is a right to subsistence and that it has the same structure as the right to security. First, there is the duty to avoid depriving others of subsistence (level I). Secondly, there is the duty to protect people against deprivation by third parties (level II), and thirdly, there are "duties to provide for the subsistence of those unable to provide for their own – duties to aid the deprived" (Shue 1996, p. 53). So subsistence rights are not only positive and security rights are not only negative. Shue draws the conclusion that the distinction between positive rights and negative rights is not significant. "It is duties, not rights that can be divided among avoidance and aid, and protection" (Shue 1996, p. 53). A right can only be fully guaranteed if all three types of duties are performed. But they "must not necessarily be performed by the same individuals or institutions" (Shue 1996, p. 52).

Basic rights "specify the line beneath which no one is to be allowed to sink" (Shue 1996, p. 18). They "are everyone's minimum reasonable demands upon the rest of humanity"

<sup>23</sup> I think at least in case of murder or assault it is not true that compensating can balance contributing. It is not plausible in this case to say that negative "duties do not make it wrong to contribute to, or to profit from, a collective injustice when one makes compensating protection and reform efforts for its victims" (Pogge 2005a, b, p. 69).

because the “enjoyment of them is essential to the enjoyment of all other rights” (Shue 1996, p. 19). Shue mentions three interconnected basic rights: security, subsistence, and liberty (including political participation). Subsistence is understood as “minimal economic security,” including “unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventive public health care” (Shue 1996, p. 23). Treating world poverty as a question of justice then leaves the opportunity for us to examine the two questions (who caused it and who must eradicate it) together, emphasizing that there is a duty to protect the other’s right to subsistence. Thus, an injustice from this point of view could either consist in an active violation of the right to subsistence (violation on level I, HAT), or in the passive failure of individuals or institutions to protect this right (violation on level II, by omission), or in the passive failure to help a deprived person (violation on level III, by omission). From this point of view, the first question (who caused poverty) is relevant insofar as it allows us to view practices that lead to poverty as unjust.

But how can one be deprived of subsistence without being deprived of security (as in the case of colonialism, enslavement or unjust warfare)? Shue provides us with the “flower contract” as an example of *structural economic injustice* that leads to a deprivation of subsistence. Imagine a village with a peasant and six workers. They live from growing black beans. Now the peasant makes a deal with a man from the capital of the country who guarantees him a salary for growing flowers for export instead of growing beans. The equipment he is provided with from the capital enables him to hire only two men. Since every landowner in the region is offered a similar contract, black beans are short in supply and become extremely expensive. The four workers that are left unemployed will no longer be able to provide for themselves and their families. All of them will be threatened with death from malnutrition (cf. Shue 1996, pp. 41–6).

Shue comes to the conclusion that “the parties to the contract partly cause the malnutrition” (Shue 1996, p. 44). And here, we can indeed describe the condition of the workers as worse when compared to their situation before the flower contract. We can characterize the process according to *harming by action*. Furthermore, the deprivation of subsistence goes back to “the absence of the appropriate social guarantees [...]. Such contracts could, for example, have already been made illegal. Or they could have been managed or taxed in order to compensate those who would otherwise predictably be damaged by them” (Shue 1996, pp. 44–5). Therefore, to Shue it is clear that “the honouring of subsistence rights may often in no way involve transferring commodities to people, but may instead involve preventing people as being deprived of the commodities or the means to grow, make, or buy the commodities” (Shue 1996, p. 51). Here we are back to Pogge’s point. But we see more clearly that while we can describe the parties of the flower contract as harming the workers by action (according to HAT), there is also a second institutional failure to protect the worker’s subsistence that is the violation of a positive duty. And maybe it is another violation of a positive duty that individuals did not shape better institutions. What we have gained from Shue is a more adequate differentiation between negative and positive duties. But is this concept of subsistence-protection convincing?

## 4 Two Dissimilarities in the Analogy Between Security Rights and Subsistence Rights

### 4.1 The Causation of Deprivation Dissimilarity

There seems to be a dissimilarity between security and subsistence: Most of the violations of security-rights go back to intended harm as an end or means, e.g. murder in order to

inherit a fortune. But most of the violations of subsistence-rights are not intended directly. They might, as in the example of the flower contract, be accepted as an undesired side-effect, but they were neither an end nor a means to the enrichment of the peasant. Therefore, there may be another dissimilarity in compensation, as Shue admits by writing that contracts with such predictable negative effects on the subsistence of third parties should *either be prohibited or compensated* by taxes. There seems to be only one kind of physical integrity that must not be destroyed. Murder cannot either be prohibited or compensated – it should be prohibited unconditionally. The violation of security in cases of rape, murder, or assault seems primarily to be the fault of the person who committed the crime and not a fault of society's rules that did not efficiently prohibit the violation. But, on the other hand, there are some security rights that might more resemble subsistence rights: employers should for example make some security arrangements for their workers, to protect their workers' security instead of risking it to save money. This sounds like a positive duty for the employer.

In a classical liberal understanding, rights should protect us from unjust acts of others and the state that endanger us. Rights to security plausibly illustrate this basic intuition. But what about rights to subsistence? Does the loss of subsistence really usually go back to violations by others as Shue suggests? Shue is not as sure on this as it seemed on first sight: In a later chapter of his book, he lists the three corresponding duties to a right of subsistence as follows:

I. To avoid depriving.

II. To protect from deprivation

II.1. By enforcing duty (I)

II.2. By designing institutions that avoid the creation of strong incentives to violate duty (I)

III. To aid the deprived

III.1. Who are one's special responsibility,

III.2. Who are victims of social failures in the performance of duties (I), (II-1), (II-2) and

III.3. Who are victims of natural disasters" (Shue 1996, p. 60).

So only duty III.2. corresponds to a former violation of a subsistence right. III.1. could refer to one's own small children or compatriots whereas duty III.3. refers to natural disasters as a different cause of deprivation. It is implausible to construct duties III.1 and III.3 as compensations for former rights violations, although the demarcation between what is the outcome of a natural disaster and what is the outcome of a lack of protection may occasionally be very thin: What if the government decides not to buy a warning system against tsunami and thousands of people are killed? Nonetheless, these are exceptional cases. It is evident that there are many threats to subsistence that are due to natural causes (being a small child, being handicapped, being the victim of an accident or a natural disaster) that could not have been prevented by individual or institutional action. Thus, it would be much more plausible to consider duties III.1 and III.3 as primary duties, i.e. as duties on level I.<sup>24</sup> They are positive duties that would be necessary even in a perfect world

<sup>24</sup> Alan Gewirth comes to the same conclusion. He criticizes that in Shue's model positive duties ground on primary, negative duties. Positive duties to protect only exist for the sake of the fulfilment of negative duties (Gewirth 1987, p.64). In contrast to this view, Gewirth holds that positive rights to economic goods require direct positive duties of assistance. But this position is confronted with the allocation problem: who does have which positive duty against whom?

with no one violating his negative duties, because natural causes of deprivation cannot be ruled out by the fulfilment of negative duties. What is needed on level I is also the allocation of positive duties (e.g. for parents) and the fair distribution of positive duties (e.g. in case of natural disaster). But then the analogy between security and subsistence rights breaks down, because in the latter case there are positive duties on level I.

#### 4.2 The Compensation Dissimilarity

As we have seen, Shue's idea that "duties to aid become relevant only after failures to perform the first two general kinds of duty" (Shue 1996, p. 159) is not convincing. Furthermore, concerning the compensation of rights violations, we find the same problems as in the discussion of classical liberalism and its corrective-justice-intuition. We will only get an answer to the second question (how to eradicate poverty) if we answer the first question (who is responsible for its emergence). Therefore we could try to show, as Pogge does, that the causes for poverty are former violations of negative duties, or we will have to say that to let someone live below a certain level of subsistence while one could help is itself a violation of a right to subsistence. But this would be the violation of a positive duty.

From this it follows that there seem to be two kinds of rights to subsistence:

*The right to subsistence<sub>1</sub>* refers to the power to control the means of one's own ability to exist. This already functioning subsistence should be maintained by protection *against others*. The situation should not be worsened (by prohibiting the violation of negative duties).

But what if a person lacks the power or the means to subsist in the first place? Let us call this different case *subsistence<sub>2</sub>*.

*The right to subsistence<sub>2</sub>* requires that the means to subsistence should be provided *by others* in the first place. This implies the transfer of money or goods, in order to (re) establish the power to control of one's own ability to exist. The situation should be improved (by the allocation of positive duties).

While the *protection* of security might in most cases aim at maintaining the status quo (protection from worsening), the protection of *subsistence<sub>2</sub>* might in a lot of cases directly aim at improving the status quo, i.e. benefiting the person. If there is a basic right to *subsistence<sub>2</sub>*, others are obliged to provide for it, even if they did not cause the neediness by action, and this means the existence of a very general positive duty on level I. The example of the flower contract is meant to illustrate how *subsistence<sub>1</sub>* should have been protected, where it was already given. It is clear that it is in general hopelessly complicated to assess the consequences of contracts and other economic arrangements, and raise taxes that burden the parties responsible for the deprivation of *subsistence<sub>1</sub>* accordingly. But if we drop this last point and replace it with the idea that institutions should also *provide* people with *subsistence<sub>2</sub>*, we are back to an allocation problem. In Pogge's opinion, Shue is "leaving unclear" if positive duties "depend on whether we are or are not involved" in the deprivation of the poor. (Pogge 2002, p. 249 NN 271) To remember, according to Pogge we are involved in the deprivation of the poor by imposing an unjust order that leaves their (economic) rights unfulfilled. Other interpreters seem to imply that Shue's duty to aid the deprived has to be applied even if there has not been any previous contact between right holder and duty bearer (cf. Jones 1999, p. 65 and Orend 2002, p. 142 and 147). We are facing a dilemma here. *Either* we decide that there are only duties to aid as a compensation



for former rights violations. Then we are facing the first horn of the dilemma that some people's rights to subsistence might remain unfulfilled for three reasons: (a) the depriver cannot be brought to compensation or (b) the compensation required according to responsibility would not be enough to provide for *subsistence*<sub>2</sub> or (c) the deprivation does not go back to a former rights violation but to natural causes. This is a problem similar to the one Pogge's critics noticed concerning his concentration on the allocation of positive obligations via compensation for former harming. Or we decide that there is a duty to aid those deprived of *subsistence*<sub>2</sub> even if the aiding party is not responsible for the deprivation as in the Samaritan cases. Then we have the second horn of the dilemma: we are back to a strong version of positive duties.

## 5 Positive Duties of Justice

I want to propose a way out of the above mentioned dilemma by considering a more adequate understanding of positive duties. So again: What is so wrong with positive duties? By now we have only examined Singer's idea of individual positive duties that leads to three objections: overcharge, possibility of unjust burden-sharing and inefficiency. If my analysis in section 1.3. is sound, we must reject Singer's approach because it is a mistake to apply the individual helping model that is adequate for unforeseeable *emergencies*<sub>1</sub> to the poverty problem as a foreseeable *emergency*<sub>2</sub> that requires an institutional solution. The way I want to propose as leading us out of the dilemma is to defend a strong *institutional* version of positive duties. Let me explain. Shue is perfectly right in emphasizing that both, negative and positive basic rights require *institutional protection*. This institutional protection of basic rights implies an allocation of positive duties.<sup>25</sup> But here the analogy ends because of the mentioned dissimilarities between negative and positive rights concerning their corresponding first level duties. While it is true that positive duties are needed to protect the substance of negative rights, the idea is still to protect the status quo. By contrast, positive rights can require assistance on level I if subsistence cannot be provided for by the agent herself since we must then interpret the right to subsistence in the sense of *subsistence*<sub>2</sub>. But this is not as problematic as it might look at first sight since the institutional level II is the most important level to protect the substances of basic rights. And this implies to enforce suitable economic arrangements that will guarantee subsistence-protection (or providence for subsistence). I propose to consider the positive duties that institutions are justified to allocate in order to guarantee the fulfilment of subsistence rights as *positive duties of justice*.

My proposal is to categorize duties not only according to the theory of action but also according to the theory of goods. According to the theory of goods we can distinguish between basic goods, that are the substances of basic rights (in Shue's language) and non basic goods that are not protected by basic rights. Second, we can call the duties (positive and negative) corresponding to basic rights *duties of justice* in order to make clear that they

<sup>25</sup> As Elizabeth Ashford has recently pointed out, the fact that both negative and positive rights confront us with an allocation problem concerning corresponding positive duties to protect is absolutely not trivial. Ashford shows that "institutional structures are just as important in specifying and allocating many of the negative duties imposed by rights as the positive duties, so that the need for an institutional allocation of the corresponding duties does not distinguish positive rights to aid from negative rights not to be harmed" (Ashford 2006, p. 221). I agree with Ashford on this point. Not the *existence* of welfare rights is dependent on adequate institutional structures (like O'Neill 1996 claims), rather the *securing* of the substance of welfare rights requires just global institutions.

are considered as institutionally *enforceable*. Institutions should allocate positive duties in order to protect positive human rights. Third, the realization of positive rights as an institutional matter of positive duty allocation can also be referred to in terms of social, economic or distributive justice.<sup>26</sup> We have also seen this from the analysis of Shue's flower contract example. The flower contract should not be prohibited unconditionally but those who are suffering from its side effects should be compensated for their losses. What we expect from institutions is to *punish* violations of negative rights like murder on the one hand. Furthermore there should be some ex post compensation for the surviving dependents

<sup>26</sup> My proposal is illustrated by the following overview:

Duties	Corresponding rights	Substance	Violation	Sanctions	Allocation
Duties of justice (negative and positive)	Basic rights (negative and positive)	Basic goods: Security, Subsistence: basic necessities	Harming: violating a negative duty corresponding to a basic right vs. failure to give one's fair share according to economic justice	Formal sanctions, relevant for human rights protection	Institutional rights-protection by allocation of positive and negative duties
Duties of benevolence (positive)	Duty to do good (to benefit non basic interests)	Non basic goods, depending on preference satisfaction	Failing to benefit (disregard of sensibilities, not rights)	Informal sanctions	Individual moral actors

This picture resembles Brian Orend's. But there are two important modifications.

First Orend suggests redefining Shue's concept by reformulating the notion of a negative duty. He thinks that we can keep "the belief that negative duties are more important than positive ones" by summing up all three duties that correspond to basic rights under one "normatively negative duty not to harm" (Orend 2002, pp. 143f). Normatively positive duties would then be duties of benevolence that refer to non basic goods such as politeness. I agree to this division but in order to avoid confusions I would reject the label "normatively negative duties" and rather speak of *duties of justice* in order to indicate that they are *enforceable*.

Second, according to Orend's view there can be *harming by action* (HAT) and *harming by omission* (HOT) if a person's basic rights are concerned. From this point of view we can indeed judge poverty as the result of an individual human rights violation either by action or by omission to shape better institutions or even to aid the poor. But as I pointed out there is a dissimilarity *within* the duties corresponding to basic rights between the allocation of universal individual negative duties not to harm others in the narrow libertarian sense, and the positive duties corresponding to subsistence rights. As we have seen above, in the case of subsistence rights much depends on the institutional order and its rules. Furthermore, according to HOT there is a direct positive duty to help if the helper can prevent damage to an important good (that basic rights are intended to protect). The bad Samaritan and the robbers seem to commit an equivalent evil from this point of view because they are both violating their normatively negative duties not to harm the man. And this is not plausible. I don't know whether we should generally avoid speaking of *harming* by omission. Anyway, it makes only sense in cases where the omission is traceable like in Singer's drowning child case and not in the case of poverty. So my idea is to indicate the rights violation corresponding to positive rights to subsistence as an institutional allocation failure that does indeed result in some individual benefiting from unjust structures. This is because we must determine positive duties before we can say in what way they are violated. So it is true that negative duties are somehow more determined but – and this is my point against Pogge – positive duties are also absolutely necessary in order to guarantee the fulfilment of positive human rights. And insofar as they are corresponding to basic rights they are enforceable *duties of justice* what makes them categorically different from duties of benevolence. (For a critique of Pogge's unwillingness to consider positive duties as duties of justice see Gilabert 2004, 543, n 12.)

of the victim. On the other hand it is indeed hard to ascribe the consequences of the flower contract solely to the individual failure of the peasant. Here we do not think in terms of punishment but indeed in terms of *simultaneous* compensation i.e. by levying taxes. But Shue's own example shows that we are not so sure whether allowing such contracts is itself an institutional failure. With regard to distributive justice we can base the idea of compensation on a more general principle like Rawls' idea that the better off should compensate the worse off for their (undeserved) benefits. But then we are step by step leaving contribution to evil as an allocation principle and combining it with capacity. In my opinion there is nothing wrong with that. I cannot propose an adequate model of combining contribution and capacity here but intuitively it seems quite clear that they should be combined.<sup>27</sup> This is so because a right to *subsistence*<sub>2</sub> would require those who are capable to provide for it by giving their fair share. (This can be considered as a matter of distributive justice.) In any case we must not go as far as to defend the global application of the Rawlsian difference principle that requires *maximizing* the position of the worst off. But we must go with Pogge beyond Rawls and claim that a just global order must guarantee the fulfilment of negative and positive human rights what seems to imply minimal global economic justice.

Positive human rights require a certain minimal standard of living (free from severe poverty) that could be achieved by institutional arrangements. Institutions could establish a fair burden sharing that would also avoid individual overcharge and inefficiency (the objections against Singer's Position). And this is exactly Pogge's point. Rights *protection* (what Shue refers to as level II) is above all an institutional task. Pogge's criterion for the injustice of the global institutional order is that it lacks just arrangements that would guarantee the fulfilment of positive and negative human rights (although such an alternative just order would be feasible<sup>28</sup>). My point is that such a just institutional order would itself require the fulfilment of both, positive and negative duties. But we should not think of these positive duties in terms of Singer's drowning child case. Rather they are burdens that have to be fairly shared by all of mankind in order to establish global institutions that are just in the above mentioned sense. So it would be legitimate if just institutions were to levy taxes according to an acceptable allocation principle that should be sensible to capacity and contribution. Such just burden sharing enforced by adequate institutions would also avoid overcharge and inefficiency. This is how things would be like in ideal theory.

<sup>27</sup> Pogge's concept of compensation and the concept of strong positive duties overlap in identifying the global rich as the primary duty bearers with regard to the eradication of the poverty problem. Here is my suggestion: if my argument is right and there are strong positive duties of justice, then the allocation problem is still an open question. Here it might make sense to use the case of contributing to and benefiting from injustice as one allocation principle. To illustrate my point I will use a modified form of Pogge's own example. A injures B by reckless driving. C and D observe this in their vehicles from the other side of the road. Pogge holds that A has a positive obligation to get B to the hospital that is stronger than the positive duty of C and D to help B. My point is that the injured B (no matter where his injury comes from) has a right to get help that results in a positive duty of A, C and D to help him. The good thing from this point of view is that B will have a moral claim to get help from C who is capable to drive him to hospital if A's car is damaged so that she cannot do so. B also has a right to D's first aid who happens to be a doctor and whose competence might be life-saving. On the other hand, the burdens of helping should be fairly allocated so that, other things equal, A's taking over the costs for helping makes most sense. In the deviant scenarios A might compensate B (by paying the hospital bill) and he might compensate C or D for their help because she caused the problem in the first place. We all have positive duties to help the workers from Shue's flower-contract example but it makes a lot of sense to burden the peasant (who gets all the benefits from the flower contract) with especially high taxes.

<sup>28</sup> Pogge calculates that 1.2% of our incomes would be sufficient to close the poverty gap (Pogge 2002, 7f. cf. Singer's number of 1%, Singer 2002, p. 193).

But concerning the extremely nonideal world we live in, Singer has one strong point concerning institutional solutions, that “tens of millions will starve or die from easily preventable illnesses before such institutions are attained” (Singer 2005, 27; cf. Singer 2002, pp. 180ff; 193, see also O’Neill 2005a, p. 252). Also Pogge’s allocation of positive obligations via harming the poor by contributing to and profiting from an *unjust* order applies to the non ideal circumstances in our real world. While Singer’s approach at least in the consequent version of Unger leads to overcharge, Shue’s conception of positive duties as default duties seems to be problematic concerning the allocation of positive duties.

In Shue’s theory it might be possible to reduce duties to aid to a minimum by avoiding deprivation through protection. But the world we live in needs a different arrangement: “Since violations of the duty not to deprive people of their rights are deeply characteristic of the world we live in, we must, in order to be in the least practical, move to the assignment of some later waves of duty: default or back-up duties, like duties to protect, duties to aid, and whatever others are needed” (Shue 1996, p. 171). Thus a cruel dialectic emerges between those who are not only deprived of their subsistence but also of their rights to subsistence, liberty, and security by their own governments (that do nothing to protect their rights but on the opposite contribute to their deprivation), and those who are willing to help them while not being directly responsible for former violations of their rights. So in this scenario higher costs may arise for the less responsible. This is the case when help comes from parties who neither directly violated duties to avoid (on level I) nor duties to protect (on level II), but have tertiary duties to help (on level III) because those who violated the first two types of duty are not willing to compensate for their violations. Under nonideal circumstances, the question is how much can be expected of those who are less responsible: “expecting some individuals endlessly to be willing to step into the breaches left by the failures of others to do their prior duties is wildly unfair. These lives would simply be consumed by (default) duties – this is precisely to ignore that for duty-bearers too, as much as for victims of rights violations, this is the only life they will have” (Shue 1996, p. 172). If a government fails to protect the basic rights of its citizens, there is a negative duty not to “strengthen the hand of the violators” (Shue 1996, p. 175). But Shue does not go as far as Unger to consider affluent individuals guilty of *harming by omission* when they do not provide for *subsistence*<sub>2</sub> on level I and do not create institutions that protect basic rights worldwide on level II. Now we see the space into which Pogge’s argument fits: if we are all causally involved in the persistence of poverty, one cannot be satisfied with Shue’s weak conception of default duties. Pogge provides us with stronger duties to compensate. But the failure we have to compensate for does not only seem to be a failure to fulfil negative but also positive duties. So is Pogge’s positive obligation simply redundant? This is not so because within a just global order we would have *different positive duties* that would be allocated by taxes and there would be *different (just) rules* that might reduce our benefits. Our positive obligations are less determinable. They might be interpreted as obligations to donate money in order to contribute to famine relief and they might be interpreted as obligations to political engagement and protest.

But as I have tried to show, Pogge’s idea to base positive obligations on the violation of a negative duty is not convincing. Although the empirical analysis that we are contributing to and being benefited by unjust institutions is quite true, it makes no sense to consider these effects as a violation of a negative duty. This is so because negative duties in any familiar version imply that they can be fulfilled by simple forbearance. And this is not true for Pogge’s negative duty. So it makes more sense to refer to the content of negative duty generated positive obligations directly as positive duties since we *can* – as Pogge

impressively points out – *do* something. And since these duties correspond to positive human rights under nonideal circumstances we have to think of a way to fulfil them although they are underdetermined. It might make sense to base these duties on profiting, even if it is passively. Being benefited by an unjust order might provide us with an argument that some parts of our wealth that go back to an *unjust* order are at least undeserved. Anyway in our world the global rich whose capacity Singer refers to are probably the same ones that are most benefited by the unjust global order. But here Pogge's underlying institutional solution that would guarantee a fair burden sharing is to defend against Singer's general (overcharging) individual duty to prevent evil whenever we can.

Eventually there is one thing we should not leave unmentioned. All the approaches under discussion base the individual duties that occur in a nonideal world on a morally responsible agent. This implies that we do not want to harm and want to help. So if Pogge shows us that we are harming, even if it is very indirectly, we have a strong reason to compensate. But those who are harming the most might do so actively and intentionally and therefore they will not be so keen to compensate. Before just institutions are in place it might be necessarily so that those who are less responsible for evil but more morally aware will bear higher costs in shaping a just institutional order. So it is understandable why the Samaritan may illustrate the direction of our moral intuitions although, as I have tried to show, his individual helping in an *emergency*<sub>1</sub> is not an adequate model for our duties according to global distributive justice that would be able to guarantee a just institutional solution for poverty as an *emergency*<sub>2</sub>.

## 6 Conclusion

Classical negative duty based approaches are not adequate to cope with the problem of world poverty since they are not able to consider it as a problem in itself. Corrective justice in a libertarian sense can only aim at a restitution of the status quo ante and it would be contingent whether thereby poverty would be reduced or even eradicated. Against libertarianism I defended the idea that there are positive duties corresponding to basic rights. Some of these positive duties are individual (like the Samaritan duty in *emergencies*<sub>1</sub>), some are institutional (like the duty to protect from *emergencies*<sub>2</sub> or the duty to establish a status quo that will eradicate poverty as an *emergency*<sub>2</sub>). Positive duty based approaches can consider poverty as a problem in itself that requires an *institutional* solution. There are *positive duties of justice* that could be legitimately allocated by a just global order since they are necessary to fulfil positive human rights in the sense of the right to *subsistence*<sub>2</sub>. I suppose that an adequate allocation would refer to contribution and capacity. A just global order would realize global distributive justice in the sense that negative and positive human rights were fulfilled. Under nonideal circumstances Pogge's approach gives us the best reason to work at in institutional solution. But as I have tried to show, it should not be considered as primarily based on a negative duty.

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