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POGGE'S INSTITUTIONAL COSMOPOLITANISM

by

SCOTT P. NEES

Under the Direction of Dr. Andrew Jason Cohen

ABSTRACT

In his landmark work *World Poverty and Human Rights*, Thomas Pogge offers a novel approach to understanding the nature and extent of the obligations that citizens of wealthy states owe to their less fortunate counterparts in poor states. Pogge argues that the wealthy have weighty obligations to aid the global poor because the wealthy coercively impose institutions on the poor that leave their human rights, particularly their subsistence rights avoidably unfulfilled. Thus, Pogge claims that the wealthy states' obligations to the poor are ultimately generated by their negative duties, that is, their duties to refrain from harming. In this essay, I argue that Pogge cannot successfully appeal to negative duties in way that would appease his critics because his notion of a negative duty is seriously indeterminate, so much so as to compromise his ability to plausibly appeal to it.

INDEX WORDS: Thomas Pogge, International law, Distributive justice, Human rights, Negative duties, Peter Singer

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2010

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Chapter 1.

INTRODUCTION

In his book *World Poverty and Human Rights*, Thomas Pogge develops a novel approach to understanding the nature and extent of the obligations that the citizens of the world's wealthiest states owe to their less fortunate counterparts in the world's poorest states.[1] Pogge's work has recently generated a significant amount of scholarly discussion on the topic of international distributive justice and human rights in large part because, if successful, Pogge's approach manages to accomplish what on the face of it appears to be a nearly impossible feat; to wit, the reconciliation of the views of those who, like Peter Singer, believe that we (citizens of wealthy states) have extensive moral obligations to assist the global poor with the libertarian view that we have such moral obligations only if we have more or less directly caused the impoverishment of the poor. What we might call the Singerian approach to moral obligation,[2] in other words, seems to occupy a place on the continuum of approaches to moral obligation that is diametrically opposed to that of the libertarians, and by all appearances, the two sides are at an impasse. The Singerian approach demands that we give a significant portion of our wealth to combat poverty because we are in a position to do so without thereby sacrificing much of moral significance, while the libertarian approach gives short shrift to such notions because they tend either to ignore completely or at least to downplay the moral significance of the causal relationships (or lack thereof) between us and the deprivations that afflict the world's poor. If successful, then, Pogge's project marks the fortunate marriage of an otherwise exceedingly odd couple.

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[1] For statistics pertaining to the extent of world poverty, see Pogge (2003, 6-11).

[2] It should be noted that Singer does not himself defend a particular conception of human rights. Rather, he defends a particular view of what our moral duties require of us that could inform certain (maximalist) conceptions of human rights.

Pogge's strategy is to introduce a new framework for understanding human rights[3] that--he hopes--will allow him plausibly to claim that the wealthy and powerful's participation in social institutions through, for instance, their political and economic activity, is sufficient to activate their negative duties to refrain from harming others (in this case, the global poor). His view, which he dubs "institutional cosmopolitanism," is motivated by the fact that global institutional structures (such as the global economy, international law, and, in general, the shared practices that determine how individual states behave as well as their relationships to one another[4]) are by and large shaped and sustained by decisions made by the wealthiest states of the world. Moreover, Pogge argues that these structures determine to a large extent whether or not the human rights, particularly the subsistence rights, of the bulk of the world's poor are fulfilled. Hence, if this is the case, then it follows that the wealthy states of the world are largely responsible for the massive famine and poverty-related deprivations that are the scourge of much of the world's population today.

Pogge argues that this state of affairs has important moral implications for those of us (average citizens) living in wealthy states. Indeed, he argues, the political activity, consumption

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[3] I discuss Pogge's understanding of human rights in greater detail below, but at this point it should suffice to point out that Pogge understands the concept of human rights in a fairly standard way that bears strong resemblance to the accounts of human rights outlined in Altman and Wellman (2009, 2-3) and discussed at greater length in Buchanan (2004, 118-125) and Shue (1996, 13-18). Roughly, the core elements that each of these accounts shares with Pogge's is that each defines human rights as a subset of moral rights that attaches to persons in virtue of their humanity (as opposed to, say, their nationality, sex, race, etc.), that recognizes that persons have certain needs and interests that must be protected and respected, and that generates weighty moral obligations on others. Pogge, for instance, writes, "A commitment to human rights involves one in recognizing that human persons with a past or potential future ability to engage in moral conversation and practice have certain basic needs, and that these needs give rise to weighty moral demands" (2008, 64). As I discuss below, Pogge's account of human rights differs from the others mentioned in its greater emphasis on the role that institutions play in securing the objects of human rights.

[4] Pogge's explicit focus on institutions is consonant with the Rawlsian understanding of justice as pertaining to the institutional framework, or "basic structure," of society (cf. Rawls, 2001, 10-12). Rawls defines the "basic structure" of a society as "the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time....The basic structure is the background social framework within which the activities of associations and individuals take place." Further, Rawls takes the basic structure to be the subject of justice in part because "the effects of the basic structure on citizens' aims, aspirations, and character, as well as on their opportunities and their ability to take advantage of them, are pervasive and present from the beginning of life" (2001, 10).

patterns, and the like of citizens living in wealthy states contribute--however indirectly--to the overall character of the global institutional order, and to the extent that this is the case, the wealthy are causally and morally implicated in the human rights deficiencies of poor states. Thus on Pogge's telling, our participation in the global institutional order is sufficient to activate our negative duties to refrain from harming others and also thereby generates obligations on our part to aid the poor and to promote institutional reform. Pogge's argumentative strategy, then, has the twin virtues of attempting to appease the libertarian-minded among us by tying our moral obligations to the poor to our own activity within social institutions, while simultaneously possessing obvious appeal for those who fall in the Singerian camp.

To what extent is Pogge's strategy successful? This is the question that I take up in this essay. In the first place, I attempt to show that Pogge's account of negative duties under institutional cosmopolitanism is subject to serious indeterminacy, so much so, I argue, that his invocation of negative duties in support of a fairly robust list of social and economic rights loses much of its normative appeal. Specifically, I argue that Pogge's view becomes indistinguishable from that of someone who affirms both negative *and* positive duties. The libertarian might then charge that Pogge has adopted a kind of Trojan Horse strategy that attempts to smuggle in positive duties in the guise of negative duties to refrain from harming through our participation in institutions. The outcome, on my view, is that Pogge does not accomplish what he initially sets out to do. He does not, in other words, show that we have strong duties to assist the global poor in a way that would be convincing to someone who did not already believe as much.

I have divided the body of this essay into four chapters. In the next chapter, I explain the differences between what Pogge calls "minimalist" (*i.e.*, libertarian) and "maximalist" views of the duties that rights--in particular, human rights--are thought to entail. In chapter three, I ex-

plain how Pogge offers his institutional view in response to the debate between minimalist and maximalist "interactional" views of the duties that human rights entail. Pogge, in short, hopes to redefine the way we think about human rights and with it the way that we think about how duties are generated by human rights violations. By offering his institutional cosmopolitanism as an alternative to the different interactional cosmopolitanisms, Pogge hopes thereby to sidestep the impasse in the debate between minimalist and maximalist conceptions. In chapter four, I lay out my own arguments and respond to objections, and I offer some concluding remarks in chapter five.

Chapter 2.

MINIMALIST AND MAXIMALIST CONCEPTIONS OF DUTIES

2.1 Introduction

I begin this chapter by laying out some of the basic conceptual machinery that Pogge employs in the course of his argument. The distinction I shall outline here and discuss at greater length below is between two different understandings of the duties that human rights entail. Pogge lays out the basic distinction when he writes:

> On one side are libertarians who require [the duties that rights entail] to be exclusively negative duties (to refrain from violating the right in question). Such a minimalist account disqualifies the 'human rights' to social security, work, rest, and leisure, an adequate standard of living, education, or culture...on the ground that they essentially entail positive duties. On the other side are maximalist accounts according to which all human rights entail both negative duties (to avoid depriving) and positive duties (to protect and to help). For the minimalist, human rights require only self-restraint. For the maximalist, they require efforts to fulfill everyone's human rights anywhere on earth..." (2008, 70).

On the one hand, then, are libertarian (what Pogge calls, and what I shall hereafter for convenience call, "minimalist") conceptions, according to which rights entail *negative* duties (that is, duties to refrain from harming others or from violating others' rights). On the minimalist view, our duties to protect and to assist others can be activated only insofar as we have violated their rights; if we have not violated X's rights, then we have no moral obligation to assist X in obtaining the objects of his or her rights. A minimalist conception, then, excludes what are often called social and economic rights (rights, for instance, to education, healthcare, a decent social minimum, and so forth) because such rights are thought to entail what are called *positive* duties (that is, duties to aid and assist), which are said to impose obligations on us regardless of whether or not we are directly implicated in any rights violations.

What Pogge calls "maximalist" conceptions hold that rights entail both negative and positive duties; that is, rights entail duties both to refrain from harming others as well as duties to protect and to assist others whose rights are subject to being violated. Importantly, the maximalist does not require that we directly harm others or violate their rights in order for us to have a moral obligation to them; our being in a position to aid another is sufficient to activate our obligations to assist those who are subject to rights violations.[5]

The overarching aim of Pogge's project, as we shall see, is to attempt to formulate a conception of human rights that, in some sense, squares the minimalist's insistence that human rights entail only negative duties with the maximalist's insistence that there are also social and economic human rights. If he is successful, Pogge hopes to show that citizens of wealthy states have strong moral obligations to assist their counterparts in impoverished states and that these obligations are grounded in a negative duty to refrain from harming others (in this case, the global poor). In what follows, I shall explain what I mean by all of this by discussing in greater detail the salient features of the debate between minimalist and maximalist views of the duties that hu-

[5] For a more thorough treatment of the distinction between positive and negative rights, see Shue (1996, 35-65). In particular, Shue's discussion brings to the fore some problems associated with making too sharp a distinction between positive and negative rights. The central problem is that securing negative rights (for instance, against violations of one's physical security) often requires a host of positive actions in addition to what Shue calls "negative refraining" (39). Thus, my negative right against being attacked requires that others refrain from attacking me but in addition may require positive provision for a police force and legal system to enforce my rights. As Shue notes: "The protection of 'negative rights' requires positive measures, and therefore their actual enjoyment requires positive measures. In any imperfect society enjoyment of a right will depend to some extent upon protection against those who do not choose not to violate it" (*ibid.*). The upshot, on Shue's account, is that to the extent that the differences between positive and negative rights is diminished in this way, "the distinctions between [negative] security rights and [positive] subsistence rights, though not entirely illusory, are too fine to support any weighty conclusions" (37). One might then ask what it is that distinguishes negative rights, as Shue describes them, given that they require positive measures. Shue provides an answer to this question when he writes, "The end-result of the positive preventative steps taken [to enforce negative rights] is of course an enforced refraining from violations, not the performance of any positive action. The central core of the right is a right that others not act in certain ways" (39). I believe that Shue's discussion here can be assimilated nicely to Pogge's minimalist / maximalist distinction and can help us make sense of some of Pogge's--what I take to be--loose formulations of the minimalist position (e.g., "[H]uman rights [on the minimalist's account] require only self restraint"). On my reading, we can understand the minimalist position as follows: the minimalist accepts that rights (1) entail negative duties (to refrain from violating others' rights) plus (2) require what Shue calls "positive preventative steps" taken to enforce the negative right in question, i.e., to prevent others from violating, for instance, X's right to physical security. The maximalist, then, would accept both (1) and (2) but would add that rights also entail positive duties (to aid and assist), which are conceptually distinct from and extend beyond the "positive preventative steps" that would be required to enforce X's negative rights.

man rights entail, and in the subsequent chapter, I go on to explain Pogge's position *vis-a-vis* the minimalist / maximalist debate.

2.2 Maximalist Conceptions

The maximalist approach proceeds by arguing that in addition to negative duties, rights also entail positive duties that require us to assist those whose rights have been violated or remain unfulfilled, though the rights in question may not necessarily have been directly violated by some other agent(s).[6] The maximalist then argues that such duties require us not only to refrain from directly harming others by depriving them of the objects of their rights, but also to assist them in obtaining the objects of their rights. One upshot of the maximalist understanding of human rights as also entailing positive duties is that we (those of us living in wealthy states) have strong moral obligations to assist those living in extreme poverty, regardless of whether or not we are directly implicated in their impoverishment. In order to discharge our positive duties toward those who are subject to human rights violations or whose human rights happen to remain unfulfilled, we must, for instance, donate a portion of our wealth to Oxfam, Feed the Children, or some other international charity organization. We must, in other words, actually do something to assist the global poor rather than, as the minimalist insists, merely refrain from causing them harm.

[6] A human right, for instance, to the basic necessities required to stay above the absolute poverty threshold may remain unfulfilled, though its being unfulfilled is not the result of some harm committed by an individual or collective agent. A very weak state, for instance, may lack the resources needed to ensure that its citizens' subsistence rights are adequately fulfilled. In such a case, there may be no agent who violates the right in question, though the right still remains unmet.

The maximalist approach to moral obligations[7] is typified by the work of Peter Singer, whose landmark essay, "Famine, Affluence, and Morality" (1972), did much to inaugurate the debate on the nature and extent of the obligations that the citizens of wealthy states owe to those of poor states. In the essay, Singer appeals to the following principle as justification for what amounts to a positive duty[8] to help the impoverished: "[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" (1972, 231). The argument that Singer develops employs this principle by claiming, first, that that extreme poverty is bad and, second, that it is well within the power of most citizens of wealthy states to assist those living in poverty without making a sacrifice of comparable importance. Given these two claims, it follows from Singer's principle that the wealthy ought to do something to alleviate extreme poverty.

To appreciate fully the intuition supporting Singer's principle, consider the following counterfactual scenario that Singer famously develops in order to marshall support for his argument: Suppose you are walking near a shallow pond, and you see a child floating in it face down. Singer contends that provided that wading into the pond to save the child poses no appreciable risk to your own well-being (*e.g.*, the risk of drowning), most of us would save the child, indeed, that most of us would think that we *ought* to save the child and, further, that we would be blameworthy in not doing so. In wading into the pond, says Singer, we may ruin our clothes, but this is not sufficiently important to outweigh the serious harm that would result should we choose to allow the child to drown. Accordingly, we have a moral obligation to save the child.

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[7] Once again, I do not mean to suggest that Singer offers a rights-based approach; rather his work typifies what Pogge calls a maximalist understanding of moral obligations. The point I wish to highlight is how a maximalist approach, such as Singer's, can be seen to support a more inclusive and demanding list of duties, which in turn could provide the normative core of a more robust, rights-based approach.

[8] I say "what amounts to" here because Singer does not explicitly invoke positive duties in the course of the essay, though he clearly subscribes to the view that there are such duties.

Singer goes on to draw an analogy between the drowning-child scenario and the situation that obtains between the well-off citizens of wealthy states and their less fortunate counterparts in poor states. Like someone happening upon a drowning child in a pond, the world's well-off are in a position to prevent grave harm from befalling others without thereby sacrificing anything of comparable moral worth. All of the morally-salient features, then, of the drowning-child counterfactual case are also present in the very real situation with respect to the wealthy and global poverty, and accordingly, on Singer's view, the same principle that motivates our intuitions with respect to the former case is also applicable to the latter: The world's wealthy ought to assist the world's poor because they can do so and can do so without sacrificing anything of comparable moral worth. By extension, if the wealthy do not assist the poor in some respect, they are failing to meet a weighty moral obligation, a failure that is comparable in its gravity to the moral failure of a passerby who allows a child to drown in a pond when he or she could have saved the child with minimal sacrifice.

Singer insists that the moral ramifications of inaction on the part of the wealthy in the face of widespread and severe world poverty are far-reaching; indeed, he claims that the consistent failure of the wealthy to discharge their positive duties to aid the poor is a symptom of a fundamentally flawed moral outlook. The implications of this view for the denizens of the wealthy states of the world are, accordingly, quite stark: "[T]he whole way we look at moral issues," Singer writes, "our whole moral-conceptual scheme--needs to be altered, and with it, the way of life that has come to be taken for granted in our society" (1972, 230). In the upshot, then, while Singer's concern in "Famine, Affluence, and Morality" is not explicitly to lay out and defend a conception of human rights, the line of argumentation that he pursues lends support to the claims

that there are stringent, positive duties to assist those living in extreme poverty and that these duties are largely unmet and, indeed, often ignored altogether.

2.3 Minimalist Conceptions

We can gather from the foregoing exposition of Peter Singer's line of argumentation that a maximalist account of human rights can be so construed as to provide support for a rather robust list of social and economic rights (*e.g.*, rights to the material goods required for subsistence, to education, to healthcare, and so forth) and hence for a correspondingly robust list of stringent duties imposed on those who are in a position to promote and protect the rights of the world's poor. The minimalist's account, by contrast, denies that the list of human rights is as inclusive as it is on the maximalist's telling because the former also denies that rights conceptually entail positive duties in the first place. Rather, the minimalist holds that rights in general--and, hence, human rights in particular--entail only negative duties (that is, duties to refrain from harming), and as such, the minimalist's list of rights by and large includes only rights that prohibit harmful interference by others, where "others" denotes both individual and collective entities (*e.g.*, governments, corporations). Hence, the social and economic rights that are the staple of maximalist accounts of human rights have no place in minimalist accounts.[9]

[9] On Allen Buchanan's reconstruction of the argument (2004, 195-201), two reasons are commonly offered in support of the minimalist's claim that rights entail only negative duties. First, the minimalist claims that we have a "duty of charity" to support others' welfare, though this duty is not a requirement of justice. Thus, we ought to aid others, but our charity is not something we owe to them and, strictly speaking, they have no right to it. Second, the minimalist claims that there are no positive rights because the corresponding duties of such rights do not impose "clear and definite" requirements on the obligors, which is, the minimalist argues, a necessary condition for something to be a right.

Chapter 3.

POGGE'S INSTITUTIONAL TURN

3.1 Introduction

In the previous chapter, I laid out two different views on the duties that human rights entail. Both minimalist and maximalist conceptions typically fall within the broader rubric of what Pogge calls "interactionalism" or, alternatively, "interactional cosmopolitanism."[10] Briefly, the latter view, says Pogge, "assigns direct responsibility for the fulfillment of human rights to other individual and collective agents," whereas institutional cosmopolitanism "assigns such responsibility to institutional schemes" (2008, 176). In this chapter, I begin by explaining how, on Pogge's view, interactionalism informs the minimalist / maximalist debate and, what is more, is the predominant paradigm for understanding human rights. I then explain what Pogge calls "institutional cosmopolitanism," and I outline his reasons for offering it as an alternative to the interactional understanding of human rights.

The move toward institutional cosmopolitanism allows Pogge to go beyond the dispute between minimalist and maximalist versions of interactionalism by arguing that human rights fulfillment is, first and foremost, a matter of how institutions are designed, specifically a matter of whether or not institutions are designed such that persons living within them have secure access to the objects of their human rights. Contra the minimalist interactional view, the institutional paradigm does not require that we have direct interaction with the world's poor in order to bear significant moral responsibility for their condition. Rather, on the institutional paradigm,

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[10] Pogge's view is "cosmopolitan" insofar as it includes three distinct elements: "First, *individualism*: the ultimate units of concern are *human beings*, or *persons*--rather than, say, family lines, tribes, ethnic, cultural or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, *universality*: the status of ultimate unit of concern attaches to *every* living human being *equally*--not merely to some subset, such as men, aristocrats, Aryans, whites, or Muslims. Third, *generality*: this special status has global force. Persons are ultimate units of concern *for everyone*--not only for their compatriots, fellow religionists, or suchlike" (2008, 175).

our participation in institutional structures that we share with the poor is sufficient to ground our responsibility to them and is thus sufficient to activate our negative duties to refrain from harming them in the event that these institutional structures cause them harm. In the remainder of the chapter, I go on to highlight Pogge's reasons for thinking that the global institutional order does actually cause harm to the poor.

3.2 Interactional Versus Institutional Paradigms

As noted above, the hallmark of the interactional paradigm[11] is that it "assigns direct responsibility for the fulfillment of human rights to other individual and collective agents." This seems to be, more or less, the typical way of understanding rights and the duties that they entail, and Pogge indicates as much when he points out that the concept of human rights "suggests an interactional understanding" (2008, 70). Thus, regardless of whether one falls into the minimalist or the maximalist camp, one accepts the interactional paradigm for understanding rights insofar as one believes that the responsibility for rights-fulfillment falls directly on individual and collective agents. For the minimalist, responsibility falls directly on individual and collective agents because the latter must exercise restraint in their interactions with others and must compensate others when they directly and negatively interfere with them. Likewise, maximalists believe that responsibility for evils such as global poverty falls directly on individual and collective agents, though maximalists are inclined to downplay the moral importance of the causal connections between agents and harms suffered by the poor.

Pogge's innovation lies largely in his rejection of the interactional paradigm in favor of institutional cosmopolitanism, which, as noted, claims that the responsibility for the fulfillment

[11] It should be noted that others (for instance, Buchanan; 2004, 85) use the term "interactional" in a different sense than Pogge. Buchanan actually refers to Pogge's approach in his 2004 as an interactional approach, but this usage seems to be at odds with how Pogge himself employs the term in his 2008.

or nonfulfillment of human rights falls directly on institutional schemes, in the first place, and individual and collective agents only indirectly, that is, only insofar as they contribute to the relevant institutional schemes. To understand precisely what it is that distinguishes institutional from interactional cosmopolitanism and how the two views yield different understandings of the duties that human rights entail, it is helpful here to understand that there are two distinct aspects of Pogge's institutional view that should be disaggregated: first, there is a definitional component that lays out how Pogge understands the concept of human rights, and second, there is a normative component, which generates prescriptions in light of his definition of human rights. I discuss each of these components in turn in the paragraphs to follow.

Pogge's understanding of the concept of human rights is perhaps most clearly and succinctly expressed in the following passage:

> By postulating a human right to X, one is asserting that any society or other social system, insofar as this is reasonably possible, ought to be so (re)organized that all its members have secure access to X, with 'security' always understood as especially sensitive to persons' risk of being denied X or deprived of X officially: by the government or its agents or officials ... Human rights, then, are moral claims on the organization of one's society (2008, 70).

We can see immediately from this passage the most salient respect in which an institutional conception of human rights differs from an interactional conception: on the institutional view, human rights are a function of how social institutions are organized. This way of understanding the concept of human rights differs from what we might call the traditional understanding of human rights, which includes no conceptual tie to institutions and which defines human rights as a species of moral rights that attaches to persons *qua* their humanity (that is, not in virtue of their race, gender, religious orientation, or nationality).[12] To say, for example, that I have a right to the ma-

[12] cf. Buchanan (2004, 118-190) for an example of what I have called the "traditional" way of defining the concept of human rights. Also, it should be noted that Pogge's definition does not deny that human rights attach to individuals *qua* their humanity; rather, his approach merely adds the additional proviso that the concept of human rights specifically must make reference to the institutional structures within which rights either are or are not fulfilled.

terial goods required for a minimal level of subsistence is, according to the institutional view, not merely to say that I have a right to these goods that attaches to me *qua* my humanity, but is to say that I have a right to live within a social system that provides me with secure access to the goods required for me meet the minimum subsistence threshold.[13]

The critical step in Pogge's argument comes about in virtue of the normative component of his view, which characterizes the duties that his view generates in light of the definitional component. The general idea is that since human rights are moral claims on the institutional organization of one's society, they generate moral responsibility on the part of anyone and everyone who in any way is causally responsible for sustaining the institutional structures within that society. The normative component, then, can be summed up in terms of a single principle: "Persons share responsibility for official disrespect of human rights [*i.e.*, human rights violations] within any coercive institutional order they are involved in upholding" (Pogge 2008, 70). Or, on an alternative formulation: "[O]ne ought not to cooperate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled without making reasonable efforts to protect its victims and to promote institutional reform" (2008, 176). Moral responsibility for the human rights record of a given society--and hence moral culpability, if human rights are unmet--arises indirectly, then, on the institutional view because the institutional view does not require that X directly violate Y's rights in order for X to be morally accountable for Y's rights being violated or unmet. Rather, the institutional view assigns moral responsibility for the human rights record of a society to anyone who participates in--and thereby helps to shape and sustain--the institutional structures of that society. Although X may not have directly violated Y's rights, if

[13] Pogge points out that this approach has two limitations: "First, its applicability is contingent, in that human rights are activated only through the emergence of social institutions. Where such institutions are lacking, human rights are merely latent, incapable of being either fulfilled or unfulfilled....Second, the cosmopolitanism of the institutional approach is contingent as well, in that the *global* moral force of human rights is activated only through the emergence of a *global* institutional order, which triggers obligations to promote any feasible reforms of this order that would enhance the fulfillment of human rights" (2008, 176-177).

both X and Y live within and participate in the same social institutions, institutions which *ex hypthosi* allow Y's human rights to remain unfulfilled, then X shares responsibility for Y's situation and must, on pain of violating a negative duty to refrain from harming Y, take measures to protect Y and to promote institutional reform such that Y has secure access to the objects of his or her rights.

To illustrate how interactional and institutional views support different understandings of how the duties entailed by human rights are triggered, Pogge considers how each view would interpret a right not to be enslaved (2008, 177-178). On the minimalist interactional view, a moral right against enslavement places constraints on individual behavior by prohibiting ownership in slaves. Supposing that I do not have obligations to the enslaved arising from a positive duty to aid and assist them, I remain in good standing, morally speaking, so long as I do not personally own any slaves, participate in slave trafficking, and the like. On the institutional view, on the other hand, the right against enslavement places constraints on legal and economic institutions, first, and on individual and collective agents only derivatively. An important difference with the interactional view arises here concerning the moral responsibility of those who do not themselves own slaves or otherwise participate in the institution of slavery in any direct sense. As Pogge describes this difference, "On the institutional view...those involved in upholding an institutional order that authorizes and enforces slavery--even those who own no slaves themselves--count as cooperating in the enslavement, in violation of a *negative* duty unless they make reasonable efforts toward protecting slaves or promoting institutional reform" (2008, 177, italics in the original).

A few words should be said here regarding the importance of institutional cosmopolitanism in light of Pogge's strategic objectives. It should be clear from the preceding paragraph that

institutional cosmopolitanism, if correct, succeeds in implicating anyone who participates in an institutional framework in which human rights are unmet in the violation of a negative duty to refrain from harming. The strategic importance of this move lies in the invocation of the negative duty. Pogge seems, on my reading, to be agnostic on the question of whether or not rights entail both negative and positive duties, but he quite explicitly formulates his argument so as to appeal to the minimalists (who understand rights as entailing only negative duties), while simultaneously giving the maximalists much of what they want (strong duties to aid the global poor, for instance). As such, the novelty of Pogge's institutional turn lies largely in how it allows him to invoke negative duties in a rather surprising way and to a rather surprising end. If successful, then, Pogge's project strikes a nice balance, what he calls an "intermediate position," between minimalist and maximalist understandings of human rights: "[Institutional cosmopolitanism] goes beyond simple libertarianism, according to which we may ignore harms that we do not directly bring about, without falling into a utilitarianism of rights, which commands us to take account of all relevant harms whatsoever, regardless of our causal relation to them" (2008, 177).

It remains to be seen, though, how Pogge's institutional cosmopolitanism can generate moral responsibilities derived solely from negative duties on the part of the wealthy for the plight of the world's poor. As suggested in the account given above, a necessary condition for Pogge's invocation of X's negative duty to refrain from harming Y by cooperating in a coercive institutional order that leaves Y's human rights unfulfilled is that both X and Y must live under a common set of coercively-imposed social institutions. An argument could be made to the effect that the global poor and the global rich tend to live in different states--and, hence, under different institutional schemes--and that the rich bear no responsibility for the poor's poverty because this poverty is a function of domestic factors that are indigenous to poor states and that the rich,

therefore, have had no hand in shaping. I take up Pogge's response to this sort of objection in the next section.

3.3 How the Rich Harm the Poor

As noted above, one might argue that my obligations to aid the poor cannot plausibly extend to those who live beyond the borders of the state in which I live, as the institutional structures of any given state are primarily determined by local, rather than global, factors, the primary factor being the government of the state in question. Since the governments of many of the world's poorest states are corrupt and tyrannous and sustain significant human rights deficits within their borders, responsibility for harms produced by poor states' institutional structures falls on the governments of the states in question, not on individuals living in other states.

While not denying the claim that much world poverty is engendered by corrupt governance in poor states, Pogge argues that the wealthy states still bear significant responsibility for the plight of the poor in those states because, he argues, wealthy states engage in practices that encourage and sustain corruption in the poorest states. In support of this claim he cites three main practices engaged in by wealthy countries that have a significant impact on the character of governance in poor countries (2008, 118-119). First, wealthy states provide diplomatic recognition--and all of the attendant privileges--to, in his words, "any group controlling a preponderance of the means of coercion" (118), regardless of how such groups come to power or exercise their power. Second, along with international recognition, wealthy states provide corrupt governments access to loans (what Pogge calls the "international borrowing privilege), and third, wealthy states allow corrupt governments control over how their country's natural resources are spent (the "international resource privilege"). Thus, rather than being blame-free, wealthy states frequently

engage in practices that encourage and sustain corrupt governments, and hence wealthy states are also implicated in the human rights deficits that are the result of such practices.[14]

[14] In addition, Pogge points to several ways in which the global economy is largely shaped by the wealthy, leaving the poor vulnerable to "exogenous shocks through decisions and policies made--without input from or concern for the poorer societies--in the US or EU (e.g. interest rates set by the US and EU central banks, speculation-induced moves on commodity and currency markets)" (2008, 122-123).

Chapter 4.

NEGATIVE DUTIES AND INSTITUTIONAL COSMOPOLITANISM

4.1 Introduction

In this chapter, I begin my criticism of Pogge's argument by raising several questions pertaining to the nature and extent of our negative duties under institutional cosmopolitanism. I begin with the observation that the interactional paradigm seems much better equipped in the way of theoretical resources to provide concrete answers to such questions as: "What exactly do my negative duties require of me?"; "How stringent are the duties entailed by my violation of someone's rights in particular cases?"; and, "When, if ever, are my negative duties fulfilled?" The reasons for this are relatively straightforward. If, for example, I violate your property rights by stealing something of yours, then the interactional paradigm yields fairly precise guidance on how I ought to compensate you.[15] I ought to honor my negative duty to you in this case by providing some kind of compensation to you that is roughly equivalent in value to that which I stole (plus, perhaps, some additional compensation for the trouble I have caused you). Likewise, the stringency of my obligation to you varies in proportion to the welfare setback I have caused by stealing from you. If, for instance, I steal a pencil from you, then my compensatory obligation is much less stringent than it would be had I stolen a coveted family heirloom of yours since the family heirloom, in this example, is something that you have a strong emotional attachment to and the loss of which would constitute a significant loss for both you and your family. Finally, the interactional paradigm allows me to have some sense of when my obligation has been met: in the case under consideration, I have fulfilled my obligation to you as soon as I have adequately repaid you for the harm I have brought about.

[15] I appeal here to what I take to be roughly the commonsensical way of understanding compensation for harms brought upon others.

The first claim that I shall defend in this section is that the interactional view of rights lends itself to a kind of precision and determinacy with respect to its requirements that is nearly absent under Pogge's institutional paradigm. Negative duties under institutional cosmopolitanism, I argue, are indeterminate insofar as they generate obligations that are compensatory (requiring that I compensate for harms I have produced), yet that are not tied in any clear way to my specific actions and decisions within the global institutional order. The result, I argue, is that it is unclear what I must do to satisfy my negative duties. A more demanding interpretation of Poggean negative duties might require that I give endlessly to meet my compensatory obligations, while a less demanding interpretation might require much less of me. This indeterminacy, I argue, ends up being a serious theoretical liability for institutional cosmopolitanism, particularly in light of Pogge's stated goal of providing an account of our obligations to the poor that appeals to human-rights minimalists, because it leaves Poggean negative duties looking a lot like positive duties in disguise (in a way to be specified below). Indeed, the argument I develop in this chapter claims that the thorough-going minimalist would find Pogge's invocation of negative duties unsatisfying in large part because Poggean "negative duties" blur, if not obliterate completely, how we normally understand the distinction between positive and negative duties, or so I argue.

4.2 The Indeterminacy of Poggean Negative Duties

The first part of the argument that I develop here points to a peculiarity with respect to how negative duties are conceived under institutional cosmopolitanism. The peculiarity in question derives from the fact that most people living under a given institutional scheme cannot discharge their negative duties toward others within the same institutional scheme by meeting the

primary requirement that negative duties demand that we meet, *viz*., the requirement to refrain from harming others. Thus, the standard way of discharging negative duties under institutional cosmopolitanism is by meeting the secondary requirement that in the event that we harm someone we must compensate them for the harm we have caused. The first premise of the argument can be laid out as follows:

(1) Negative duties require (i) that we avoid harming others (the Harm-Avoidance Requirement) and (ii) that if we do harm others, we must compensate them sufficiently for the harm we have produced (the Compensation Requirement).

I take this first premise to be an uncontroversial statement about what negative duties require. Pogge's formulation of the normative component of institutional cosmopolitanism explicitly employs this two-part understanding of negative duties. Recall the normative principle: "[O]ne ought not to cooperate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled *without making reasonable efforts to protect its victims and to promote institutional reform*" (2008, 176, italics added). Pogge's formulation of the normative component, then, essentially includes the two parts that I have included in the first premise of my argument. The first, non-italicized, portion corresponds to what I call the Harm-Avoidance Requirement of negative duties because it asks us to avoid harming others through our participation in coercively-imposed institutional structures that leave others' human rights unfulfilled. The second, italicized, portion corresponds to what I call the Compensation Requirement of negative duties because it asks us to protect the relevant victims of whatever institutional order we share with them and to promote institutional reform, requirements that we presumably must try to meet when the Harm-Avoidance Requirement cannot be fulfilled.

I take the second premise of the argument to be no more controversial than the first. It runs as follows:

(2) Most people cannot meet the Harm-Avoidance Requirement with respect to harms

produced by an institutional order of which they are part.

This premise captures the idea that most of us are far-removed (causally) from the negative outcomes produced by the institutional structures in which we partake and thus that most of us cannot avoid harming others through our participation in social institutions.[16] This reflects the obvious point that the outcomes produced by an institution that I cooperate in are not tied specifically to my actions, my decisions, and my patterns of behavior in a way that would allow me to have control over these outcomes. There are, of course, some noteworthy exceptions to this rule with respect to powerful collective agents who can through their actions wield tremendous influence over the character of the global institutional order. The International Monetary Fund, for example, might, as a matter of policy, choose to implement Structural Adjustment Package A over Structural Adjustment Package B in the developing world, which in turn might alter outcomes significantly in the countries in which Package A is introduced. But, this is surely not the case with the rest of us non-powerful, individual agents, whose actions, taken individually, have little-to-no net effect on the institutional order and the outcomes it produces. Accordingly, most of us cannot, under institutional cosmopolitanism, fulfill the Harm-Avoidance requirement that is the primary requirement imposed by our negative duty to refrain from harming others.

If the first two premises of the argument I have laid out thus far are true, then it follows straightforwardly that

(3) Therefore, most people must discharge their negative duties under institutional cosmopolitanism by meeting the Compensation Requirement.

The implication here is that according to the normative component of institutional cosmopolitanism, most of us must fulfill our negative duties to the global poor by meeting the Compensation

[16] Thanks to A.J. Cohen for pointing out that we are not necessarily far-removed (geographically, at least) from the effects of some institutional order in which we participate. My tax dollars, for instance, may go toward some local housing project that requires the demolition of low-income housing, thereby producing harm for the poor at a much more local level. I believe, though, that my point still stands, that even with respect to local effects of institutions in which I am a participant, these effects are still often divorced from any particular decision I may have made.

Requirement to aid and protect the poor and to promote institutional reform. We can see, then, that institutional cosmopolitanism derives much of its normative force by exploiting this secondary feature of negative duties. In other words, institutional cosmopolitanism is able to generate support for the view that we (individuals living in wealthy states) owe much to the global poor in the way of aid and assistance precisely because we cannot avoid harming them through the institutions that we collectively and coercively impose on them. In this way, institutional cosmopolitanism is able to satisfy the human-rights maximalists by generating more or less the same list of normative demands on the wealthy that they seek to justify through their ascription of positive duties, though, of course, Pogge's institutional cosmopolitanism does not attempt to defend positive duties.

The foregoing paragraph might raise some interesting questions regarding what the Compensation Requirement demands of us under institutional cosmopolitanism, and the fourth premise of my argument attempts roughly to articulate this:

(4) The Compensation Requirement does not say that we must compensate in kind for harms we have produced, but it does strongly suggest that whatever compensation we provide to those whom we have harmed be adequate to or in some sense proportionate to the harm committed.

Again, I understand this premise as attempting to make a rough, though uncontroversial indication of what compensation for harms we have committed requires of us. I would even go so far as to say that the intuition embodied in premise four is something of a fixture of our moral reasoning about compensation for harms: if I produce X amount of harm to some person(s), then the compensation I provide for having brought about X ought to be to roughly equal to or greater than X (on some reasonable metric). So, if I steal your pencil, then, all things being equal, I ought to compensate you by providing you with something of equal or greater value than the pencil that I have stolen. Likewise, if I steal your car, then I ought to atone for my theft by

providing you with another car or, perhaps, something of equal or greater value than the car I have stolen. I should mention here that many examples of harms do not admit themselves so readily to an overly-simplistic calculus that allows us to determine *precisely* what constitutes adequate or proportionate compensation. How, for example, does one determine proportionality or adequacy with respect to compensation for intangible harms such as broken promises or offensive and insulting behavior, or for that matter, how does one determine proportionality with respect to certain tangible harms such as rape or kid-napping?[17] I submit, though, that the rough intuitive notion that compensation must be in some sense adequate to the harm is a sound one that finds its way into our moral reasoning in any number of cases.

In addition, we might also add a corollary to premise four:

(4a) Once I have adequately compensated for some harm I have produced, I have met the demands of the Compensation Requirement (and hence have discharged my negative duty to the person(s) I have harmed).

This point is important because it clearly defines the extent of our obligations to atone for harms we have brought about. (4a), in other words, is one way of stating an intuitive moral principle that we can apply to specific cases in order to determine when our compensatory obligations have been satisfied. If X commits some harm to Y, then X's commitment to Y according to the Compensation Requirement is not indefinite or open-ended, but rather ends once X has adequately met the demands of the Compensation Requirement.

In (4) and (4a), I have highlighted what I take to be some of the "normal" or intuitive ways that we tend to think about the how to satisfy the Compensation Requirement in order to point out some further peculiarities with respect to how negative duties are conceived under institutional cosmopolitanism, which leads me to my fifth premise:

(5) Determining whether or not one has satisfied the Compensation Requirement under

[17] Thanks to A.J. Cohen for the latter suggestion.

Poggean institutional cosmopolitanism is practically impossible.

By this, I have two specific points in mind. First, institutional cosmopolitanism does not comport well with (4), which says, once again, that my compensation for some harm I have perpetrated ought to be adequate to or in some sense proportionate to the harm that I have committed. The reason for this is that, practically speaking, there is no way for me plausibly to match up my contribution to some harm-causing portion of the global institutional order with some definite harm caused at some other part of the institutional order. There is, accordingly, no metric that would allow me to determine the extent of my compensatory obligations in any straightforward way. Likewise, with respect to (4a), there is no practical way for me to determine when the term of my compensatory obligation has expired; under institutional cosmopolitanism, I have unending obligations to the global poor so long as they exist and partake in the same harm-causing institutional order that I play a part in shaping and sustaining.

Premises three through five of my argument lead to the following conclusion about negative duties as conceived under institutional cosmopolitanism:

(6) Therefore, the negative duty, as conceived under institutional cosmopolitanism, is subject to serious indeterminacy with respect to what it requires of most of us.

In anticipation of a potential objection here, I should note that this conclusion does nothing to damage Pogge's argument by itself, as Pogge is no doubt aware that institutional cosmopolitanism generates indeterminate duties. The point I want to take note of at this part in the argument is the extent of the indeterminacy. Pogge's institutional cosmopolitanism gives almost no helpful guidance whatsoever that could allow us to determine when the Compensation Requirement of our negative duties to the world's poor has been satisfied. Is my voting for the right political candidate and purchasing fair-trade coffee sufficient for me to remain in good standing with respect to my negative duties? Or, must I give endlessly to Oxfam and perpetually lobby my friends,

neighbors, and Congressional representatives in order to bring about reform? Presumably, both of these ways of approaching the Compensation Requirement would be unsatisfactory to Pogge, the former because it demands too little, and the latter because it demands too much. The Poggean optimum, then, would likely fall somewhere in the middle, but without further specification as to what negative duties require under institutional cosmopolitanism, we have no way of knowing. Institutional cosmopolitanism, as Pogge describes it, is conceptually compatible both with giving endlessly and with giving little. If my fifth premise is correct (and, hence, if we have no clear metric for determining when the Compensation Requirement is satisfied), then we have no way of knowing which pole we should aim for unless Pogge can give more guidance on this point.

Before I proceed to the final premise of my argument, I shall briefly rehearse some of the points that have been made thus far. To begin, recall that Pogge's objective is to offer a conception of human rights that squares the minimalist's insistence that rights entail only negative duties with the maximalist view that we have stringent obligations to aid the poor. Institutional cosmopolitanism, hence, attempts to provide support for the maximalist's list of social and economic rights without thereby affirming positive duties, and it hopes to do so in a way that will appeal to the rights minimalist. My aim in this paper is to deny the latter claim, *viz*., that Pogge's view will appeal to the minimalist in the way that he wants it to. In order to defend this claim, though, some conceptual points are in order.

First, Poggean institutional cosmopolitanism resists the claim that we have obligations to the poor that are generated by positive rights. I want to claim, though, that the institutional view itself is conceptually compatible with the claim that we have both positive and negative duties. Thus, we could make a distinction between between what we might call a minimalist (*i.e.*, Pog-

gean) institutional cosmopolitanism and a maximalist institutional cosmopolitanism. The former view is that which I have been discussing all along; it claims only that we have negative duties and that these duties are sufficient to generate substantial obligations on the part of the wealthy toward the poor. The latter, maximalist, conception of institutional cosmopolitanism might assert that we have both positive and negative duties. In this case, we would have negative duties toward the poor generated by our participation in a coercively-imposed institutional scheme that leaves their human rights avoidably unfulfilled, but in addition to this, we would have positive duties toward the poor that are generated by our being in a position to aid and assist them without thereby sacrificing anything of great moral significance (we might call this version "institutional cosmopolitanism *a la* Singer").

With respect to the argument that I have been developing up to this point, the distinction that I have drawn between minimalist and maximalist conceptions of institutional cosmopolitanism becomes relevant because I want, ultimately, to claim that

(7) If Pogge's account of institutional cosmopolitanism is subject to serious indeterminacy with respect to what it requires of us (in other words, if my premise six is true), then we cannot determine whether Pogge's view represents a maximalist or a minimalist version of institutional cosmopolitanism.

The point I hope to highlight here is that given the indeterminate character of Poggean negative duties (their open-endedness, their compensatory nature and consequent underdetermination, *etc.*), it becomes impossible to draw any lines between Poggean institutional cosmopolitanism and a normatively beefed-up, maximalist institutional cosmopolitanism. Without further specification as to the extent of our negative duties under Poggean institutional cosmopolitanism, it seems that the class of negative duties can swell to include any number of duties that extend implausibly beyond what we would normally think of as negative duties. Without some criterion for specifying the extent of our negative duties, then, it makes little difference whether we talk of

Pogge's institutional cosmopolitanism as being a minimalist view, as Pogge intends his view to be understood, or a maximalist view, as both views would seem to generate similar--if not identical--obligations.

The upshot of this argument is that I do not think that a thoroughgoing minimalist would be satisfied with Pogge's invocation of the negative duty in the context of his institutional cosmopolitanism. While I do not deny that Pogge's argument highlights an important way in which the world's wealthy contribute to the poverty of the world's poor, I think that he stretches the notion of a negative duty nearly to the breaking point.[18]

4.3 Making Negative Duties Concrete

Up to this point, I have not denied the main empirical premise of Pogge's argument, *viz.*, that global institutions harm the poor,[19] but I have argued that Pogge's account of the obligations that our negative duties toward the poor impose is unsatisfactory, given its aim of appealing to minimalists. In this section, I offer some positive suggestions as to how Pogge might circumvent

[18] There is another, slightly different, way of thinking of the matter. Consider the following quote, in which Pogge distinguishes his view from minimalist and maximalist interactional views: "We see...how the institutional approach makes available an appealing intermediate position between two interactional extremes: it goes beyond simple libertarianism, according to which we may ignore harms that we do not directly bring about, without falling into a utilitarianism of rights, which commands us to take account of all relevant harms whatsoever, regardless of our causal relation to them" (2008, 177). We might begin by asking ourselves what exactly Pogge means when he calls his view an "intermediate position." A natural way of interpreting this passage would suggest that Pogge's view is "intermediate" in terms of the type of causal relation required to ground some duty. On the minimalist account, there must be a more or less direct connection between X's action and some harm produced by X's action in order to ground X's duty to atone for the harm committed. On the maximalist account, no such direct causal connection is needed; X has a (positive) duty to aid and protect others, regardless of X's causal relation to them. Pogge's view, then, would be intermediate insofar as it does not require a *direct* causal link between X and some harm produced to ground X's duties, yet it does not seek to abandon or overcome the need for a causal link altogether. Rather, Pogge's view is intermediate between the two views because it allows that *indirect* causal links (of the sort that come about through X's participation in social institutions) are sufficient to ground X's (negative) duties to those who are harmed by the institutional structures in which X participates. The worry for the minimalist, then, might be that in claiming that indirect (and, indeed, often weak) causal links can ground duties, Pogge may have gone too far in severing the causal tie between X's actions and the harms produced as a result of these actions, as one can potentially trace any harm produced by the global order back to X's activity by invoking indirect causal links. Thus, Pogge's view could be seen to approach the maximalist's view insofar as very indirect causal links begin to look like no causal links at all, and I suppose this would arouse suspicion amongst minimalists.

[19] For a criticism that argues that the global institutional order has not harmed the poor, see Risse (2001).

the problem I have raised. The central point of the strategy that I outline here is that at the very least Pogge needs to specify the requirements of negative duties under institutional cosmopolitanism more concretely in order to appease the minimalist critic. One way of doing this, I suggest, is by introducing what I shall call the Least Harm Principle. The Least Harm Principle states that when some agent A is faced with a range of possible courses of action (say, X, Y, and Z) where each prospective action will produce some harm and where A *must* choose either X, Y or Z, A has a moral obligation to choose the course of action that results in the least overall amount of harm. For example, suppose I have a choice between buying product X and product Y and that I must choose between X and Y. Suppose further that X is produced in a country with lax environmental laws and that X's production generates a significant amount of pollution, which in turn results in a net welfare reduction for the citizens of the country in which X is produced. The manufacture of Y, on the other hand, does not produce widespread negative externalities, though it does cause some lesser amount of harm. In this case, the Least Harm Principle specifies that I must purchase Y, supposing that I must purchase either X or Y.

The import of the Least Harm Principle is in part that it seems to capture the situation that most ordinary citizens face with respect to their interaction with the global institutional order. The institutional structures in which we participate make available a finite range of choices across a number of different domains (*e.g.*, the economic and political domains), and it is often the case that in our economic and political lives we must choose from among the options made available to us where any given choice will result in some harm elsewhere in the institutional order. It seems plausible to say that if I cannot avoid choosing at least one of the options in question, I am going some way toward honoring my negative duties in choosing the least harmful option (and thereby satisfying the Least Harm Principle). Indeed, the argument I hope to develop

in what follows claims that satisfying the Least Harm Principle with respect to my interaction with the global institutional order through, for instance, my consumption patterns and political activity is often sufficient for meeting my negative duty towards the global poor.[20]

My understanding of how satisfying the Least Harm Principle can be thought also to satisfy our negative duties under Pogge's institutional paradigm draws its motivation in part from an objection laid out by Allen Buchanan against Pogge. Buchanan's concern is that our participation in the global institutional order is largely involuntary and that this makes it difficult for Pogge to claim that we are morally responsible for our participation. Buchanan writes, "[T]o the extent that the existing global basic structure is 'the only game in town' it may be misleading to say that the participation of ordinary people in it is voluntary; yet it would seem that voluntariness is a necessary condition for responsibility" (2004, 95). Buchanan's charge here seems to oversimplify the matter. Given that opting out of the global institutional order is not a viable option for most, there is a sense in which our participation in it is not voluntary. However, there is still much room for choice with respect to the various different ways in which we interact with the global order, and hence there is a sense in which though our participation as a whole is involuntary, we are left with a significant degree of voluntariness with respect to the choices we make within the context of our participation. Though I may not voluntarily participate in the global institutional order as it currently stands, my choice, for example, to purchase stocks in Goldman Sachs and Blackwater is still undertaken voluntarily. Thus, I hope here to stake out a middle ground between Buchanan's view, according to which our participation in the global institutional

[20] The obvious objection here is that in committing the least harm, I am still committing some harm and therefore am still in violation of a negative duty. My response, as will hopefully become clear, is that some--indeed many--choices we make in our participation in the global institutional order are not really choices at all in any robust sense. For instance, I cannot really choose not to eat in a situation in which any food item I can choose between will result in some harm elsewhere. The point I hope to make is that in such a case I am not morally accountable for purchasing the food that I need (because I cannot go without food), but that I can be held morally accountable for purchasing Food A over Food B, all things considered, because the choice between A and B is a genuine choice, whereas the choice between purchasing food and starving is not.

order is not sufficient to ground our moral responsibility for its harmful effects, and Pogge's view, according to which we are responsible for the effects of the global order notwithstanding the choices we make as consumers, voters, etc.

As a kind of intuition pump for the point I am making, consider the following counterfactual scenario. Suppose you are starving--on the brink of death--and you are locked in a room with a computer that has two buttons (say, Button A and Button B). You are told by your captors that if you push Button A, you will receive enough rice to keep you alive for some time but that in pushing Button A you will also cause x amount of harm to some person(s). If you push Button B, you will receive a delicious three-course dinner, but you will also be causing x + y amount of harm to some person(s). The points I would like to make are that (a) you are not in violation of a negative duty in pushing Button A (because you do not really have a choice, as it is slow starvation leading to a painful death otherwise) but that (b) you are in violation of a negative duty in pushing Button B. Given the circumstances, the real choice here is not between not pushing either of the buttons and pushing one of the buttons; the real choice is between pushing buttons A and B.

How, then, can satisfying the Least Harm Principle be seen as sufficient to satisfy our negative duties? The idea here is a relatively simple one that draws on the analogy between pushing Button A over Button B and my participation in the global institutional order through my economic and political activity. There are indeed many aspects of our participation in the global institutional order that are significantly nonvoluntary: I cannot go without food, clothing, and shelter, and accordingly I must participate in institutions in order to obtain these things. Yet in meeting the needs that necessitate my participation in the global order in the first place, I can often exercise significant discretion as to how I will meet those needs. I can buy Brand A rather

than Brand B, I can vote for Politician X over Politician Y, and so forth. The rough idea here is that though I cannot be held morally responsible for my participation *per se* in the global institutional order (in cases in which my participation is nonvoluntary), I am responsible for the choices that I make within the context of my participation. The upshot of the view is that in a significant number of cases I can meet my negative duties under institutional cosmopolitanism simply by fulfilling the Least Harm Principle with respect to the choices I make as a participant in the global order because my nonparticipation is not a viable option (and hence I cannot be held responsible for participating).

The interpretation I offer of negative duties under institutional cosmopolitanism is surely much more modest in what it demands of us than anything that Pogge has in mind. However, it has the virtue of tying my obligations to the global poor to the choices I make within the small corner of the global institutional order that I happen to occupy, and it can go some way toward defining the extent and the duration of my negative duties without thereby running afoul of the rights minimalist.

Chapter 5.

CONCLUSION

In this thesis, I have attempted to call attention to one respect in which I believe that Pogge's institutional cosmopolitanism falls short, given its aim of providing a plausible account of the duties that human rights entail. The argument I have developed claims that the conception of negative duties under institutional cosmopolitanism suffers from a serious indeterminacy such that the minimalists that Pogge hopes to appeal to would be dissatisfied with Pogge's invocation of negative duties in order to support a robust list of stringent social and economic rights. I have concluded the paper by offering a more modest interpretation of negative duties under institutional cosmopolitanism according to which ordinary citizens in wealthy states are not in violation of their negative duties with respect to certain aspects of their participation in the global institutional order.

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