

## The allocation of anti-poverty rights duties

Our rights, but whose duties?

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Theorists must find more to say than that it is all complicated and that a lot of people, including total strangers, bear a lot of duties towards each other.

Henry Shue, *Basic Rights*<sup>1</sup>

### 29.1 Introduction

Recent years have seen a greater interest for the 'supply-side' of human rights, i.e. for the duties correlative to human rights and their duty-bearers.<sup>2</sup> This is important as, even though human rights have justificatory priority over duties, their existence is tied to their ability to generate not only feasible but also fair and more generally justifiable duties.<sup>3</sup> Rights imply duties or obligations,<sup>4</sup> and because an 'ought' implies a 'can', rights imply feasible duties. As a result, understanding human rights and allegedly recognizing their existence require, first of all, identifying their corresponding duties and duty-bearers and, then, specifying how the

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1 2nd edn. (Princeton University Press, 1996), p. 157.

2 See, e.g., on that expression O. O'Neill, 'The Dark Side of Human Rights', *Int'l Aff.*, 81(2) (2005), 427–39. See also J. Griffin, *On Human Rights* (Oxford University Press, 2008), p. 96.

3 See J. Tasioulas, 'The Moral Reality of Human Rights' in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (New York: Oxford University Press, 2007), pp. 75–101.

4 I will be using 'duties' and 'obligations' interchangeably in this chapter.

former are allocated to the latter.<sup>5</sup> Besides its theoretical importance, clarifying the allocation of human rights duties also presents practical advantages as it focuses on implementation and openly addresses the tragic priorities once faced by all human rights practitioners and governments in practice.<sup>6</sup> This is crucial in the case of anti-poverty<sup>7</sup> or subsistence rights (i.e. rights that protect basic or urgent interests of people, such as the rights to food, shelter and health in particular<sup>8</sup>) as poverty and the scarcity of resources enhance the difficulty of the specification of feasible and fair duties and of their fair allocation to the many potential duty-bearers.

Shue's 1980 seminal book on *Basic Rights* was the first one to address the importance of the specification and allocation of human rights duties.<sup>9</sup> The response to that book among global justice theorists has been important and the responsibility to deliver on human rights has provided a new focus in philosophical writings about global justice.<sup>10</sup> Curiously, however, and despite greater awareness of the importance of human rights duties and openly addressing the issue, most human rights theorists to date have not made the duty question central to their accounts of human rights.<sup>11</sup> As a result, they have not delved into the intricacies of

5 See T. Pogge, 'Human Rights and Human Responsibilities' in A. Kuper (ed.), *Global Responsibilities: Securing Rights by Defining Obligations* (New York: Routledge, 2005), pp. 3–35.

6 See J. W. Nickel, 'How Human Rights Generate Duties to Protect and Provide', *Hum. Rts. Q.*, 15(1) (1993), 77, 85–6.

7 The expression is borrowed from C. R. Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009), p. 161.

8 See, e.g. H. Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2nd edn. (Princeton University Press, 1996); D. Miller, *National Responsibility and Global Justice* (Oxford University Press, 2007); D. Miller, 'The Responsibility to Protect Human Rights' in L. H. Meyer (ed.), *Legitimacy, Justice and Public International Law* (New York: Cambridge University Press, 2009), pp. 232–51; Beitz, *The Idea of Human Rights*; A. Kuper, 'Introduction: The Responsibilities Approach to Human Rights' in Kuper, *Global Responsibilities*; and Pogge, 'Human Rights and Human Responsibilities'.

9 Shue, *Basic Rights*. See also H. Shue, 'Mediating Duties', *Ethics*, 98 (1988), 687–704.

10 See, e.g. D. K. Chatterjee (ed.), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge University Press, 2004); Pogge, 'Human Rights and Human Responsibilities'; Kuper, 'Introduction', pp. xxi–ii; Miller, *National Responsibility*; T. Pogge, 'Severe Poverty as a Human Rights Violation' in Pogge, *Freedom from Poverty as a Human Right*, pp. 11–53; C. R. Beitz and R. E. Goodin, 'Introduction: Basic Rights and Beyond' in Beitz and Goodin (eds.), *Global Basic Rights* (Oxford University Press, 2009), pp. 1–24; and Miller, *National Responsibility*.

11 There are exceptions, of course: e.g. Nickel, 'Human Rights'; J. W. Nickel, *Making Sense of Human Rights*, 2nd edn. (Malden, MA: Blackwell, 2007), pp. 38–41; and Beitz, *The Idea of Human Rights*, pp. 109–10, 113–17, 122–5 and 160–74.



identifying duty-bearers and justifying these determinations, allocating duties among many duty-bearers of different types (individuals, states, international organizations and/or non-state actors) and parsing the relationship between those human rights duties *stricto sensu* and other responsibilities for human rights and their international bearers.<sup>12</sup>

There are many explanations for that neglect. One of them is the sheer complexity of the subject in moral theory. Questions of moral responsibility and their subjects, but also the question of the 'moral division of labour'<sup>13</sup> between them are among the most controversial ones in moral philosophy.<sup>14</sup> As a result, much of the progress one may make on the topic is often looked down upon as amounting to 'strategic' or 'pragmatic' thinking at the most.<sup>15</sup> A second reason for the neglect of the topic is its moral but also practical and legal indeterminacy. Issues pertaining to the allocation of burdens to different duty-bearers at any given time and in the long run are radically indeterminate morally, but they also give rise to practical indeterminacies related in particular to questions of cost and resources.<sup>16</sup> Furthermore, the answers given by international law to some of those issues remain indeterminate. It suffices here to mention the uncertainties about the exact content and bearer(s) of the concept of 'responsibility to protect'<sup>17</sup> adopted by the United Nations in 2005 or of the 'corporate social responsibility' for human rights,<sup>18</sup> and

12 See, e.g. Griffin, *On Human Rights*, pp. 96–110; C. Wellman, *The Moral Dimensions of Human Rights* (Oxford University Press, 2011), pp. 24–5; and J. Tasioulas, *Human Rights – From Morality to Law* (Oxford University Press, forthcoming 2012).

13 See Shue, *Basic Rights* (on the notion of 'complex division of labour').

14 See Nickel, 'Human Rights', p. 79; D. Miller, 'Distributing Responsibilities', *J. of Pol. Phil.*, 9 (2001), 453–71; Miller, *National Responsibility*; and Kuper, 'Introduction'.

15 See, e.g. Tasioulas, *Human Rights*, by reference to Shue, *Basic Rights*, on strategic or pragmatic thinking on the question.

16 See A. Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (New York: Oxford University Press, 2004), pp. 180 et seq.

17 See, e.g. S. Szurek, 'La responsabilité de protéger, nature de l'obligation et responsabilité internationale' in Société française pour le droit international (SFDI) (ed.), *La responsabilité de protéger (Colloque de Nanterre)* (Paris: Pedone, 2008), pp. 91–134; A. Peters, 'The Security Council's Responsibility to Protect', *Int'l Organisations L. Rev.*, 8 (2011), 1–40; A. Peters, 'The Responsibility to Protect: Spelling out the Hard Legal Consequences for the UN Security Council and its Members' in U. Fastenrath et al. (eds.), *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (Oxford University Press, 2011), pp. 297–325; and P. Hilpold, 'From Humanitarian Intervention to Responsibility to Protect: Making Utopia True?' in Fastenrath et al., *From Bilateralism to Community Interest*, pp. 462–76.

18 See, e.g. S. R. Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility', *Yale L. J.*, 111 (2001), 443–545; and P. Alston, 'The "Not-a-Cat" Syndrome: Can the

about the human rights responsibilities of the United Nations<sup>19</sup> or even of private individual or collective actors.<sup>20</sup>

One may also stress, finally, the conflation of human rights duties with other moral responsibilities, including global justice responsibilities and in particular responsibilities to remedy severe violations of basic rights such as subsistence or anti-poverty rights.<sup>21</sup> Straddling those very different issues has impoverished accounts of human rights duties by focusing only on certain duties (to protect and provide) and not on others and their interaction, but also only on certain (basic) rights and not on others and their interaction. More generally, this conflation of responsibilities under global justice and human rights duties obliterates the line between the human rights duties that are owed to human right-holders and the other sorts of moral responsibilities for human rights that are not owed to them.<sup>22</sup> It is as if by wanting so much to focus on the supply-side of human rights, one had fallen prey to the reverse danger of forgetting the directed nature of human rights duties and the existence of right-holders in the first place.

As a result, this is not a chapter about diffused, abstract, discretionary or imperfect moral reasons or duties of charity, solidarity or global

International Human Rights Regime Accommodate Non-State Actors' in Alston (ed.), *Non-State Actors and Human Rights: Collected Courses of the Academy of European Law* (New York: Oxford University Press, 2005), pp. 3–37.

19 See, e.g. F. Mégret and F. Hoffmann, 'The UN as Human Rights Violator? Some Reflections on the United Nations Changing Human Rights Responsibility', *Hum. Rts. Q.*, 25 (2003), 314–42.

20 See, e.g. M. Hakimi, 'State Bystander Responsibility', *Eur. J. Int'l L.*, 21(2) (2010), 341–85.

21 See, e.g. the essays in Pogge, *Freedom from Poverty as a Human Right* or Kuper, *Global Responsibilities*. See also the treatment of the question within the section on anti-poverty rights in Beitz, *The Idea of Human Rights*, pp. 160–74.

22 See, e.g. Kuper, 'Introduction', p. xxii; Pogge, 'Human Rights and Human Responsibilities'; Pogge, 'Severe Poverty'; S. Caney, 'Global Poverty and Human Rights: The Case for Positive Duties' in Pogge, *Freedom from Poverty as a Human Right*, pp. 275–302; L. Wenar, 'Responsibility and Severe Poverty' in Pogge, *Freedom from Poverty as a Human Right*, pp. 255–74; and L. Wenar, 'Human Rights and Equality in the Work of David Miller' in H. De Schutter and R. Tinnevelt (eds.), *Nationalism and Global Justice: David Miller and His Critics* (London/New York: Routledge, 2010), pp. 31–41. Those authors rightly understand that recasting poverty responsibilities in terms of human rights takes them away from beneficence and charity, but they do not distinguish sufficiently between duties of justice and duties correlative to individual rights that all have. There are exceptions, however: e.g. Beitz, *The Idea of Human Rights*, who distinguishes between human rights duties of states and *pro tanto* reasons to protect human rights of other states and international actors; and Miller, 'The Responsibility to Protect Human Rights', who refers to international responsibilities to protect human rights to distinguish them from human rights duties.



justice,<sup>23</sup> or about other kinds of moral responsibilities one may have to prevent or remedy injustices, including for remedying human rights violations. I will be focusing on moral human rights duties *qua* individualized, specific, non-discretionary and perfect moral duties owed to rights-holders. Nor is this a chapter about international legal duties corresponding to human rights law or other forms of international legal responsibilities, including the international community's responsibility to protect and to react coercively or not. The chapter pertains primarily to the moral duties corresponding to those international legal human rights.

The gist of the argument is that a lot of confusion on this topic stems from an unreflected use of the term 'responsibilities' and in particular from insufficient delineation of 'human rights duties' *stricto sensu* from moral preventive and remedial 'responsibilities for human rights' that fall on other bearers than the human rights duty-bearers (as opposed to the *ex post* liability of the human rights duty-bearers themselves for not having complied with their duties).<sup>24</sup> This conflation has given rise, within recent human rights theories, to loose references to subsidiarity among human rights duty-bearers and their duties,<sup>25</sup> but also to an unaccounted-for distinction between primary, first-level or direct duties and secondary, second-level, on the one hand, or indirect human rights duties or 'responsibilities' or '*pro tanto* reasons', on the other.<sup>26</sup>

23 Just as human rights duties do not exhaust duties of social justice (see Griffin, *On Human Rights*, p. 65; J. Tasioulas, 'Justice, Equality and Rights' in R. Crisp (ed.), *The Oxford Handbook of the History of Ethics* (forthcoming January 2013), on the relationship between justice, equality and human rights), international human rights duties do not exhaust duties of global justice either.

24 See, e.g. Kuper, 'Introduction'; Pogge, 'Human Rights and Human Responsibilities'; Pogge, 'Severe Poverty'; Caney, 'Global Poverty and Human Rights'; Wenar, 'Responsibility and Severe Poverty', p. 255; and Wenar, 'Human Rights'. This is also the case in international law: e.g. Hakimi, 'State Bystander Responsibility', who uses 'responsibility' as a state's remedial responsibility following a violation of one of its duties; cf. Mégret and Hoffmann, 'The UN as Human Rights Violator?', p. 342. See for a similar critique, T. Van Boven, 'A Universal Declaration of Human Responsibilities?' in B. Van Der Heijden and B. Tahzib-Lie (eds.), *Reflections on the Universal Declaration of Human Rights: A Fiftieth Anniversary Anthology* (The Hague, Netherlands: Martinus Nijhoff, 1998), pp. 73–9; and Pogge, 'Human Rights and Human Responsibilities', p. 6.

25 See, e.g. Nickel, 'Human Rights', pp. 81–2 and 85; Nickel, *Making Sense*, pp. 38–9; Griffin, *On Human Rights*, pp. 104–5; Wellman, *Moral Dimensions*, p. 25; and Tasioulas, *Human Rights*.

26 See, e.g. Beitz, *The Idea of Human Rights*, pp. 109–10. However, he often uses 'duties' for 'responsibilities' (e.g. at p. 108).

My argument is three-pronged. The chapter starts with a few reminders about the nature of human rights (with a special emphasis on basic subsistence rights, also called anti-poverty rights) and the relationship between human rights and duties (section 29.2). It then moves on to the specification and allocation of human rights duties (section 29.3). The third section of the argument pertains to the justifications and content of further moral responsibilities and responsibility-bearers for international human rights (section 29.4).

## 29.2 Human rights and duties

The aim of this first section is to define what is meant by human rights (section 29.2.1) and how they relate to duties (section 29.2.2).

### 29.2.1 From interests to human rights

In a nutshell, human rights may be considered a sub-set of universal moral rights (categorical moral entitlements): (i) that protect fundamental objective interests (urgency); (ii) which belong to all human beings (generality) (ii)(a) merely on the basis of their humanity (universality) (ii)(b).<sup>27</sup>

To start with, human rights are a sub-set of universal moral rights and share all the characteristics of moral rights. A human right exists *qua* moral right when an interest is a sufficient ground or reason to hold someone else (the duty-bearer) under a (categorical and exclusionary) duty to respect that interest vis-à-vis the right-holder.<sup>28</sup> For the interest to give rise to a duty to respect and protect it, it must be threatened on an ordinary basis, and this vulnerability is captured by the idea of standard threat.<sup>29</sup> Once an interest is deemed sufficiently important to give rise to a duty to respect and protect against standard threats, there is an abstract right to the protection of that interest and that interest is the substance or object of the right. The corresponding duties will then have to be

27 See S. Besson, 'Human Rights and Democracy in a Global Context – Decoupling and Recoupling', *Ethics and Global Politics*, 4(1) (2011), 19; and S. Besson, 'Human Rights – Ethical, Political... or Legal? First Steps in a Legal Theory of Human Rights' in D. E. Childress (ed.), *The Role of Ethics in International Law* (Cambridge University Press, 2011), p. 211.

28 J. Raz, 'On the Nature of Rights', *Mind*, 93(370) (1984), 194, 195.

29 Shue, *Basic Rights*, pp. 17 and 29 et seq.; Nickel, *Making Sense*, pp. 70–4; and Beitz, *The Idea of Human Rights*, p. 111.



specified in context and the concrete duties corresponding to the abstract right will be identified. Rights are, on this conception, intermediaries between interests and duties.<sup>30</sup>

Turning to the second element in the definition, human rights are moral rights of a special intensity and universal moral rights, in that the interests protected are regarded as fundamental and general interests that all human beings have by virtue of their existence and not of a given status or circumstance. They include individual interests when these constitute part of a person's well-being in an objective sense. What makes it the case that a given individual interest is regarded as sufficiently fundamental or important to generate a duty and that, in other words, the threshold of importance and point of passage from a general and fundamental interest to a human right is reached, may be found in the normative status of each individual *qua* equal member of the moral-political community, i.e. their political equality or equal political status.<sup>31</sup> A person's interests are owed equal respect by virtue of his or her status as a member of the community and of his or her relations to other members in the community; those interests are recognized as socio-comparatively important by members of the community and only then can they be recognized as human rights.<sup>32</sup> The recognition of human rights is done mutually and not simply vertically and, as a result, human rights are not externally promulgated as such, but mutually granted by members of a given political community.<sup>33</sup>

### 29.2.2 From human rights to duties

*Qua* normative relationships, human rights imply duties. Both the rights and the duties are directed or perfect as a result. One often refers to that 'double perfection' and to their mutual relationship as one of correlativity. There are three remarks one should make about the correlativity between human rights and duties.

<sup>30</sup> Raz, 'On the Nature of Rights', p. 208.

<sup>31</sup> See R. Forst, 'The Justification of Human Rights and the Basic Right to Justification. A Reflexive Approach', *Ethics*, 120(4) (2010), 711; and R. Forst, 'The Basic Right to Justification: Toward a Constructivist Conception of Human Rights', *Constellations*, 6(1) (1999), 35, 48.

<sup>32</sup> See also A. Buchanan, 'The Egalitarianism of Human Rights', *Ethics*, 120(4) (2010), 679; A. Buchanan, 'Equality and Human Rights', *Politics, Philosophy & Economics*, 4(1) (2005), 69; and S. Besson, 'The Egalitarianism of Human Rights', *Archiv für Rechts- und Sozialphilosophie Beiheft*, (2012), 19–52.

<sup>33</sup> See J. Cohen, 'Minimalism about Human Rights: The Most We Can Hope For?', *J. of Pol. Phil.*, 12(2) (2004), 190, 197–8; and Forst, 'Justification of Human Rights'.

First of all, while human rights can be abstract, there can be no abstract human rights duties and they are always context-specific and concrete.<sup>34</sup> Human rights duties may only be specified by reference to a concrete threat to the protected interest. As a result, a human right may be recognized and protected before specifying which duties correspond to it.<sup>35</sup> This is what we refer to as the justificatory priority of rights over duties.<sup>36</sup> Once a duty is specified, however, it will be correlative to the (specific) right, but the right may pre-exist abstractly without its specific duties being identified.

A human right is, second, a sufficient ground for holding other individuals under all the duties necessary to protect the interest against standard threats.<sup>37</sup> It follows that a right might provide for the imposition of many duties and not only one. As a result, those duties will evolve with time and place.<sup>38</sup> This is what one refers to as the pluralism of human rights duties.

Finally, human rights have a dynamic nature. As such, successive specific duties can be grounded on the same right depending on the circumstances.<sup>39</sup> This application indeterminacy of rights also implies that rights need to be localized to be fully effective; it is only in local circumstances that the allocation and specification of duties can take place.<sup>40</sup>

### 29.3 The allocation of human rights duties

Once human rights are recognized, the actual allocation of human rights duties can take place in specific circumstances. There are three separate sets of questions that need to be elucidated under the heading of the allocation of human rights duties: first of all, the specification of the content of human rights duties (section 29.3.1); second, the identification

<sup>34</sup> Cf. Griffin, *On Human Rights*, p. 109.

<sup>35</sup> See N. MacCormick, 'Rights in Legislation' in P. M. S. Hacker and J. Raz (eds.), *Law, Morality and Society: Essays in Honour of H. L. A. Hart* (Oxford: Clarendon Press, 1977), pp. 189, 201.

<sup>36</sup> MacCormick, 'Rights in Legislation', pp. 199–202; and Raz, 'On the Nature of Rights', pp. 196 and 200.

<sup>37</sup> See J. Waldron, 'Introduction' in Waldron (ed.), *Theories of Rights* (Oxford University Press, 1984), pp. 10–11.

<sup>38</sup> See Beitz and Goodin, 'Introduction', p. 10.

<sup>39</sup> See Raz, 'On the Nature of Rights', pp. 197–9. See also J. Waldron, *Liberal Rights: Collected Papers* (Cambridge University Press, 1993) on the cascade of rights-correlative duties.

<sup>40</sup> See Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 180–6.



of human rights duty-bearers (section 29.3.2); and, finally, the assignment of human rights duties to those duty-bearers (section 29.3.3). Some specificities of the allocation of anti-poverty rights duties are discussed towards the end (section 29.3.4).

### 29.3.1 *The specification of human rights duties*

Following Shue's seminal three-tier model, one distinguishes between negative duties to avoid depriving (respect), positive duties to protect from depriving (protect) and positive duties to aid the deprived (fulfil).<sup>41</sup> Positive duties to protect arise against the violation or non-fulfilment (as opposed to violations by the duty-bearers themselves) posed either by other agents, such as individuals or even third states within the scope of jurisdiction of the duty-bearing state, than the duty-bearers or by natural elements. They add a layer of protection to negative duties to avoid depriving. They imply either developing indirect institutional and legislative protection or taking direct practical measures of protection. Positive duties to aid, finally, arise when negative duties to avoid or positive duties to protect have either been violated or not fulfilled sufficiently and where aid is needed.

All of those duties, whether positive or negative, may be triggered by all human rights without distinction. A right regarded as predominantly negative by reference to its main duties to avoid depriving (such as the right to life) may also give rise to positive duties to protect life against other threats. This was one of the seminal points made by Shue in 1980.<sup>42</sup> It is important to stress that there could, of course, be many other types of human rights duties depending on the need for protection.<sup>43</sup>

The specification of human rights duties, i.e. the identification of their content, takes place in context and at a specific time and place. The three categories of duties mentioned arise concurrently even though they are articulated by reference to one another. The reason they need to arise

41 See Shue, *Basic Rights*, pp. 52–3 and 60.

42 See Shue, *Basic Rights*, p. 52. Cf. Pogge, 'Human Rights and Human Responsibilities', pp. 14–17; and Pogge, 'Severe Poverty'. On Pogge's argument, see E. Ashford, 'The Duties Imposed by the Human Right to Basic Necessities' in Pogge, *Freedom from Poverty as a Human Right*, pp. 183–218; E. Ashford, 'The Alleged Dichotomy between Positive and Negative Rights and Duties' in Beitz and Goodin, *Global Basic Rights*, pp. 92–112; and J. Lichtenberg, 'Are There Any Basic Rights?' in Beitz and Goodin, *Global Basic Rights*, pp. 71–91.

43 See Beitz and Goodin, 'Introduction', p. 13.

concurrently is that one needs to spread the burden across time and agents, or else each duty will amount to an unreasonable burden on any given agent.<sup>44</sup> Of course, not all human rights duties will or should be borne by the same human rights duty-bearers at the same time.<sup>45</sup>

### 29.3.2 *The identification of human rights duty-bearers*

Before human rights duties may be fairly and justifiably allocated to a specific duty-bearer, the latter needs to be identified as a potential duty-bearer. Interestingly, that identification implies more than a feasibility test and ought itself to be justified. In other words, human rights duties do not simply bind anyone who can be bound.

At this stage, authors tend to diverge. Some defend an interactional or interindividual view of human rights duty-bearers that regards them as individuals only,<sup>46</sup> while others defend an institutional view of human rights duty-bearers. The latter group divides into two sub-groups: one considers that individuals may also bear human rights duties concurrently to institutions,<sup>47</sup> while the second one sees them as only bearing residual or subsidiary human rights duty-bearers.<sup>48</sup> Finally, among those authors who have adopted the institutional view, some see institutions as mere mediators or representatives of individuals and their duties and not as direct duty-bearers,<sup>49</sup> whereas others regard institutions as duty-bearers in their own right.<sup>50</sup>

In this section, I argue for an institutional model of human rights duties with institutions as primary duty-bearers in their own right, and not only as a mediating framework for individual duties, on the one hand (section 29.3.2.1), and with residual or subsidiary duties of individuals, on the other (section 29.3.2.2). Note that this excludes other international

44 See Shue, *Basic Rights*, pp. 59, 61, 173. 45 See Shue, *Basic Rights*, p. 120.

46 See, e.g. Griffin, *On Human Rights*, pp. 104–5; Wellman, *Moral Dimensions*, pp. 24–7; and Tasioulas, *Human Rights*.

47 See, e.g. Shue, *Basic Rights*, pp. 56–7; Thomas Pogge, 'Shue on Rights and Duties' in Beitz and Goodin, *Global Basic Rights*, pp. 113–30; and P. Gilibert, 'Humanist and Political Perspectives on Human Rights', *Pol. Theory*, 39(4) (2011), 439.

48 See, e.g. Nickel, 'Human Rights'; Nickel, *Making Sense*, pp. 38–41; and Beitz, *The Idea of Human Rights*, pp. 113 et seq.

49 See, e.g. Shue, *Basic Rights*.

50 See, e.g. Nickel, 'Human Rights'; Pogge, 'Human Rights and Human Responsibilities', pp. 8 et seq.; Pogge, 'Severe Poverty'; Nickel, *Making Sense*, pp. 38–41; and Beitz, *The Idea of Human Rights*, pp. 113 et seq.



agents, such as other states or international organizations (which, I will argue later, bear responsibilities for human rights, but have no human rights duties).

### 29.3.2.1 Institutions

The primary human rights duty-bearers are ourselves. Human rights are in principle owed to all of us and one may expect therefore that we are also all duty-bearers of those rights we hold.

Importantly, however, we are *all* duty-bearers together and not individually, whereas we are all right-holders individually albeit in a general and equal fashion. This is a consequence of the systematic nature of human rights. Moreover, as Arendt famously noted, human rights are worthless and human beings 'naked' without a political community.<sup>51</sup> We need a set of institutions that can bear the collective burden of 'our' duties to one another and then potentially re-assign further institutional but also individual duties to us if need be in an *egalitarian* way. As explained previously, human rights are inherently relational just as is the equal status of which they are constitutive. Their recognition depends therefore on the creation of a set of institutions, i.e. sets of rules that govern our interactions with one another.<sup>52</sup> This is a consequence of the egalitarian dimension of human rights.

It follows from both the systematic and the egalitarian dimensions of human rights that human rights duty-bearers are a polity's institutions. The institutional duty-bearers of human rights include all of the institutions, whether legislative, executive or judicial, of the polity. The relevant polity in each case is that which has jurisdiction over the right-holders,<sup>53</sup> whether the polity is national or regional (for example, the European Union<sup>54</sup>) and whether or not the right-holders and subjects to

51 See H. Arendt, 'The Decline of the Nation-State and the End of the Rights of Man' in *The Origins of Totalitarianism* (London: Penguin, 1951), pp. 177–8 and 299.

52 See C. Reus-Smit, 'On Rights and Institutions' in Beitz and Goodin, *Global Basic Rights*, pp. 25, 30.

53 On the meaning of the jurisdiction requirement for human rights and duties to arise, see S. Besson, 'The Extraterritoriality of the European Convention on Human Rights. Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts To', *Leiden J. of Int'l L.*, 25(4) (2012), 857–84.

54 On the European Union as a human rights duty-bearer, see S. Besson, 'The European Union and Human Rights: Towards a New Kind of Post-National Human Rights Institution', *Hum. Rts. L. Rev.*, 6(2) (2006), 323; and Besson, 'Human Rights and Democracy'.

jurisdiction are formal citizens.<sup>55</sup> This is indeed the polity in which the right-holders share equal and interdependent stakes with others.

Of course, other individuals may violate the interests protected by human rights and ought to be prevented from doing so by public institutions and in particular through positive legal means. However, public institutions remain the primary addressees of human rights claims and hence their primary duty-bearers.<sup>56</sup> Furthermore, there is nothing in this account that precludes extending it to international institutions when the individual stakes are sufficiently equal and interdependent at the global level for one to claim there could be an international political community.<sup>57</sup> At the moment, however, the circumstances of political equality, which imply being in a certain relationship to one another, i.e. sharing a social context,<sup>58</sup> are not yet given at the international level. What all this implies, of course, is that the universality of human rights-holders does not necessarily imply the universality of human rights duty-bearers,<sup>59</sup> or at least not more than the universality of the specifically relevant institutional duty-bearers in each case.

Besides those normative arguments for the institutional model of human rights duty-bearers, one may also mention practical ones.

55 On the ambivalence between residents with equal stakes and citizens, see, e.g. Nickel, *Making Sense*, pp. 38 et seq.; and Beitz, *The Idea of Human Rights*, pp. 114 and 122.

56 By reference to the international law on the responsibility of the state, any action or omission committed by an official agent of the state and an agent controlled de jure or de facto by the state may be attributed to the state. This is why I think many of the examples given by Hakimi, 'State Bystander Responsibility', pp. 354 et seq. as evidence of the human rights bystander responsibility of the state are in fact examples of human rights duties *tout court* and consequent remedial responsibility for their violation.

57 See Besson, 'Human Rights and Democracy' by reference to T. Christiano, 'Democratic Legitimacy and International Institutions' in S. Besson and J. Tasioulas (eds.), *The Philosophy of International Law* (Oxford University Press, 2010), pp. 119–37. To that extent, the proposed account is a cosmopolitan one (unlike T. Nagel, 'The Problem of Global Justice', *Phil. & Pub. Aff.*, 33(2) (2005), 113), albeit not a monist one. It comes closest to Miller, *National Responsibility*, or Beitz, *The Idea of Human Rights*, but differs from the former's focus on nationality instead of democracy and from the latter's lack of interest for democracy and the egalitarianism of human rights.

58 See D. Miller, 'National Responsibility and Global Justice' in H. De Schutter and R. Rinnevelt (eds.), *Nationalism and Global Justice* (London/New York: Routledge, 2010), pp. 14, 25; D. Miller, 'A Response' in De Schutter and Rinnevelt, *Nationalism and Global Justice*, pp. 179, 192; and Miller, *National Responsibility*, pp. 56 et seq.

59 See Tasioulas, 'Reality'; Shue, *Basic Rights*, p. 120; Nickel, 'Human Rights', p. 84; Nickel, *Making Sense*, p. 41; Griffin, *On Human Rights*, pp. 101–2; and Beitz, *The Idea of Human Rights*, pp. 118 et seq. Cf. O'Neill, 'The Dark Side of Human Rights', p. 433; and C. Lafont, 'Accountability and Global Governance: Challenging the State-Centric Conception of Human Rights', *Ethics & Global Politics*, 3 (2010), 193, 203.



The first and most important argument usually made for the institutional account of human rights duty-bearers is an argument of feasibility.<sup>60</sup> Institutions are the only ones to have the sustainable capacity to respect and uphold human rights duties.<sup>61</sup> The argument has been made most famously by Shue, who understands institutions as a way of spreading the burden or cost of respecting human rights on the members of the community in a feasible manner and a way that centralizes the resources available. Shue also refers to institutions as a way of securing the mediation of human rights duties between all those individuals involved.<sup>62</sup> Institutions help both directing and 'perfecting' human rights duties. Institutions allow us indeed to identify the right-holders and duty-bearers of any given human right and all of them at the same time and in a systematic fashion, whether the latter are institutional as in the proposed account or individual as in Shue's account.

The second argument for the institutional model is a legal argument. It has been made most famously by Pogge<sup>63</sup> and recently by Beitz.<sup>64</sup> International and domestic human rights law is indeed currently (still) only addressed at state or regional institutions, and more precisely at those of the state or entity in which the right-holder is a member (or to whose jurisdiction they are subjected). As a result, the proposed account of institutional human rights duty-bearers fits our legal practice, both domestically and regionally or internationally, and therefore has practical traction.

Finally, a third argument for the institutional model of human rights duty-bearers is democratic. Given the grounding of democracy in political equality and the mutual relationship between political equality and human rights,<sup>65</sup> it should come as no surprise that democracy is the political process through which decisions about our equal rights should be taken. Important reasonable disagreement about those human rights, combined with the moral and practical indeterminacy that prevail over

60 See Shue, *Basic Rights*, pp. 166 et seq.; and Beitz and Goodin, 'Introduction', pp. 9 and 15.

61 See also Nickel, 'Human Rights', p. 81.

62 See Shue, *Basic Rights*, pp. 166 et seq.; and Beitz and Goodin, 'Introduction', pp. 15–16.

63 See Pogge, 'Human Rights and Human Responsibilities', pp. 8 et seq.; and Nickel, *Making Sense*, pp. 38–9. Pogge now entertains the idea of concurrent human rights duties of institutions and individuals, even though he still focuses on institutions' duties (T. Pogge, *World Poverty and Human Rights*, 2nd edn. (Cambridge: Polity Press, 2008); and Pogge, 'Shue on Rights').

64 See Beitz, *The Idea of Human Rights*, pp. 109–10, 113–17.

65 See Besson, 'Human Rights and Democracy'.

their corresponding duties, make it clear that justifications for the assignment of human rights duties by, and to, our institutions need to be democratically legitimate.

### 29.3.2.2 Individuals

On the proposed institutional account of human rights duty-bearers, individuals are residual or subsidiary human rights duty-bearers. Those human rights duties have been coined 'back-up' duties by James Nickel.<sup>66</sup>

Individuals' duties only arise when their institutions have failed or before they have set up their institutions. The failure of institutions amounts to more than the mere violation of human rights duties, however. It corresponds to the lack of effective governance in the polity. To that extent, individual back-up human rights duties ought to be distinguished from what other authors have regarded as subsidiary individual duties that are triggered as second-order duties in case of single violations of human rights duties by state institutions.<sup>67</sup>

The individuals concerned are those belonging to the political group or about to belong to it through the exercise of jurisdiction. This is determined, just as were the relevant institutions in the previous section, by reference to their sharing equal and interdependent stakes. Those are indeed the circumstances of egalitarian and democratic politics.

Importantly, individual human rights duties, when they arise, are held collectively as shared duties. Again, this may be explained by reference to the systematic nature of human rights and the fact that we are all rights-holders and duty-bearers at the same time, and to the egalitarian dimension of human rights and the fact that human rights are inherently relational and socially contextualized. Of course, in due course, collective duties can be allocated further and give rise to individual duties. However, the fact that they are primarily shared duties has implications for the grounds of allocation of those duties in the first place.

### 29.3.3 The allocation of human rights duties to duty-bearers

The assignment or allocation of duties to individual duty-bearers raises questions of fairness and needs to be justified as a result. Again, one may distinguish between the assignment of human rights duties to institutional

66 See Nickel, 'Human Rights'; and *Making Sense*, pp. 40–1.

67 See, e.g. Tasioulas, *Human Rights*; and Griffin, *On Human Rights*, pp. 104–5. See also Pogge, 'Shue on Rights'.



duty-bearers in the first place (section 29.3.3.1), and then of residual duties to individual duty-bearers (section 29.3.3.2).

#### 29.3.3.1 Institutional duty-bearers

The allocation of human rights duties to institutions occurs through the processes set up by those institutions. That process also allows for an institutional re-allocation of duties to some individuals in certain cases.

Importantly, whether the duties are then re-allocated to institutions or individuals, the primary allocation of the aggregate burden of human rights duties to the polity and its institutions ought to be justified. Just as the burden of duties allocated to institutions is an aggregate of duties, the grounds for the re-allocation to the capable institutions may also be deemed an aggregate of various justifications. As a result, one need not choose between harm, causality, special ties, benefit or capacity as standards grounds of moral responsibility.<sup>68</sup> All can be subsumed under an aggregate justification of human rights duties.<sup>69</sup>

In the assessment of the justification of an assignment of human rights duties, the reasonableness of the burden and of the cost also needs to be taken into account besides the grounds for assigning the duties. Given the limited resources available at any given time and the numerous duties that may be assigned, priorities have to be made in terms of the degree of resources allocation to any given right, but also in terms of the rights to which those resources ought to be allocated. Those questions are morally indeterminate, however.<sup>70</sup> The distribution of scarce resources should follow robust egalitarian and distributive principles that need to be argued for. Besides, once we know the resources available for human rights, the prioritization of certain human rights duties over others requires an additional argument.<sup>71</sup> In view of the moral complexity of the allocation of duties, the quality of the process is essential, however. This is one of the reasons mentioned before as to why institutions are the most legitimate primary duty-bearers. They offer a procedural framework in

68 See Miller, 'Distributing Responsibilities', pp. 464 et seq.; *National Responsibility*, pp. 98 et seq.; and 'The Responsibility to Protect Human Rights'.

69 See Beitz and Goodin, 'Introduction', p. 17. As we will see, this is what distinguishes human rights duties from responsibilities for human rights that have to be justified individually by reference to one ground in each case.

70 See Nickel, 'Human Rights', p. 81; and Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 180 et seq.

71 See Nickel, *Making Sense*, p. 85.

which human rights duties can be deliberated and allocated in an inclusive and egalitarian fashion.

#### 29.3.3.2 Individual duty-bearers

When institutions fail or before they are in place, individuals in the group share collective human rights duties. Those duties as shared duties amount to duties to create, maintain and enhance institutions able to fulfil human rights duties.

The allocation of the aggregate burden of human rights duties to those individual duty-bearers has to be justified. Again, the fact that it is an aggregate set of duties allows for an aggregate set of reasons for those duties and we need not provide one justification applicable to each and every one of them. Of course, once duties are individualized, the question of justification will arise anew and without an institutional and procedural framework to decide on the question in a democratic way. There would seem to be no other choice then but to resort to strategic moral thinking.

#### 29.3.4 The allocation of anti-poverty rights duties

The allocation of human rights duties pertaining to basic subsistence or anti-poverty rights raises interesting issues of their own.

An important feature of anti-poverty rights is that their existence and enjoyment is necessary to the existence and enjoyment of other human rights. As a result, they have justificatory priority over other human rights. This, in turn, sets an ultimate limit to the duties one may be burdened with: there are no endless duties, argues Shue, by reference to the need to protect one's own basic rights.<sup>72</sup> Another feature of anti-positive rights duties is that they are usually duties to protect and to aid the deprived. This is because poverty is endemic and has very complex causes of which many are non-human.<sup>73</sup>

There are also common ideas about anti-poverty rights duties that need to be set aside, however. The first consideration to dispel is the idea that anti-poverty rights give rise to more positive duties than other (negative) rights and hence raise more questions of allocation of cost.<sup>74</sup> Another alleged feature of anti-poverty rights is their absolute nature. Unlike other human rights, they are mostly not held to be socio-comparative.<sup>75</sup> This

72 See Shue, *Basic Rights*, pp. 116 and 173. 73 See Pogge, 'Severe Poverty', p. 15.

74 See Shue, *Basic Rights*, p. 96.

75 See Miller, 'Global Justice', p. 25; and Beitz, *The Idea of Human Rights*, pp. 161–2.



feature has been wrongly interpreted by human rights theorists to imply that those rights do not raise issues of equality and hence can safely be regarded as part of global justice duties.<sup>76</sup> This may be the case when identifying the protected interests and standard threats to those rights, but the burden of the corresponding duties competes with that of other human rights duties, thus raising the same questions of priority between equal human rights as others. As a result, anti-poverty rights duties cannot be regarded as taking absolute priority over other human rights duties in case of conflict.<sup>77</sup>

#### 29.4 Responsibilities for human rights and their allocation

Human rights duties co-exist with international responsibilities for human rights: unlike the former, however, the latter are not owed to a specific right-holder by a specific duty-bearer, and do not have a specific content.

Broadly speaking, responsibilities are abstract moral requirements whose extent and reasonable distribution among potential bearers are still indeterminate and subject to judgment. Nor are responsibilities directed; they have no right-holder as a result. The first difficulty to arise is that moral duties amount to moral responsibilities, albeit concrete and perfect ones whose material extent and personal allocation are fully specified and duties directed to an individual right-holder.<sup>78</sup> The reverse is not true, however: not all responsibilities amount to duties. Of course, responsibility is a highly slippery notion in moral and political philosophy, but even more so in legal philosophy.<sup>79</sup> In short, it refers to the confrontation of a person or group of persons with the effects of their action or that of others. There can be ex ante or preventive<sup>80</sup> and ex post or remedial responsibilities.<sup>81</sup> There are many potential grounds for remedial responsibility. Miller convincingly distinguishes six of them,

76 See Miller, *National Responsibility*; Pogge, 'Severe Poverty'; and Beitz, *The Idea of Human Rights*.

77 See Beitz and Goodin, 'Introduction', pp. 23–4.

78 See Miller, 'The Responsibility to Protect Human Rights', p. 233 n. 2.

79 See Miller, *National Responsibility*, p. 82; S. Scheffler, 'Individual Responsibility in a Global Age' in *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford University Press, 2001), pp. 32–48; and T. Honoré, 'Responsibility and Luck' in *Responsibility and Fault* (Oxford: Hart Publishing, 1999), pp. 14–40.

80 See Beitz and Goodin, 'Introduction', p. 17.

81 See Miller, *National Responsibility*, pp. 83–4, 98. See also 'Distributing Responsibilities'.

i.e. outcome, causality, harm, community, capacity and benefit, and argues they should all apply concurrently if one is to cover all potential cases of remedial necessity.<sup>82</sup>

In a nutshell, responsibilities for human rights are diffusely vested onto the international community at large. They are part of international responsibilities for global justice that arose slowly between the 1940s and 1970s with the adoption of international law and institutions active in the monitoring and protection of human rights.<sup>83</sup> While (domestic or regional) political institutions have remained the addressees of human rights duties, other states and international institutions have since also been considered as the bearers of some responsibilities for the protection of human rights. The content of those responsibilities is captured by the broad concept of a responsibility 'for' human rights. In short, they are responsibilities to: (i) hold accountable (monitor, ensure compliance); (ii) assist or aid (promotion, training, including through cooperation); and (iii) intervene (as an *ultima ratio* only).<sup>84</sup>

In what follows, and by reference to the pattern adopted with respect to human rights duties, I first explain how responsibilities for human rights may be identified (section 29.4.1), before turning to their potential bearers (section 29.4.2) and the potential allocation of responsibilities to them (section 29.4.3).

##### 29.4.1 The identification of responsibilities for human rights

As explained previously, the main characteristic of those responsibilities and what distinguishes them from duties is precisely that we lack ways of specifying their content and bearers, and of allocating the former to the latter.

Once specified and allocated, however, responsibilities for human rights do not become human rights duties: they are not necessarily perfect and correlative to a right. Moreover, they often have a distinct content and set of bearers from human rights duties. They are not subsidiary,

82 See Miller, 'Distributing Responsibilities'; *National Responsibility*; and 'The Responsibility to Protect Human Rights', p. 234.

83 See, e.g. S. Moyn, *The Last Utopia, Human Rights in History* (Cambridge, MA: Harvard University Press, 2010); and S.-L. Hoffmann (ed.), *Human Rights in the Twentieth Century* (New York: Cambridge University Press, 2011).

84 See Beitz, *The Idea of Human Rights*, pp. 109 and 163; and C. R. Beitz, 'Human Rights and the Law of Peoples' in D. K. Chatterjee (ed.), *Ethics of Assistance: Morality and the Distant Needy* (Cambridge University Press, 2004), pp. 193, 208.



secondary or default human rights duties as a result, but concurrent preventive or remedial responsibilities.<sup>85</sup> Of course, responsibilities for human rights are related to and co-exist with human rights duties to the extent that they help prevent human rights violations by human rights duty-bearers or remedy those violations when human rights duty-bearers are unable or unwilling to fulfil their duties. Thus, responsibility-bearers cannot be successfully identified and responsibilities allocated to them without reference to human rights duties.<sup>86</sup>

Most of the time, however, responsibilities for human rights remain unspecified in their content. This is why they are also referred to as 'pro tanto reasons' by Beitz<sup>87</sup> or as mere 'remedial responsibilities' by Miller.<sup>88</sup> A problem, however, is the articulation of some of the responsibilities for human rights to the violation or non-fulfilment of human rights duties. The apportioning of responsibilities to the failure of human rights duty-bearers would imply indeed that we can identify that failure and calibrate responsibilities corresponding to that failure.<sup>89</sup> Another problem lies, moreover, in the lack of international institutions with the ability and legitimacy to allocate those responsibilities.

#### 29.4.2 *The identification of bearers of the responsibilities for human rights*

Just like their content, the bearers of the responsibilities for human rights are usually indeterminate. They are vested on the international community at large. Among potential bearers of those responsibilities, one may mention individuals, states other than the duty-bearing state and international organizations.

As to individuals, first of all, we all bear a shared responsibility for the respect of human rights as primary constituency of the international community. Importantly, and for the reasons of systematicity and equality mentioned before, that responsibility is shared or collective. Practically, of

<sup>85</sup> See also Beitz, *The Idea of Human Rights*, p. 108; and Miller, 'The Responsibility to Protect Human Rights', p. 233.

<sup>86</sup> On the 'guarantor' position of the international community, see also Beitz, *The Idea of Human Rights*, p. 108.

<sup>87</sup> Beitz, *The Idea of Human Rights*, pp. 117 and 163.

<sup>88</sup> See Miller, *National Responsibility*, and Miller, 'The Responsibility to Protect Human Rights', p. 233 n. 2.

<sup>89</sup> See Beitz, *The Idea of Human Rights*, pp. 163–4.

course, there are important coordination limitations to what individuals can do voluntarily, even collectively, at the global level.

Second, the states other than the human rights duty-bearing states are more plausible bearers of our responsibilities for human rights. To quote Buchanan, states may indeed be seen as instruments of global justice through which we can institutionalize our shared individual responsibilities for human rights.<sup>90</sup> Importantly, states are bearers of responsibilities in their own right and not only as a way of mediating their constituency's responsibilities. Again, states cannot do much on their own without coordination.

Finally, international organizations are often also regarded as bearers of our responsibilities for human rights to the extent that they provide an institutional framework for state cooperation.<sup>91</sup> Again, one may make the argument that they not only do so in mediating our responsibilities, but also in their own right *qua* subjects of international law. Active forms of interference with domestic sovereignty on human rights matters are still in their infancy, however. The difficulty lies not so much with sovereignty itself as, contrary to what is often stated, international human rights and modern state sovereignty are in a relationship of mutual constitution and reinforcement,<sup>92</sup> but in the other states' own sovereignty in determining how to allocate their resources.<sup>93</sup>

#### 29.4.3 *The allocation of responsibilities for human rights to their bearers*

The allocation of responsibilities for human rights to their bearers is one of the most difficult questions lying before us. One should distinguish between potential grounds for and costs of responsibility

<sup>90</sup> See Buchanan, *Justice, Legitimacy, and Self-Determination*. See also Miller, 'The Responsibility to Protect Human Rights', p. 241.

<sup>91</sup> See Shue, *Basic Rights*, p. 178.

<sup>92</sup> See S. Besson, 'Sovereignty' in *Max Planck Encyclopedia of Public International Law*, available at [www.mpepil.com](http://www.mpepil.com).

<sup>93</sup> See Miller, 'The Responsibility to Protect Human Rights', pp. 240 et seq. See, however, H. Shue, 'Limiting Sovereignty' in J. M. Welsh (ed.), *Humanitarian Intervention and International Relations* (New York: Oxford University Press, 2004), pp. 11–28 on the responsibilities of sovereign states to the other states' populations. For a discussion, see T. Endicott, 'The Logic of Freedom and Power' in Besson and Tasioulas, *Philosophy of International Law*, pp. 245–59; and J. Cohen, 'Sovereignty in the Context of Globalization: A Constitutional Pluralist Perspective' in Besson and Tasioulas, *Philosophy of International Law*, pp. 261–80.



(section 29.4.3.1), before turning to potential procedures for assigning those responsibilities (29.4.3.2).

#### 29.4.3.1 Grounds and costs

There are various grounds for preventive or remedial international responsibilities for human rights. That plurality of grounds ranges from outcome, causality, harm, capacity, benefit or special ties.<sup>94</sup> Depending on the case, any of them may be chosen as a ground for individualized responsibility for human rights, but nothing prevents them from all applying at the same time or some of them in some cases and others in others.<sup>95</sup>

Interesting questions follow, however. One of them is the question of potential conflict of responsibilities. Miller rightly suggests choosing the strongest connection in such cases.<sup>96</sup> Another possibility may be to foresee cascades of responsibilities with some grounds kicking in when other responsibilities have not been acted upon.<sup>97</sup> It seems, however, that there should be a priority of the outcome responsibility of the state that is also the duty-bearer of human rights duties in case of violation of its duties. Other states cannot have to make up entirely for the failure of the domestic institutions to comply with their human rights duties.

Another important question pertains to the cost of one's responsibilities, since those can only be justified as long as respecting them can be done without incurring excessive costs in each case.<sup>98</sup> And this is even more complicated when there are many potential responsibility-bearers on many different grounds.<sup>99</sup> As in the case of human rights duties, it seems that there should not be endless responsibilities for any given bearer. Finally, one should add the priority of the human rights of the members of one's own political community since our responsibilities for human rights co-exist with our human rights duties. The latter are concrete and exclusionary duties and take priority over the former as a result.

<sup>94</sup> See Miller, 'Distributing Responsibilities', pp. 464 et seq.; *National Responsibility*, pp. 98 et seq.; and 'The Responsibility to Protect Human Rights'. See also on this mixture of grounds for the responsibilities for human rights, Beitz, 'Human Rights'; and *The Idea of Human Rights*, p. 171.

<sup>95</sup> See also Beitz, *The Idea of Human Rights*, pp. 170–1.

<sup>96</sup> See Miller, 'Distributing Responsibilities', pp. 468 et seq.

<sup>97</sup> See Miller, 'Distributing Responsibilities', p. 471; and 'The Responsibility to Protect Human Rights'.

<sup>98</sup> See Miller, 'The Responsibility to Protect Human Rights', p. 241.

<sup>99</sup> Miller, 'The Responsibility to Protect Human Rights', p. 244.

#### 29.4.3.2 Allocation

There is a difference between identifying a person as potentially responsible and assigning responsibility to him or her.<sup>100</sup> The assignment of responsibility requires spreading the burden over various agents and assessing the fairness of the overall individual burden on each of them.

By reference to what applies to human rights duties in the domestic or regional context, allocation of international responsibilities for human rights requires an institutional and procedural framework.<sup>101</sup> There is, to date, no international institutional framework or procedure for the aggregation of responsibilities on all grounds and the re-allocation of the many responsibilities for human rights on various grounds to the many potential responsibility-bearers. In the current circumstances, in any case, it would be difficult for international decisions to pre-empt domestic allocations of human rights duties, especially when the latter are democratic. Concrete and perfect human rights duties take priority as a result over responsibilities for human rights, in case they enter into normative or practical conflict. This is the re-distribution problem mentioned by Miller: once a distribution and allocation has taken place domestically and/or regionally, a global re-distribution and allocation is difficult to justify, especially when social inequalities can be traced back to domestic preferences.<sup>102</sup>

As a result and in the absence of an international institutional framework, the allocation of international responsibilities for human rights on different grounds remains a matter of judgment for each potential responsibility-bearer in each case.<sup>103</sup> Potential responsibility bearers have to resort to individual and strategic or pragmatic thinking in the absence of knowledge or assurance about others' actions.<sup>104</sup> One cannot exclude from all this that no one will act in the end if no one is required to by an institutional allocation of responsibilities or some form of alternative coordination on the question.<sup>105</sup> Of course, the consequence of what Beitz refers to as an 'uneven web of disaggregated responsibilities to act'<sup>106</sup> is

<sup>100</sup> Miller, *National Responsibility*, pp. 82–3.

<sup>101</sup> See Shue, *Basic Rights*, pp. 166 et seq. and 180.

<sup>102</sup> See Miller, *National Responsibility*, pp. 56 et seq.

<sup>103</sup> See D. Miller, 'Review of "Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?" by James Pattison', *Global Discourse*, 2(1) (2011), 1, 4, <http://globaldiscourse.files.wordpress.com/2011/05/miller.pdf>.

<sup>104</sup> See Shue, *Basic Rights*, pp. 160–1; and Beitz, *The Idea of Human Rights*, pp. 173–4.

<sup>105</sup> See Beitz and Goodin, 'Introduction', pp. 22–3.

<sup>106</sup> See Beitz, *The Idea of Human Rights*, p. 173.



insecurity. This is also what one may refer to as the protection gap between human rights duties and responsibilities for human rights.<sup>107</sup>

### 29.5 Conclusions

The aim of the present chapter was to take up the challenge of the identification and allocation of anti-poverty rights duties. Without rehearsing the many steps in my argument, two conclusions stand out.

The first one is that the supply-side of human rights and human rights duties and their bearers are not only essential features of human rights themselves, but also a feasibility condition of their existence and hence of their recognition. A key dimension of human rights and human rights duties that tends to be downplayed by overlooking their supply-side is the political dimension of human rights and the importance of egalitarian and hence democratic decision-making on those complex moral issues of allocation of human rights duties and responsibilities for human rights.

The second conclusion is that our understanding of the specification of human rights duties, the identification of human rights duty-bearers and the assignment of specific duties to them need to be carefully distinguished from international responsibilities for human rights and their allocation to international agents other than the human rights duty-bearers. The strength of human rights lies precisely in their specificity: their being doubly directed with specified right-holders *and* duty-bearers, on the one hand, and their having specifiable and assignable duties, on the other. Conflating them with imperfect responsibilities for human rights and other reasons or responsibilities one may have under global justice only contributes to watering them down.

Those theoretical conclusions have consequences for how we conceive of human rights duties under international law and identify their bearers. It is important, for instance, to understand the recently recognized responsibility to protect of the international community *qua* responsibility for human rights, but also to envision the United Nations' human rights responsibilities *qua* responsibilities *stricto sensu* and not as human rights duties. More generally, one should focus on other moral resources than human rights and on other legal instruments than international human rights law, if one is to find more specific ways of alleviating

<sup>107</sup> See Miller, 'The Responsibility to Protect Human Rights', p. 246; and *National Responsibility*, ch. 9, p. 274.

world poverty. As the new historians of international human rights have explained, one of the most curious developments since the 1990s has been the growing inclusion of all humanitarian issues under human rights. While this may have been a fruitful rhetoric and political move back then, I hope to have shown that it is certainly the best way neither to move forwards in moral terms nor for human rights to last in political morality.