

The Range of Social Human Rights

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[1] Even though poverty and poverty-related deaths are still increasing worldwide, too little has been undertaken against them. The question addressed in this article is whether citizens in the industrial countries who are better off have a duty to mitigate or stop the misery of the poor; and if so, what kind of duty is it. One could assume that social human rights offer an adequate answer to this question but their content, justification and implementation are highly contested from a legal as well as philosophical point of view. Different approaches to justifying social human rights and corresponding obligations are discussed in this contribution, and it is argued that neither focussing solely on a concept of "negative" obligations nor on a concept of "positive" obligations is sufficient. Moreover, it is pointed out that it is not convincing to deny social rights the status of human rights on the grounds that they do not correspond to negative universal duties. Instead liberal rights as well as social rights are both correlated with "waves of duties," "negative" and "positive."

[2] When the subject of human rights is discussed, the talk tends to focus on civil rights and liberties and sometimes on political rights, but rarely on the question of social human rights. Nevertheless, there are good reasons for devoting more attention and discussion time to this subject, as well.

[3] As we are all aware, much of the world's population lives in poverty. The annual statistics on world poverty state this unambiguously: Worldwide, some 1.3 billion people live on less than a dollar a day, while a further 1.7 billion have a daily income of no more than 1-2 dollars.(1)

[4] At this point, some listeners might refer to the corpus of existing international human rights conventions, arguing that these already formulate a whole range of individual claims to social assistance, and that their provisions have merely not been implemented decisively enough. Indeed, the International Covenant on Economic, Social and Cultural Rights, which came into force in January 1966, established the rights of every individual to a decent standard of living, to a just organization of labor, to social security under conditions of unemployment, illness, disability or old age, to employment opportunities and to the protection of the family. Nevertheless, despite some progress in more precisely defining these rights, the current human rights legislation is still wanting in a number of important respects. National governments have either failed to comply with their obligation to incorporate the legislation on social human rights into their national laws or have done so only half-heartedly, a situation resulting not least from a lack of clearly defined implementation measures.(2) Furthermore, the responsibility of non-governmental organizations and of citizens on an international level requires further definition. (3)

[5] The question to be investigated here is whether people occupying a more privileged economic position have a duty to assist those who live in poverty. Most of us would answer this question in the affirmative, explaining that we -- as citizens of rich, industrialized nations -- are obliged to help precisely because we are much better off than many people in poor countries and because we can, at relatively little expense to ourselves, do much to directly improve their plight. This gives rise to further questions regarding to whom these obligations actually apply: to nation-states, organizations operating internationally or private actors? And what precisely do these duties involve?

[6] To answer these questions, I shall concentrate on social human rights and on the duties that correspond to them. In so doing, I will not base my arguments exclusively on moral-philosophical positions but rather shall refer to international legal agreements and to the outcomes of professional conferences in the human rights field. Despite the enormity of the poverty problem, the *legal* social rights with which a binding and enforceable individual claim is associated are still intensely disputed. As the duties connected with them cannot be defined, as some theorists assume, one cannot speak of legal claims but, at best, of recommendations and suggestions put forward to legislators. In order to answer the question of whether we have not merely a moral but also a legal duty to help the poor, it is necessary to show that social *rights* are also *human rights* with corresponding *universal duties*.

[7] In the following, I will first discuss an approach toward the justification of social human rights that is based on a concept of negative duty. It can circumvent the objection referred to above; nevertheless, it is not far-reaching enough to satisfy our demands (I). This is followed by a discussion of approaches based on the concept of the equal distribution of liberty and social autonomy and which imply positive duties (II). Finally, a refutation of the objection that social rights posit only unspecified obligations and not universal ones is followed by remarks on the scope of the duties associated with social human rights (III).

I. The Right to Just Institutions

[8] An objection often made with regard to the concept of social rights -- and one which has its origins in Kantian

philosophy -- challenges the notion that one can even speak of *rights* to charity. These, it is argued, are merely claims, whose counterpart obligation, in contrast to civil rights and liberties, cannot be considered as *perfect duties*. Only they can be universalized; only in their case can the addressee be unambiguously specified, as well as the type of obligation of each individual, which is furthermore the same for everyone. Imperfect duties, on the other hand, are those that cannot be universalized and that do not exist vis-à-vis a specific other. According to Kant, these are duties that people are obliged to perform for one another because they are aware that they are mortal and vulnerable beings who, at least occasionally, have to rely on the help of others. And as humans are also rational beings, they understand that they cannot behave according to the principle of refusing to offer assistance when it is needed or of withholding assistance towards the development of capabilities. However, in this explanation, the obligation to help is not a perfect duty. When social claims are violated, as, for example, when a starving person is denied food, it cannot be determined unambiguously who is at fault. Does the responsibility lie with the other citizens, who fail to provide for such people although they are in a position to do so, or with state institutions that do not guarantee access to food or even impede such access? Both the impossibility of assigning clear responsibility when social claims are violated and the difficulty of clearly determining the addressee of the duty to fulfill these claims pose an obstacle to the legal enforceability of positive duties.(4)

[9] To circumvent the difficulties associated with a positive concept of obligations, Thomas Pogge undertakes two basic innovations in his approach.

[10] On the one hand, he introduces an "institutional" change into the discourse on human rights.(5) In this view, human rights are moral claims on an institutional order to create conditions that make it possible for the freedoms and goods human rights formulate to be used. Here the term "institutions" is understood to refer not to collectively organized actors but to the rules of the game of a social system that coordinates the interactions between individual and collective participants. According to this approach, every social order should be organized in such a way as to guarantee all participants access to all human rights.(6)

[11] The second change of perspective that Pogge undertakes is linked to the first, but is tied up with the concept of obligation. Pogge describes the duties associated with human rights as *negative duties*. This means that there exists a negative duty to refrain from participating in an organizational system that is unjust, and that is, when it obstructs the realization of human rights. This is based on the notion that one is also not free when one's personal autonomy is restricted through the use of force by other individuals or the state, as, for example, when one segment of the population is in possession of resources and simultaneously occupies a position from which it can maintain this inequitable division of resources through the use of force.

[12] When parties to a contract can be forced to approve of contracts or agreements that obviously run counter to the interests of the citizens in question institutions are not just. One can speak of forced contracts when the participating parties are not permitted to make an *informed* decision, but rather when the economically stronger negotiating partner uses his political advantage to force upon another party a contract or treaty that he would not sign himself. Excluded from this are offers of desperately needed credit to poor countries by wealthy countries or their representatives, which the former could never completely repay and for which a high rate of interest is furthermore charged. Also excluded are contracts/treaties that cement the so-called "international resource privilege."(7) Current international rules allow every government in power (regardless of how a group has come to power and as to whether it is a democratic or totalitarian regime) to freely dispose of the country's national resources. Natural resources, however, should be regarded as being possessed by the whole mankind. All people who benefit from the production, sale and usage of world's natural resources should – according to Pogge - pay a kind of resource tax, which is to be used for raising the minimum living standard of the world's poorest people.

[13] We have still not yet answered the question of why we are obliged to offer assistance of any kind to people living in poverty. Pogge's answer is that one does have a duty to help people considerably worse off than oneself because one has helped to create or at least to sustain the situation. One is co-responsible for the situation of the worse off. This suggestion stands and falls on the assumption that international regulations effect social, political and economic situations of individual citizens in a way that others have to live in poverty. There is no shortage of examples of this asymmetrical interrelationship through which the privileged can be held responsible for the poverty of others. Global institutions make decisions about international investments as well as financial and economic requirements, provide loans and offer military and development aid, and thereby have a direct influence on the lives of people in poor countries. The already mentioned "resource privilege" is another example.

[14] Based on a *negative* concept of obligations, this "institutional change" introduced into the discussion on human rights offers many advantages. If one looks at the rules that apply internationally and at those who uphold them, the conditions that inhibit the realization of human rights become clear, and not only in one's own country. A frequently voiced criticism of social human rights – that they place an overwhelming burden of demands for assistance on the few – is elegantly avoided. The duty of the individual is limited to not supporting unjust systems of order. In addition to

reducing the pressure on the individual to provide concrete forms of support, the scope of obligation is clearly international. In contrast, positive duties, which are based on social relations, offer a very loosely defined basis of obligation, leaving one open to choose, for example, between supporting the local homeless shelter or working for *amnesty international*. One can ask oneself what one can do to alleviate the suffering of people anywhere in the world.

[15] The negative concept of duties suggested here, on the other hand, provides an unambiguous and therefore "stronger" rationale: Everyone who contributes to the upholding of unjust institutions and who profits from them bears a responsibility for the poor living conditions of others. And above all, one thing is definitely ruled out: that one do nothing, that one maintain no "social relations" with the people in question.

[16] However, a decisive problem is associated with the concept of negative obligation. Just as with the positive duties to help, it remains unspecified what actions by states or private actors should cease. Passively desisting can also serve to further increase injustices. Thus, in the shadow of economic relations not regulated by international law, supra-territorial regulatory systems can develop that contribute to undermining the high standard of employee protection established in European countries and excluding those affected by the regulations from the decision-making process.⁽⁸⁾ If we have remained idle, upholding the existing unjust national and global society and thus contributing to the suffering of others, are we not now obliged to take measures against the existing unjust international order? The problem is obviously that the exclusive focus on the obligation to desist contains no demand for the recasting and reorganization of existing institutions. In the following, I will show that one nevertheless does not have to dispense entirely with a comprehensively defined concept of social human rights.

II. The Right to Flourish

- Equal Distribution

[17] An attempt to provide a justification for social human rights that also embraces *positive duties* is offered by Stephan Gosepath.⁽⁹⁾ He presupposes the currently widespread view, human rights are based on a morality of equal respect and concern. But he suggests that we understand this moral principle as a *principle of equal distribution*.⁽¹⁰⁾ Every person has a *prima facie* claim to all goods that are available for public distribution. Such goods can be divided into four categories: civil liberties, possibilities for political participation, social positions and opportunities, and economic profit. Human rights also belong to the desired goods. The equal consideration of all means that, everyone has an *identical* claim to an equal share of all goods regarded as desirable. Connected with this is the likewise equally distributed responsibility to shoulder one's share of the burdens in society. Consequently, it is the deviations from this hypothetical equal distribution that need to be justified in public discourses.

[18] Gosepath proposes an elegant bridge from the moral claims that every person has on all desirable goods to human rights, which can be justified on the basis of moral arguments alone. According to his proposal, the moral claims that arise from the principle of justice are also claims to human rights. Human rights are therefore claims that derive from the principle of equal distribution and that regulate the just distribution of social goods. The normative claim to equal distribution represents a principle towards the generation of morally recognizable, individual human rights. Just like all other classical civil liberties and political rights, social rights also derive from demands for equal distribution. As they differ from civil liberties and political rights only in terms of *what* they distribute, they are neither to be subsumed under these other two categories of rights nor should they be seen as deriving from them. Rather they enjoy precisely the same status as civil rights and liberties. The forging of this link between the principle of equal distribution and human rights is possible because the claims to a just *prima facie* distribution are not limited to a specific community or nation state, but -- just as with human rights -- are universal. Gosepath's theory is not a "threshold theory," i.e. the equal distribution goes beyond the basic provision of goods to prevent any unregulated unequal distribution from taking place. It is easy to imagine how by this means, it would be possible to ensure social support services that extend far beyond the subsistence level.

[19] With the reversal of the burden of proof implied in the proposal, unequal distribution becomes a phenomenon that demands justification: It is not the others who must show that they have a claim to a thing, but rather those in possession of things that all would consider desirable who must prove that their claim is justified while that of the others is not.⁽¹¹⁾ Yet Gosepath's position also brings to light at least two difficulties, which shall be discussed here.

[20] The principle of distribution does not only apply to material resources (e.g. economic profit, raw materials, education) but also and indeed explicitly to rights, for the latter are among those goods that "one may not as a human being withhold from anyone." Yet human rights are also "indivisible," which means that they cannot be distributed to a specific number of people. People "possess" human rights in that they grant one another moral claims deriving from these rights. Thus they require no distribution: from a normative viewpoint, everyone has a right to social support in

the event of illness, to political liberty, to political participation. This is precisely what constitutes the claim to the universality of human rights. It would contradict the very idea of human rights if – purely hypothetically – certain social human rights were to exist that, until successfully challenged, would be distributed only among a certain group of people, e.g. only among women.

[21] In addition, Gosepath's notion that rights should be allocated according to the principle of equal distribution is tautological. On the one hand, the principle of equal distribution is a human-rights-generating principle, which means that legitimate moral claims deriving from the principle of equal distribution are also simultaneously human rights. On the other, human rights themselves are among the goods to be distributed, and thus are an object of distribution. Therefore the claim and the object of the claim are identical. Gosepath appears to support the view that a human-rights-based claim to private, political and social human rights exists. If this criticism is apt, then the justification for human rights still needs to be articulated.

- Concepts of Liberty and Social Autonomy

[22] Other maybe more convincing approaches toward a justification of social human rights rest on a concept of liberty. For a long time, one interpretation of this concept dominated the debate: that of negative freedom, understood as the absence of the arbitrary use of power by the state. As far as the classical rights are concerned, e.g. the rights to life, personal liberty and property, this concept of freedom provides sufficient justification. Not so, however, in the case of social human rights. For rather than serving to defend one from intrusions by the state, these rights formulate demands for services from the state. Only a few legal theorists and philosophers have attempted to draw upon the concept of positive freedom in justifications of social rights, and even they have done with some hesitation. According to the interpretation of the positive concept of freedom, it is not only external obstacles that restrict the exercise of liberty; one is also unfree when access to the exercise of equal opportunities and the material requirements that correspond to them are lacking. One relatively widespread approach refers to a concept of positive freedom – thereby acknowledging the basic necessity of social rights – but also offers a "functionalist" justification of social rights.

[23] One proponent of this "functionalist" position is Jürgen Habermas, who presents a legal-philosophical program for the justification of a system of rights that also includes social rights.⁽¹²⁾ According to Habermas, human rights do not simply spring from moral norms, nor can they be directly justified by means of discourse theory. Rather, structurally speaking, they more closely resemble rights than moral norms. The characteristic structure of the rights goes back to the legal form (*Rechtsform*), to subjective freedom in the form of a legal claim as it has evolved historically. Roughly outlined, the discourse principle is realized in the process of the legal institutionalization of democratic procedures. It was only through the interplay between individual human rights and popular sovereignty that four legal principles arose to which citizens, rationally speaking, could consent: these included rights to the greatest possible measure of equal liberty, the right to membership status, the actionability of rights and individual legal protection, and political participation rights. The social rights "to the provision of living conditions that are assured socially, technologically and ecologically to the extent required to guarantee equality of opportunity with regard to the exercise of the civil rights listed in (1) to (4)" are justified as an extension of the above-mentioned four categories of rights.⁽¹³⁾

[24] Thus the question arises of why social rights play only a subordinate role in Habermas' concept. The most obvious grounds for rejecting a legal principle that would accord constitutional status to social rights would appear to be that no principle of social rights arises out of the application of the discourse principle to the legal form that would necessarily have had to be contained in the *process* of the justification of the rights. The system of rights includes "precisely those rights that citizens must grant one another if their coexistence is to be legitimately regulated by means of positive rights."⁽¹⁴⁾ By this, Habermas is referring above all to those rights that form the precondition for a legitimate establishment of lawmaking process according to the democratic principle. From the perspective of a *procedural* justification of human rights, social rights only command attention as a precondition for the *exercise* of the former rights by citizens. As a legal *component* of the process, they are of no importance.

[25] Why is a "functionalist" justification insufficient? One reason is that one can only justify a minimum of subsistence services: Only those services can be admitted that render a citizen "market-worthy" and enable his or her political participation.

[26] As the following discussion of the various approaches will show, another reason is that this concept of freedom presumes a far too narrowly defined notion of personal freedom.

[27] Henry Shue offers a rationale for why one should not acknowledge social rights only in relation to the exercise of other rights but rather attribute to them a constitutive value at the level of a legal principle.⁽¹⁵⁾ At first glance, Shue

also seems to be proposing a functionalistic justification for social rights. In his opinion, it is possible to distinguish "basic rights" from other rights. Basic rights are those that every person must possess if he or she is to be able to exercise any rights at all. Without a right to freedom from bodily harm, to a certain minimum standard of living and to a few civil rights and liberties, it is impossible to make use of any other rights. The basic rights are mutually dependent: if one does not have a guaranteed claim to material security, one cannot exercise one's civil rights and liberties; on the other hand, without protection from arbitrary arrest and terror, material security is not worth much. In addition, Shue is of the opinion that there must be many basic rights that apply to everyone, and that these need to be accessed for other human rights to be exercised. Thus, Shue's approach goes one step further than Habermas's. While he does continue to view social rights as a condition of possibility for the exercise of other rights, he does not prioritize civil rights and liberties but emphasizes the interdependence of the three categories of rights. Nevertheless, he sticks to a narrow functionalist justification of social rights.

[28] Robert Alexy approaches the question of social rights from the opposite direction. (16) Some time ago, he demonstrated that it is not true that one can only speak of freedom when one is free of external obstacles or when one enjoys positive freedom and can participate in processes of political self-governance. He defends the view that the concept of *positive freedom* also implies that the necessary preconditions must exist to make it possible for one to provide a "decent" standard of living for one's family. For this to be achieved, Alexy argues, the corresponding material conditions must be accessible. This indeed seems to be a promising approach – at least at first glance. But another problem comes up.

[29] Alexy's concept of positive freedom rest entirely on the premise that it is sufficient for the exercise of personal and political liberties that the appropriate *resources* be made available. This view fails to recognize the fact that goods can have very different effects on the welfare of individuals and can be used by different individuals in different ways. (17) A person's quality of life cannot be determined in terms of the goods one possesses alone. Which goods people require and in what amount depends to a decisive degree on what capabilities they have or want to develop. Children, for example, do not yet have the necessary capabilities to enable them to make use of the resources allocated to them. The handicapped, the ill or the elderly often do not or no longer possess the necessary abilities to look after themselves, not even when they have the material resources to do so.

[30] Social human rights should not merely provide the material preconditions for people to be able take advantage of their freedoms, pursue their goals and realize their plans without threat of impediment by others or through inventions of the state. Furthermore, these rights should not merely justify the development of civic competences so as to enable people to take part in processes of political self-determination; human rights should also make it possible for people to "develop" themselves on a personal level. It should enable them – within reasonable limits – to pursue their vision of the good life, even if they do not themselves possess the corresponding means or capabilities they would need. There must, in the words of Ernst Tugendhat, be "personal space for the development and flourishing of the self." (18)

[31] At this point, it can be ascertained that social human rights cannot simply be reduced in the functionalist manner to the provision of the means for the exercise of civil rights and liberties, for they have an *intrinsic value*. This value lies in the pursuit of different activities and the development of capabilities that enable one to pursue a concept of the good. This aspect goes beyond the concept of positive freedom in so far as one is no longer speaking here of spaces for action created and secured by the state through the provision of resources, but rather of self-development. The aspect of action that comes into play with the shift towards a capabilities approach suggests that one speak of "social autonomy". (19) Social human rights secure a universal claim to be able to develop those capabilities that are required if one is to execute a life plan regarded as valuable. And this claim to be able to possess the means necessary to lead a good life (in accordance with one's individual requirements and plans) cannot justifiably be denied to anyone.

[32] One could ask oneself what status such a moral "right to flourish" would have alongside the rights already established in the UN Declaration. Does it represent a kind of meta-right? Does it belong to the category of social human rights or does it fall outside the canon of existing rights? The moral claim to flourish defended here can be understood as a moral right, in the justification for which two points should be made clear: that there are human needs and interests that cannot be satisfactorily described in terms of negative and positive freedoms. A "right to flourish" has, as we have seen, its own value, which cannot be reduced to either negative or political freedoms. This value resides in the development of capabilities and in the fact that one must be able to rely on the support of others when one is not, is not yet or is no longer in a position to look after oneself.

[33] In addition, this moral right is formal in the sense that it demands and allows context-specific interpretations to be made of the conditions of a given society. It is here above all of heuristic value, and is to be understood as a principle by means of which social rights may be concretized and spelled out in moral and political discourses. This universal moral claim requires specification in various political contexts by citizens. Knowledge of the economic and institutional requirements must flow into the political discourse together with knowledge of the biographical resources of the

citizens in question. Great differences exist in terms of what capabilities are regarded as valuable in different environments. Diversity will probably be relatively limited when what is at stake is the securing of existential human "functions," such as access to an adequate supply of food, appropriate housing and health care. However, through the political concretization of more capabilities, much stronger variations will arise. The acquisition of the ability to deal with high-tech equipment, for example, is not necessarily regarded as an urgent task in some developing countries. A further aspect, however, is that it is not only the *type of capability* that underlies the discussion but – even in the realm of basic human functions – the *standard of its realization* can and must be interpreted. In the Democratic Republic of the Congo, for example, the most urgent demands in the area of pediatric health care are the provision of oral dehydration salts and free access to vaccination equipment, a standard which, from the perspective of the Federal Republic of Germany would be unacceptably low.

III. Series of Duties and Scope

[34] Thus far I have only spoken of the justification of a *moral* right to flourish. What has still to be addressed, however, is the objection (referred to in the introduction) to the application of moral arguments in the domain of legal rights, particularly with regard to social human rights.

[35] This objection calls into question the very notion of a *right to welfare* on the grounds that such claims -- in contrast to civil rights and liberties -- cannot be considered as *perfect duties*. As has been mentioned before, only perfect duties stand in direct relation to a legal subject and place a specified obligation upon each individual, which is furthermore the same for everyone. The difficulty of clearly determining the addressee of the duty as well as the kind of obligation to fulfill these claims pose an obstacle to the legal enforceability of positive duties, so a widespread critique on attempts to justify legal social rights. The critique, however, grasps at thin air.

[36] Neither "positive" social human rights nor "negative" civil rights and liberties correspond precisely to exclusively "positive" or "negative" duties. Rather, *series of duties*, or, in the words of Jeremy Waldron, "waves of duties" are associated with these rights, which demand both the forbearance of certain actions as well as the provision and distribution of resources.(20) Thus, for example, the right to free speech corresponds to the duty to refrain whenever possible from censoring publications and statements. This, in turn, also brings with it the duties to protect groups of citizens from hate speech, discriminatory remarks or insults and to support citizens' groups or political organizations in their activities, *e.g.* by granting non-profit status to their organizations. These are doubtlessly positive duties. The stringing together of duties that we encounter in the context of negative rights also exists in relation to social rights. They oblige everyone not to support unjust institutions that impede people from achieving an appropriate standard of living *and* to create a conditions that make it possible for the rights to subsistence, housing and work to be realized -- not only in one's "own country," but also in the developing world. Furthermore, obligations to provide direct assistance are imposed that can vary according to criteria like urgency, expediency and degree of social relationship.(21)

[37] One conclusion from this could be that neither negative nor positive human rights are legal rights, an assumption that does not make much sense. The more convincing conclusion is that perfect negative duties correspond to social human rights, as well as do imperfect duties. But the latter can no longer serve as grounds for regarding social human rights exclusively as moral rights and not also as potential *legal* human rights since the same is true for liberty rights. The question that needs to be elucidated in the case of all human rights is rather what moral obligations are also legally recoverable.

[38] Negative and positive duties, as this discussion has thus far demonstrated, do not in any sense cancel each other out but rather complement one another. Social human rights formulate an individual claim to be able to flourish, which obliges all people as well as national and international organizations to refrain from supporting existing unjust institutions as well as to implement agreements and measures that lead to the provision of the corresponding resources and opportunities to those people who lack them.

[39] Let me address a last question. How far-reaching are the *positive* duties imposed by social rights? Do human beings have identical obligations to help the poor? Is there a convincing gradation of the degree of responsibility and the scope of application of social rights according to certain characteristics and standards? There are at least three competing models for dividing this kind of "moral labor".(22)

[40] The first assumes that all people, regardless of their personal relationships, have the same rights and obligations. In order for these rights to be realized, the duties of individuals or institutions are to be divided according to the anticipated level of efficiency and effectiveness.(23) Expediency is the decisive criterion for the division of duties in this model. The second model – that of relationship-dependent responsibility – is based on the notion that special relationships between people, be they based on kinship, friendship or common citizenship, also imply special responsibilities. The closer the degree of contact between two people, the more extensive are their mutual

obligations. Neither model on its own provides a satisfactory standard for the division of moral duties.

[41] The first model, however, fails to take into consideration the fact that many moral obligations are not independent of personal relationships. Thus we bear greater responsibility for our own children and family members than we do for other people; friends take precedence over acquaintances, one's fellow citizens over those of other countries.

[42] But there are also problems with the second model. The forms of relationship discussed are not necessarily those best suited to providing assistance and responding to needs. Furthermore, such a division can have a disproportionately negative impact on certain groups, whom it might prevent from pursuing other goals. In the areas of caretaking and childrearing, for example, the lion's share of the burden of responsibility is borne by women. In addition, in the light of increasing interdependency worldwide, it is no longer easy to determine with certainty to whom one has a special obligation. This was also demonstrated by Pogge's reference to a negative concept of obligation.

[43] Peter Koller proposes a third model, which integrates aspects of the other two. Both points of view – that of expediency as well as that of social relationships – should be included in our considerations of the scope of moral duties. While the first aspect is inclusive and the available means and resources are distributed to everyone who makes a legitimate claim, the latter is of an exclusive nature. The closer the degree of social contact, but also the more clearly one is implicated in the difficult circumstances of another, the more prepared one is *de facto* to perform acts of solidarity and the more extensive are one's obligations to provide assistance and care. This applies not only within a society but also to international cooperation between nation states.

[44] Koller, however, firstly proceeds from the problematic assumption of the dichotomy between negative and positive duties, to which negative and positive rights respectively correspond. Duties of forbearance are universally valid. Not so, however, with the positive duties, as they are directed preferentially to those in one's immediate proximity, e.g. one's fellow citizens. Secondly, he overlooks the fact that obligations to perform services of assistance can be generalized. A "right to flourish," however, is, at least from a moral perspective, universal. Between family members as well as between friends there exist – alongside these social claims-- more extensive obligations. However, these cannot be expected of all other people, the major point of distinction between these and universal moral obligations to provide assistance.

[45] Quite apart from this, however – and here Koller's standard of expediency can be applied – there remains the question of the extent to which social human rights are realizable. With increasing institutionalization, the moral claim to the material conditions required for the development of capabilities does not diminish. However, it would place an overwhelming burden on individuals in the developed world to have to execute these duties on a global scale. What does exist is the duty to direct governments, NGOs and other institutions with the necessary infrastructure to take over these duties.(24) Nevertheless, morally based social human rights remain the driving force behind the will to create just national and international institutions.(25)

(1) The World Bank, THE WORLD DEVELOPMENT REPORT 1999/2000, 2000, 19ff. See: www.worldbank.org/wdr.

(2) Philip Alston, Making Economic and Social Rights Count: a Strategy for the Future, POLITICAL QUARTERLY 2, (1997), 188.

(3) Rolf Künemann, Neuere Entwicklung beim Recht auf Nahrung, in: JAHRBUCH MENSCHENRECHTE 2000, ed. by Gabriele von Arnim/Volker Deile u.a., 290ff. See also the website of FIAN, FoodFirst Information and Action Network: www.fian.org.

(4) Onora O'Neill, Transnationale Gerechtigkeit, ed. by Stefan Gosepath/ Georg Lohmann, Philosophie der Menschenrechte, 1998, 220.

(5) See: Thomas Pogge, The Bounds of Nationalism, CANADIAN JOURNAL OF PHILOSOPHY. SUPPLEMENTARY VOLUME ON NATIONALISM (1997); and: How Should Human Rights be Conceived?, in: JAHRBUCH FÜR RECHT UND ETHIK, 3, ed. by Joachim Hruschka, 1995, 103-120.

(6) Thomas Pogge, Lebensstandards im Kontext der Gerechtigkeitslehre, ZEITSCHRIFT FÜR PHILOSOPHISCHE FORSCHUNG 51,1 (1997), 16.

(7) See Onora O'Neill 1998 (Fn. 4), 228; and Thomas Pogge (Fn 5); Michael Baumann/Michael Windfuhr, Politische

Globalisierung versus ökonomische Archipelisierung, in: World Watch Institute Report – Zur Lage der Welt 2000, 7-35, 2000

(8) The *lex mercatoria* is an example for a juridical regulation between private actors that takes place without state intervention. See: Gunter Teubner, *Globale Law Without a State*, 1997.

(9) See: Stefan Gosepath, *Zur Begründung sozialer Rechte*, in: *Philosophie der Menschenrechte*, ed. by Stefan Gosepath/Georg Lohmann, 1998:

(10) See also: *Philosophie der Menschenrechte*, hg. Stefan Gosepath/Georg Lohmann 1998, especially the contributions by Georg Lohmann, 62-96; Andreas Wildt, 124-146; Stefan Gosepath, 146-188; Robert Alexy, 244-265; Thomas Pogge, 378-401; see also: Ernst Tugendhat, *Vorlesungen zur Ethik*, 1993, 336ff., and, *Die Kontroverse um die Menschenrechte*. In: *ANALYSE&KRITIK* 15 (1993), 101-110.

(11) See also: Ernst Tugendhat, *Dialog in Leticia*, 1997, 70

(12) See: Jürgen Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, 1992, 112ff.

(13) See: Jürgen Habermas (Fn. 12), 156, and also: Ulrich K. Preuß, *Verfassungstheoretische Überlegungen zur normativen Begründung des Wohlfahrtsstaates*, in: *Sicherheit und Freiheit. Zur Ethik des Wohlfahrtsstaates*, hg. von Ch. Sachße/H.T. Engelhardt, 1990

(14) See: Jürgen Habermas (Fn. 12), 155

(15) Henry Shue, *Basic Rights*, 1980

(16) Robert Alexy, *Theorie der Grundrechte*, 1986, 386ff.

(17) See Amartya Sen, *Capability and Well-Being*, in: *The Quality of Life*, ed. by Martha Nussbaum/ Amartya Sen, 1993; see also: Ernst Tugendhat (Fn. 10) *Vorlesungen...*, 360

(18) Ernst Tugendhat, (Fn. 10), *Die Kontroverse...*, 108

(19) See also: Günter Frankenberg, *Why Care? - The Trouble with Social Rights*, *CARDOZO LAW REVIEW* 17, 1996, 1386.

(20) Jeremy Waldron, *Liberal Rights*, collected papers 1981-1991, 203ff. Cambridge.

(21) See: *The Limburg Principles*, *HUMAN RIGHTS QUARTERLY* 9, (1987), 122-135; see also: *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, *HUMAN RIGHTS QUARTERLY* 20, 1996, 691-730; and: *General Comments of the Committee on Economic, Social, and Cultural Rights*, especially: *General Comment No. 3: The Nature of States Parties Obligation (art.2, para. 1 of the Covenant)*, in: *Economic, social and cultural rights. A textbook*, ed. by A. Eide/ C. Krause/ A. Rosas, 1995, 442ff.

(22) Robert E. Goodin, *What is so special about our fellow countrymen?*, *ETHICS* 98, 1988, 663-686 and Henry Shue, *Mediating Duties*, *ETHICS* 98, 1988.

(23) Peter Koller, *Der Geltungsbereich der Menschenrechte*, in: *Philosophie der Menschenrechte*, ed. by Stefan Gosepath/Georg Lohmann 1998. (Fn. 40), 104ff.

(24) See also: Ernst Tugendhat (Fn. 10), *Vorlesungen...*, 350; Axel Honneth, *Universalismus als moralische Falle? Bedingungen und Grenzen einer Politik der Menschenrechte*, *MERKUR* 48, 9/10, 1994, 878.

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