



universität
wien

MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

Against the Classical Distinction Between Positive and Negative Human Rights: A Case for Shue's Tripartite Model

verfasst von / submitted by

Christian Davis Moorman

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Legal Studies (MLS)

Wien, 2022 / Vienna 2022

Studienkennzahl lt. Studienblatt /
Postgraduate programme code as it
appears on
the student record sheet:

UA 992 892

Universitätslehrgang lt. Studienblatt /
Postgraduate programme as it appears on
the student record sheet:

Human Rights (MLS)

Betreut von / Supervisor

Dr. Elisabeth Holzleithner

Abstract

The human rights movement which came to the fore of international politics and law after the second world war kickstarted, and remains the core of, an unprecedented shift in international legal and moral philosophy. This thesis examines the moral side of this human rights-based framework, and argues that it should be understood as a species of cosmopolitanism. It is specifically focused on the theoretical and practical tension within this framework between two kinds of duty, which have historically been referred to as positive duties and negative duties. It explores the philosophical roots of the dichotomy between these two kinds of duty, and some of the problems it causes for the HR Framework as a moral framework. It then argues that the dichotomy is a false one. This thesis will argue that Henry Shue's tripartite model for understanding rights and their associated duties is preferable to the classical model, and will consider and rebut some counters to Shue's model. It will first engage with Stephanie Collins' formulation of the claimability problem, which argues that certain human rights are not 'real' human rights because they are not claimable. It will then engage with an original challenge to Shue's model based on the supposed vagueness of the rights classically referred to as positive rights in contrast to those classically referred to as negative rights. This challenge argues that a dichotomy between two kinds of right can survive a transition to Shue's model, and potentially act as the basis of a distinction between two classes of right, one more and one less fundamental. It will argue that neither the claimability problem nor the original challenge succeed as objections to Shue's model. It will conclude by briefly suggesting a potential path forward for proponents of Shue's tripartite model with respect to the practical task of the allocation of duties.

Deutsch Abstract

Die Menschenrechtsbewegung, die nach dem Zweiten Weltkrieg in den Vordergrund der internationalen Politik und des internationalen Rechts rückte, hat einen beispiellosen Wandel in der internationalen Rechts- und Moralphilosophie eingeleitet und bildet nach wie vor den Kern dieser Bewegung. In dieser Arbeit wird die moralische Seite dieses auf den Menschenrechten basierenden Rahmens untersucht und argumentiert, dass er als eine Art Kosmopolitismus verstanden werden sollte. Sie konzentriert sich insbesondere auf das theoretische und praktische Spannungsverhältnis innerhalb dieses Rahmens zwischen zwei Arten von Pflichten, die historisch als positive Pflichten und negative Pflichten bezeichnet wurden. Er untersucht die philosophischen Wurzeln der Dichotomie zwischen diesen beiden Arten von Pflichten und einige der Probleme, die sich daraus für den HR-Rahmen als moralisches Rahmenwerk ergeben.

Anschließend wird argumentiert, dass die Dichotomie falsch ist. In dieser Arbeit wird argumentiert, dass Henry Shues dreigliedriges Modell für das Verständnis von Rechten und den damit verbundenen Pflichten dem klassischen Modell vorzuziehen ist, und es werden einige Gegenargumente zu Shues Modell geprüft und widerlegt. Zunächst wird auf Stephanie Collins' Formulierung des Problems der Einforderbarkeit eingegangen, wonach bestimmte

Menschenrechte keine "echten" Menschenrechte sind, weil sie nicht einforderbar sind.

Anschließend wird auf eine originelle Anfechtung von Shues Modell eingegangen, die sich auf die vermeintliche Unbestimmtheit der Rechte stützt, die klassischerweise als positive Rechte bezeichnet werden, im Gegensatz zu den Rechten, die klassischerweise als negative Rechte bezeichnet werden. In dieser Anfechtung wird argumentiert, dass eine Dichotomie zwischen zwei Arten von Rechten den Übergang zu Shues Modell überleben und möglicherweise als Grundlage für eine Unterscheidung zwischen zwei Klassen von Rechten dienen kann, einer mehr und einer weniger grundlegenden. Es wird argumentiert, dass weder das Problem der Anspruchsberechtigung noch die ursprüngliche Herausforderung als Einwände gegen Shues

Modell erfolgreich sind. Abschließend wird kurz ein möglicher Weg für die Befürworter des dreigliedrigen Modells von Shue im Hinblick auf die praktische Aufgabe der Zuweisung von Pflichten aufgezeigt.

Table of Contents

INTRODUCTION	6
CHAPTER I: THE HUMAN RIGHTS FRAMEWORK AS COSMOPOLITAN	6
THE MORAL-LEGAL FRAMEWORK CREATED BY THE IBHR	7
DUTY-BEARERS WITHIN THE HR FRAMEWORK: STATES, INDIVIDUALS OR BOTH?	10
THE HR FRAMEWORK AS A SPECIES OF COSMOPOLITANISM	13
CHAPTER II: A TENSION IN THE ALLOCATION OF COSMOPOLITAN DUTIES	15
POSITIVE AND NEGATIVE DUTIES: THE CLASSICAL DISTINCTION	16
THE ROOTS OF THE DISTINCTION: A SHAKY PHILOSOPHICAL FOUNDATION	19
CHAPTER III: AGAINST THE BIFURCATION OF DUTIES AND RIGHTS	26
THE PROBLEM LURKING WITHIN THE POSITIVE-NEGATIVE DISTINCTION	27
THE TRIPARTITE DISTINCTION BETWEEN RIGHTS-BASED DUTIES: SHUE'S ARGUMENT	28
THE BENEFITS OF SHUE'S TRIPARTITE MODEL	32
CHAPTER IV: A COUNTER TO SHUE	34
THE CLAIMABILITY PROBLEM AS A COUNTER TO SHUE	35
COLLINS' PROPOSED SOLUTION TO THE PROBLEM	37
THE CLAIMABILITY PROBLEM AND SHUE'S TRIPARTITE MODEL	38
A SECOND OBJECTION TO SHUE	41
A REWORKED CONCEPTION OF CLOSENESS: A PATH FORWARD?	45
CONCLUSION	46
BIBLIOGRAPHY	48

Introduction

In this thesis, I will begin by sketching out the moral-political framework defined by the documents that comprise the International Bill of Human Rights, and showing that this framework should be classified as a species of cosmopolitanism. In chapter II, I will introduce a tension which has historically been held to exist between two types of duty, positive and negative duties, and will explore how this tension affects the moral framework explored in chapter I. I will also explore the philosophical roots of this tension, focussing on the work of Cicero, whose account of it has proven to be incredibly influential. In chapter III, I will explore Henry Shue's argument against the binary distinction between positive and negative rights and duties, and his proposed alternative model for understanding rights and their associated duties. In chapter IV, I will consider some counters to Shue's model, and will attempt to rebut them, before briefly suggesting a direction which may be helpful to those engaging in the practical task of duty-allocation.

Chapter I: The Human Rights Framework as Cosmopolitan

I have two aims in this chapter. First, I aim to sketch out the moral-political framework defined by the documents that comprise the International Bill of Human Rights. Second, I plan to demonstrate that this specific moral-political framework is a form of cosmopolitanism.

The International Bill of Human Rights is the name commonly applied to three documents: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. These documents collectively lay out the tenets of a specific moral-political worldview, in a much clearer way (thanks to their nature as rooted in the legal-political sphere) than many widely accepted ethical systems. I am limiting myself, in this paper, to considering the ideology

presented through the International Bill of Human Rights¹ for three reasons. First, the documents which comprise the IBHR are the most widely known and accepted human rights documents in the world today. Second, the amount of space I have in this paper, and the amount of time I have to devote to its research, are limited. Finally, the documents which make up the IBHR do effectively set out the core tenets of the moral-political framework that will be the concern of this paper. I believe this is demonstrated in large part by the very fact that they have been collectively dubbed the International Bill of Human Rights.

After I have outlined the moral-political framework created by the IBHR, I will briefly define cosmopolitanism, and show that the HR Framework (the moral-political framework created by the IBHR) is a form of cosmopolitanism. This will establish the theoretical platform from which I will explore the central question of this paper: the positive-negative distinction between different human rights and its philosophical viability.

The Moral-Legal Framework Created by the IBHR

I will now proceed to give an overview of the moral-political framework that the IBHR creates. The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly in 1948, and although it has no legal power it lays out a list of the inalienable human rights.² In 1966, the UN General Assembly adopted the ICCPR and the ICESCR, two international treaties (with legal power for states parties) which set out the various fundamental civil, political, economic, social, and cultural rights.³

I will not list every right covered by the IBHR as doing so would take up too much space, but some examples include the rights to freedom from torture and slavery, the right to freedom of movement, and the rights to health, education, an adequate standard of living, and

¹ Henceforth referred to as the IBHR.

² "International Bill of Human Rights." *United Nations OHCHR*.

³ *Ibid.*

freedom from hunger.⁴ The IBHR, at its core, establishes a human rights-based worldview, wherein these rights are inviolable, inalienable, and to be defended and protected by states which adopt this worldview. The three documents, in their respective preambles, all emphasize the necessity of the recognition of the inherent dignity that inheres in all human beings, and the recognition of their equal and inalienable rights.⁵ The fundamental rights enumerated in these documents are claimed, in the preambles of the two covenants, to “...derive from the inherent dignity of the human person.”⁶ These passages make it clear that the IBHR-based worldview is based on a form of natural law theory, wherein inherent dignity is an essential characteristic of all humans, and the root of the various fundamental rights which form the IBHR’s basis.

All three documents also posit the same end goal: the establishment of conditions in which all human beings are able to enjoy their fundamental rights, where these rights are universally respected and protected.⁷ Based on this claim, we can see that this worldview has an important teleological aspect—there is an ideal state of affairs at which it aims, although it is important to note that this view does not conceive of the duty to respect human rights as a means to this *telos*, but rather as being a perfect duty (in the Kantian deontological sense) in itself.

In referencing the posited all-encompassing community of human beings, all of the documents use the term “the human family.”⁸ This gives us a clearer idea of the sort of universal community that the IBHR is positing, the close connection between the members of this community, and, perhaps, of the strength of our duties toward our ‘siblings.’ At the end of the preambles of the ICCPR and ICESCR are two matching passages, which read, “...the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present

⁴ *Ibid.*

⁵ See the preambles of the ICCPR, ICESCR, and UDHR.

⁶ See the preambles of the ICCPR and ICESCR.

⁷ See the preambles of the ICCPR, ICESCR, and UDHR.

⁸ *Ibid.*

Covenant...”⁹ These identical passages are significant in that they directly engage with the question of duty, the specific sort of duty that should result from acknowledging the fundamental importance of human rights, and the way in which this human rights-based duty might rub against and interact with individuals’ other duties.

As mentioned above, for reasons of space I will not list each of the rights enumerated and described in the IBHR. Where certain rights become relevant to this paper, I will discuss them in particular, but for now it should suffice to simply say that whereas the UDHR lays out a group of wide-ranging fundamental human rights, the two covenants lay out groups of fundamental human rights that relate to their respective spheres, the civil and political on the one hand, and the economic, social and cultural on the other.

Now that we have explored some of the particular aspects of the IBHR, we can construct a picture of the ideological framework which it entails—I will refer to this as the HR Framework. As we have seen, the HR Framework is a natural law-based theory, which posits human dignity as an essential characteristic of human beings. This human dignity is then used as the foundation of a collection of human rights which are deemed inalienable, and which must be respected and protected. Human dignity, in its universality, also plays the role of a unifying characteristic, something that, by virtue of the fact that all human beings possess it, makes a community of all human beings, or, as we have seen it referred to in the IBHR, a “human family.”

It is also posited that a better world for all human beings can only be achieved if a state of affairs is reached wherein all humans can enjoy their human rights—this notion reinforces the duties of both states and individuals to promote knowledge of and respect for human rights, and engage in a human-rights based sort of missionary work, spreading the ideology to all of the members of the human family. Finally, the IBHR gives us a picture of the sorts of duties the HR

⁹ See the preambles of the ICCPR and ICESCR.

Framework entails. States parties to the covenants acknowledge a duty to promote respect for and observance of the rights they contain, and to try to establish conditions in which all humans can enjoy their economic, social, cultural, political, and civil rights. Individuals likewise have a duty to promote and respect human rights.

As can be seen, the HR Framework presumes the existence of a close link between human rights and duties—just as human dignity is the root of human rights, so are human rights the roots of certain duties. These duties are either directly imposed by the documents constituting the IBHR¹⁰ or indirectly implied through the enshrinement of specific human rights. An example of this latter method of duty-creation would be that the enshrinement of the human right to freedom from slavery, even in a scenario in which the IBHR did not explicitly mention any associated duties, would imply a duty not to enslave anybody, and perhaps even a duty to make an effort to dismantle institutions of slavery one might encounter in the world. The relatively vague nature of the IBHR's treatment of certain rights and their associated duties, as well as questions about exactly what kinds of duty the HR Framework implies in many cases, has led to numerous academic and political clashes, one of which we will explore in greater depth in chapter IV. For now, it is enough to establish that one of the characteristics of the HR Framework is a belief that there are strong, direct links between rights and duties, in both the moral and legal spheres.

Duty-Bearers Within the HR Framework: States, Individuals or Both?

Another highly significant aspect of the HR Framework that we should remember is that even though individual humans are its main focus, it is a system that is centred on nation-states. It is states which become parties to the covenants which help make up the IBHR, and it is states

¹⁰ The strongest example of this being the covenants' imposition of legal duties to 'protect and promote' human rights on states parties.

which are tasked with protecting the rights that they lay out. This is not to say, though, that the HR Framework does not ascribe duties to individuals—the question of whether the IBHR’s ascription of duties is addressed mainly to states or individuals has a complex answer. Some articles are clearly addressed to states parties, such as Art. 4 ICCPR, which directly references them and only them.¹¹ The language of other sections of the IBHR, though, can be vague in this respect, such as Art. 7 ICCPR, which claims that nobody should be subjected to torture or cruel, inhuman or degrading treatment or punishment.¹² This prohibition of torture is not explicitly aimed at states or individuals, and based on the wording and context should be (and has been) interpreted as ascribing a duty to refrain from engaging in such activities to both groups, although, of course, the main legal requirement to perform the duty falls upon the shoulders of states.¹³ The nature of the IBHR, as a set of documents addressing a variety of categories of actor (such as states, individuals, and groups)¹⁴ is the result, in large part, of the historical context in which it was created. The nation-state is, of course, the primary form of social organisation in the modern world—humans today are, in almost all cases, state-bound creatures. In many cases, citizens of nation-states delegate certain responsibilities to the state, endowing it with special powers and duties, turning it into a sort of agent itself. It is these agents which bear the legal brunt of the human rights regime, and which perform the primary protective role within the human rights framework. It is important, however, to note the central role the duties of individuals play in the human rights framework—the sort of moral/legal system that this framework is can only be truly effective when it involves actors at every level.

The rights enumerated in the IBHR are very interesting from a philosophical perspective. The nature of these documents, and the mechanisms which are built into them, mean that they

¹¹ ICCPR Art. 4.

¹² ICCPR Art. 7.

¹³ “What Are Human Rights?” *United Nations Human Rights Office of the High Commissioner*.

¹⁴ See ICCPR Art. 5, which addresses “State[s], group[s] and person[s]...”

occupy a unique space which encompasses the realms of morality, politics, and law, as states have various options with regard to the status they accord them.

There are three basic ways in which states can interact with the ICESCR and the ICCPR, the two covenants which constitute two thirds of the IBHR. The first option is to take no action, which essentially means they do not consent to the covenant in question. The second option is to sign the covenant but not ratify it. In essence, this option amounts to a demonstration of a state's approval of the gist of the covenant in question and a willingness to abide by its tenets without actually ratifying the covenant and giving it legal power. The third option is for the state to ratify the covenant, giving it legal effect within its boundaries.¹⁵ It is important to note that ratification can come in many different forms, as states can ratify the covenants with reservations that have significant effects on their legal applicability and strength. The prime example of the utilization of this method, of using reservations to weaken or altogether sterilize a covenant in the legal sense while still becoming party to it, can be seen in the United States' ratification of the ICCPR.¹⁶

Although some states (such as the US) take the path of least legal resistance when it comes to the IBHR, neglecting to give the constituent covenants legal power either by not ratifying them or ratifying them but attaching a heap of reservations, understandings, and declarations, this should not be seen as evidence that they do not subscribe to the HR Framework. Many of the states that go to great lengths to minimise their legal responsibilities in connection with the IBHR do project a profound respect for the rights and duties enshrined in its constituent documents, and make an effort to appear as though their actions are in compliance with these treaties.¹⁷ The broad point I am trying to make is this: the HR Framework is very widespread as a moral-political view, and even where states effectively opt out of giving

¹⁵ "Status of Ratification Interactive Dashboard." *United Nations Human Rights Office of the High Commissioner*.

¹⁶ For a relatively thorough (but still concise) exploration of how the United States has gone about this, see Ash, Kristina. "U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence." *Northwestern Journal of International Human Rights*.

¹⁷ Felice, William F. *The Ethics of Interdependence: Global Human Rights and Duties*. p. 14.

the legal documents that form its basis actual legal power, they still ascribe to the Framework in its moral sense. The HR Framework's nature, as a viewpoint which simultaneously has one foot on the plane of morality and the other on the plane of politics and law, allows for a proliferation of the levels of power which states can accord it.

There are two main 'levels' at which states adopt the HR Framework: the moral and the legal. On the first level, states effectively adopt the values of the Framework as a set of guiding principles—they acknowledge respect for and protection of human rights as a moral baseline. On the second level, they adopt the values of the Framework in the moral sense, as they do on the first level, but additionally give legal power to the Framework. The second level obviously involves greater stringency on the part of the state in question, but both levels involve an adoption (at least on paper) of the cosmopolitan HR Framework. In almost all cases, states accept the HR Framework as a sound basis of moral norms, even where they do not formally bring themselves in line with the legal norms it attempts to establish.

At the level of the individual, the HR Framework constitutes a system which provides one with a set of guiding principles and moral elementary units. Although the burden of legal obligation does not straightforwardly fall on individuals who violate the tenets of the HR Framework, it still performs a significant prescriptive role with regard to duties in the lives of many, and these duties are taken very seriously by practitioners.¹⁸

The HR Framework as a Species of Cosmopolitanism

Now that I have laid out and explored the basic form and characteristics of the HR Framework, I will briefly explain why it, as a moral-legal framework, should be categorised as a member of the philosophical school known as cosmopolitanism. It is important to keep in mind that the HR

¹⁸ The OHCHR's Stand Up for Human Rights campaign illustrates the importance of the role of individuals in the HR Framework, highlighting the significance of human rights document-based individual duties. See "About the Campaign." *Stand Up for Human Rights*.

Framework is a species of cosmopolitanism rather than a legal/political formulation of cosmopolitanism as a whole. Cosmopolitan thought is not monolithic: there are many cosmopolitanisms, some of which stand in direct theoretical conflict with one another. Cosmopolitanism is a category of view rather than a specific viewpoint. I will begin by laying out the central characteristic that all cosmopolitan views share, before showing why the HR Framework should be characterised as such a view.

The biggest hint as to what cosmopolitanism as a category entails is provided by the etymological background of the term ‘cosmopolitan’ itself. The word has its roots in the Greek term *kosmopolites*, which can be translated as ‘citizen of the world.’¹⁹ The core idea that is central to all of the different species of cosmopolitanism is that all human beings belong to a single all-encompassing community, regardless of their individual characteristics or circumstances.²⁰ Beyond this central tenet, it is difficult to pinpoint any views that are shared by all cosmopolitanisms. A variety of questions (existing at a variety of levels of specificity) divide the field of cosmopolitans. Disagreements, for example, about how the all-encompassing community of people should be understood and defined, whether this community should be viewed through the lens of politics, morality, or both, and about the natures of cosmopolitan duties and duty-bearers have created myriad conflicting cosmopolitanisms.

Given the broad nature of cosmopolitanism as a category, it is easy to see how the HR Framework fits in as a form of cosmopolitanism. Its central tenet, as we have seen above, is an insistence on the notion that all human beings are inherently endowed with human dignity. This notion of dignity effectively constitutes the solid and clear foundation upon which the rest of the view is constructed. The possession of human dignity and rights, which are common to all people regardless of their accidental characteristics (e.g., ethnic background, religious beliefs, nationality), is the tie that binds the all-encompassing cosmopolitan community together. This

¹⁹ “Cosmopolitan (Adj).” *Online Etymology Dictionary*.

²⁰ Kleingeld, Pauline, and Eric Brown. “Cosmopolitanism.” *Stanford Encyclopedia of Philosophy*.

understanding of human dignity and rights as universal helps define the sort of cosmopolis that this view posits—the common threads that unite the cosmopolitan community are both moral and political, and have (at the very least) some bearing on duties in both realms.²¹

Having now explored the structure of the HR Framework as a moral-legal system, and especially its moral aspects, and shown why it should be classified as a species of cosmopolitanism, I have established a solid theoretical structural foundation from which this paper can explore its central question regarding duties and rights within the HR Framework. It is important to reiterate that this paper is philosophical rather than legal in nature, and so although the HR Framework has a dual nature and is simultaneously both a legal and moral framework, my focus will be on its status as a form of the latter, and on questions rooted mainly in the moral sphere (although they will of course have some degree of legal import given the Framework's dual nature and the ties it draws between law and morality).²² I will now move on to explore a central tension that has historically affected various forms of cosmopolitanism, and which I think exists within this framework, which is the root of some practical as well as theoretical inconsistencies.

Chapter II: A Tension in the Allocation of Cosmopolitan Duties

Now that I have given a sketch of the HR Framework as a moral-political view and shown why it should be categorised as a form of cosmopolitanism, I will move on to describe the tension within this framework that will lie at the heart of this paper. The tension in question is between two seemingly disparate kinds of human rights-based duty, namely what I will refer to as positive

²¹ I decline to specify who the particular duty-bearers are here, as the subject is the matter of some debate within the context of the HR Framework.

²² Because I am focusing on the moral side of the HR Framework, and the moral duties it prescribes, I will not touch on the historical (and contemporary) debates centring on questions about whether certain HR Framework-prescribed duties are legal as well as moral, and the degrees of legal accountability involved in the observance, or failure to observe, these duties. For a rigorous and interesting exploration of some of these questions, see Boot, Eric R. *Human Duties and the Limits of Human Rights Discourse*.

duties to provide aid and negative duties to refrain. There is, as we will see, an imbalance within the HR Framework, whereby the latter sort of duty and the rights associated with it are seemingly accorded greater moral and legal significance than the former. This tension is not a novel problem, but has afflicted various forms of cosmopolitanism throughout history. As will be demonstrated, the HR Framework, despite its modern roots, does not avoid problems relating to this historical tension: some of the more significant practical problems with the Framework actually find their root in it.

In this chapter, I will introduce the problem of the positive-negative distinction between duties, the corresponding distinction between two classes of fundamental rights, and the historical roots of this distinction. In the section focused on the history of the tension, I will almost exclusively engage with Cicero, and his *De Officiis*. This is both on account of the limited space I have and because the Ciceronian treatment of the question is by far the most historically influential treatment of the topic. Because of the outsized influence the Ciceronian treatment had on later thinkers such as Hugo Grotius, Immanuel Kant, and Adam Smith, as well as more recent political figures, many of the concepts and assumptions we are currently working with are fundamentally Ciceronian in nature. As will be shown, some Ciceronian notions and assumptions have even trickled down to us (sometimes through the political thinkers he influenced, sometimes past them) in a more subtle manner, becoming unquestioned presuppositions within the framework of Western political thought.

Positive and Negative Duties: The Classical Distinction

Before I delve into a broader discussion of these kinds of duties and their place within the HR Framework, it will be useful to briefly outline what is commonly meant when one speaks of positive and negative duties. Put roughly, a positive duty is one which requires an agent to perform a positive action, whereas a negative duty only requires an agent to refrain from

performing an action.²³ The classic example of a positive duty is the duty to give to those in need. In order to fulfil this duty, one must take action: the duty bearer must go about *doing* something, whether that is making a donation to a charity via text message or giving someone who is begging an euro. The classic example of a negative duty is the duty not to kill. In fulfilling this duty, the agent in question is not forced to take positive action, but can fulfil it simply by refraining from engaging in the activity of killing people.

These different kinds of duty are commonly seen as being connected to specific basic rights, because of the close interlinkage between rights and duties. Because of this, many rights are frequently referred to as positive or negative rights, depending on the category that the duty they entail falls into. This distinction, between positive and negative duties, and the categorisation of the rights which correspond with and ground these duties as positive or negative rights, have perhaps unsurprisingly become involved in the discourse surrounding the HR Framework. Rights whose fulfilment requires us to engage in positive action, such as the right to an adequate standard of living, and other socioeconomic rights guaranteed by ICESCR, are commonly seen as and referred to as positive rights. On the other hand, rights whose fulfilment only requires us to refrain from engaging in certain activities, such as the rights to life, freedom from slavery, and freedom from torture, i.e., many of the civil and political rights guaranteed by the ICCPR, are commonly seen as and referred to as negative rights. The distinction's influence on the HR Framework is partially illustrated by the notion of separate 'generations' of human rights. There is considerable overlap between first generation human rights (civil and political rights) and the rights that are commonly thought of as negative rights, and likewise between second generation rights (economic and social rights) and so-called positive rights. This generational division between the two groups of rights throws the notion of priority

²³ Capriati, Marinella. "The Universal Scope of Positive Duties Correlative to Human Rights." p. 355.

between rights into sharper relief—referring to one group as ‘first generation’ rights creates connotations of practical and moral priority over later generations of rights.²⁴

While it is clear that the HR Framework promotes the fulfilment and protection of both positive and negative rights, it also seems to place more emphasis on negative rights and duties than positive ones. The rights associated with negative duties are generally considered to be more clearly laid out in the IBHR and also to be morally and legally stricter than their positive counterparts. By contrast, positive duties are generally seen as possessing a distinct vagueness in the IBHR, which makes it difficult to pick out specific demands they might make of duty-bearers.

Take, for example, the positive duty to ensure that people possess the adequate standard of living laid out in ICESCR Art. 11. While it is clear that the HR Framework posits that people should have access to a minimum standard of living, including freedom from hunger and access to clothing and housing, the questions of how far one should be expected to go in the performance of this duty, and how to select a primary beneficiary individual or group (for there are myriad eligible potential beneficiaries) are left unanswered. The text of the right itself does not give much in the way of an indication of a direction one should head in when deliberating about the specific way in which to perform the associated duty, and many practical pathways to the performance of the duty appear to be open.

The effect of this vagueness is that positive duties and their associated rights are perceived as being weaker than negative duties and theirs—when it is unclear what the scope and limits of a duty are, it becomes much more difficult for this duty to play a significant role in our

²⁴ The notion that first generation rights should have priority over those belonging to the second generation has actually been rejected by the OHCHR. They claim that all of these fundamental rights should be considered as existing on a level plane, with none being theoretically or morally prior to any other. Nevertheless, rights are still discussed as belonging to one of the three generations, and laypeople generally consider first generation rights to be more fundamental than second and third generation rights. See “Key Concepts on ESCRs - Are Economic, Social and Cultural Rights Fundamentally Different from Civil and Political Rights?” *United Nations Human Rights Office of the High Commissioner*.

practical decision-making processes.²⁵ Furthermore, the rights associated with negative duties are commonly perceived as being ‘more basic’ than those associated with positive duties, perhaps because people perceive the comparative ease with which they can be guaranteed as being indicative of fundamentality. In any case, the HR Framework is commonly understood by many of its practitioners as involving two kinds of fundamental rights: those related to physical security, which are the most basic sort, and those related to subsistence, which are less basic.²⁶

The real-world effect of the widespread belief in this distinction has been significant and arguably disastrous. Subsistence rights and rights to aid are not taken nearly seriously enough, and the actions of the wealthier members of the global community fail to reflect their frequent declarations in the public sphere of their commitment to eradicate global poverty and combat inequality.²⁷ Put simply, the efforts of those in a position to make a real impact on the lives of those in dire need of having their rights to subsistence taken seriously are just not good enough. This real-world effect demonstrates the importance of what might at first seem like a relatively minor theoretical question about taxonomical categories of duty.

The Roots of the Distinction: A Shaky Philosophical Foundation

Of course, the HR Framework is a relatively young moral system, which is technically rooted in the mid-20th century. As demonstrated in chapter I, though, the Framework is an iteration of cosmopolitanism, a philosophical view whose roots go back to the origins of the Western philosophical tradition in Greek antiquity. Questions about the positive/negative distinction and its effects on the framework of cosmopolitan rights and practical morality have plagued

²⁵ Indeed, Onora O’Neill has even argued that this vagueness undermines the rights associated with positive duties to such a degree as to make these rights little more than rhetorical in nature. We will engage with this line of argument in more depth in Chapter IV. See O’Neill, Onora. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. pp. 130–4.

²⁶ Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. pp. 35–7.

²⁷ For a concise, well-researched breakdown of this disingenuous, common sort of charitable “action” by the wealthiest actors on the global stage, see Pogge, Thomas. “Unfair Share.” *RSA Journal*.

discussions about cosmopolitanism since its emergence. The positive/negative distinction is not a novel topic—indeed, some of the answers to questions about positive and negative duties and rights that different philosophers have proposed throughout history have altered subsequent formulations of cosmopolitanism, including the HR Framework. For this reason, a general understanding of the philosophical and historical roots of the distinction will help us see the problem they create more clearly, and will perhaps be of some use in an attempt to formulate a solution to that problem. As we will see, a look at the philosophical roots of this issue reveals aspects of the problem itself that have become obscured in the contemporary discourse. These aspects will prove crucial to the solution that will be proposed in chapter III of this paper.

Perhaps the most impactful historical argument in favour of a bifurcation of duties along similar lines to the contemporary positive/negative distinction can be found in Cicero's *De Officiis*. It is hard to overstate the influence this text and the ideas expressed in it have had on philosophers and politicians through the centuries—medieval Christian philosophers, Grotius, Pufendorf, Kant, and Smith, to name a few, were all heavily influenced by the work.²⁸ *De Officiis* covers a wide variety of topics relating to political life, but this section will focus on three particular aspects of Cicero's account which are relevant to this paper's aims: the bifurcation of duties, a specific and selfish account of property rights, and the introduction of what I will refer to as the concentric circle model of closeness into the discussion about duties of material aid.²⁹

Cicero distinguishes between two kinds of duty in *De Officiis*, which he associates with 'justice' and 'beneficence,' respectively.³⁰ He defines justice as "...that brightest adornment of

²⁸ As Nussbaum states, "This book really was a kind of biblical text for the makers of public policy round the world." See Nussbaum, Martha C. *The Cosmopolitan Tradition: A Noble but Flawed Ideal*. p. 21-2.

²⁹ In picking these characteristics out of Cicero's account of duties, I am following Nussbaum. It is Nussbaum's analysis of the Ciceronian picture of duties which revealed to me how deeply rooted the bifurcation was, and which opened my eyes to the aspects of Cicero's account which have subtly survived for millennia, eventually ingraining themselves in the fabric of the HR Framework and causing theoretical and practical problems over two thousand years after they were first given voice by that soon to be executed Roman statesman. See Nussbaum, Martha C. *The Cosmopolitan Tradition: A Noble but Flawed Ideal*. ch. 2.

³⁰ Cicero. *On Obligations*. I.20.

virtue, the means by which men gain the title of *boni*.”³¹ Beneficence, on the other hand, is described as being the “close companion” of justice, “...which we may also label kindness or generosity.”³² Even at this earliest stage, one can begin to recognise traces of the idea behind making the contemporary positive/negative distinction.

In defining justice, Cicero points out that it has two central concerns: the first is to make sure that nobody harms anybody else unless he or she is prompted to, and the second is to ensure that communal property serves communal interests and private property serves private interests.³³ The foundation of justice, he claims, is “...good faith, in other words truthfully abiding by our words and judgements.”³⁴ When it comes to injustice, there are two kinds: the kind which is directly perpetrated by an agent, and the kind which is indirectly perpetrated by an agent who fails to prevent an injustice when they have to power to do so.³⁵ Cicero claims that someone involved in this latter kind of injustice is just as guilty as someone who has abandoned the defense of their closest relatives or their own country.³⁶

Cicero spends some time discussing the obligations he perceives as emerging from justice, duties such as keeping one’s promises even in wartime, and treating adversaries (even those one has defeated) fairly and humanely.³⁷ It is fascinating to read the Ciceronian account of these duties, as one can identify passages which seem to have directly inspired the political thought of later thinkers in the Western philosophical and legal traditions.³⁸ Cicero’s discussion

³¹ *Ibid.* The term *boni* is described in the endnotes to the Oxford World’s Classics edition of *De Officiis* as having a moral, a political, and a legal sense. A sense of the term is captured when one discovers it is associated with those who resisted the tyrannical ambitions of men such as Julius Caesar and Mark Antony, choosing to defend the Roman republic at great personal risk. See Cicero. *On Obligations*. p. 131.

³² Cicero. *On Obligations*. I.20.

³³ *Ibid.*

³⁴ Cicero. *On Obligations*. I.23.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Cicero. *On Obligations*. I.33-41.

³⁸ For example, at I.28, Cicero claims that “...right action such as this is just only if performed voluntarily.” Most modern readers will read this sentiment and immediately think of Kantian deontology. Cicero also lays out a principle in III.27 that bears some similarity to Kant’s categorical imperative. Likewise, Cicero’s treatment in book I of the law of war, and insistence that agents keep promises bears a striking resemblance to Grotius’ work in *De Iure Belli Ac Pacis*.

of these duties of justice³⁹ is wide-ranging, but for the purposes and aims of this paper, it should suffice to point out the main characteristics of his account of these duties.

Cicero's account of duties of justice involves four main ideas. The first is an insistence on honesty, and a related absolute disavowal of any form of deception.⁴⁰ As noted above, this idea has played a formative role in the inception of modern treaty law and international humanitarian law. The second central idea is that these duties are owed to all people. Cicero insists that duties of justice have a universal scope—they are owed not only to our fellow citizens, but also to slaves, enemies during conflict, and every “fellow-man.”⁴¹ The third central idea is that these duties are grounded in natural law. Cicero believes that the reason it is wrong to harm our fellow people is that doing so “...flies in the face of nature...”⁴² Cicero's point seems to be that because humans are, by nature, social beings, such distinctly antisocial behaviour as cheating or bullying your fellow humans in order to gain some personal advantage goes against our very nature, as it undermines the inter-human social framework. This notion is distinctly cosmopolitan in nature, and reinforces Cicero's claim that duties of justice are owed universally.

The fourth and final central idea that runs through Cicero's account of duties of justice is the idea that private property rights are very important, and that the confiscation of one's private property is a grave offense, on par with the most heinous crimes. Over the course of his exploration of justice and duties of justice, Cicero continuously returns to questions relating to property rights and examples involving the confiscation, redistribution, or outright theft of private property, always concluding that such actions are irredeemably unjust.⁴³ Cicero's account of private property itself is rather simple. He claims that,

“Private property has been endowed not by nature, but by long-standing occupancy in the case of those who settled long ago on empty land; or by victory in the case of those

³⁹ I am borrowing this term from Nussbaum, whose lead I am following in analysing Cicero.

⁴⁰ Cicero. *On Obligations*. I.32-4, 39-42.

⁴¹ *Ibid.* I.32-5, 40-2, 155.

⁴² *Ibid.* III.21.

⁴³ *Ibid.* I.20-3, 25, III.21-5.

who gained it in war; or by law or bargain or contract or lot... So since what was by nature common property has passed into the ownership of individuals, each should retain what has accrued to him, and if anyone else seeks any of it for himself, he will transgress the law of the community.” (*On Obligations* I.21.)

The Ciceronian picture of private property straightforwardly favours existing distributions of property and does not seem to leave much room for an account of just redistribution. These underlying assumptions about property, which, as Nussbaum points out, are not well argued for or elaborated on, play a significant role in shaping Cicero’s account of duties of justice and duties of material aid.⁴⁴

Contrasting with his view of duties of justice, which are crucial and universally owed, Cicero paints a picture of duties of beneficence. He stresses that these duties are very important but warns that in fulfilling them we must take care to avoid numerous potential pitfalls.⁴⁵ He identifies three central concerns to keep in mind when acting benevolently:

“We must ensure first that our benevolence does not prove deleterious either to recipients of what will seem to be a kindly gesture, or to any others; second, that such benevolence does not go beyond our means; and third, that it is apportioned to each recipient according to his worth.” (*On Obligations* I.42)

These guidelines for correct benevolent conduct require some unpacking, and, as will be shown, are perhaps unsurprisingly undergirded by concerns about the retention of private property.

The first concern with beneficence Cicero identifies has to do with the means of acquisition of the resources one hopes to generously distribute. Generosity, for him, is useless if one has to harm others or violate their private property rights in order to achieve it.⁴⁶ The second concern has to do with the degree of one’s generosity. One’s generosity, Cicero insists, should not outstrip one’s means—the reason for this, it is argued, is that such excessive generosity

⁴⁴ Nussbaum, Martha C. *The Cosmopolitan Tradition: A Noble but Flawed Ideal*. p. 24-6.

⁴⁵ Cicero. *On Obligations*. I.42.

⁴⁶ *Ibid.* I.42-4.

constitutes an injustice toward one's family, who are the just recipients of the resources.⁴⁷ In this concern, one can detect traces of Cicero's account of degrees of closeness and their relation to duty, which he will elaborate on during his explanation of the third concern, and further at the end of Book I.

The third concern identified by Cicero, that our benevolence should be apportioned to recipients "according to their worth," is the most confusing at first glance. What sort of method does Cicero have in mind for ranking the "worth" of potential recipients? He goes on to explain that specific things we should take into account with regard to a potential recipient of our benevolence are that recipient's character, their affection for us, their social relationship with us, and any favours they have previously done us.⁴⁸

Cicero follows this passage up with some broader, sometimes contradictory claims about beneficence, which round out his account. He claims that in cases where all other concerns are equal, one's duty is to help the person who has the greatest need.⁴⁹ He immediately follows this with the claim that "...the interests of the community and its coherence will best be served if our bounty is bestowed most of all on those most closely connected with us." (*On Obligations*. I.50.) Cicero then asserts that it is our duty to give to others regardless of their connection to us when engaging in such an act of charity when it costs us nothing.⁵⁰ The examples he gives of acts of generosity along these lines are allowing strangers access to running water on one's property, and allowing strangers to light their torch from one's fire. The picture he paints of duties related to benevolence and charity is very restrictive, and leaves little room for justified charity toward strangers.

Cicero proceeds to give a sketch of the "levels" of human fellowship that exist. He believes that having a clear understanding of these levels is practically useful in that it allows us

⁴⁷ *Ibid.* I.44.

⁴⁸ *Ibid.* I.45.

⁴⁹ *Ibid.* I.49-50.

⁵⁰ *Ibid.* I.51-3.

to determine who we have the strongest duties toward with regard to charity and the provision of material aid. The picture he paints can be likened to a series of social concentric circles surrounding the agent—I will henceforth refer to this model as the Ciceronian concentric circle model of closeness. The closest concentric circle, which represents the group we have the strongest obligations toward, consists of our country and our parents.⁵¹ He justifies this claim by stating that we owe the members of this circle the greatest debt, on account of the crucial formative role they played in our lives. Within the first circle, though, the state must take precedence over our parents, as the state contains our parents along with all of our other family and social relations.⁵² The second closest circle consists of our children and immediate family. He justifies their position in the model with the claim that they are our dependents, and would have nothing were it not for us.⁵³ The third circle is populated with more distant relatives, with whom, on account of the familial connection, we share a destiny.⁵⁴ Beyond this circle still, somewhere down the line of concentric circles, after those containing fellow members of one's race, for example, and fellow speakers of one's language, is the circle which includes all members of the human race on account of their shared humanity.⁵⁵

Understanding the Ciceronian concentric circle model of closeness, and its major effect on duties of benevolence within the Ciceronian picture, is key to understanding why the practical demands relating to these duties are so weak when it comes to strangers. This aspect of Cicero's account of duties, though, should not simply be viewed as an arbitrary pillar that supports a selfish practical philosophy, but rather as an attempt by Cicero to answer the questions that we naturally encounter when we think of the actual performance of our "positive" duties, such as duties to provide material aid to others. The Ciceronian concentric circle model of closeness seems to be aimed at solving such questions as what one owes to whom and why, how much

⁵¹ *Ibid.* I.58.

⁵² *Ibid.* I.57.

⁵³ *Ibid.* I.58.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* I.53.

one should give, and how one should choose between two seemingly worthy recipients of aid or charity when one's resources are limited. These questions are answered by Cicero's account, albeit in a way that seems to run counter to the common contemporary conception of cosmopolitanism as a philosophy that emphasises duties toward our fellow humans regardless of their nationality or personal connection to ourselves.

The Ciceronian picture, while acknowledging that our duties in the realm of justice are owed universally to all of our fellow members of the cosmopolis, effectively blocks off the possibility of our duties of beneficence being owed to anybody outside a limited sphere delineated by accidental characteristics such as nationality, race, and familial relation. All in all, the Ciceronian picture argues in favour of a bifurcation of duties along similar lines to the positive-negative distinction, and is actually the main historical root of the distinction. Understanding the Ciceronian picture, therefore, can help us to better understand the problem at hand for the HR Framework.

In the course of making his argument Cicero introduces some key concepts, such as the concentric circle model of closeness and a specific account of property rights, which provide theoretical support for this bifurcation. I will return to these concepts in the final chapter of this thesis, where I will contend that they continue to exercise excess influence on political philosophy broadly and the HR Framework more specifically, but can be utilised in a potential reworking of some aspects of the HR Framework.

Chapter III: Against the Bifurcation of Duties and Rights

In chapter I, I gave an overview of the HR Framework as a moral-political philosophical system and showed why it should be categorised as a form of cosmopolitanism. In chapter II, I introduced the distinction between positive and negative duties and rights, an age-old question that has plagued various historical forms of cosmopolitanism, and showed that it affects the HR

Framework and causes some serious philosophical and moral problems. I also gave an overview of the most influential historical account of this distinction, that given by Cicero, in the hopes that obtaining an understanding of the philosophical roots of the problem might help illuminate a path forward with regard to its detrimental contemporary effects. This look into the historical roots of the distinction did indeed prove fruitful, and we were able to identify a handful of ideas and assumptions which serve as part of its theoretical foundation, some of which the intervening centuries have obscured to such a degree as to make them invisible to the contemporary eye, such as a specific, implicit account of property rights as well as a concentric circle model of closeness which helps duty-bearers choose between potential beneficiaries.

In this chapter, I will explore Henry Shue's argument against the positive-negative distinction, which seems to offer a solution to some of the theoretical and practical problems the distinction poses for the HR Framework and its picture of duties. I will begin by laying out Shue's critique of the positive-negative distinction, before moving on to an exploration of his own proposed alternative model for understanding basic rights and their associated duties. To conclude the chapter, I will consider the benefits of Shue's so-called tripartite model, and explore some of the reasons one might have for preferring it to the positive-negative model.

The Problem Lurking Within the Positive-Negative Distinction

At first glance, the positive-negative distinction might seem unproblematic and, indeed, common-sensical. To many, the priority of negative security rights over subsistence/aid rights is almost self-evident, for how could someone enjoy the right to material aid if their rights to life and freedom from slavery and torture were not already guaranteed? Dead persons cannot benefit from material aid, and the notion of the distribution of such aid to slaves seems similarly absurd.

Upon closer inspection, though, one begins to notice some serious problems with this picture of human rights and their associated duties. To begin with, it simply feels odd to propose

that in the list of fundamental human rights, some are more fundamental than others, and so deserve greater attention from duty-bearers. On second glance, is it so absurd to equate rights to material aid with the right to life, when in many cases the absence of material aid will pose a mortal threat to a potential recipient? Many positive rights do seem to be just as theoretically fundamental as negative rights—just as the ‘negative’ right to life is thought to be logically prior to (and therefore more fundamental than) ‘positive’ rights to material aid, one could argue that the protection of the ‘positive’ right to education is logically prior to many ‘negative’ civil and political rights, such as the rights to freedom of expression and to peaceful assembly. One could argue that a country’s having a sufficiently educated populace is actually a prerequisite requirement for these ‘negative’ rights to have any meaning.

The biggest problem, though, for this commonly held view of human rights-based duties is that the strong positive-negative distinction seems to melt away when one focuses on the practical steps involved in ensuring and preserving various specific human rights. The rejection of this clear distinction is a relatively popular move in the discourse about rights and duties, and philosophers such as Martha Nussbaum and Henry Shue have pointed out the faults of the distinction when discussing questions of duty. Shue’s argument against the distinction, which he makes in *Basic Rights*, is the most convincing of these, and by far the most influential. In the next section, I will give an overview of his argument.

The Tripartite Distinction Between Rights-based Duties: Shue’s Argument

Shue begins with the observation that in the United States, rights relating to physical security are commonly considered to be more important than subsistence or so-called economic rights. He goes on to claim that one of the main assumptions that supports this perception of rights is the assumption that rights to physical security are negative rights and rights to subsistence are

positive rights.⁵⁶ His stated aim is to try to refute the argument that rights to subsistence are positive, and that positive rights should be considered as secondary to negative rights. As can be seen, Shue will be wrestling with a problem related to the age-old positive-negative distinction within the context of U.S. policy. His arguments, despite his narrower focus on U.S. policy, have broad significance for all areas affected by the notion of the positive-negative distinction, and offer an original solution to the problems we have seen this distinction cause within the HR Framework. Also, although he mainly refers to subsistence rights and rights to physical security, his general argument is applicable to the broader bundles of so-called positive and negative basic rights which practitioners of the HR Framework generally distinguish between.

Shue opens his argument by breaking down the assumption that subsistence rights are positive and therefore secondary into four premises:⁵⁷

- I. The distinction between subsistence rights and security rights is both sharp and significant.
- II. The distinction between positive rights and negative rights is both sharp and significant.
- III. Subsistence rights are positive rights.
- IV. Security rights are negative rights.

His plan is to demonstrate that premises III and IV are faulty—Shue will propose an alternative way of thinking about subsistence and security rights that he hopes can replace the classical categorisation of them as positive and negative rights respectively.⁵⁸ Shue acknowledges that in making this argument against premises III and IV, he is simultaneously challenging premise II, but points out that he is not aiming at a complete collapse of the positive-negative distinction, as he believes it is possible for the categories to be legitimately reframed.⁵⁹

⁵⁶ Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. p. 35.

⁵⁷ *Ibid.* p. 36.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

Shue's argument hinges on the simple notion that neither security rights nor subsistence rights fit neatly into their respective sides of the positive-negative distinction.⁶⁰ As we saw in chapter I, when we explored the IBHR and the roots of the HR Framework, the active protection of human rights is just as important a part of the Framework as acting in accordance with them. Shue points out that while it may be possible to avoid violating someone's rights to physical security in a passive manner, by refraining from acting in certain ways, it is not possible to protect people's security rights without engaging in various activities which would fall into the positive category according to the classical positive-negative model.⁶¹ In this argument, it is interestingly possible to detect echoes of Cicero's insistence that the performance of duties of justice involve not only refraining from engaging in unjust action, but also the active defence of victims one has the power to protect from unjust treatment. Shue goes on to argue that the guarantee and protection of people's security rights within any social context necessarily involves the establishment of institutions such as courts, prisons, police forces, militaries, and training facilities for the people who will work in these institutions, as well as a system of taxation which will help support these institutions and their employees indefinitely.⁶² When we come to clearly see this aspect of the nature of the protection of security rights, they begin to seem much less straightforwardly negative.

When it comes to rights to subsistence, Shue notes that while we usually think of these rights as being fulfilled through the provision of some form of material aid, they can often be fulfilled in a 'negative' way. He argues that in some cases, the right to subsistence does not actually demand 'positive' action at all, but rather a form of noninterventionism.⁶³ In such cases, the fulfilling of one's duty connected to another's right to subsistence is incredibly similar to the noninterventionist duty that is classically associated with negative duties such as duties of justice

⁶⁰ *Ibid.* p. 37.

⁶¹ *Ibid.* p. 37-8.

⁶² *Ibid.*

⁶³ *Ibid.* p. 40.

or duties connected to the right to security. Put simply, fulfilling the subsistence rights of others requires a type of ‘refraining from’ which, on the classical picture, is associated with negative rights—in certain ways, one can passively perform morally significant duties connected with subsistence rights.

Having shown that the kinds of rights classically associated with each side of the positive-negative distinction do not neatly fit into their respective categories, Shue goes on to propose an alternative model for understanding these rights and their associated duties. His argument is that the morally and practically significant distinctions we should be making are between types of duty, and that these distinctions should not carry over into our classification of different rights.⁶⁴ Observing and protecting each kind of right requires us to perform various kinds of duty, and it does not make sense to associate just one kind of duty with each right. In reality, each basic right entails three kinds of duty: duties to avoid depriving, duties to protect from deprivation, and duties to aid the deprived.⁶⁵

This model becomes clearer when we apply it to the types of right which have been our concern throughout this paper, namely, that bundle of rights that have historically been thought of as negative rights, which Shue refers to as security rights, and that bundle of rights that have historically been thought of as positive rights, which Shue refers to as subsistence rights, and I generally refer to with the broader term ‘rights to material aid.’

Take the right to life for example, which in the IBHR is covered by Article 3 of the UDHR and Article 6.1 of the ICCPR, and is generally considered to be a prime example of a negative right with negative associated duties. The right to life, when viewed through the lens of Shue’s tripartite model, is understood as ascribing three kinds of duty to duty-bearers instead of one. Ensuring that someone’s right to life is not violated involves more than the simple performance of a duty to avoid directly violating their right to life—a singular agent’s refraining

⁶⁴ *Ibid.* p. 52.

⁶⁵ *Ibid.* p. 52-3.

from killing others only gets us part of the way to ensuring this right. Because of this, the right to life should be understood as also ascribing a duty to protect others from the deprivation of their right to life, even in scenarios where that right is not directly threatened by the agent in question, as well as a duty to provide material aid to those without protection, with the view to their being able to establish protective measures they are currently lacking.

The same model applied to a typical right to material aid, say, the right to an adequate standard of living (which is defined as involving access to adequate food, clothing, and housing), which in the IBHR is covered by Article 25 of the UDHR and Article 11 of the ICESCR, yields a similarly complete picture. Ensuring the right of others to an adequate standard of living will involve three kinds of duty. First, we must refrain from directly violating the right: we have a duty to refrain, for instance, from demolishing someone's home or food supply. Second, we have a duty to protect people from others who are aiming to engage in such a direct violation. Finally, we have a duty to provide the means to achieve an adequate standard of living to those who are currently lacking it—this final kind of duty most closely resembles the traditional picture of the duty to provide material aid, but it is clear that the performance of the other two duties are equally pivotal with regard to ensuring the right to an adequate standard of living is protected.

As can be seen, the tripartite model presents a view of duties that is altogether more complete than the traditional binary positive-negative model. Shue reframes the connection between rights and duties in a manner that seems altogether more convincing on its face than the traditional picture.

The Benefits of Shue's Tripartite Model

Shue seems to pick out a central feature of rights-fulfilment that the binary positive-negative model of rights and duties has overlooked, namely, that ensuring and fulfilling specific rights requires the performance of more than one kind of duty, and for this reason alone his argument

deserves attention from people involved in the discourse surrounding basic rights and duties.

Within the context of this paper, though, Shue's argument is highly significant, as it seems to solve some of the thorniest problems that the positive-negative distinction causes within the HR Framework.

To begin with, it relieves the HR Framework of the tension between the various fundamental human rights. On Shue's model, all basic rights are conceived of as being equivalent in terms of fundamentality, with no subgroup of rights taking precedence over any other. Placing all basic human rights on equal footing in such a manner has both practical and theoretical benefits for the HR Framework. On the one hand, the elimination of the perceived priority of 'negative' rights over 'positive' rights would lead to increased attention in the real world to the enforcement and protection of that group of rights which formerly fell into the latter category. This equalisation greatly weakens the justificatory excuse that is often trotted out by rights defenders who fail to adequately protect 'positive' rights that they expended the vast majority of their energy and resources ensuring the protection of the most basic 'negative' rights, and that they had little left in the tank or the bank to protect 'positive' rights with.

The potential benefits of integrating a tripartite model of rights-based duties into the HR Framework are major. The so-called 'positive' rights have historically been neglected in the practical realm for decades, in favour of a focus on the enforcement and promotion of 'negative' rights. The integration of a tripartite model into the HR Framework might go some way toward convincing actors on all levels, from the nation-state to the individual, to take the former group of rights more seriously, and to increase their efforts to defend them. The adoption of the tripartite model would also have a profound impact on the process of moral decision-making for such agents, as questions involving clashes between different rights would take on a whole new character, without agents being able to refer to a ready-made justification for favouring certain rights over others.

Shue's model also solves a nagging theoretical problem that affects the HR Framework, which is that according to the framers of HR Framework itself, the rights enumerated in the IBHR are all morally equivalent, with no basic right being more or less basic than any other. The binary positive-negative model of rights and duties flew in the face of this aspect of the Framework, and Shue's model presents a clear solution to this issue.

In addition to these more specific problems it solves, Shue's tripartite model simply seems to present a more accurate picture of how basic rights and their associated duties should be understood. His argument, that individual basic rights are neither positive nor negative, but that their protection and promotion require the performance of three kinds of duty that would, on the binary positive-negative model, fall onto both sides of the divide, is convincing, especially when one observes the steps involved in the practical business of rights-protection. The tripartite model not only seems to more accurately reflect reality, but also relieves the HR Framework of the theoretical tension introduced by the binary positive-negative distinction.

Chapter IV: A Counter to Shue

In the previous chapter, I explored Henry Shue's tripartite model of distinguishing between the duties associated with basic rights, and the suitability of its potential application to the HR Framework. We found that for various reasons, integrating an understanding of basic rights and duties along the lines described by Shue in *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* would be a good theoretical move: Shue's model answers many of the theoretical and moral questions that the binary positive-negative model cannot, and is altogether more satisfactory from the perspective of explanatory power.

In this chapter, I will explore the most pressing counter to Shue's model and will try to respond to this counter in defence of Shue, and will also consider and attempt to rebut an original and equally pressing counter. I will then briefly outline an original answer to one of the

questions that lie at the root of this species of counter. The counter in question revolves around what has been called the ‘claimability’ problem for socioeconomic rights, and has most notably been fleshed out by Onora O’Neill in *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. In this section, I will attempt to rebuff this counter as formulated by Stephanie Collins, a proponent of O’Neill’s view, in her article titled *The Claims and Duties of Socioeconomic Rights*. My main reason for choosing to deal with Collins’ formulation is that it is more recent than O’Neill’s, and considers some of the criticism that O’Neill’s work has been subjected to in the years since its publication. Because of this, I believe Collins’ treatment of the claimability problem is a stronger counter to Shue’s view than O’Neill’s.

After responding to Collins’ counter to Shue, as well as another original counter, I will briefly explore a solution that I think tackles the claimability problem at its root: a reworking of the Ciceronian notion of ‘closeness,’ which has subtly maintained an important place in the theoretical landscape of the HR Framework, and which has the capacity to play an important role in a more well-rounded, less self-centred framework of duty-allocation. I should emphasize here the intended brevity of this final section—unfortunately, the project of fleshing out the reworked notion of closeness I have in mind is beyond the scope of this paper, and would itself require a significant amount of background research and engagement with intense philosophical debates which are unrelated to the main aims of this paper. This final section should be understood merely as an attempt to point the HR Framework in the direction of a theoretical avenue the exploration of which may (or may not) prove fruitful down the line.

The Claimability Problem as a Counter to Shue

The basic structure of what is referred to as the claimability problem, as formulated by Collins, is as follows:

- I. Huge swathes of the global population lack reliable access to the goods necessary for attaining and foreseeably maintaining a minimally decent human life.
- II. Whether this state of affairs constitutes a human rights violation depends on whether there are human rights to basic socioeconomic goods.
- III. To qualify as a basic right, a right must be claimable. A right is claimable when there is one or more specific agent with a duty to ensure that the content of the right is realized, which is owed to the claimant.
- IV. To qualify as a human right, a right's claimability must fulfil two further conditions, which are
 - a. The agent or agents in question have the duty to fulfil the right independently of real-world institutional arrangements.
 - b. The human right in question must be enforceable—each human must have an ability to obtain the socioeconomic good in question from the duty-bound agents. Collins describes this sub-condition as the requirement that human rights have actionable “teeth.”⁶⁶
- V. Basic rights to socioeconomic goods do not fulfil the conditions required for claimability, and therefore do not qualify as actual human rights.

The claimability problem essentially states that because socioeconomic rights, the prime example of which is seemingly held to be the right to an adequate standard of living, are not claimable per premises III, IVa, and IVb, they are not real human rights, as human rights must be claimable. This problem challenges Shue's model, as it reasserts a binary distinction between kinds of basic right, a distinction made along the same line as the classical one between negative rights and positive rights.⁶⁷ The claimability problem specifically targets the cluster of rights whose fulfilment is thought to mainly involve the provision of material aid, and it goes so far as

⁶⁶ Collins, Stephanie. “The Claims and Duties of Socioeconomic Human Rights.” p. 702.

⁶⁷ *Ibid.* p. 703.

to claim that these rights are not real human rights. The relegation of all rights involving duties requiring the provision of socioeconomic goods to a status below that of ‘actual’ human rights effectively nullifies the achievement of Shue’s tripartite model, which was to rebuff the notion that distinctions can be made between the various human rights in terms of their levels of fundamentality.

Collins’ Proposed Solution to the Problem

Furthermore, the solution Collins offers to this problem is not appealing. She proposes that the duties associated with rights to socioeconomic goods should be individualised, and not understood not as duties of groups or collectives. The individual’s duty is to engage in ‘epistemically reasonable’ deliberate consideration of measures that could be taken in order to secure the provision of the socioeconomic good in question for a beneficiary, and then to take the measure that will provide the greatest degree of good.⁶⁸ This deliberation must not incorporate any biases, and no potential beneficiaries must receive unfair consideration throughout the process.⁶⁹ When the individual agent in question finds themselves in a scenario in which multiple actions seem to be equivalent in terms of the net benefit they provide, the agent should use a randomiser in order to choose between them.⁷⁰

This solution is unappealing for two main reasons. First, it relies too much on individuals being able to engage in an act of logically pure and unbiased reasoning for socioeconomic rights to be fulfilled. In the real world, which is our main concern, it is quite rare to find individual agents capable of such phronetic clarity. Furthermore, it is somewhat unrealistic to expect the majority of agents to engage in such reasoned deliberation as constantly as Collins’ model would require. The second reason Collins’ solution is unappealing also has to do with practicality. It is

⁶⁸ *Ibid.* p. 710-12.

⁶⁹ *Ibid.* p. 711.

⁷⁰ *Ibid.* p. 712-15.

that it is simply unrealistic to expect vast swathes of individuals to be able to deactivate their biases as easily as she hopes. Although Collins' solution has some theoretical merit, it falls short when considered from a practical standpoint.⁷¹

The Claimability Problem and Shue's Tripartite Model

The issue the claimability problem creates for Shue's model is this: a version of the positive-negative distinction seems able to survive even within Shue's tripartite model, because of the fact that claimability creates a binary distinction between two classes of right along the same line. The answer to the claimability problem which suggests itself in Shue's *Basic Rights* is that socioeconomic human rights are claimable, and that the people who possess the duties associated with them are the affluent, a group defined as "...those consuming the absolutely largest amounts for the satisfaction of mere preferences..."⁷²

The affluent are, to Shue, a group defined by their level of wealth and the nature of their expenditure—they have reached a position in which subsistence needs are not a central concern, and they can focus their expenditure on the satisfaction of their preferences. He contends that the affluent, as a group, are the duty-bearers upon whose shoulders the fulfilment of subsistence rights should fall, and that they must go so far as to sacrifice anything except their own basic rights in order to fulfil the basic rights of others.⁷³ Of course, this contention immediately conjures up images of the global affluent donating themselves into a state of near-poverty, and Shue pre-empts this thought by pointing out that if the majority of the affluent took their duties seriously, few of them would actually be forced to drastically alter their lives in the course of their fulfilment.⁷⁴

⁷¹ Unfortunately, I do not have space to engage more thoroughly with Collins' proposal, and have to settle for the short rebuttal given here. In any case, Collins' solution to the claimability problem is of less interest to this paper at the current moment than her formulation of the problem itself, and the challenge it poses to Shue's tripartite model.

⁷² Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. p. 119-23.

⁷³ *Ibid.* p. 114.

⁷⁴ *Ibid.*

Collins' main counter to the claim that a collective such as 'the affluent' can be picked out as the relevant duty-bearing body in order to solve the claimability problem is as follows. She claims that it is inaccurate to denote a collective group as a duty-bearer because different individual members of the group can act in drastically different ways with regard to the duty in question.⁷⁵ Some members of the affluent might give very generously in order to ensure that others are able to enjoy subsistence rights, while other members of the affluent might actively avoid doing so. In such a scenario, Collins claims, we would individualise the wrongdoing of the latter affluent person, because it would be unfair to the most generous members to label the entire collective as wrongdoers.⁷⁶ It would only make sense, then, to individualise the duty associated with the wrongdoing.

What this counter gets wrong is that it begins by considering the collective group (the affluent) in the first instance as a set of individuals. Of course, collectives are constituted of individuals, but when considering the subsistence duties Shue is concerned with, the collective should be thought of first as a monolith. To use Collins' example, if different individual members of the collective group 'the affluent' respectively act in drastically different manners with regard to the global deprived, and the affluent fall short of the goal of the protection of subsistence rights, this should be understood as a failure on the part of the affluent, the collective, regardless of what different individuals do. The point of picking out a collective such as the affluent as the main duty-bearer with regard to subsistence rights is to acknowledge a collective responsibility of some body of individuals to other individuals. The affluent denotes a collective body constituted of those individuals who have the resources to act as part of the duty-bearing monolithic collective with regard to subsistence rights. In any case, picking out a collective group such as the affluent as a duty-bearer at least has the benefit of creating a duty-bearer that is transnational in nature, and is generally more effective than the sum of its parts.

⁷⁵ Collins, Stephanie. "The Claims and Duties of Socioeconomic Human Rights." p. 707.

⁷⁶ *Ibid.*

This gives us reason to believe that Shue's attribution of subsistence duties to the affluent is at least preferable to and more practically effective than the attribution of duties to a series of individuals.

Collins' second counter to the claim that a collective such as the affluent can be picked out as a duty-bearing agent is that it is incredibly difficult, if not impossible, to fulfil requirement IVb of the claimability argument when the 'teeth' are being brought to bear on such a group. Such a sprawling transnational group as the affluent are not seen by her as being graspable by the 'teeth' whose efficacy the claimability argument insists upon. She argues that the coercive force through which these rights are enforced must either apply to the group as a whole, or to a subset of the group. Collins dismisses the possibility of the former method of enforcement out of hand, claiming that if coercive force must be applied to all members of a group, enforcement becomes impossible, presumably due to the logistical and practical challenges associated with bringing 'teeth' to bear on such a large group. She claims that the latter method of enforcement is also problematic, as the picking out of a subset of a group requires consideration of the traits of individuals, which she claims must lead to an individualisation of the rights-based duties.

In response to Collins' second counter, I argue that the focus should not be on the features of the 'teeth' which might be brought to bear on duty-bearer, but rather on the capability of the duty-bearer to see to it that the right in question is not violated. The collective group 'the affluent' are not selected by Shue as the main duty-bearer with regard to subsistence rights because they are easily graspable by coercive 'teeth,' but because it is the group which has the power and resources to protect those rights. As Collins herself points out when laying out the claimability argument, "... 'ought' implies 'can...'"⁷⁷ The collective group 'the affluent' includes any and all those humans whose material wealth gives them the capability to perform the duties associated with rights such as subsistence rights. The existence of these duties hinges not on the

⁷⁷ *Ibid.* p. 702.

question of whether victims can force duty-bearers to perform their duties, but rather on the question of whether potential duty-bearers can actually perform the duties in question. By picking out the group ‘the affluent’ as the main collective duty-bearer, Shue ensures that the performance of duties associated with subsistence rights falls on the shoulders of a group all of whose members are capable of collectively performing the duty without making any sacrifices with regard to their own basic rights.

Furthermore, the application of coercive force in question does not need to be logically watertight—its application should be aimed at the group as a whole, but seeing as coercion is a practical rather than a theoretical matter, the actual form of the ‘teeth’ should not have any effect on the status of a collective group as duty-bearing. In essence, I contend that the actionable teeth (their specific form and even their mere existence) related to a duty should be perceived as an afterthought rather than as a prerequisite requirement for the duty’s existence. It is entirely conceivable that a human could have their human right to a socioeconomic good violated by another, but lack access to a coercive method through which to obtain that good. A victim’s lacking a pathway to coercion, though, does not absolve the duty-bearing collective from its failure to provide rights protections.

A Second Objection to Shue

I will now briefly consider a second objection to Shue, which I feel should constitute a serious concern for proponents of his model, and will attempt to rebut this objection. The objection is this: while the positive-negative distinction itself might not hold up, doesn’t a very powerful feature of it survive the transition to Shue’s tripartite model in the form of a division between two kinds of right based on the vagueness of their associated duties? One might ask, what does the tripartite model tell us about who owes what to whom when it comes to the actual enforcement of the bundle of rights formerly known as ‘positive’ rights? It seems that while it

remains clear, on Shue's model, how to go about fulfilling the duties associated with 'negative' rights, it is still totally unclear how we should go about fulfilling the duties associated with 'positive' ones. Isn't this a ground for a different kind of distinction, which runs along the same lines as the positive-negative distinction? Could this distinction not ground a different kind of priority—if not moral, then practical?

I would rebut that it is true that Shue's tripartite model, taken alone, does not tell us anything about who the three kinds of duty associated with, say, subsistence rights are owed to, and what specific lengths it is proper to go to in order to consider them fulfilled. This, though, does not set these duties apart from duties associated with 'negative' rights in any meaningful theoretical or practical way. The kind of binary distinction between rights sought after by this objection does not exist, even though it may seem, on the surface, as though the duties associated with positive rights are generally more vague than those associated with negative ones. Perhaps an example will clarify my point.

Let us consider the duties associated with two rights which fall on either side of the classical positive-negative divide: say, the right to life and the right to an adequate standard of living. The former is a classic 'negative' right, which people usually associate with refraining from acting in certain ways, and the latter a classic 'positive' one, which people usually associate with the provision of material aid. According to the classical understanding, it is clear what one must do in order to fulfil their duty associated with the right to life, but it is unclear what one must do in order to fulfil one's duty associated with the right to an adequate standard of living. Even when these rights are viewed through the lens of Shue's tripartite model, it may be argued, this significant aspect of the classical distinction seems to remain: in the case of the right to life, it is much clearer what our duties are than in the case of the right to an adequate standard of living. Whether they are understood as being the root of three kinds of duty or one, this relative practical clarity on the one side and vagueness on the other seems to set the two groups of rights apart from one another. This distinction does not need to ground a division of duties into two

classes, differing in their degrees of fundamentality, but it does delineate a fundamental difference between two categories of basic rights.

This counter to Shue picks out an important aspect of the relationship between rights, duties, and practical action. It is true that basic rights are usually defined in somewhat vague language—it is understandably difficult for us to navigate incredibly nuanced practical questions using only a list of very broad statements which were written as concisely as possible. In the case of duties associated with the right to an adequate standard of living, it is in fact difficult to figure out what we owe to whom, and to navigate all of the delicate questions regarding the potential beneficiaries of our actions. I contend, though, that these difficulties are common to all rights, and that in the case of the rights which are classically categorised as ‘negative,’ they have simply been obscured by a degree of consensus with regard to their protection which has not been reached when it comes to the rights classically categorised as ‘positive.’

All of the difficulties involved in the translation of ‘positive’ rights and duties into practical action in line with those rights and duties also apply to ‘negative’ rights. There are serious questions that should be asked when one attempts to act in accordance with, say, the HR Framework. These questions are both morally and practically relevant, and their answers will drastically affect our actions, and through them, the world. Some of the most popular of these within the wider philosophical/moral conversation surrounding duties that we have encountered in the context of this paper are questions surrounding material aid. Who might an agent owe material aid to? What sacrifices (if any) is it necessary for the agent to make in providing this aid? What mechanisms should be created in the pursuit of the protection and fulfilment of basic rights involving material aid? These are just a handful of the questions that naturally occur when one begins the process of translating certain rights from the HR Framework into practical action. The fact that they necessarily occur when one begins that process is understood by this objection to Shue as setting the rights involving these questions apart from another group of rights, whose practical protection does not involve such vague, open-ended questions.

What this counter gets wrong is that the translation of this second group of rights, those classically understood as ‘negative,’ into practical action also necessarily involves complex questions along the same lines. The main difference between the two clusters of rights is that in the case of the second, classically ‘negative’ cluster, the majority of Western nations have reached a point of general consensus as to the answers to these difficult questions. Specific answers to questions concerning fundamental aspects of the practical measures involved in ensuring ‘negative’ rights protections have become so deeply ingrained in the Western moral-political psyche that they have begun to obscure the fact that they are only one of a handful of possible answers to these questions. To use a specific example, the broadest practical questions concerning the protection of the right to life are generally thought of as being solvable through the establishment of institutions such as police forces and justice systems which take very specific forms. The notion that there could exist alternative institutions through which to protect this right is hardly considered, as the primacy of these institutions as the central rights-enforcers is so deeply ingrained in the Western political psyche.

Hundreds of years of political trial and error have led Western nations to the conclusion that the right to life is best protected by such institutions, and the conclusion that these institutions should look and function a certain way. These institutions bear the brunt of the second type of right-based duty, that to protect people from potential rights violations. But there is nothing ‘necessary’ about them—they could conceivably look completely different, or be replaced by alternative institutions which perform the same rights-protective function. Questions about these potential alternative institutions, though, or about tweaks that could be made to the existing institutions in order to make them more efficient, do not stop us from making sure *some* type of grand institutional effort is made to protect those rights.

In the case of ‘positive’ rights, that is exactly what we have allowed such questions to do, and the emphasis on the vagueness of the duties associated with these rights exacerbates this problem. Practical questions relating to duty-performance tend to stun us into a state of inaction,

when what is needed is practical action of any reasonable-seeming sort, which would allow us to learn and develop better practical methods in order to more effectively and efficiently perform these ‘positive’ duties. In any case, my broader point is the following: the reason the duties associated with ‘negative’ rights seem to be much simpler and less vague than those associated with ‘positive’ rights from a practical perspective is that we generally take the answers to the myriad questions surrounding those duties for granted because of the Western cultural-political context. In reality, the duties on each side of the divide posited by this objection are as practically complex and ‘vague’ as each other, we simply find it harder to see the practical complexity of some of these duties.

A Reworked Conception of Closeness: A Path Forward?

Having considered and rebutted two counters to Shue’s model which centred around duty allocation and performance, I will now very briefly outline a model which might be of use in these practical spheres. The model in question is based on the Ciceronian concentric circle model of closeness, but would involve a near-total reworking of that model as it was formulated in *De Officiis*. Such a reworked model could act as a useful tool for individuals to understand the allocation of various duties associated with basic rights, and the practical demands of these rights on different groups. Such a model could conceivably preserve the fundamentality of the human rights-based duties humans have toward others while simultaneously giving these same humans an easy model through which to differentiate between potential beneficiaries in the real world when it comes to the third kind of duty within the tripartite model, duties to assist.

Such a reworked notion of closeness could also incorporate an understanding of historical connections between different groups (and specifically historical injustices perpetrated by certain groups at the expense of others) as constituting a ‘closeness’ connection which is morally and practically relevant with regard to duties. This would allow space for strong duties to

provide assistance to come into existence between the groups which sit at either end of the most significant inequality gaps, and give the groups at the higher end a strong moral and practical incentive to ensure that they fulfil these duties. Strong duties could come to exist between two groups without eroding those groups' duties toward the rest of humanity. The area in which this sort of closeness becoming acknowledged in the moral realm would have the biggest impact would be that of the drastic inequality that currently exists between former colonial powers and their former colonies. Shue specifically mentions the inequality between these two groups, and points out that it is usually directly connected to past failures by the former colonial powers in the performance of their duties to avoid depriving and to protect.⁷⁸

Perhaps a reworked conception of closeness which takes historical human rights violations and their impact on present inequality into account could help us more clearly understand our duties, whom they are owed to, and why.⁷⁹

Conclusion

In conclusion, I have explored the effect that the tension between positive and negative rights and duties has with respect to the HR Framework, and Henry Shue's alternative tripartite model for understanding rights and duties. I have shown why Shue's model is preferable to the classical model, and defended his view against two strong counters, concluding that his model is the best way to understand rights and duties within the HR Framework. The widespread integration of Shue's tripartite model into the moral side of the HR Framework would have various practical benefits both for victims of rights violations and duty-bearers, and would yield a more accurate picture of rights and their associated duties. Finally, I pointed out that a reworked conception of

⁷⁸ Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. p. 62-3.

⁷⁹ For an excellent in-depth appraisal of the historical background of contemporary global inequality, and the central role Western imperialism played (and continues to play) in its creation, see Piketty, Thomas. *Capital and Ideology*. Esp. Part 2.

closeness, which Cicero explored in his *De Officiis*, could help HR Framework practitioners perform the difficult practical task of duty-allocation.

Bibliography

Ash, Kristina. "U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence." *Northwestern Journal of International Human Rights*. Vol. 3, Issue 1, (2005), <https://scholarlycommons.law.northwestern.edu/njihr/vol3/iss1/7>

Boot, Eric R. *Human Duties and the Limits of Human Rights Discourse*. Springer International Publishing, 2017.

Capriati, Marinella. "The Universal Scope of Positive Duties Correlative to Human Rights." *Utilitas*, vol. 30, no. 3, Sept. 2018, pp. 355–378., <https://doi.org/https://doi.org/10.1017/S0953820817000334>.

Cicero. *On Obligations*. Translated by P G Walsh, Oxford University Press, 2000.

Collins, Stephanie. "The Claims and Duties of Socioeconomic Human Rights." *The Philosophical Quarterly*, vol. 66, no. 265, Oct. 2016, pp. 701–722.

"Cosmopolitan (Adj.)." *Online Etymology Dictionary*, <https://www.etymonline.com/word/cosmopolitan>.

Felice, William F. *The Ethics of Interdependence: Global Human Rights and Duties*. Rowman and Littlefield, 2016.

"International Bill of Human Rights." *United Nations OHCHR*, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=The%20International%20Bill%20of%20Human%20Rights%20is%20a%20powerful%20statement,agree%20to%20abide%20by%20them>.

"International Covenant on Civil and Political Rights." *United Nations OHCHR*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

"International Covenant on Economic, Social and Cultural Rights." *United Nations OHCHR*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

"Key Concepts on ESCRs - Are Economic, Social and Cultural Rights Fundamentally Different from Civil and Political Rights?" *United Nations Human Rights Office of the High Commissioner*, <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights/escr-vs-civil-political-rights>.

Kleingeld, Pauline, and Eric Brown. "Cosmopolitanism." *Stanford Encyclopedia of Philosophy*, Stanford University, 17 Oct. 2019, <https://plato.stanford.edu/entries/cosmopolitanism/>.

Nickel, James W. "How Human Rights Generate Duties to Protect and Provide." *Human Rights Quarterly*, vol. 15, no. 1, Feb. 1993, pp. 77–86.

Nussbaum, Martha C. *The Cosmopolitan Tradition: A Noble but Flawed Ideal*. The Belknap Press of Harvard University Press, 2019.

O'Neill, Onora. "The Dark Side of Human Rights." *International Affairs*, vol. 81, no. 2, Mar. 2005, pp. 427–439.

O'Neill, Onora. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge University Press, 1996.

Piketty, Thomas. *Capital and Ideology*. Translated by Arthur Goldhammer, The Belknap Press of Harvard University Press, 2020.

Pogge, Thomas. "Unfair Share." *RSA Journal*, vol. 157, no. 5545, 2011, pp. 10–13.

Shue, Henry. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. Second ed., Princeton University Press, 1996.

"About the Campaign." *Stand Up for Human Rights*, <https://standup4humanrights.org/en/about.html>.

"Status of Ratification Interactive Dashboard." *United Nations Human Rights Office of the High Commissioner*, <https://indicators.ohchr.org/>.

"Universal Declaration of Human Rights." *United Nations OHCHR*, <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>.

"What Are Human Rights?" *United Nations Human Rights Office of the High Commissioner*, <https://www.ohchr.org/en/what-are-human-rights>.