

with another particular person's rights in this way. Consequently, it is a matter of "our choice" when and in relation to whom to perform an imperfect duty.

Contemporary responses to these historical discussions focus mostly on whether or not the imperfect duties of charity are enforceable. Some Kantians, for example Onora O'Neill (1996), argue that imperfect duties are enforceable, because the existence of institutions, states, and transnational institutions can match up the needs of some and the resources of others in the right ways. Other Kantians argue against O'Neill on this point and also that Kant's views on poverty and redistribution are found not in his discussion of duties of virtue, but in his discussion of public right in the Doctrine of Right. For example, Helga Varden argues that Kant in this work maintains that the state's obligation to provide unconditional poverty relief for its citizens issues from its need to reconcile its monopoly on coercion with each citizen's innate right to freedom. Other Kantians who utilize Kant's account of public right, albeit in different ways, to justify the state's obligation to provide poverty relief include Sarah W. Holtman (2004) and Arthur Ripstein (2009). Only recently have issues concerning global economic justice and related redistribution begun to garner attention by Kantians. Contemporary utilitarians such as Peter Singer do not follow Mill by arguing that the performance of imperfect duties is left to our choice. Instead, they tend to agree with other, so-called positive duties accounts in maintaining that our duties to assist others are constitutive of justice. Indeed, much of the current discussion concerning issues related to the traditional distinction between perfect and imperfect duties is undertaken in terms of the distinction between negative and positive duties.

Related Topics

- ▶ [Charity](#)
- ▶ [Duties, Positive and Negative](#)
- ▶ [Habermas, Jürgen](#)
- ▶ [Kant, Immanuel](#)
- ▶ [Kant, Immanuel: Contemporary Kantian Responses to](#)
- ▶ [O'Neill, Onora](#)
- ▶ [Singer, Peter](#)
- ▶ [Utilitarianism](#)

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Duties, Positive and Negative

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The distinction between negative and positive duties captures some of the important controversies in recent discussions on economic justice. Somewhat simplified, theories that affirm the so-called negative duties conception of justice are committed to the fundamental assumption that justice primarily requires that we not harm or wrong others. Positions affirming this view also typically defend the assumption that the best liberal theory of justice justifies rights and duties insofar as they are fundamentally compatible with individuals' rights to "self-ownership" or "freedom." Specific rights are seen as grounded in an individual's right to set and pursue ends of one's own, including with one's own person, and with one's means insofar as one respects others' rights to do the same.

The kinds of rights and duties that are particularly important from the point of view of economic justice include rights of private property appropriation and of the sick, the poor, the disabled, and children to access or be provided with material resources. Among liberal thinkers, right-wing libertarians always affirm a negative duties conception of justice. According to right-wing libertarian accounts, such as the ones often attributed to Kant and Locke and also explicitly defended by F. A. Hayek, Jan Narveson, and Robert Nozick, enforceable rights of justice cannot include rights beyond individuals' rights to appropriate private property through some, suitably specified actions. Justice merely requires that everyone respect everyone else's private property rights, including everyone's right to appropriate a fair share of the natural

resources in the world (whatever that is determined to be). No persons can be under enforceable obligation to share their private property with others or to labor so as to create values to be enjoyed by others. Therefore, beyond an original claim to a fair share of the natural resources or to the product of one's labor on a fair share, there is no right to property, regardless of poverty, disability, sickness, or age. According to these right-wing libertarians, persons who refuse to help the sick, the poor, the disabled, and children may be immoral and possibly imprudent, but they are committing no wrongdoing from the point of view of justice.

The right-wing libertarian view of economic justice has received sharp criticism from many places. To start, Henry Shue (1980) famously questioned the sustainability of the exclusive disjunction between enforceable negative duties and non-enforceable positive duties that such right-wing libertarian accounts rely on. Instead of explicitly challenging this dichotomy, left-wing libertarians have tried to find a way to build in theoretical conditions that provide for greater economic justice. For example, A. John Simmons (1992) has taken issue with the claim that charity is not enforceable on a Lockean account, whereas Michael Otsuka (2003) has argued that disabled persons are entitled to more (rather than less) and better natural resources since they, due to no fault of their own, start with less as they cannot labor. Onora O'Neill (1996) has argued that at least on Kant's considered account, duties of virtue, such as charity, are enforceable once there are proper institutions in place to match up the needs of the vulnerable and needy with the resources of those who enjoy plenty. By arguing that justice requires more than merely not wronging one another, these thinkers have taken decisive steps toward including so-called positive duties in their accounts of economic justice.

Other thinkers and traditions have simply taken the inability of right-wing libertarians to deal with human vulnerability and need as fairly conclusive evidence that the foundation of individuals' rights to self-ownership or freedom should be abandoned as the fundamental principle of justice. A host of alternative theories have emerged to cope with the need for a redistribution of resources in light of the contingencies of human being and living that justice seems to demand. Although considerations of freedom and negative duties are often seen as playing an important role also in these alternative theories, positive duties are seen as at least as important. On these positions, justice requires us not only to abstain from harming or actively wronging others, but it also requires us to help others obtain a certain level of, for example, material

resources, welfare, capability, primary goods, or well-being. According to these theories, the just world is the world in which at least everyone enjoys a minimum of some such good (primary goods, capabilities, welfare, etc.), and the more just world is typically viewed as one in which there is more rather than less equality with regard to one of these goods. Rather than seeing self-ownership and freedom as the foundation of justice, these theories typically see (minimal) equality with regard to one of these goods as the real foundation – and then argue that self-ownership or freedom obtains its proper role within the framework set by equality with regard to this particular good. Utilitarian theories, such as that of Peter Singer (1979), capability theories, such as those developed by Amartya Sen (2009) and Martha Nussbaum (2007), Marxist accounts like that of G. A. Cohen (2008), and care theory accounts like Virginia Held's (2006), may reasonably be seen as affirming a basic commitment to a positive duties approach to justice so understood. For example, although Marxists like Cohen want to maintain space for individual freedom in an account of justice, it is no longer seen as a paramount principle of justice capable of overriding others' extreme need and poverty.

In addition to these discussions between "negative" and "positive" accounts of justice, Kantians have added complexity to liberal discussions surrounding poverty by focusing on the importance of public institutions to our analyses of poverty. Setting aside their various differences, Kantians such as Katrin Flikschuh (2000), Jürgen Habermas (1997), Sarah W. Holtman (2004), Pauline Kleingeld (2004), Arthur Ripstein (2009), Helga Varden (2008), and Howard L. Williams (2006) have argued with Kant and against many of the above accounts that public authorities, including states, are ideal and not merely prudential requirements for justice. Moreover, Varden has argued that by incorporating Kant's distinction between private and public right, the resulting position can remain faithful to the right-wing libertarian commitment to self-ownership and freedom without having to remain blind to the rights of the sick, the poor, the disabled, and children. She argues that private right captures individuals' claims against one another whereas public right captures citizens' claims on their public institutions – and these two categories of right are not reducible to each other. Once these distinctions are brought into play, the considerations of the rights of children, the sick, the disabled, the poor as well as other so-called welfare rights can be brought into focus without also giving up the foundational commitment to freedom and self-ownership. Ripstein (2006) and Varden (2010) have also proposed

that Rawls's account of justice (1996, 1999) should be seen as an account of public right, and to fully overcome the objections that have been raised by many of the above authors, his institutional account also requires Kant's distinction between private and public right. Other Kantians, such as Kleingeld and Holtman, have been arguing less directly against libertarians, but have reached many of the same conclusions regarding poverty relief by means of Kant's public right arguments.

Some of the above-mentioned Kantians, such as Flikschuh, Habermas, Kleingeld, Varden, and Williams, have started to explore the implications of these arguments concerning the importance of public institutions within the context of global justice, including economic justice. Just as the Kantian accounts of domestic economic justice are becoming more complex in that they identify several different types of private and public relations as constitutive of the just state, the Kantian approaches to global justice are currently developing in the same direction. Trying to figure out how the domestic authority of states is complemented by Kant's "right of nations" and "cosmopolitan right" in some public, institutional whole lies at the core of these discussions.

Naturally, these controversies surrounding negative and positive duties, including questions of whether or not individuals and institutions have the same rights and obligations, have their global counterparts in non-Kantian and "Kantian inspired" theories. Although right-wing libertarians have written less on global justice, the cosmopolitan structure of their arguments, that individual rights and freedom come first in any account of justice, easily lends itself to global application. The most influential of which is Thomas Pogge's employment of aspects of Nozick's theory of justice (see the entry on [Nozick, Robert](#) in this encyclopedia). Those mentioned above who argue in favor of positive duties have all been very active in global justice discussions. They tend to be joined by thinkers focusing somewhat more exclusively on developing cosmopolitan accounts of global justice, as we find with Kok-Chor Tan (2004). Finally, engaging the institutional issues – whether of a Kantian/Rawlsian type or not – is central in the work on global justice by Michael Blake (2001), Charles R. Beitz (1979), Allan Buchanan, Thomas Nagel (2005), Mathias Risse (2005), Thomas Pogge (2008), and Simon Caney (2006). For example, these thinkers consider issues of global economic justice in light of institutional questions such as the following: Do states have the right and duty to intervene in other states affairs under any or some conditions, such as genocides? Is there any important difference between states or a global

public authority like the UN authorizing such interventions? Are states merely prudentially necessary for global justice and could/should we have a world state instead? Is a world state the only possible global authority, or can a future, more just world involve several, overlapping vertical layers of sovereign authority? Does the level of current global interaction entail that states are causing poverty beyond its own borders, and, if so, are states responsible for relieving poverty beyond their own territories? In which sense do states own the natural resources located within their territories? Important to all of these discussions is the questions whether or not there exist or should exist global public (coercive) institutions and whether or not the existence of such global institutions changes the analysis in important ways.

Related Topics

- ▶ [Absolute Poverty](#)
- ▶ [Beitz, Charles](#)
- ▶ [Caney, Simon](#)
- ▶ [Capabilities Approach](#)
- ▶ [Cosmopolitanism](#)
- ▶ [Duties, Perfect and Imperfect](#)
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- ▶ [Rawls, John](#)
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Duties, Remedial

- ▶ [Duties, Determinate and Indeterminate](#)
- ▶ [Duties, Perfect and Imperfect](#)
- ▶ [Duties, Positive and Negative](#)

Duty to Prosecute

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The “duty to prosecute” refers to the claim by proponents of international criminal justice that the international community has a moral and legal obligation to investigate and punish the most serious abuses of human rights in the aftermath of war or repressive rule. Conversely, it challenges the legitimacy of amnesties and non-retributive forms of transitional justice for perpetrators of such crimes. The duty has its origins in (a) international treaties that have codified a universal recognition of core crimes for which prosecution is mandated, and (b) the international human rights law which creates for victims a nonnegotiable right of redress for the wrongs done to them. The argument has been challenged primarily on consequentialist grounds – that is, that strictly demanding prosecution might prolong a war, dissuade a dictator from stepping down, or generate a violent backlash against transitions to democracy or peace.

The phrase “duty to prosecute” was originally used by the legal scholar Diane Orentlicher in a 1990 article, written shortly after democratic transitions from military rule in Latin America and from communism in Eastern Europe. In most of these cases, there were few prosecutions. The transitions were facilitated by formal or de facto amnesties, often accompanied by non-retributive forms of accountability, such as truth commissions or lustration. In some cases, such as Argentina, prosecutions took place but the process was aborted because of fears of military backlash. Orentlicher argued that the failure to prosecute the crimes of the old regime is a violation of the state's duty under international law to hold individuals accountable for universally reprehended crimes, such as torture or disappearances. While she acknowledged that it may not be practical to bring every perpetrator to trial, that duty requires at least “exemplary prosecutions” of those who bear the greatest responsibility for systematic atrocities or