

**Institutional Cosmopolitanism and the Duties that Human
Rights Impose on Individuals**

Ievgenii Strygul

Date: 18-06-2012

Bachelor Thesis

Subject: Political Philosophy

Docent: Rutger Claassen

Student Number: 0774391

Words: 7905

Leiden University – 2012

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Section 1

INTRODUCTION

Thomas Pogge in his paper “Cosmopolitanism and Sovereignty” developed an idea for global institutional reform which contributed significantly to the debate about global justice and promotion of human rights. He is of the opinion that such ultimate goals as global justice and the fulfillment of human rights would be easier to achieve with a system that assumes a vertical dispersal of sovereignty (Pogge 1992, p. 48). He calls it “institutional cosmopolitanism” (or alternatively “institutionalism”). It is a system where individuals' loyalties and allegiance are dispersed among many different political units of various size, and where any political unit is dominant (p. 52).

In his work, Pogge contrasts institutionalism to another cosmopolitan approach which he calls “interactional cosmopolitanism” (or alternatively “interactionalism”). From his paper, we can understand that the main difference between institutionalism and interactionalism lies in their view on the duties that human rights entail (p. 50-53). Interactionalism holds individual and collective agents *directly* responsible for justice. Pogge's form of cosmopolitanism, by contrast, holds institutions and institutional schemes responsible for it, leaving individual and collective actors with *indirect* responsibility. In Pogge's view, his new approach would lead to a much stronger overall morality (p. 50).

In order to justify institutional cosmopolitanism, Pogge attempts to use a strategy that would permit him to go beyond the debate between two extreme approaches to duties, namely libertarianism and utilitarianism. The idea is to invoke strong obligations on the part of individuals by appealing only to their negative duties and not affirming positive duties¹. In this way, Pogge attempts to broaden the circle of responsibility for the fulfillment of human rights. However, Pogge attempts to do it in a way which seems to be

¹ As it will be explained further in my thesis, *negative duties* are duties to constrain actions that could cause harm to the rights of other individuals, *positive duties* are duties to help other individuals with the fulfillment of their human rights

overly ambitious and almost impossible – to reconcile the libertarian and the utilitarian view on duties. The goal of my thesis is to discover how successful Pogge is in his strategy to do it.

In my thesis, I will attempt to show that when Pogge addresses *negative duties* within his cosmopolitan approach – his argumentation loses much of its normative appeal. My first critical argument is that institutional cosmopolitanism does not specify well enough the obligations that negative duties impose on individuals. This leads to a weakening of the position of institutionalism in the debate on human rights. My approach to show that the obligations are not well enough specified is to explore the way how institutionalism assumes the requirements that negative duties impose on individuals and compare its view on the duties with the view provided by another cosmopolitan approach – interactionalism. I will argue that the answer of institutionalism is very indeterminate and therefore weak, while the answer of interactionalism is clear and therefore more convincing than the answer of institutionalism.

My second critical argument is that Pogge fails to address negative duties in his theory the way he wants to do it. I will attempt to show that the institutional view on the duties doesn't distinguish much from the view of someone who assumes that we have both negative and positive duties, while Pogge tries not to affirm positive duties (1992, p. 52).

If I succeed in my argumentation, I will show that Pogge fails to reach his primary goal – to provide strong arguments in favor of institutional cosmopolitanism and convince the reader that his approach to human rights leads to a much stronger overall morality (1992, p. 50).

Serving the goal of my thesis, I have divided my thesis into six sections. The second section will lay out the conceptual framework that Pogge uses in his theory to develop his arguments in favor of institutional cosmopolitanism. In particular, I will explain the difference between the two extreme approaches to the individuals' duties that human rights entail, namely libertarianism and utilitarianism. The third section will make you

familiar with Pogge's institutional approach to the duties. I will explain how and why Pogge attempts to go beyond the debate between libertarians and utilitarians. In the fourth section of my thesis, I will lay out main objections to institutional cosmopolitanism. In the fifth section, I will make a suggestion for improvement of the theory by introducing "the Least Harm Principle" and show how it addresses the criticism to the theory. In the final section of my thesis, I will draw conclusions about how successful Pogge is in his attempt to reconcile the two extreme approaches to duties and conclude how well "The Least Harm Principle" responds to the criticism addressed to institutional cosmopolitanism.

Section 2

LIBERTARIAN AND UTILITARIAN CONCEPTS OF DUTIES

2.1 Introduction

This section will explain the conceptual framework that Pogge uses in his theory to develop his argument that supports institutional cosmopolitanism. The aim of Pogge, as we will later on, is to go beyond the debate between two extreme views on duties that human rights entail, namely libertarianism and utilitarianism (Pogge, 1992, p. 51). In order to understand Pogge's strategy to go beyond the debate, it is necessary to understand the conceptual difference between the two extreme views on duties.

Libertarianism and Utilitarianism propose two conceptually different understandings of duties. The difference between a libertarian and a utilitarian position lies in their understanding of how far reaching individuals' duties are. The utilitarian concept assumes that we have both *negative* and *positive* duties (Singer 1972, pp. 229-43, Shue 1980, Luban 1985, p. 209). *Negative duties* oblige us to avoid harming the rights of other individuals. *Positive duties* oblige us to assist other individuals with the fulfillment of their human rights. In contrast to the utilitarian concept, the libertarian concept assumes that we only have negative duties (Buchanan 2004, pp.195-201, Nozick 1974, pp. 160-162). This section of my thesis will explore both the utilitarian and the libertarian concept of duties and lay out how these concepts are being justified by their supporters.

2.2 The Utilitarian Concept of Duties

The utilitarian concept of duties assigns two types of duties to individuals: *negative* and *positive* duties (Pogge 2008, p. 70). *Negative* duties entail two obligations (Nees 2010, p. 21). The first obligation requires us to restrict all our actions that could cause harm to human rights of other individuals. It is known as the "*Harm-Avoidance Requirement*". The second obligation obliges us to compensate sufficiently the harm

caused by our actions to other individuals if we couldn't avoid the harm. This obligation is known as the "*Compensation Requirement*". In turn, *positive* duties entail an obligation to assist other individuals with the fulfilment of their human rights (Singer 1972, p. 232).

The utilitarian view on duties was defended by numerous philosophers including Peter Singer (1972), David Luban (1985), and Henry Shue (1996). Unfortunately, I don't have enough space in this thesis to explain all arguments that advocate the utilitarian concept of duties. Therefore, I will analyse only those arguments which seem to be the most convincing.

The first argument belongs to Peter Singer who is convinced that if "it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it" (1972, p. 231). To support this specific claim Singer develops his famous argument of a drowning child. To understand it, consider a situation: you see a drowning child in a pond and you can save him by diving into the water. But if you dive into the water, you will probably spoil your clothes. But if you don't, the child will die. In this case, you are morally obliged to dive into the water and save the child, because the harm of the child (in this case the loss of his life) will by far outweigh your potential harm (the spoiled clothes)². Thus, it is your positive duty to dive into the water.

The other argument that supports the utilitarian view on duties comes from to Henry Shue (1996). In his argumentation he highlights the problem associated with a too sharp distinction between negative and positive duties. He assumes that a negative right often requires a positive action what he calls "negative refraining" (p. 39). For example, I have a negative right not to be killed. To secure my negative right, some positive preventive actions should be taken, such as the provision of police forces and a legal framework, that would secure my negative right not to be killed. Hence, it is very difficult to separate what we should understand under a negative right and a positive duty, because the former often requires the latter. The difference between the libertarian and the utilitarian position

² This is a "harm principle" described and justified by Peter Singer in his work "Famine, Affluence, and Morality" (1972, 231)

regarding the argument of Shue essentially lies in their understanding of what Shue calls “*positive preventive steps*”. *Positive preventive steps* are steps that should be taken in order to prevent violations of human rights (Shue 1996, p. 39). Utilitarians assume that these steps also include the positive duties of individuals to aid and assist other individuals with the fulfilment of their rights (Shue 1996, pp. 36-65), while libertarians assume that these steps should be limited only to the preventive actions that directly restrain violation of human rights (Nozick 1974).

David Luban unveils the utilitarian position on human rights with these words, “A human right, then, will be a right whose beneficiaries are all humans and whose obligors are all humans in a position to effect the right” (1985, p. 209). In so far, as I understand it from the reading, utilitarians assume that all humans are in a position to be able to effect the rights of other individuals without having to have a causal relation with them. For example, you don’t have to have any specific relation with starving children in Africa to be held by utilitarians responsible for their death. Because, if you could help the starving children, but you didn’t, utilitarians assume that you are responsible for their death. In contrast to utilitarians, libertarians assume that the number of individuals that can effect a right of an individual is strictly limited to those who have a *direct causal relation* with that individual (see section 2.3).

2.3 The Libertarian Concept of Duties

The libertarian concept of duties denies that human rights entail any *positive* duties (to aid and assist other individuals with the fulfilment of their rights). Hence, they also reject the fundamental list of positive rights that utilitarians assume (e.g. a right for education, material security, healthcare, etc.; see Nozick 1974, Buchanan 2004). In contrast to utilitarians, libertarians limit an individuals’ responsibility only to actions that impose direct harm to human rights. Consequently, on a libertarian view, you cannot be responsible for the harm that has indirect relation to your actions. For example, following the libertarian view, you cannot be responsible for the death of an African child only because you hadn’t send five euro last month to a charity organization that supports

children in Africa. In fact, there is no direct causal relation between your action (or inaction) and the harm caused to the child.

Further, following the libertarian view, human rights entail only *negative* duties. That is, first, to restrain your actions from harming the rights of other individuals. Second, to compensate the harm if you couldn't avoid it

The argument that advocates the libertarian view on duties can be found in the book of Allen Buchanan "Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law"(2004). In his book Buchanan argues that we should separate the "duty of charity" from the "duty of justice" (p. 195-201). The former duty requires us to aid and assist welfare of other individuals, however, this is not what we "owe" people by the requirement of justice³. In other words, individuals do not have any rights for our charity, because justice doesn't assign any charity-obligations to individuals.

Another argument can be found in Nozick's "Anarchy, State, and Utopia" (1974). In his work, Nozick has noted that the enforcement of positive rights will lead to permanent and unjustified interferences in personal life of individuals that are intuitively unjust (see Nozick's famous "Wilt Chamberlain" example, pp.160-162). In relation to this, however, the core problem is that positive duties do not include any clear obligations for the obligors, while clear and definite obligations, following libertarians, are indeed a necessary condition for something to be assumed as just (Nozick 1974, p. 162).

³ Buchanan contrasts the "duty of charity" to the "duty of justice" by arguing that only the latter imposes some obligations of justice on individuals (Buchanan 2004, p. 195-201)

Section 3

POGGE'S INSTITUTIONAL COSMOPOLITANISM

3.1 Introduction

In the previous section of my thesis, I have clarified the difference between the libertarian and the utilitarian concept of the duties that human rights impose on individuals. In this section, I will lay out the theory of “institutional cosmopolitanism”, or alternatively, “institutionalism.”

Within the theory, Pogge develops a new understanding of human rights and, consequently, the duties that they entail. I will begin with the exploration of institutionalism and lay out how it can be distinguished from another cosmopolitan approach to human rights and the duties which Pogge calls “Interactional cosmopolitanism” (or alternatively, “interactionalism”). In this section of my thesis, I will also analyse what is Pogge’s specific reason to go beyond the libertarian-utilitarian debate about duties and what his strategy entail. In this context, I will also investigate the reasons for Pogge to offer his alternative to the interactionalism approach.

3.2 Interactional Cosmopolitanism and Pogge’s Institutional Response

In his article “Cosmopolitanism and Sovereignty”, Pogge emphasises the difference between his “institutional cosmopolitanism” and what he calls “interactional cosmopolitanism” with the following words,

“Interactional cosmopolitanism assigns direct responsibility for the fulfilment of human rights to other (individual and collective) agents, whereas institutional cosmopolitanism assigns such responsibility to institutional schemes. On the latter view, the responsibility of persons is then indirect – a shared responsibility for the justice of any practices one support: one ought not to participate in an unjust institutional scheme (one that violates human rights) without making reasonable efforts to aid its victims and to promote institutional reform.” (1992, p. 50)

As I understand it from the text, the main difference between the institutional and the interactional paradigm lies in their understanding of the responsibility that duties impose. For those who support interactional paradigm, irrespectively of whether they share the

utilitarian or the libertarian view on human rights and the duties, individuals are directly responsible for the fulfilment of human rights of other individuals. In other words, if you share the utilitarian or the libertarian position on duties, you fall automatically into the paradigm of interactional cosmopolitanism because you share the belief that individuals are directly responsible for the fulfilment of human rights.

In general, libertarians share this belief because they assume that a direct causal relation between individual's action and harm caused is a necessary condition to be able to impose some responsibility for his action on the individual. Utilitarians, in turn, share this belief because they assign direct responsibility for the fulfilment of human rights to individual and collective actors "independently" of their causal relation with those whose rights should be fulfilled. In contrast to interactionalism, Pogge's institutional cosmopolitanism suggests another approach to individuals' responsibility for the fulfilment of human rights. Institutionalism holds institutions and institutional schemes directly responsible for the fulfilment of human rights and leaves individual and collective actors with only indirect responsibility.

Such a new approach to individuals' responsibility regarding human rights includes a new, distinct from interactional, understanding of human rights and, consequently, the particular duties that they entail. Here, I will lay out both innovations of Pogge: his new concept of human rights, and his new concept of the duties that human rights entail.

Pogge writes on his understanding of human rights, "Human rights, then, are moral claims on the organization of one's society" (2008, p. 70). This is quite a new understanding of human rights that differs greatly from a traditional understanding of human rights that interactionalists assume. For interactionalists, human rights are a sort of moral rights that individuals possess by virtue of being a human (Nees 2010, p. 13). Interactional concept doesn't tie human rights to institutions. Contrastingly, Pogge sees a direct relationship between human rights and institutions. He writes, "...human rights are activated only through the emergence of social institutions. Where such institutions are lacking, human rights are merely latent and human rights violations cannot exist at all." (Pogge 1992, p. 51). From the reading we can understand that Pogge sees human rights as

a function of institutions. To understand Pogge's concept of human rights (as a function of institutions) better, let us consider the following example. I have a right for security, healthcare, and other goods and services that an institution can provide. From Pogge's understanding of human rights follows that I do not have a right for these goods and services (what interactionalists would say), but I have a right to participate in a system which would secure my access to these goods and services.

The introduction of a new concept of human rights assists Pogge with his attempt to develop a new view on the duties that human rights entail. In turn, it serves Pogge's goal to go beyond the libertarian-utilitarian debate about duties in order to broaden the circle of responsibility for the fulfilment of human rights without having to affirm positive duties (Besson 2003, p. 519).

In so far, Pogge attempts to show that individuals are (indirectly) responsible for the consequences of institutions in which they participate, because they are responsible for the shape of institutions which Pogge assumes to be directly responsible for the fulfilment of human rights within their structure. And if an institution in which we participate doesn't fulfil human rights, it is our obligation imposed by the negative duty to avoid harm in order to reform it. The trick here is that Pogge attempts to activate positive duties of individuals (that is, to aid and assist other individuals with the fulfilment of their human rights) by appealing only to negative duties (that is, to restrain your own activity that could harm human rights of other individuals)⁴.

⁴ Pogge's understanding of human rights as moral claims and duties attached the rights is justified in the following passage,

"Consider a human right not to be enslaved. On an interactional view, this right would constrain persons, who must not enslave one another. On institutional view, the right would constrain legal and economic institutions: slavery must not be permitted or enforced. This leads to an important difference regarding the moral role of those who are neither slaves nor slaveholders. On the interactional view, such third parts have no responsibility vis-à-vis existing slaves, unless the human right in question involved, besides the negative duty not to enslave, also a positive duty to protect or rescue others from enslavement. Such positive duties have been notoriously controversial. On the institutional view, by contrast, some third parties may be implicated far more directly in the human rights violation. If they are not making reasonable efforts toward institutional reform, the more privileged participants in an institutional scheme in which slavery is permitted or even enforced – even those who own no slaves

This new institutional concept of human rights and duties helps Pogge achieve two goals. First, it helps him escape the interactional debate between libertarians and utilitarians about duties that human rights impose on individuals. It seems that Pogge has found a very subtle approach to duties which is able to balance between libertarianism and utilitarianism, satisfying simultaneously both camps of interactionism. Institutionalism seems to be able to satisfy the libertarian camp since it invokes only negative duties and doesn't affirm positive duties. In turn, institutionalism seems to be able to satisfy the utilitarian camp by giving them what they want – strong duties to aid and assist other individuals with the fulfilment of their rights (Pogge 1992, p. 51). To that extent, Pogge's institutionalism – is a “device” to activate the positive duties of individuals by appealing only to their negative duties.

Second, this approach allows Pogge to broaden the responsibility for the fulfilment of human rights without having to affirm positive duties (Pogge 1992, p. 52), and also to assume that his cosmopolitan approach leads to a much stronger overall morality (p. 50).

themselves – are here seen as cooperating in the enslavement, in violation of a negative duty.” (Pogge 1992, p. 52)

Section 4

CRITICISM TO INSTITUTIONAL COSMOPOLITANISM

4.1 Introduction

In the third section of my thesis, I have analyzed how institutional cosmopolitanism of Pogge understands human rights and the duties that they entail. I have also explained how institutionalism differs from interactionalism and laid out what Pogge's reasons are to develop an alternative vision of human rights and duties. In this section of my thesis, I will highlight the criticism to institutional cosmopolitanism. This will be done by raising several questions that will construct my critical argument that Pogge's strategy fails to reconcile libertarianism and utilitarianism successfully within his institutional cosmopolitanism.

The first element of my critical argument will question the institutional understanding of the two requirements imposed by negative duties, namely the *Harm-Avoidance Requirement* (that is, a requirement to avoid harm) and the *Compensation requirement* (that is, a requirement to compensate the harm caused). I will argue that interactional cosmopolitanism can provide us with better answers to the questions that the two requirements impose than Pogge's institutional cosmopolitanism does.

The second element of my critical argument will question the difference between the view of institutionalism on duties and the view of any other approach that assumes that human rights impose both negative and positive duties on individuals. I will argue that the difference is not so big as Pogge claims. I will also lay out some objections of libertarians to institutional cosmopolitanism that tend to weaken the position of institutionalism in the debate on human rights.

4.2 The Harm-Avoidance and the Compensation Requirement

The first argument of criticism that I want to underline in my thesis concerns the obligations that negative duties impose on individuals. To recall, the negative duties

which the interactional approach assumes impose two obligations (requirements) on individuals (Nees 2010, p. 21). First, the obligation to avoid actions that could harm other individuals (the *Harm-Avoidance Requirement*). Second, if we produce a harm to other individuals, we are obliged to compensate it sufficiently (the *Compensation Requirement*).

As we will see from the following reading, the negative duties that Pogge assumes within his institutional cosmopolitanism also assume the *Harm Avoidance* and the *Compensation Requirement*. In Pogge's book "World Poverty and Human Rights" he argues as follows:

"(1) One ought not to cooperate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled (2) without making reasonable efforts to protect its victims and to promote institutional reform" (2008, p. 176; numbers added).

From the first part of the reading (1) we can see that institutional cosmopolitanism assigns the responsibility to individuals not to participate in institutions that violate human rights. That is the *Harm-Avoidance Requirement* imposed on individuals by the negative duties that institutional cosmopolitanism of Pogge assumes. In the second part of the reading (2) we can find the explanation of the *Compensation Requirement* that according to institutionalism appeals to negative duties. That is, to promote institutional reform of the institutions that fail to fulfil human rights of other individuals. This is the normative component of Pogge's theory.

To make it clear, if you participate in an institution which violates human rights, following Pogge's logic, you contribute in some indirect way to the harm caused to the rights of other individuals. Hence, you are indirectly responsible for the violations of rights of other individuals within the institution. And as far as you contribute to the violation of human rights through your participation in an institution, you are obliged to compensate the harm caused (since it is your negative duty). What is not clear from the institutional theory – is how individuals are supposed to decide whether the Harm-Avoidance requirement is fulfilled? It seems to be a very subjective part of the theory. This is the first problem that concerns the Harm-Avoidance Requirement

Another problem in Pogge's institutional cosmopolitanism that concerns the Harm-Avoidance requirement is that it doesn't leave a person many options how he can avoid actions that could be assumed as a sustain of an institution that violates human rights. Actually there are only two alternatives: to become an emigrant or a hermit (Woods 2010, pp. 65-66). However, how many people are ready for these two options? Intuitively, we can say that the overwhelming majority of people is not ready today to choose any of them. What is more, Pogge indirectly affirms that the option of becoming an emigrant provides also no feasible solution to how one can escape an institution that violates human rights. Pogge presupposes that social cooperation is global and therefore claims that the boundaries of institutions go beyond the boundaries of nation-states (1992, p. 52). Hence, even if you become an emigrant, you still cannot escape the institution you participated in. And also you don't escape the responsibility for the consequences of the institution.

The other element of my critical argument concerns the *Compensation Requirement*. From the theory it is not evident what kind of compensatory action should be taken in order to be able to fulfil the Compensatory Requirement. Pogge writes on the compensatory obligation within his institutional cosmopolitanism:

"Our negative duty not to cooperate in the position of unjust practices, together with our continuing participation in an unjust institutional scheme, triggers obligations to promote feasible reforms of this scheme that would enhance the fulfilment of human rights" (1992, p. 52).

Such definition of the obligation seems to be too broad and subjective. Pogge doesn't answer comprehensively the main question "what kind of action should we take in order to satisfy the Compensatory requirement?". He argues, "*Promote feasible reforms*" (p. 52). However, this is a too broad and indefinite answer. It could be done on numerous ways. As a citizen of an unjust state I can go out in the street and promote institutional reform via, for example, a civil protest. Or I can write once a year on my Twitter that I am against violations of human rights in my country and I would prefer an institutional reform. I would promote institutional reform in both cases. But do I fulfil the Compensatory Requirement in both cases? And in which situations? The problem here is that institutionalism doesn't propose any metrics that could help us to measure adequately

my contribution to the violations that have been done under a global institutional scheme (Nees 2010, pp. 24-25). Hence, it is also impossible to match up my contribution to the harm caused with the compensation I offer.

In contrast to institutionalism, interactionalism provides a clear answer to this problem. According to the interactional understanding of the Compensatory Requirement, if I produce a particular amount of harm to an actor(s), I should compensate this actor(s) with at least the same amount of bonuses (Nees 2010, p. 23). For instance, we study together at the same class and I have stolen 100 euro from you. Following the interactional understanding of the principle, I should pay you at least 100 euro back in order to be able to fulfil the Compensatory Requirement. This is a very clear and definite answer. However, institutionalism cannot provide us with such a clear and definite answer. Institutionalism doesn't assign direct responsibility to individuals. Therefore, following the institutional logic, it would be the class (not me) who is directly responsible for the violation of your right (the right for property in our case), and I would only be responsible for the violation of your right indirectly, because I share the responsibility with the rest of the class (because we all participate in the same institution which is directly responsible for the violation of rights).

As far as it is the class who is directly responsible for the violation of your right, then the whole class is to be responsible for the compensation of the harm caused to you. And it is absolutely untransparent from the theory how the compensation should be provided and in what amount. Should each member of the class give you 5 euro? Or should I pay you 100 euro back, and would it be the responsibility of the class to kick me out of the class? Or should the whole class say just sorry to you without any kind of further compensation? My point here is that it is debatable how the Compensatory Requirement should be fulfilled following the institutional approach, while the interactional approach can indeed provide us with a transparent and definite answer.

So far, the institutional approach to human rights and duties that they entail doesn't provide any clear answer to the question how an individual can practically fulfil the Harm-Avoidance requirement to avoid institutions that cause violations of human rights

(that is, if we assume that the answer “to become a hermit” is not a good answer at all). It also doesn’t provide any definite answer to the question how an individual can measure his contribution to the harm caused, or how an individual can match up his contribution to the caused harm with the compensation that he offers. Therefore, we can conclude that the duties that institutionalism assumes are predominantly indeterminate, while the duties that interactionalism assumes are transparent and determinate.

4.3 How Pogge’s View on the Duties Differs From That of Utilitarians

To recall, Pogge introduced a new concept of human rights in order to be able to find an intermediate position between libertarianism (according to which we only have negative duties) and utilitarianism (according to which we have both negative and positive duties; Pogge 1992, p. 51). It is Pogge’s strategy to activate positive duties appealing only to negative duties; he tries to support the utilitarian list of human rights without having to affirm positive duties. The aim of my critical argument here is to show that Pogge doesn’t succeed to do this. In order to show it, it is necessary to make some conceptual points.

Pogge acknowledges only negative duties and doesn’t affirm positive duties. What I want to show now, is that the conceptual position of Pogge doesn’t differ from the conceptual position of someone who claims that we have both negative and positive duties (i.e. shares the utilitarian position regarding the duties that human rights entail). Therefore, it is possible to make a distinction between what we would call “libertarian (Poggean) institutional cosmopolitanism” on the one hand, and “utilitarian institutional cosmopolitanism” on the other hand⁵. Libertarian institutional cosmopolitanism would assume that human rights impose only negative duties on individuals which are sufficient to produce some positive obligations (Pogge 1992, p. 52). Utilitarian institutional

⁵ John Rawls in his book “A Theory of Justice” (1971) develops an approach which seems to look like what we would call “Utilitarian Institutional cosmopolitanism”. He assumes a duty to reform unjust institutions as Pogge it does, while also recognizing a list of some positive duties.

cosmopolitanism would assume that we have negative duties that oblige us not to participate in institutions that avoidably leave human rights unfulfilled, and also have positive duties that oblige us to aid and assist other individuals with the fulfilment of their rights if we don't have to sacrifice something of great moral significance (Nees 2010, p. 27). In section 4.2 of my thesis I have argued that the negative duties that Pogge appeals to within his institutional cosmopolitanism are quite indeterminate. And as far as it is not obvious enough from the theory of institutionalism what kind of obligations negative duties entail, it is difficult to distinguish the Poggean version of institutional cosmopolitanism from what we would call a utilitarian institutional cosmopolitanism. As the negative duties within the Poggean version of institutionalism are not specified, they can include all the duties that a utilitarian institutionalism would assign to individuals as positive duties. Hence, there is no big difference between Poggean institutionalism, which unsuccessfully tries to affirm negative duties only, and utilitarian institutionalism, which recognizes both negative and positive duties.

My main argument here is that Pogge doesn't succeed in his goal to use the libertarian position on the duties to justify the list of rights and duties of utilitarians. Actually, he fails to convince us that his position differs much from the position that asserts that individuals have both negative and positive duties. To that extent, he fails in his main goal to prove that we have strong obligations to assist other individuals with the fulfilment of their rights by appealing only to negative duties.

4.4 Direct and Indirect Responsibility

As was noted, Pogge argues that his institutional cosmopolitanism broadens the responsibility for the fulfilment of human rights (1992, p. 52). He attempts to do so by going beyond simple libertarianism (p. 51). He assigns direct responsibility for the violation of human rights to institutions, and indirect responsibility to all participants who participate in those institutional schemes, trying not to affirm positive duties. Then, Pogge explains his success to do this by accentuating that he found "an intermediate position"

between libertarianism and utilitarianism (2008, p. 177). However, then the question that arises – what does Pogge understand with “an intermediate position” between libertarianism and utilitarianism?

On my understanding of “an intermediate position”, it is a position which is intermediate in terms of causal relation between an individual’s action and a harm caused. To recall, on the libertarian view there should be a direct relation between X’s action and Y’s harm, in order to be able to impose some duties on X (see section 2.2). On the utilitarian view, such a causal relation is not necessary to be able to ground duties. Thus, an intermediate position between libertarianism and utilitarianism would assume a position which would be somewhere in-between a libertarian and a utilitarian position in terms of their understanding of the relation between X’s action and Y’s harm necessary to impose some obligations on X.

In contrast to my view, Pogge believes his position is intermediate, because he thinks that an indirect relation between X’s action and the harm caused to Y – is a sufficient condition to be able to hold X responsible for the harm caused to Y. The criticism from libertarians would be that indirect causal relation is generally insufficient to be able to hold X responsible for the harm of Y, because it seems to be no causal relation at all. Indirect relation enables Pogge to trace a relation between the X’s action and the harm caused to Y almost in all cases, even where libertarians would not find the relation. Hence, it can be concluded that Pogge shares more the position of utilitarians who assume that no causal relation is necessary for generating duties, than the position of libertarians who assume that a causal relation is a necessary condition for grounding of duties.

4.5 Voluntariness and Responsibility

Apparently, Pogge’s version of institutional cosmopolitanism seems to function properly only in a system where we would be able to choose voluntary institutions in

which we may participate⁶. Then we would be able to meet the Harm-Avoidance Obligation leaving institutions that don't fulfil human rights. Unfortunately, the existing system of nation-states doesn't provide us with such possibility. We are prescribed to be a member of a state (normally) simply by the place of our birth. Hence, following the concept of institutional cosmopolitanism of Pogge, we are all prescribed to be guilty of violating human rights in our country. What is more, because of the interconnectedness of the world we seem to be responsible for violations of human rights not only in our country, but in the whole world, because we are all members of one global institution.

As Buchanan rightfully claimed, however, responsibility requires voluntariness (2004, p. 95). If we cannot prove that individual X made action Y on a voluntary basis, we can't hold individual X responsible for the action Y. And actually, individuals' participation in the global structure of the world doesn't seem to be voluntary (Buchanan 2004, p. 95). Therefore, we cannot assign responsibility for the consequences of the structure to individuals who non-voluntarily participate in it. To that extent, institutionalism indeed fails to assign the responsibility to individuals for violation of human rights caused by institutions which people don't choose for on a voluntary basis.

⁶ Only if we don't assume that all institutions are imperfect and sometimes violate human rights. If we assume that all institutions are imperfect, than it seems that we are unable to escape the responsibility for violation of human rights at all.

Section 5

SUGGESTIONS TO INSTITUTIONAL COSMOPOLITANISM

5.1 Introduction

The previous part of my thesis was dedicated to the criticism to institutional cosmopolitanism. I indicated that institutional cosmopolitanism does not provide any clear answer to the question how individuals can fulfil the obligations imposed on them by negative duties, namely the Harm-Avoidance Requirement and the Compensation Requirement. Institutionalism also seems to leave individuals with not so many options how they can avoid actions that could be assumed as a sustain of an institution that violates human rights. Another problem within institutional cosmopolitanism that I have tried to explain is that it doesn't differ much from the position of utilitarians who believe that we have both negative and positive duties. As we found, Pogge attempts to show that affirmation of positive duties is not necessary to be able to broaden the individuals' responsibility for the fulfilment of human rights. Evidently, the main problem within the institutional theory of Pogge is that the theory does not specify the requirements that negative duties entail.

This part of my thesis will address the criticism to institutional cosmopolitanism. I will attempt to refute the main objections to institutionalism by suggesting the *Least Harm Principle*. The Least Harm Principle implies that we should always choose an action from a range of actions which produce the least harm to other individuals. In this section, I will lay out the concept of the Least Harm Principle and observe how it responds to the criticism to institutionalism.

5.2 The Least Harm Principle

As was noted in the previous section of my thesis, one of the essential problems in the theory of institutional cosmopolitanism is that it doesn't specify the obligations that negative duties impose on individuals. To be sure, the first step to improve the theory

would be a precise specification of the obligations. A viable way how we can specify the obligations – is to introduce the Least Harm Principle (Nees 2010, pp. 29-34).

The Least Harm principle assumes that when individuals are faced with a range of choices between various actions, we are morally obliged to make a choice that would produce the least harm to other individuals. In order to understand the principle better, let us consider the following situation. You want to buy a car and you should choose between two models: one is a normal car, and one is environment-friendly. According to the Least Harm Principle you have a moral obligation to choose the environmentally-friendly car, because it produces less harm to the environment in comparison to the normal car.

The Least Harm principle has several advantages in respect to institutional cosmopolitanism. First, it allows to address the major problem of institutionalism which is indeterminacy of negative duties: it allows to specify the obligations imposed by negatives duties. The Least Harm Principle will make it relatively clear how individuals should assume whether the Harm-Avoidance Requirement is fulfilled or not. If one chooses an action or a course of actions that produces the least harm to other individuals – one does fulfil the Harm-Avoidance Requirement.

Second, the Least Harm Principle will leave individuals with much more space to avoid any indirect harming of rights of other individuals in comparison to a simple version of institutionalism that Pogge assumes. As I have argued in the previous section of my thesis, Pogge's institutional cosmopolitanism leaves individuals only with two options how individuals can avoid actions that could be assumed as a sustain of an institution which violates human rights; either to become an emigrant or a hermit⁷. What is more, if we assume that all institutions are imperfect (will not always fulfil all rights of

⁷ As I have argued in the section 4.2 of my thesis, the option to become an immigrant is not a good option. It doesn't escape individuals from the responsibility for the harms caused by an institution as far as Pogge assumes that institutions go beyond the system of nation-states. Hence, Pogge leaves individuals actually with only one option – to become a hermit.

all individuals), then participation in an institution is a guilt by itself. Consequently, one should become a hermit who doesn't participate in any institution. And intuitively we can say that there are not so many people who are open for this ultra-radical option.

In turn, the Least Harm Principle provides institutionalism with a solution. It provides individuals with many options how they can satisfy the Harm-Avoidance Requirement, without actually having to emigrate or becoming a hermit. The principle directly addresses the problems which individuals face each day in their interactions with the global world, what makes it highly practical and useful. Do you want to buy a car? Choose a car which does the least harm to environment! Do you decide which political party you should vote for? Vote for a party that provides the most support for human rights! And so on. As a matter of fact, the Least Harm Principle generates a good moral guidance for individuals in almost all everyday decisions.

Third, the Least Harm Principle perfectly suits Pogge's idea about a system with a vertical dispersal of sovereignty, where individuals could choose institutions where they want to participate (1992, p. 58), while also being applicable in the existing system of nation-states. This makes the Least Harm Principle realistic and practical in use. The Least Harm Principle also provides a good response to the critique of Buchanan (2004) to Pogge. To recall, Buchanan criticises Pogge that we cannot be responsible for the consequences of the global structure because we don't participate voluntarily in the global structure, and responsibility requires voluntariness (p. 95).

The Least Harm Principle leaves individuals enough space in their each day-choices to be able to assume their voluntariness. Even if we don't have a choice whether to participate in the global structure or not, we are still volunteers in our decisions for what party to vote, what products to buy, what organizations to support, etc. The Least Harm Principle proposes an intermediate position between Buchanan's and Pogge's views on individuals' responsibility. It keeps individuals responsible for making choices that would produce the least harm. Individuals are asked by the Least Harm Principle to be responsible not for *all* consequential harms of the global structure (if we would do so, we would go way too far in our assumption of the responsibility). The Least Harm Principle

requires from individuals not less or more – to minimize the harms of the structure they participate in. It seems to be just and realistic. And it doesn't require from individuals to eliminate all evils of the global structure what in practice seems to be impossible.

Of course, the objection that can be made here is – if I commit the least harm, I'm still guilty for committing a harm. Hence, I cannot meet the Harm-Avoidance Requirement imposed by negative duties. The response to the criticism will be that some choices that we make when interacting with the global world – are not choices at all (in the moral sense). We cannot choose, for example, to drink water, or not, or to eat, or to die from starving. Evidently, we are not morally responsible for this kind of questions. But we can choose products that we buy, organization that we support, political parties that we vote for, and so on. In fact, these are real choices in the moral sense. And we are morally responsible for this kind of choices.

The other obvious objection to the Least Harm Principle can be that in many cases we don't know *a-priori* which action from a range of actions will produce the least harm. Often, we can discover it only *a-posteriori*. I absolutely agree with this criticism, as individuals can never calculate all possible outcomes and consequences of their actions. Therefore, individuals can be morally responsible only for the intended outcomes and the assumed consequences of the outcomes. If I sell herrings on a market and one of my customers would die because I had sold him a fish and he choked on a fish bone, I cannot be held responsible for his death, because I could not have assumed his death. I could be held responsible only in a situation where I had sold him an infected fish, or because I had done it on purpose, or because I had not taken any preventive action (for example, by checking my fish whether it was fresh before I would sell it to people). On basis of this, I believe that the Least Harm Principle still stands the critic.

CONCLUSION

In the first four sections of my thesis, I have underlined a number of weak points in the theory of institutional cosmopolitanism of Pogge regarding the duties that human rights entail. In my criticism of the theory I have argued that Pogge's vision of institutionalism has definite difficulties with the specification of negative duties. As a consequence, the theory cannot answer clearly such questions as how the Harm-Avoidance or the Compensation Requirement can be met within the theory of institutionalism. I have also observed that Pogge is not convincing enough in his arguments to be able to show that his appeal to negative duties is sufficient to broaden the responsibility for certain abuses of human rights. This gives reason to conclude that Pogge's attempt to reconcile the libertarian and the utilitarian view on duties within his institutional cosmopolitanism – fails. Hence, it may be concluded that Pogge doesn't succeed in achieving his primary goal – to convince the public that we have strong obligations toward other individuals to aid and assist them with the fulfilment of their human rights.

In the previous analyses, I have responded to the criticism to institutionalism by introducing the Least Harm Principle. My conclusion is that the Least Harm Principle seems to be an adequate response to the main criticism to institutional cosmopolitanism. It definitely helps to specify the negative duties and solve the problems associated with the lack of the specification of the duties. In fact, the Least-Harm Principle can assist the theory of institutional cosmopolitanism by answering to such questions as how the Harm-Avoidance and the Compensatory Requirements should be fulfilled within the institutional version of cosmopolitanism, and also how individuals can be responsible for the consequences of a system that they don't choose voluntarily to participate in. In sum, I conclude that the Least Harm Principle is able to eliminate many weak points in the theory of institutionalism and to significantly strengthen its position within the fascinating debate on global justice and the promotion of human rights.

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