



## The Problem of Positive Rights and Their Corresponding Duties

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*In an exploration of whether positive rights impose any special burden on individuals, this paper first surveys the literature on the distinction between positive rights and negative rights. Traditionally, positive rights have been regarded as those entitling individuals to goods and services such as food and health care, while negative rights pertain to non-interference. Initially it appears that negative rights are less burdensome, because respecting these rights seems to not require any activity on the part of others. In contrast, respecting positive rights to goods and services seem to have a more direct impact on individuals, as the attainment of goods and services is dependent on the labour of others. However, I argue in this paper that in practice there is no significant difference in how negative and positive rights are implemented. Both types of rights have negative and positive duties corresponding to them, or they both contain a demand for non-interference as well as a demand for something to be provided. Furthermore, I argue that both individuals and states are duty-bearers for rights and that, while negative duties are universal, only states bear the responsibility for fulfilling the positive duties attached to both negative and positive rights. Consequently, positive rights are no more onerous for individuals than are negative rights because all that is required of them is non-interference.*

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Whether or not a meaningful distinction can be drawn between “negative” and “positive” rights is highly controversial. Negative rights guarantee individuals freedom from interference and are relatively straightforward, such as the right to security of the person. Contrarily, positive rights are quite contested and include rights to receive goods and services, such as food or health care. While some philosophers have argued that no practical difference exists between the two, others have maintained that there are significant dissimilarities. Libertarians emphasize a distinction, often only supporting the validity of negative rights, while others hold that positive rights pose no great threat to the implementation and enjoyment of negative rights.<sup>1</sup>

This paper will first explicate Onora O'Neill's argument that we should be skeptical of positive rights because of their obscure corresponding duties. It will next examine Richard Lippke's objection to placing precedence on negative rights, Adina Preda's rejection of

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<sup>1</sup> Leif Wenar, “Rights,” *Stanford Encyclopedia of Philosophy* (Fall 2015), ed. Edward N. Zalta, <https://plato.stanford.edu/archives/fall2015/entries/rights/>

“conflicts” between positive and negative duties, and Charles Beitz's emphasis on states as duty-bearers. Finally, it will be argued that positive and negative rights can not be demarcated effectively because their practical application is the same. Moreover, as they appear in the reality of rights practice, both negative and positive rights produce negative and positive duties, with the former duties applying to states and individuals, and the latter solely to states.

## 1. Skepticism of Positive Rights

The motivating question about positive rights for O'Neill is: “what is required of the farmer, the physician and others who actually have to provide food and health care?”<sup>2</sup> When positive rights are not satisfied, she worries that it is unclear who should be held accountable. Negative rights have less ambiguity; their first-order obligations, to be respected, apply equally to everyone, while their second-order obligations, to guarantee they are respected, are assigned particularly.<sup>3</sup> Although international human rights practice charges states with these latter obligations for positive rights as well, the unappealing consequence is that positive rights are “special, not universal.”<sup>4</sup>

Attributing second-order obligations to states is problematic, according to O'Neill, because it is first-order obligations which properly correspond to rights. If the rights in human rights documents are “not matched by obligations, they are at best aspirational.”<sup>5</sup> She also doubts whether states should possess authority to determine who bears first-order obligations, as many ratifying states refuse or are unable to fulfill their second-order duties.<sup>6</sup> Ultimately, first-order duties are relegated by states to individuals, who simultaneously enjoy the benefit and bear the weight of positive rights. In particular, she is concerned that the farmer and the physician suffer excessive strain.<sup>7</sup> Overburdening the people responsible for delivering services and goods may cause their willingness to provide their services and the quality of their labour to diminish. This would devastatingly impact the well-being of society.<sup>8</sup>

## 2. Questioning the Precedence of Negative Rights

Lippke argues that libertarians have failed to offer a distinction between positive and negative rights that sufficiently justifies favouring the latter. The duties to satisfy both are

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<sup>2</sup> Onora O'Neill, “The Dark Side of Human Rights,” *International Affairs* 81, no. 2 (2005): 429, <http://www.jstor.org.proxy.lib.sfu.ca/stable/3568897>.

<sup>3</sup> *Ibid.*, 428.

<sup>4</sup> *Ibid.*, 431.

<sup>5</sup> *Ibid.*, 434.

<sup>6</sup> *Ibid.*, 435.

<sup>7</sup> *Ibid.*, 436.

<sup>8</sup> *Ibid.*, 439.

defensible, as positive rights are, like negative rights, “vital conditions of agency.”<sup>9</sup> As he describes it, the ontological argument in support of the distinction states that “the duties correlative to negative rights require... a good deal less of their bearers than the duties correlative to positive rights, or more strongly... nothing at all.”<sup>10</sup> To the stronger view, he points out that negative rights require their bearers, at the very least, to resist causing others bodily harm.<sup>11</sup>

O'Neill's claim that duties corresponding to positive and negative rights relevantly differ is labeled here as ontological. Lippke refers to her argument (from a paper other than that cited here) that the duty not to interfere with others places no particular burden on individuals, whereas the duty to help provide rights to goods and services for everyone in need is unrealistic and stringent. He responds that she presupposes our obligation to respect the non-interference rights of others entails our personal abstinence from such interference. Alternatively interpreted, the duty may be “to see to it that they are free from coercion, violence, and theft,” which is only “selectively” satisfiable since others could plausibly be perpetually threatened by interferences, and guaranteeing the respect of their right would impose a tremendous burden.<sup>12</sup> However, Lippke does agree that the duties linked to negative rights usually have a clearer nature than those linked to positive rights.<sup>13</sup>

### 3. Against “Conflicts” of Positive and Negative Duties

Despite acknowledging a demarcation between negative and positive rights, Preda insists that this does not support the view that positive rights have conflicting corresponding duties with those of negative rights.<sup>14</sup> If rights were in supposed “conflict,” this would mean that the duties from each could not be satisfied simultaneously.<sup>15</sup> Unlike the previous two authors, Preda explicitly claims that obligations can also be positive or negative, in the former case “to perform a certain action” and in the latter to “abstain from it.”<sup>16</sup> An individual's right to food, for instance, imposes a negative duty on others to refrain from interfering with them acquiring food and a positive duty to assist them in obtaining food. While clearly different readings of this particular right, she thinks we normally place both duties within the same right.<sup>17</sup>

Preda's characterization of the duties entailed by positive and negative rights is

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<sup>9</sup> Richard L. Lippke, “The Elusive Distinction Between Negative and Positive Rights,” *The Southern Journal of Philosophy* 33, no. 3 (1995): 336, ProQuest.

<sup>10</sup> *Ibid.*, 336-37.

<sup>11</sup> *Ibid.*, 337.

<sup>12</sup> *Ibid.*, 340.

<sup>13</sup> *Ibid.*, 345.

<sup>14</sup> Adina Preda, “Are There Any Conflicts of Rights?” *Ethical Theory and Moral Practice* 18, no. 4 (2015): 678, doi: 10.1007/s10677-015-9596-2.

<sup>15</sup> *Ibid.*, 679.

<sup>16</sup> *Ibid.*, 680.

<sup>17</sup> *Ibid.*, 681.

intriguing. She expresses her view through a hypothetical scenario, in which Aditi is starving and Valjean, having no food himself, steals a loaf of bread from a bakery to fulfill his positive duty to help Aditi.<sup>18</sup> It may seem evident that Valjean violated the negative rights of the baker, but Preda maintains that there is no rights conflict. Since “general” rights are here conceptualized as universal, Aditi's positive right to food creates a positive duty for everyone. Therefore, the baker is also obligated to assist Aditi. Although Valjean intervened and fulfilled the baker's duty for him, his theft is justified because the baker was duty-bound to provide Aditi with bread regardless. On Preda's view, “enforcement powers” do not apply to particular persons or institutions, instead they belong to the right-holder and to any others acting on their behalf.<sup>19</sup>

#### 4. States as Duty-Bearers

Beitz identifies two sceptical concerns regarding positive rights: the first is “conceptual,” referring to the trouble of deciding who holds obligations to fulfill positive rights, and the second is “normative,” relating to the potential for those obligations to be excessively taxing.<sup>20</sup> In contrast to the aforementioned positions, he argues that the duties of positive rights are placed on states rather than individuals. According to Beitz, these sceptical arguments fail to acknowledge that, in actual international practice, all rights are “in the first instance conditions for institutions rather than for individual persons.”<sup>21</sup> Beitz proposes a “two-level model,” in which states are given primary duties to respect and guarantee the respect of rights, and the “international community” is obliged to intervene if states fail to meet these duties.<sup>22</sup> Like Preda, he describes duties as both positive and negative.<sup>23</sup>

O'Neill's claim that positive rights produce obligations with unclear designees, causing them to lose “normative force,” is classified by Beitz as a “conceptual” concern.<sup>24</sup> He replies that, in actual practice, positive rights do have prescriptive weight provoking agents to act. He argues that many people find “direct” reasons to help satisfy others' positive rights, even if they cannot help all individuals in need.<sup>25</sup> Beitz finds the normative worry more compelling: that the corresponding duties of positive rights are “likely to be burdensome” to the extent that “outside agents” of the international community would lack “sufficient reason” to intervene.<sup>26</sup> Beitz claims that positive rights, such as O'Neill's example

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<sup>18</sup> Ibid., 683.

<sup>19</sup> Ibid., 684.

<sup>20</sup> Charles R. Beitz, “The Force of Subsistence Rights,” in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao and Massimo Renzo, 537-38 (Oxford: Oxford University Press, 2015).

<sup>21</sup> Ibid., 538.

<sup>22</sup> Ibid., 539.

<sup>23</sup> Ibid., 540.

<sup>24</sup> Ibid., 542.

<sup>25</sup> Ibid., 543.

<sup>26</sup> Ibid., 544.

of the right to food, are seen as necessary for even a minimally decent life and, as a result, privileged and wealthy external agents do find reasons to aid destitute members of poorer states.<sup>27</sup> Since the normative concern relies on individuals being burdened by positive rights, the worry subsides once it is admitted that states take on these responsibilities and costs.<sup>28</sup>

## 5. Positive and Negative Rights, Positive and Negative Duties

I strongly object to O'Neill's insistence that "the farmer and the physician" suffer an extra or onerous duty in the face of positive rights. Assuming they are not forced into their respective careers, the obligation to provide goods and services is not a special duty, but a mere aspect of their professions. The police officer, who is enlisted to protect the non-interference rights of others, would not perceive these demands to be unreasonable. More importantly, neither the police officer nor the farmer nor the physician are blameworthy when disaster strikes. For example, if a riot occurs in one of a state's municipalities and the local police force is insufficient to contain the riot and prevent widespread damage and injury, particular police officers are not regarded as having failed to protect the negative rights of those impacted. The perceived onus of failure is on the state, ultimately, if the public is dissatisfied with the amount of civil unrest in society. The same argument pertains to the farmer and the physician. If a famine destroys crops and results in mass starvation the state is held responsible, not individual farmers. Likewise, a lack of free healthcare reducing society's standard of living is not blamed on specific physicians.

If positive rights are considered not in terms of the burden they place on the farmer and the physician, but rather in terms of the burden placed on ordinary individuals, O'Neill's view may be subject to further criticism as expounded on by Lippke. He points out that she also asserts that positive rights require more in general of all individuals than do negative rights. In his demonstration of how the obligation to respect non-interference rights can also put considerable strain on individuals, I think that Lippke is correct that positive rights are not necessarily more cumbersome. However, his alternative way of defining the duty to respect a negative right is unacceptable. He envisions the right as being plausibly revised to require of individuals that they protect others against bodily harm, which is clearly not what the right looks like in practice. This would be an unreasonable demand of individual duty-bearers. The criticism applies also to O'Neill's worry that individual positive rights create burdens for all people. In reality, duties to provide others with goods or services are not enforced universally on ordinary citizens.

More specifically, my objection to Lippke's alternative account of a negative right's connected obligation is that he fails to explicitly distinguish between positive and negative

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<sup>27</sup> *Ibid.*, 545-46.

<sup>28</sup> *Ibid.*, 546.

duties and he assigns them erroneously. I concur with Preda's argument that rights connote both a positive duty to provide

something and a negative duty to refrain from doing something. For example, the right to security of the person contains the negative duty to not harm others and the positive duty to protect the bodily integrity of others. Similarly, the right to health care implies a negative duty to not block others from receiving health care and a positive duty to provide them access to health care. My view diverges here, however, because Preda, like Lippke, ascribes positive duties to individuals. The obligation to supply individuals with anything implied by a negative or positive right, I argue, in actual practice belongs only to states. Consequently, the "enforcement powers" Preda mentions are also within the domain of states, not all individuals.

Beitz is the only author of the four discussed who credits states with a sufficiently significant role in the practice of human rights as it really exists. I agree with his claim that, currently, states bear primary duties in relation to both negative and positive rights. These duties are both "negative" and "positive" because the state is obligated, firstly, to not interfere with its citizens' bodily integrity or access to goods and services, and secondly, to provide protection of said bodily integrity and supply said goods and services. The burden to fulfill positive rights rests with the state and creates no special obligations for specific individuals, and certainly not for all individuals. Were positive duties assigned to individuals, as Preda claims, they definitely would be too burdensome and O'Neill's concern would be well-founded. Although Beitz focuses on the duties that states possess, his view is compatible with the claim that individuals are required to satisfy the negative duties generated by others' rights.

## 6. Objection

At this point one could potentially protest that my argument, and perhaps that of Beitz, fails to indicate why states are the actual obligation-bearers of positive duties. If states do carry the (positive) burden of both negative and positive rights, it seems as though the apprehension voiced by O'Neill about their efficacy in accomplishing this task cannot be alleviated. If positive duties do not apply universally to individuals, as negative duties do, is it possible for states to satisfy all the positive demands? Admittedly, it is true that states are not always capable or willing to guarantee that the rights (both positive and negative) of their citizens are satisfied. It is a sad feature of the current state of affairs that millions worldwide lack subsistence and freedom from physical harm.

Nevertheless, that states do not perfectly (or, in some cases, competently) meet the obligations allocated to them by the international community does not change the fact that

states are the primary duty-bearers within human rights practice. I see little cause for despair about positive rights having a merely “aspirational” character as a result. With Beitz, I contend that individuals can and do find reasons to assist in the fulfillment of the positive (and negative) rights of others, and have not tried to suggest otherwise. Charity and generosity are values held and practiced worldwide, by many cultures and many individuals. An individual who helps others by volunteering at a soup kitchen, for example, acts based on chosen values rather than enforced obligations. If individuals did have positive duties linked to others' rights, anyone who walks past a homeless person would be enforceably duty-bound to contribute to the satisfaction of their subsistence and non-interference rights. This simply is not the case.

## 7. Conclusion

In this paper, I have responded to the scepticism articulated by O'Neill regarding positive rights and their linked duties. Ultimately, her worry about “the farmer and the physician” being particularly burdened by the obligations to fulfill positive rights is unconvincing. This is largely, as Lippke notes, because duties created by negative rights can be just as taxing as those by positive rights. However, I argued that both authors incorrectly deem the duties of positive rights to be universally applicable. While I use Preda's distinction between positive and negative duties to clarify this point, unlike Preda, I assert that these duties apply only to states. Negative duties, in contrast, concern both states and individuals. Beitz's position, in my view, most accurately corresponds to the reality of human rights application and enforcement. One could argue that he neglects the duties that are relegated to individuals, but I think his focus on states is justified. Since the primary sceptical concern discussed relates to the burden of providing and ensuring satisfaction of rights to goods and services, it is appropriate to stress the role of states as the actual subjects of these positive duties in modern rights practice. Of course, this would be very simplistic if states were individuals which could be compelled to be held accountable. Because they are not, perhaps our expectation that they provide us with anything is mere wishful thinking.

## Bibliography

Beitz, Charles R. “The Force of Subsistence Rights.” In *Philosophical Foundations of Human Rights*, edited by Rowan Cruft, S. Matthew Liao and Massimo Renzo, 535-51. Oxford: Oxford University Press, 2015.

Lippke, Richard L. “The Elusive Distinction Between Negative and Positive Rights.” *The Southern Journal of Philosophy* 33, no. 3 (1995): 335-46. ProQuest.

O'Neill, Onora. "The Dark Side of Human Rights." *International Affairs* 81, no. 2 (2005): 427-39. <http://www.jstor.org.proxy.lib.sfu.ca/stable/3568897>.

Preda, Adina. "Are There Any Conflicts of Rights?" *Ethical Theory and Moral Practice* 18, no. 4 (2015): 677-90. doi: 10.1007/s10677-015-9596-2.

Wenar, Leif. "Rights." *Stanford Encyclopedia of Philosophy* (Fall 2015), edited by Edward N. Zalta. <https://plato.stanford.edu/archives/fall2015/entries/rights/>.