

Symposium on Cosmopolitanism
Duties of Justice, Duties of Material Aid:
Cicero's Problematic Legacy*

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I. THE STATESMEN'S BIBLE

A CHILD born this year in the United States has a life expectancy of 76.4 years.¹ A child born in Sierra Leone can expect to live 34.7 years. Most adults in the United States and Europe are literate, although illiteracy remains a disturbing problem, correlated with poverty. Some developing countries attain nearly our overall rate of literacy: Sri Lanka, for example, has 90 per cent adult literacy, the Philippines 94.6 per cent, Jordan 86.6 per cent. In many nations, however, a person's chance of learning to read (and, hence, to qualify for most well-paying jobs) is far lower. In India, only 37 per cent of women and 65 per cent of men are literate, in Bangladesh 26 per cent of women and 49 per cent of men, in Niger 6 per cent of women and 20 per cent of men. Clean water, health services, sanitation, maternal health and safety, adequate nutrition—all these basic human goods are distributed very unevenly around the world. The accident of being born in one country rather than another pervasively shapes the life chances of every child who is born. Being female, being lower-class, living in a rural area, membership in an ethnic or racial or religious minority—these also affect life-chances within every nation. But, on the whole, differences of wealth and opportunity among nations eclipse these differences. Thus, although females

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¹All data in this paragraph are from the United Nations Development Program's *Human Development Report 1998* (New York: Oxford University Press, 1998).

do worse than males in every nation on the United Nations Development Program's complex measure of human life quality, a woman born in Japan can expect to live 82 years and to enjoy many, at least, of the basic goods of a human life; a man born in Haiti can expect to live only 53 years, with correspondingly diminished expectation of other central human goods.

What do our theories of international law and morality have to say about this situation? By and large, very little. Although we have quite a few accounts of personal duties of aid at a distance,² and although in recent years theorists such as Charles Beitz and Thomas Pogge³ have begun to work out the foundations for a theory of material transfers between nations as part of a theory of global justice, we have virtually no consensus on this question, and some of our major theories of justice are virtually silent about it, simply starting from the nation state as their basic unit.⁴ Nor has international law progressed far in this direction. Although many international documents by now do concern themselves with what are known as second-generation rights (economic and social rights) in addition to the standard political and civil rights, they typically do so in a nation-state-based way, portraying certain material entitlements as what all citizens have a right to demand from the state in which they live. Most of us, if pressed, would admit that we are members of a larger world community and bear some type of obligation to give material aid to poorer members of that community. But we have no clear picture of what those obligations are or what entity (the person, the state) is the bearer of them.

The primitive state of our thinking about this issue cannot be explained by saying that we have not thought at all about transnational obligations. For we have thought quite a lot about some of them, and we have by now sophisticated theories in some areas of this topic that command a wide consensus. Theories of the proper conduct of war, and of proper conduct to the enemy during war;

²Most such theories take their start from the classical utilitarian tradition; an influential recent statement is Peter Singer, "Famine, affluence, and morality," *Philosophy and Public Affairs*, 1 (1972), 229–43. See also: Shelly Kagan, *The Limits of Morality* (Oxford: Clarendon Press, 1989); Liam B. Murphy, "The demands of beneficence," *Philosophy and Public Affairs*, 22 (1993), 267–92; Murphy has pursued these issues further in a forthcoming book, *Demands of Morality* (New York: Oxford University Press, forthcoming). Another effort in this tradition—less successful, I believe—is Peter Unger, *Living High and Letting Die* (New York: Oxford University Press, 1996). On limits to these personal duties of benevolence, see Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991) and Samuel Scheffler, *The Rejection of Consequentialism* (Oxford: Clarendon Press, 1982).

³Charles Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979); Thomas Pogge, *Realizing Rawls* (Ithaca, N.Y.: Cornell University Press, 1989). For promising combinations of institutional and personal duties, see: Robert Goodin, "What is So Special about Our Fellow Countrymen?" *Ethics*, 98 (1988), 663–86; Henry Shue, "Mediating Duties," *Ethics* 98 (1988), 687–704; Thomas Nagel, *Equality and Partiality*; see also Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980); Goodin, *Protecting the Vulnerable* (Chicago: University of Chicago Press, 1985).

⁴A salient example, much discussed, is John Rawls, "The law of peoples," *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic Books, 1993): 41–82.

theories about torture and cruelty to persons; theories even about the rape of women and other transnational atrocities; theories about aggressive acts of various other sorts toward foreign nationals, whether on our soil or abroad—all these things we have seen fit to work out in some detail, and our theories of international law and justice have been dealing with them at least from the first century BC, when Cicero described the “duties of justice” in his work *On Duties* (*De Officiis*), perhaps the most influential book in the Western tradition of political philosophy. Cicero’s ideas were further developed in the Middle Ages by thinkers such as Aquinas, Suarez and Gentili; they were the basis for Grotius’ account of just and unjust war, for many aspects of the thought of Wolff and Pufendorf, and for Kant’s thinking about cosmopolitan obligation in *Perpetual Peace*.⁵ By now we understand many nuances of this topic and have a rich array of subtly different views—for example, on such questions as whether it is permissible to lie to the enemy in wartime, a subject concerning which Cicero and Kant are the rigorists, and Grotius takes a more indulgent line.

I shall argue here that not only our insights into the “duties of justice” but also our primitive thinking about the duties of material aid can be laid at the door of Cicero. In *On Duties* he elaborates a distinction between these two types of duties that, like everything he said in that book, has had enormous influence on the course of political thought since. The general line he takes is that duties of justice are very strict and require high moral standards of all actors in their conduct across national boundaries. Duties of material aid, however, allow much elasticity, and give us a lot of room to prefer the near and dear. Indeed, Cicero thinks that we positively ought to prefer the near and dear, giving material aid to those outside our borders only when that can be done without any sacrifice to ourselves. He cites a famous poem of Ennius to make this point:

A man who graciously shows the way to a someone who is lost
kindles, so to speak, a light from his own light.
For his own shines no less because he has lit another’s (I.51).⁶

That is how Cicero wants us to think about duties of material aid across national boundaries: we undertake them only when it really is like giving directions on the road or lighting someone’s torch from your own: that is, when no significant material loss ensues. And, as we all know, that is how many of us have come to think of such duties.

⁵On Kant’s debt to Cicero, see my “Kant and stoic cosmopolitanism,” *Journal of Political Philosophy*, 5 (1997), 1–25, reprinted in *Perpetual Peace*, ed. J. Bohmann (Cambridge, Mass.: MIT Press, 1997), 25–38.

⁶I translate the Latin of the *De Officiis* myself throughout, starting from Michael Winterbottom’s excellent Oxford Classical Text (Oxford: Clarendon Press, 1994). The best translation is in the excellent annotated version of the work by Miriam Griffin and Eileen Atkins, *Cambridge Texts in the History of Political Thought* (Cambridge: Cambridge University Press, 1991). See also the commentary on the work by Andrew R. Dyck, *A Commentary on Cicero, De Officiis* (Ann Arbor: University of Michigan Press, 1996).

It is important to understand just how central Cicero's work was to the education of both philosophers and statesmen for many centuries. For both Grotius and Pufendorf, who quote Cicero with enormous regularity,⁷ it was the obvious starting point, because its arguments could be expected to be known to the audience for whom they were writing. The same is true of Kant in the political writings: he shows his familiarity with Cicero in many ways. Adam Smith, who usually footnotes with care the Greek and Roman philosophical texts he cites, simply assumes his audience's familiarity with Cicero's *De Officiis*, feeling that he does not even need to tell them when he is quoting huge chunks verbatim. Thus, in *A Theory of Moral Sentiments*, we find a sizable chunk of Book III simply introduced into Smith's own prose without any mention of the author, the way we might do with Shakespeare or the Bible, feeling that to mention the source would be to insult the learning of the audience.⁸ English gentlemen typically had "Tully's *Offices*" on their desks to get them through difficult situations, or at least to display their rectitude. And they took Cicero with them when they went "visiting" (as Kant notes, a favorite euphemism for colonial conquest⁹). African philosopher Kwame Anthony Appiah records that his father Joe Appiah, one of the founding political leaders of the Ghanaian

⁷By count of my research assistant, Chad Flanders, 90 citations or close paraphrases of *De Officiis* in Grotius' *De Iure Belli atque Pacis*, 80 in Pufendorf's *De Iure Naturae et Gentium* (1688); most of these citations are to the portions of the work I am about to discuss. Both authors are also extremely fond of Seneca. (*Caveat lector*: some English translations, especially of Grotius, omit many of the citations, feeling that the text is top-heavy with them.) For Grotius' tremendous influence on the foundations of modern international law, see H. Lauterpacht, "The Grotian tradition in international law," *British Yearbook of International Law*, 23, #1 (1946), 1–53; on Kant's influence, see Fernando R. Tesón, "The Kantian theory of international law," *Columbia Law Review* 92 (1992), 53–102 at pp. 53, 55. Grotius, and the closely related arguments of Vattel and Bynkerhoek, all had a major influence on 18th and 19th century jurisprudence in the United States. A LEXIS search shows 74 US Supreme Court cases that refer to Grotius, 176 that refer to Vattel, and 39 that refer to Bynerhoek, all before 1900; the reliance on these texts seems to be genuine. (Search of LEXIS, Genfed Library, US File, January 1998: I owe this information to my colleague Jack Goldsmith, who informs me that a similar reliance is evident in diplomatic correspondence and political argument.)

⁸Adam Smith, *The Theory of Moral Sentiments* (1st edn 1759; 6th edn 1790), ed. D. D. Raphael and A. L. Macfie (Indianapolis: Liberty Classics, 1982), III.3.6: "...and who does not inwardly feel the truth of that great stoical maxim, that for one man to deprive another unjustly of any thing, or unjustly to promote his own advantage by the loss or disadvantage of another, is more contrary to nature, than death, than poverty, than pain, than all the misfortunes which can affect him, either in his body, or in his external circumstances." This, as will be seen, is a verbatim citation of III.21.

⁹See *Perpetual Peace*, "Third definitive article of a perpetual peace: cosmopolitan right shall be limited to conditions of universal hospitality," *Kant, Political Writings*, ed. Hans Reiss, 2nd enlarged edn (Cambridge: Cambridge University Press, 1991), p. 106:

If we compare with this ultimate end the *inhospitable* conduct of the civilised states of our continent, especially the commercial states, the injustice which they display in *visiting* foreign countries and peoples (which in their case is the same as *conquering* them) seems appallingly great. America, the negro countries, the Spice Islands, the Cape, etc. were looked upon at the time of their discovery as ownerless territories; for the native inhabitants were counted as nothing. In East India (Hindustan), foreign troops were brought in under the pretext of merely setting up trading posts. This led to oppression of the natives, incitement of the various Indian states to widespread wars, famine, insurrection, treachery, and the whole litany of evils which can afflict the human race... And all this is the work of powers who make endless ado about their piety, and who wish to be considered as chosen believers while they live on the fruits of iniquity.

nation, kept two books on his bedside table: the Bible and Cicero's *De Officiis*.¹⁰ The book really was a kind of biblical text for the makers of public policy round the world. What I shall argue here is that in one important respect this bible was more like the serpent in the garden.

I believe that Cicero was a pernicious influence on this topic. But I also think that his arguments are of considerable interest—worth studying not only to discover how we went wrong, but also in order to think better about what we want to say. We usually take on Cicero's conclusions without remembering, hence without criticizing, the arguments that led to them, and so we lack self-understanding about a very fundamental part of our own current situation. I propose to begin here to supply such a critical account; and I shall suggest that Cicero himself provides us with some of the most important resources for such critical argument. He also gives us, along with many inadequate arguments for his distinction, some much more plausible arguments that we might use to defend a moderate asymmetry between the two types of duties—but not one that has the strong anti-cosmopolitan consequences that he believes he has defended.

I shall begin by outlining Cicero's distinction between the two types of duties, and asking what explicit arguments Cicero uses to support the distinction. Then I shall suggest that the resulting position is regarded as acceptable by Cicero and his audience in large part because of a shared view that derives from Stoicism concerning the irrelevance of material goods for human flourishing. I shall then argue that the distinction does not cohere internally, even if one should accept this Stoic doctrine; and, second, that we ought not to accept it. We shall then have to ask which Ciceronian arguments remain standing, and whether they give us any good ways of defending the distinction between the two types of duties.

There is one more reason for focusing on what Cicero says about this question. Cicero, more than any other philosopher who discussed this question, was immersed in it in a practical way. The *De Officiis* was written in 44 BC, while Cicero was hiding out in the country, trying to escape assassination at the hands of the henchmen of Antony and the other triumvirs—who succeeded several months after the completion of the work. The work, dedicated to his son who is studying philosophy at Athens, argues that philosophy is essential for public life, and also that philosophers have a duty to serve the public good. It is extremely moving to read the tribute this republican statesman pays to philosophy and its role in the guidance of the state, while remembering that he was in the midst of a desperate last-ditch attempt to save republican institutions at Rome through the composition of the *Second Philippic*, his major attack on Antony's tyrannical aims. Whatever one may think of Cicero as a personality, one cannot help feeling respect for this statesman who was struggling to write philosophical advice while

¹⁰Appiah, in *For Love of Country* (Boston: Beacon Press, 1996), p.23: Appiah actually says "Cicero and the Bible," but in this context there is only one text of Cicero that is likely to have had this privileged place.

fighting for his life, and for this philosopher who was putting his life on the line for the republic.

One important note, before we begin the argument. I shall focus here on duties we or our institutions may have to people who live in other nations. This single-minded emphasis produces distortion. It suggests that there is a “we” that is powerful and rich, and a “they” who are needy. But of course, in reality the “we” in each nation is composed of privileged and oppressed groups. Distinctions of class, of race and ethnicity, and, perhaps most fundamentally, sex, influence pervasively the life chances of every person in every nation. Being born in a certain region is one determinant of one’s rights and opportunities; being born female is another, and these two dimensions (if we focus only on these two) interact in complicated ways. Thus any really good attempt to think about international obligation will need to take other differences, and associated injustices, into account, asking, for example, what duties we may have to address hierarchies of sex or race or religion in other nations (as well as our own), and whether there may be particularly urgent duties to use our resources in that way. I neglect all of these complexities here.

II. THE DUTIES OF JUSTICE

We must begin with some summarizing to get the relevant pieces of Cicero’s argument onto the table for inspection. Cicero opens his account by mentioning that justice and beneficence, *iustitia* and *beneficentia*, are two aspects of one and the same virtue (I.20). In fact, in his taxonomy of the four cardinal virtues they do figure as a single virtue, whose name is simply *iustitia* (the other three being wisdom, moderation and courage). We are therefore led to expect that his account of the two parts of *iustitia* (the genus) will link them closely together. This expectation will be disappointed.

Cicero’s general account of the duties of *iustitia* (the species) has two parts. Justice requires, first, not doing any harm to anyone, unless provoked by a wrongful act.¹¹ This is the most basic way in which Cicero thinks about justice and injustice, and it proves fundamental to everything he says in what follows.

Second, justice requires “using common things as common, private possessions as one’s own.” The idea that it is a fundamental violation of justice to take property that is owned by someone else goes very deep in Cicero’s thought, in a way that is explained by, but also explains, his fierce opposition to Julius Caesar’s policies of redistribution of land. Here he says that any taking of property “violates the law of human fellowship” (21). The account of the relevant property rights and their origin is remarkable for its obscurity and arbitrariness:

¹¹I so translate *iniuria*; one should avoid saying “injustice,” so that the definition does not seem circular, but also avoid saying something morally neutral, like “provocation”, since *iniuria* clearly means something morally inappropriate.

Nothing is private by nature, but either by longstanding occupation (as when some people at some point came into an empty place), or by conquest (as when people acquired something through war), or by law or by treaty or by agreement or by lot. Hence it comes about that the Arpine land is called that “of the Arpinates,” the land of Tuscany “that of the Tusculans.” The account of private property is of a similar kind. Hence, because, among the things that were common by nature, each one has become someone’s, therefore let each person hold onto what falls to his lot (*quod cuique obtigit, id quisque teneat*). If someone tries to get something away for himself,¹² he violates the law of human fellowship (I.21).

Cicero clearly thinks that a taking of private property is a serious injustice, analogous to an assault. But nothing in this passage explains why he should think this, or why he should think that there is any close relation between existing distributions and the property rights that justice would assign. The argument distinguishes several different ways in which nature’s common stock could be appropriated. They look morally different, and yet Cicero makes no moral distinction among them. It seems as if he is saying, since they are all rather arbitrary anyhow, then each person may as well start with his own share, and we shall define property rights from that point, rather than looking back to the mode of acquisition. But once he has distinguished between agreement and conquest in war, between law and mere chance or lot, he invites us to notice that he has not said nearly enough to explain his strong preference for existing distributions. I shall return to this issue in section VI.

Having introduced the two types of injustice, Cicero now observes that the failure to prevent an injustice is itself a type of injustice; this important passage will concern us in section V. Describing the causes of both types of injustice, he remarks that people are frequently led into immoral aggression by fear (24), by greed (25), and by the desire for glory and empire (26). The last, he notes, is the most disturbing, since it frequently coexists with great talent and force of character; he gives Julius Caesar as a case in point.

Cicero is very clear that justice requires us to use our adversaries with respect and honesty. Trickery of any sort is to be avoided (33). Furthermore, even those who have wronged you must be treated morally. For there is a limit to vengeance and punishment (34). Punishment seems to Cicero sufficient if the wrongdoer is brought to repentance and other potential wrongdoers are deterred. Anything that goes beyond this is excessive.

Cicero now turns from these general observations to the conduct of warfare. From now on he does not distinguish assault from property crime: and of course war standardly mingles the two sub-categories of injustice. About the waging of war, he insists first that negotiated settlement is always preferable to war, since the former involves behaving humanly (and treating the other party as human), whereas the latter belongs to beasts (34). So war should be a last resort when all

¹²There is a textual problem here, and Winterbottom obelizes the first half of this sentence; but the sense—not the argument!—seems clear.

negotiation has failed. Cicero offers as a good example the ancient Roman fetial law, which insists that all warfare be preceded by a formal demand for restitution (37). And of course war is justified, in his view, only when one has been grievously wronged by the other party first. In general, war should always be limited to what will make it possible to live in peace without wrongful acts (35). After conflict has ended the vanquished should be given fair treatment, and even received into citizenship in one's own nation where that is possible (35).

During conflict, the foe is to be treated mercifully: for example, Cicero would permit an army to surrender unharmed even after the battering ram has touched their walls (35); in this he is more lenient than traditional Roman practice. Promises made to the enemy must be faithfully kept: Cicero cites with honor the example of Regulus, who returned to a terrible punishment because he had promised the Carthaginians he would return (39).¹³ Even a powerful and egregiously unjust enemy leader should not be murdered by stealth (40). Cicero ends this section by reminding his readers that the duties of justice are to be observed even to slaves (41).

In general we might say that Ciceronian duties of justice involve an idea of respect for humanity, of treating a human being like an end rather than a means. (That is the reason that Kant was so deeply influenced by this account.) To assault someone aggressively is to treat them as a tool of one's desire for wealth or power or pleasure. To take their property is, in Cicero's eyes, to treat them, again, as simply tools of one's own convenience. This underlying idea explains

¹³The example of Regulus is very important to Cicero in DO: he discusses it at greater length at III.99–111, arguing against various people who would try to reconcile the conflict between virtue and expediency, or to urge that Regulus ought to have followed expediency. Marcus Atilius Regulus, a prominent Roman politician and military leader, was captured by the Carthaginians in 255 BC. Later he was sent to Rome to negotiate a peace (or, in some versions, the return of Carthaginian prisoners); he promised to return after executing his mission. When he arrived, he urged the Senate to decline the peace terms; but he kept his promise to return. The story goes that he was placed in the sunlight with his eyelids stapled open, dying an excruciating death by both starvation and enforced sleeplessness. (Sources characterize the torture in various ways, but all agree on the exceedingly painful character of the death, *exquisita supplicia*, as Cicero says, DO III.100, and compare the summary of the lost book 18 of Livy; for other references in Cicero and elsewhere, see Dyck, 619–20.) Romans considered Regulus' story a salient example of honorable behavior, definitive of a national norm of virtue (see Horace *Odes* 3.5), though modern scholars note that the story may have been invented to defuse criticism of torture of Carthaginian prisoners at Rome. See Howard Hayes Scullard, "Regulus," *Oxford Classical Dictionary*, 2nd edn (Oxford: Oxford University Press, 1970), p. 911, and the briefer article in the next edition, Andrew Drummond, "Atilius Regulus, Marcus," *Oxford Classical Dictionary*, 3rd edn (Oxford: Oxford University Press, 1996), p. 207; they follow Polybius in holding that Regulus died in Carthaginian captivity and never went on an embassy to Rome (see Dyck, p. 619). Horace's use of the story is exceedingly colonialistic and chauvinistic, with vilification of the *barbarus tortor* and praise of the *virilis voltus* (manly face) of the hero, the chaste kisses of his proper Roman wife. (The context in which the story is introduced is anxiety about the dilution of warlike Roman blood by intermarriage with barbarian peoples.) Cicero standardly uses the story as an example of the victory of virtue over expediency: see also *De Finibus*, defending the Stoic ideal of virtue against Epicurean hedonism: "Virtue cries out that, even while tortured by sleeplessness and hunger, he was happier than Thorius getting drunk on his bed of roses" (II.65). In more recent times, the example, however extreme, still fascinates. Turner's painting *Regulus* is notorious for containing, it would appear, no representation of the central figure; the reason is that the viewer is placed in the position of Regulus, struck again and again by a hammering implacable sun.

why Cicero prefers the injustice of force (*vis*) to the injustice of deception (*fraus*). The former is the act of a lion, the latter of a fox (41): “both are most foreign to the human being, but deception is more worthy of hatred”—presumably because it more designedly exploits and uses people.

In Book III Cicero returns to the duties of justice, elaborating on his claim that they are the basis for a truly transnational law of humanity. Since the useful frequently conflicts with the honorable, he writes, we need a rule (*formula*) to follow. The rule is that of never using violence or theft against any other human being for our own advantage. This passage, more rhetorical than the Book I account, is the text that most deeply influenced Grotius, Smith and Kant:

Then for someone to take anything away from another and for a human being to augment his own advantage at the cost of a human being’s disadvantage, is more contrary to nature than death, than poverty, than pain, than all the other things that can happen to his body or his external possessions.¹⁴ For to begin with it removes human fellowship and social life. For if we are so disposed to one another that anyone will plunder or assault another for the sake of his own profit, it is necessary that the fellowship of the human kind, which is most of all in accordance with nature, will be torn apart. Just as, if each limb had the idea that it could be strong if it took the strength of the adjacent limb away for itself, the whole body would necessarily weaken and perish, so too, if each one of us should take the advantages of others and should snatch away whatever he could for the sake of his own profit, the fellowship and common life of human beings must necessarily be overturned (21–2).

The point is, presumably, that the universal law condemns any violation which, should it be general, would undermine human fellowship. Klaus Reich has found in this passage the origins of Kant’s formula of universal law.¹⁵ Whether this is right or wrong, we certainly should see a strong similarity between Cicero’s argument and Kant’s idea.

Cicero now calls this principle a part of “nature, that is the law of peoples,” and also “nature’s reason, which is divine and human law.” He notes that it is also widely recognized in the laws of individual states. We should all devote ourselves to the upholding of this principle—as Hercules did, protecting the weak from assault, a humanitarian act for which he was made into a god. In general:

If nature prescribes that a human being should consider the interests of a human being, no matter who he is, just because he is human, it is necessary that according to nature what is useful for all is something in common. And if this is so, then we are all embraced by one and the same law of nature, and if that is so, then it is clear that

¹⁴It is quite unclear in what sense death and pain could be said to be contrary to nature; even to a Stoic, for whom the cosmos is thoroughly good, death itself will therefore have to be understood as a good, when it occurs. And Stoics energetically opposed the thesis that pain is intrinsically bad. Eric Brown suggests that the Stoics can defuse this problem by distinguishing two viewpoints: from the point of view of Providence, nothing is contrary to nature; from a local viewpoint, things like death are contrary to nature, in the sense that they mean the end of some natural organism. I am not sure: for the local perspective is not accurate, according to a strict Stoic account. Marcus and other writers insist again and again that we must meditate on the naturalness of our own death.

¹⁵“Kant and Greek Ethics,” *Mind*, 48 (1939), 338–54, 446–63.

the law of nature forbids us to do violence to (*violare*) anyone else. But the first claim is true, so the last is true also (III.27).

Cicero remarks that it is absurd for us to hold to this principle when our family or friends are concerned, but to deny that it holds of all relations among citizens. But then, it is equally absurd to hold to it for citizens and deny it to foreigners. People who make such a distinction “tear apart the common fellowship of the human kind” (28). (Hercules, his salient example of nature’s law, was a cosmopolitan in his aid to the weak.¹⁶)

This section makes it very clear that Cicero’s duties of justice are fully cosmopolitan. National boundaries are morally irrelevant, and Cicero sternly reproves those who think them relevant. At the core of Cicero’s argument is an idea of not doing violence to the human person—and, when we add in the distinction from Book I (and the Hercules example), of not allowing people to be violated when you can help them. *Violare* includes physical assault, sexual assault, cruel punishments, tortures, and also takings of property. Cicero now links to that idea of humanity as an end the idea of a universal law of nature: conduct is to be tested by asking whether it could be made into such a law. Cicero clearly wants the world citizen to be Hercules-like in his determination to create a world where such violations of humanity do not occur, a world that accords with nature’s moral law. The law of nature is not actual positive law, but it is morally binding on our actions, even when we are outside the realm of positive law.

This is the material in Cicero that became the foundation for modern international law. Grotius’ *De Iure Belli atque Pacis* is, we might say, a commentary on these passages. Kant’s *Perpetual Peace* also follows them very closely.¹⁷ Particularly influential was Cicero’s moral rigor, his insistence that all promises be preserved; in the form of the Grotian maxim *pacta sunt servanda*, this is the basis for modern conceptions of treaty obligation—although of modern thinkers only Kant follows Cicero all the way to his praise of Regulus.

III. THE DUTIES OF MATERIAL AID

Duties of justice are fully universal, and impose strict, exceptionless obligations. Regulus had to return to his death; it is wrong to poison even the foulest of tyrants. Very different is Cicero’s next group of duties, the duties involved in giving material aid to others. Cicero begins by saying that these duties, too, are basic to human nature, but there are many constraints. We have to make sure our gifts do not do harm; we have to make sure we do not impoverish ourselves; and we have to make sure the gift suits the status of the recipient. Distinctions that we may legitimately take into account under the last rubric include the recipient’s

¹⁶See Dyck, p. 529: “The example of Hercules, a pan-Hellenic hero, breaks down the boundaries of individual states and emphasizes the common needs and interests of all human kind.” He compares *Tusculan Disputations* 1.28 and *De Finibus* 3.65–6.

¹⁷See my “Kant and stoic cosmopolitanism.”

character; his attitude toward us; benefits previously given to us; and the degree of our association and fellowship (I.45). Duties are strongest when all of these intersect; but throughout there is a role for judgment, as to what seems weightier (45). If other things are equal, we should help the most needy (49).

As if introducing an independent consideration—which he never clearly ranks against the preceding—Cicero now says that human fellowship will be best served if the people to whom one has the closest ties (*ut quisque erit coniunctissimus*) should get the most benefit. He now enumerates the various degrees of association, beginning with the species as a whole, and the ties of reason and speech that link us all together. This all-embracing tie, he now says, citing Ennius, justifies only a type of material aid that can be given without personal diminution (*sine detrimento*). Examples are: allowing a foreigner to have access to running water and fire; giving advice to anyone who asks. But, he says, since there is an infinite number of people in the world (*infinita multitudo*) who might possibly ask us for something, we have to draw the line at the point Ennius mentions.

Cicero then discusses other bonds that do in his view justify some substantial giving: the bond of nation and language; of the same state; of one's relatives; various degrees of familial propinquity; and, finally, one's own home. In no case, it is important to note, does his argument for the closeness of the connection rest simply on biology or heredity; at least one relevant feature, and usually the central one, is some aspect of shared human practices. Citizens are said to share "a forum, temples, porticoes, roads, laws, rights, courts, elections." Families are held together by blood, but also by the shared task of producing citizens, and by "goodwill and love: for it is a great thing to have the same tombs of ancestors, to use the same religious rites, to have common burial places" (54–5). (It is of considerable practical importance to Cicero to show that family ties are not merely blood ties, because adoption, remarriage, and other common features of Roman life had made family lines look quite different from blood lines.) Cicero does not make it clear whether our duties are greater to those who are closer to us in these various shared observances.

Cicero now praises friendship as an especially powerful source of duties of aid: for friendships are more likely to be cemented by the bonds of virtue and shared aspiration than are family relations. But his highest praise is reserved for shared political institutions:

But when you look at everything with your reason and mind, of all the forms of fellowship none is weightier, none more dear, than that which each of us has with the republic. Parents are dear, children, relatives, acquaintances are dear; but the republic embraces all these loves of all of us together, and what good person would hesitate to die for her if it would help her? How much more detestable, then, is the monstrosity of those men who have cut up their country with every type of crime, and have been, and are still, engaged in her utter destruction! (57)

Although we cannot be certain, and the hasty character of the writing in this passage makes the whole course of the argument rather unclear, Cicero here appears to distinguish our affiliation with the republic from the shared association he previously mentioned, that of fellow citizens who share a forum, temples, and so forth. The affiliation praised here is with the republican institutions themselves, which make it possible for us to live a fully human life.

Cicero now turns to the question of the ranking of duties. First, he says, are duties to the republic and our parents, because we are obligated to both by strong duties of gratitude, for their benefits to us in the past (58). Next are our children and our household, because they “look to us alone, and have no other available refuge.” Next our relatives, who are congenial to us, and with whom we generally share our fortunes. But at the same time, we must look to need as well, and to what anyone would or would not be able to attain without our help. Different circumstances suggest different orderings: for example, one should aid a neighbor in preference to a brother in gathering the harvest; but in a lawsuit you should defend your relative or friend rather than your neighbor.

In short, then, Cicero proposes a flexible account that recognizes many criteria as pertinent to duties of aid: gratitude, need and dependency, thick association—but which also preserves a role for flexible judgment in adjudicating the claims when they might conflict. We have a great deal of latitude in considering the cases.¹⁸ What is clear, however, is that people outside our own nation always lose out. They are just that *infinita multitudo* who would drain off all our resources if we let their demand be heard at all. Fire and water for the alien are not nothing: they can be refused. But they are exemplary, for Cicero, of that which can be granted without diminution of our own stock.

IV. A LURKING VIEW ABOUT THE GOOD

Why is it at all acceptable to Cicero that this asymmetry should hold? He thinks it so terrible to contemplate a human being assaulting or stealing from another human being. Even a lie to the enemy seems to him the gravest desecration of the very concept of human fellowship. And yet if the same people are starving and my nation has a surplus, it seems to him just fine. There are many things that help explain these attitudes, including (as we shall see further in what follows) Cicero’s strong and utterly unjustified account of property rights. But we must now mention another piece of the picture.

In the *De Officiis*, Cicero’s view lies closer to orthodox Stoicism than in most of his other works. Perhaps because he is writing at such speed, basing his work on several Stoic texts, perhaps because these are topics on which he has in any case fewer disagreements than usual with the Stoics, he tends to sympathize with

¹⁸Probably Cicero does not allow quite as much latitude as does Kant: for the requirement that we become *boni ratiocinatores officiorum* suggests that we must learn to perform refined calculations, and that it is not simply up to us how they turn out. (I owe this observation to Eric Brown.)

the Stoic doctrine about the badness of the passions and the beliefs about external goods that are their ground. Both here and in the *Tusculan Disputations* he takes the Stoic line that one should never have grief, or fear, or anger—and he goes even further, denying in *Tusculan* Book IV that one should even have the approved variety of Stoic *erôs*.¹⁹ In *De Officiis*, the same view is evident. Right after the passage on justice and material aid, we find courage defined as a lofty attitude of mind that rises above the passions, and is able to look down serenely on the vicissitudes of fortune (I.61–8).

But of course the Stoic thesis about the passions is inseparable from their view that external things, the gifts of chance, are irrelevant for the truly well-lived life. The wise person scorns all such things and considers them small. He does not get upset at the loss of a fortune, or health, or reputation and honor, because all that is trivial stuff anyway.

This view Cicero accordingly endorses: the courageous person is “great and lofty in soul, despising human things” (61). Again, “a brave and great mind” is revealed “in the despising of external things, given that he is persuaded that a human being should wonder at and wish for and seek nothing but what is morally good and appropriate, nor should he yield to any human being or any disturbance of mind or any fortune” (66). In short, then: we can afford not to worry about the evenhandedness of our benevolence, because the really strong person—and that is any of us at our best—does not need these things.

This Stoic thesis typically makes it very difficult for any Stoic to motivate and defend beneficence. The Greek Stoics seem to have turned at this point to their view of providence: Zeus asks us to concern ourselves with the distribution of material goods, even though, strictly speaking, such things have no real importance. In general, these things are “preferred,” their opposites “dispreferred”; it is therefore appropriate to pursue them, though not to grieve when one cannot attain them. Marcus Aurelius says that the Stoic wise person will view people who weep over lost externals as similar to children who weep over a lost toy: he will help the child regain the toy (the needed externals), but he will know all the while that it is only their own foolish immaturity that makes them care about such things. Cicero, unable to take up Stoic teleology because of his own epistemic skepticism, takes a line more like Marcus’s: If people are really good they do not mind the loss of externals, so, by implication, if they do mind them that shows they are morally defective.²⁰ That does not mean that we should not aid them—but it does color our sense of why that aid is needed, and what its limits might be.

¹⁹See my “Erôs and the Wise: the stoic response to a cultural dilemma,” *Oxford Studies in Ancient Philosophy* 13 (1995): 231–67.

²⁰Given that elsewhere Cicero prefers a position that ascribes a tiny bit of value to externals, though the preponderant amount to virtue, he may waver in this work between that position (which would make it easier to justify duties of material aid to our fellow citizens) and the stricter Stoic position.

V. DOES THE DISTINCTION STAND UP?

It is now time to ask some questions. First, we need to try to understand whether Cicero's distinction of duties is coherent, even to one who accepts the Stoic doctrine. Three arguments suggest that it is not.

A. JUSTICE AND RESPECTFUL TREATMENT ARE EXTERNAL GOODS

The first objection we might make is that if we are really thoroughgoing Stoics, we should not care about just or respectful treatment any more than about material aid. All these things are externals, in the hands of chance. To a person who is truly free within, slavery, torture and rape are no worse than poverty. Stoics were quite explicit on this point. The wise person is free, even though he may be a slave. The sage on the rack is happy. The person who sees things aright will not care about the contempt and abuse of society: Seneca tells a story of Cato's undisturbed demeanor when someone spat at him in the forum (*De Ira* III.38). Even political freedom, a goal dear to many Stoic statesmen both before and after Cicero, is not, strictly speaking, important for true wellbeing. (At one point Seneca, describing Cato's struggles for political freedom, feels it necessary to remind his readers that Cato did not really think it important for himself, but only for his followers—who, presumably, were still too dependent on the gifts of fortune.)

If this is so, then one rationale for the distinction between the two types of duties disappears. If humanity is owed certain types of treatment from the world, it would seem it is owed good material treatment as well as respect and non-cruelty. If the world's treatment does not matter to humanity, then it would seem that torture, rape and disrespect are no more damaging, no more important, than poverty. It is incoherent to salve one's conscience on the duties of material aid by thinking about their non-necessity for true flourishing, and at the same time to insist so strictly on the absolute inviolability of the duties of justice, which are just other ways of supplying human beings with the external things they need.

To see how fascinating this Stoic incoherence can be, let me digress to consider Seneca's letter on slavery,²¹ which is rightly regarded as one of the formative progressive documents on this topic. Its general argument is that slaves have human worth and dignity, and therefore are due certain sorts of treatment suited to that human worth and dignity. Seneca's imaginary interlocutor keeps saying, "He is a slave" ("Servus est"). Seneca keeps on replying, "No, he is a human being" ("Immo homo est"). But to what, precisely, does Seneca think humanity entitles this human being? Both a lot and a little. A lot, in the sense that Seneca is

²¹Seneca, *Moral Epistle* 47; see edition by L. D. Reynolds, in Seneca, *Ad Lucilium Epistulae Morales* (Oxford: Oxford Classical Texts, OUP, 1965), vol. 1. English translations can be found in the Loeb Classical Library, and (better) in the selection of letters edited by C. D. N. Costa, *Seneca: 17 Letters* (Warminster: Aris & Phillips, 1988).

prepared to make quite radical changes in customs of the use of slaves. Slaves are to be reasoned with and made partners in the planning of the household. They are to sit at our table and eat with us. All cruelty and physical abuse is absolutely banned. Especially radical is an equally absolute ban on using the slave as a sexual object: for intercourse with slaves was such an accepted part of the conduct of life, where male owners are concerned, that it was not defined as adultery under law,²² and the only other person we know who objected to it was the Stoic philosopher Musonius Rufus.²³

What, however, about the material conditions of the slave—his lack of self-ownership, his inability to own material goods, in short the institution of slavery? This, it seems, Seneca never thinks to question. And his rationale for this quietism is what we might by now expect: slavery does no harm, because the only important goods are the goods of the soul. The interlocutor utters his scornful “He is a slave” one last time, toward the end of the letter. But this time Seneca does not reply that the person is human and had therefore to be treated thus, and so:

‘He is a slave.’ But maybe he has a free soul. ‘He is a slave.’ Will this do him any harm? (*Hoc illi nocebit?*) Show me anyone who is not a slave: one person is a slave to lust, another to greed, another to ambition, all to hope, all to fear (47.17).

But this tack confounds the person who had just been thinking that the treatment of people *does* matter, who had just been agreeing with Seneca that it is entirely wrong to use a human being the way one uses a beast of burden (47.5). For how can it be wrong to neglect or fondle or terrorize or even beat a slave, if all that matters is the free soul within, and that cannot be touched by any contingency? How can it be wrong to treat a slave like a beast, if it is a matter of indifference whether one is a slave or a freeman? Seneca would like to say that humanity requires respectful treatment, and yet that it does not: for obviously enough, the entire institution is an insult to humanity, because it treats a free soul as an unfree possession. This was well known to Seneca and to his contemporaries. There was no coherent Stoic defense of the institution available to him, although in fact most Stoic philosophers did support it.²⁴ Seneca therefore falls back, at this point,

²²See Susan Treggiari, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian* (Oxford: Clarendon Press, 1991). The relevant law is the famous (or infamous) *Lex Iulia de Adulteriis*, passed by Augustus in the first century in an alleged attempt to restore the pristine mores of former times—although, as Treggiari persuasively argues, it is actually much more severe than either legal or social norms that prevailed during Cicero’s lifetime. Even this severe law did not restrict sexual access of male owners to their slaves—and, as Musonius comments, public norms generally endorsed such conduct. Adultery was conceived of as a property offense against the husband or father of the woman in question.

²³See my “Musonius Rufus: Platonist, Stoic, and Roman,” *The Night of Reason: Erotic Experience and Sexual Ethics in Ancient Greece and Rome*, ed. M. Nussbaum and J. Sihvola (Chicago: University of Chicago Press, forthcoming). I argue that Musonius’ position is actually more conservative than Seneca’s: it does not claim that the slave has any right to respectful treatment; it treats the sex act as a problem of overindulgence for the free owner, rather than a problem of disrespect for the slave.

²⁴See Miriam Griffin, *Seneca: A Philosopher in Politics* (Oxford: Clarendon Press, 1976), ch. 8, 256–85.

on the familiar point about the external goods, and the familiar paradox that only virtue makes one truly free. But that maneuver does too much work if it does any at all. For it negates the importance of everything that has been argued up to this point. If it is really true that the only important form of slavery is internal slavery to passion, and if we accept the Stoic thesis that these passions are always in our control, then there is no reason to think that the lot of the abused and insulted slave is any worse than the lot of the slave who sits down with Seneca at the dinner table.

I believe that much modern thought about duties suffers from this same incoherence.²⁵ We allow that there are certain things that are so bad, so deforming of humanity, that we must go to great lengths to prevent them. Thus, with Cicero and Seneca, we hold that torture is an insult to humanity; and we now go further, rejecting slavery itself. But to deny people material aid seems to us not in the same category at all. We do not feel that we are torturing or raping people when we deny them the things that they need in order to live—presumably because we do not think that these goods are in the same class. Humanity can shine out in a poor dwelling, and we tell ourselves that human dignity has not been offended by the poverty itself. Poverty is just an external: it does not cut to the core of humanity. But of course it does. The human being is not like a block or a rock, but a body of flesh and blood that is made each day by its living conditions. Hope, desire, expectation, will, all these things are shaped by material surroundings. People can wonderfully rise above their conditions, but that does not mean that the conditions themselves are not important, shaping what they are able to do and to be. I believe that the Stoic idea of the invulnerability of the will to contingencies—and related Christian ideas about the soul—lie behind these judgments. At least the Christian version is consistent, holding that no sort of ill treatment in this life affects one's salvation. (Interestingly, many thinkers are inclined to draw the line at rape, feeling that it sullies the soul despite its unwilling character. Dante, for example, puts Piccarda Donati in the lowest rung of paradise simply for having been raped.) The Stoic version lies closer to the ordinary thought of many of us, when we express horror at “crimes against humanity” but never consider that failures of material aid might be such crimes.

²⁵A significant attempt to break down the distinction, in connection with thinking about which duties to others are most urgent, is Shue, *Basic Rights*. See also Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996), for argument that what should be considered in both cases is the prerequisites of human agency, and that both the “duties of justice” and the “duties of material aid” involve important prerequisites of agency. Also Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1985).

B. INTERDEPENDENCE AND INTERWEAVING

Even if we should convince ourselves that the presence of humanity imposes duties of justice but no duties of material aid, we would still have a problem on our hands: for the duties of justice cost money. To promote justice requires material aid. Any political and legal order that is going to protect people against torture, rape and cruelty will need material support. There will need to be lawyers, courts, police, other administrative officers, and these will need to be supported, presumably, by a system of taxation. Where internal budgetary discussions are concerned, Americans very often miss this point, thinking that money spent on welfare and relief of poverty is money spent, but that somehow the police, the courts, the fire department, everything that is required to maintain a system of contract, property rights, and personal safety are all free of cost.²⁶ Similarly, political liberty is not free: once again, tax money supports the institutional structures that make liberties more than words on paper. Such issues become vivid when one visits a nation that has a weak tax structure. In India, for example, the national government is impoverished, since relatively few citizens pay taxes. This means that the infrastructure is in disarray, jeopardizing freedom of travel and public safety; that the legal system has huge multi-year delays, jeopardizing other rights and liberties; that personal security is not protected by effective law enforcement; and so on. In short, people are not free to do as they wish in matters touched on by the duties of justice, unless material resources have been distributed—and, in most cases, redistributed—to deal with the problem.

Such problems internal to each nation already put the Ciceronian project in trouble: for we are not going to be able to protect the rights of all world citizens in many areas of basic liberty without redistribution from richer to poorer nations. Humanity is being violated daily, not only because of evildoers, but also because of the sheer inability of nations to maintain public order and public safety. If we really care about the duties of justice, in short, this already requires us to think about material aid. But the problem is magnified when we think about what an effective system of international law requires. Maintaining a system of global justice that would be at all effective in dealing with torture, cruelty, unjust war, etc. involves massive expenses; meeting these expenses requires redistribution of resources from richer to poorer nations. In that sense the US is at best muddled and at worst hypocritical when it sounds off about human rights around the world and yet opposes any attempt to create expensive institutions—or even to pay UN dues. Caring about basic human rights means spending money, not just talking fine talk.

But then the difference between the two types of duties becomes a matter of degree only. It looks like we would not have to spend very much to pay our dues to the UN, or support an international court. If we were really going to make a

²⁶See Stephen Holmes and Cass R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: Norton, 1999).

significant difference to poverty in Africa and Asia, it seems that we would have to spend a lot more money than that. To this we reply that now the whole terrain of argument has shifted: we are no longer making a point of principle, we are just haggling about the price.²⁷ And once we get off the high horse of false Ciceronian principle, we can notice that much of the aid we give to other nations actually goes to securing their citizens from violations of humanity covered under duties of justice, through expenditures on law enforcement and the legal system. We should also count at least a part of the military budget in this category, since being prepared to defend one's citizens against an unjust attack is a very important part of the duties of justice. In fact, when we look into the matter seriously, we will probably find that the enormous price of protecting citizens from torture, securing effective police protection, and protecting basic security of the person and of property is quite comparable to the cost of providing basic material necessities.²⁸ So we should conclude that if people say they are for the duties of justice and yet are unwilling to redistribute money across national borders, they are actually half-hearted about the duties of justice.

C. POSITIVE AND NEGATIVE

The duties of justice look different from the duties of material aid because they do not involve doing anything, or not very much. They mainly involve refraining from certain acts: aggressive war, torture, rape, etc. Duties of material aid, by contrast, look like they require us to do a great deal for others. That intuitive idea is very central in our thinking when we suppose that the recognition of duties of material aid would impose a great burden on our nation, while the recognition of duties of justice would not. I have already cast doubt on the positive/negative distinction by pointing out that real protection of people against violations of justice is very expensive: so if we really are serious about protecting people in other parts of the world against wrongdoing, we will have to spend a lot of money on the institutions that do the protecting. But someone may now say, if we decide not to spend this money, violations may occur, but at least the violators will not be us. We can consistently draw a line, if not precisely where the old line between justice and material aid went, at least between acting and refraining. If we refrain from cruelty and torture, etc., then we are doing no wrong, even if we are unwilling to spend our money on people at a distance, even where justice issues themselves are in play.

²⁷Recall George Bernard Shaw's similar remark to a rich society woman on the topic of prostitution. As legend has it, he asked her whether she would marry him if he had a million pounds: amused, she said yes. He then asked whether she would sleep with him for five pounds. She exclaimed, "Mr. Shaw, what kind of a woman do you think I am?" He replied, "We have already established that: now we're just haggling about the price."

²⁸See Shue, *Basic Rights*, 107 ff., citing Wassily Leontief's claims about the relatively low cost of providing basic material support.

To this argument the best reply was given by Cicero himself. In this very section of Book I of the *De Officiis*, he wrote:

There are two types of injustice: one committed by people who inflict a wrong, another by those who fail to ward it off from those on whom it is being inflicted, although it is in their power to do so. For a person who unjustly attacks another under the influence of anger or some other disturbance seems to be laying hands, so to speak, upon a colleague; but the person who does not provide a defense or oppose the injustice, if he can, is just as blameworthy as if he had deserted his parents or his friends or his country.

The more active sort of injustice, he continues, is usually motivated by fear, or greed, or the love of honor and glory. (Julius Caesar is, as elsewhere, his salient example of the last bad motive.) Cicero now turns to the second type, considering his own profession in the process:

As for neglecting the defense of others and deserting one's duty, there are many causes of that. Sometimes people are reluctant to incur enmities or hard work or expenses. Sometimes they are impeded by lack of concern or laziness or inactivity or by some pursuits or business of their own, to such an extent that they allow those whom they should protect to be abandoned. We must therefore watch out lest Plato's statements about philosophers prove to be insufficient: that because they are occupied in the pursuit of truth, and because they scorn and despise the things that most people intensely seek and for which they are in the habit of murdering one another, therefore they are just. For they attain one type of justice, not wronging anyone by the infliction of a wrong, but they fall into the other type of injustice. For impeded by their zeal for learning, they desert those whom they ought to protect. Thus he thought they would not even help the republic unless compelled. But it would have been fairer that this be done willingly; for a right action is only just if it is done willingly. There are also some people who either because of keenness to protect their estates or through some hatred of human beings say that they mind their own business and don't seem to be doing anyone any harm. They are free from one type of injustice, but they run into the other; for they abandon the fellowship of life, inasmuch as they do not expend on it any zeal or effort or resources (I.28–9).

Cicero makes an important contribution in this fascinating section. He grants that in a certain sense the active–passive distinction makes sense. There is a morally relevant distinction between actively doing a wrong oneself and simply sitting by while a wrong takes place. But this distinction, while morally relevant, does not entail that no wrong is done by the person who sits by. Not making unjust war is one bad thing; but not protecting your fellows (and the reference to “so to speak, colleagues” seems to mean fellow human beings) when you have the resources to do so is another.²⁹ We readily see this when we think of families, he suggests: for Cicero knows that the average Roman will think that the failure

²⁹See the interesting discussion of this part of Cicero's view in Judith Shklar, *The Faces of Injustice* (New Haven, Conn.: Yale University Press, 1990).

to defend one's family members from attack is a paradigm of bad behavior.³⁰ But the same is true for larger groupings of our fellow human beings: standing by idle while they get attacked is itself a wrong. There are many reasons why people behave like this: they do not want hard work, they do not want to make enemies, they are simply lazy. But none of these excuses the bad behavior or makes it the blameless innocence it represents itself as being.

Cicero's argument is not wholly satisfactory, because it relies on an antecedent analysis of when a wrong has taken place, or what help from others people have a right to expect. Cicero does not make that background account explicit. And yet he clearly believes that any acceptable such account would entail that failing to prevent a grave harm when one can is itself a wrong, comparable to an active assault. As I have suggested, he relies on a moral tradition in which the failure to defend friends and family is a paradigmatic moral failing. What he does is to extend that account to areas in which people do not usually think such thoughts.

Especially fascinating is Cicero's attack on his own philosophical colleagues. They love what they are doing, and they do not like the idea of getting messed up in politics. So, as Plato imagines, they will have to be forced to take part in the affairs of state. Cicero replies that they do wrong if they do not take part of their own choice. Like misanthropes and obsessive money-makers, they do harm to humanity by failing to aid it. This theme is of urgent significance to Cicero, who is about to be murdered for having made a different choice, and he returns to it later, saying that such a life of retirement has been chosen by "the noblest and most distinguished philosophers, and also certain strict and serious men who could not bear the conduct of the people or their leaders" (I.69). What they were after is clearly appealing: "They wanted the same thing kings do: to need nothing, to obey nobody, to enjoy their liberty, which is defined as doing as you like." Cicero is even prepared to concede that sometimes that choice may perhaps be blameless—if people have retired because of ill health or "some other very serious reason," and, he now adds, if they have extremely fine minds and are devoting themselves to learning. (Here he seems to go back on what he said about Platonic philosophers, albeit in an uncertain and half-hearted way.³¹) But anyone other than these is surely in the wrong to pursue a life that does not involve service to others through political action.

How does Cicero see the relevance of these observations to his own argument? Clearly he means to blame people who will not serve their own nation, and to defend the life of committed public service. In the earlier passage, he also pretty

³⁰See Seneca *De Ira* I.12, where the interlocutor objects that the non-angry person will not be able to avenge the murder of a father or the rape of a mother, and Seneca hastens to reassure him that these central moral acts can all be done without anger.

³¹Compare Seneca's *De Otio*, where he argues that the philosopher who does not enter public life may be able to serve the public better through philosophical insights: "We definitely hold that Zeno and Chrysippus did greater deeds than if they had led armies, won honors, and written laws: they wrote laws not for one nation but for the whole human race" (6). But Seneca's position is much more retirement-friendly than Cicero's.

clearly says that nations (or their citizens) should not stand by when wrong is going on somewhere else. Not to help someone who is being attacked is like deserting your family or friends. Perhaps there is an implicit restriction to nationals and important allies, but I do not think so: the active sort of injustice is defined fully, generally, as assault “against anyone” (*in quempiam*), and the ensuing account of the passive sort seems equally broad in its application: when that same anyone is getting attacked, it is unjust to stand by.

Cicero certainly does not elaborate on the duties imposed by the requirement to avoid passive injustice. To whom do these duties belong? In the first instance to nations? To their citizens? To both? How widely do they extend? What is meant by “if you can” (*si potest*)? Does it mean only “If you can without any sacrifice to yourself”? But this reading seems ruled out by his attack on the motives of people who will not help because they do not want to incur expense or hard work. Presumably, then, he thinks that people are in the wrong unless they are willing to incur enmity and expense and hard work in order to protect their fellow human beings.

By placing this discussion inside the section on the duties of justice, and by characterizing active injustice as some sort of assault or aggression, Cicero seems to limit the passive sort to warding off actual attacks or assaults. Clearly he does not think that hunger and poverty are the type of assault against which one has duties to protect one’s fellows, or else he would have to rewrite completely the section on benevolence. But why not? It seems quite unconvincing to treat the two types of harm asymmetrically. Furthermore, even Cicero’s limited point has implications for the topic of benevolence, which he does not notice. For even to protect our neighbors from assault will surely require, as I have argued, massive uses of our own material resources, of a type that he seems to oppose in that later section.

At this point, then, we must part company with Cicero, viewing the discussion of passive injustice as highly suggestive, but underdeveloped. Clearly Cicero did not see its importance for his later discussion of benevolence. This is perhaps not surprising, given the speed at which he was writing, with death looming ahead of him, and given his intense focus on justifying the philosopher’s choice to serve the public realm.

The important point is that Cicero is right. It is no good to say, “I have done no wrong,” if, in fact, what one has done is to sit by when one might have saved fellow human beings. That is true of assault, and it is true of material aid. Failures to aid when one can deserve the same charges Cicero addresses to those who fail to defend: laziness, self-preoccupation, lack of concern. Cicero has let in a consideration that is fatal to his own argument, and to its modern descendants.

One more rescue attempt will now be attempted. Cicero, it will be said, is perfectly consistent when he applies his doctrine of passive injustice only to the sphere covered by the “duties of justice.” This is so because passive injustice is a failure to ward off *an assault or aggression*. But lack of material goods is not an

assault or aggression. Nothing Cicero has said commits him to the view that it is also passive injustice not to supply things that people need in order to live. And indeed, it seems likely that some such intuitive idea lies behind Cicero's way of arguing here. Moreover, this same intuitive idea is in many modern people's minds when they think of what justifies humanitarian intervention.

Of course, as we have already insisted, even to protect people against assaults takes money. So this distinction cannot really help us defend Cicero's original bifurcation of duties. But let us see whether there is even a limited coherence in Cicero's doctrine, so understood. We may think of assault or aggression in two ways. On one way, assault is something that hits people from outside, through no fault of their own. But in this way of thinking, many natural events look like assaults: floods, famines, deprivations of many kinds from animals and the natural world.³² Cicero lets himself in for this extension by his reliance on the example of Hercules: for obviously enough, Hercules primarily helped people who were assailed by catastrophes of non-human origin: the Nemean lion, the Stymphalian birds, the Hydra, the boar. These are still monsters who commit human-like assaults, but they remind us that many of the invasions of our wellbeing that we most fear have a non-human origin. And Hercules' monsters obviously have, as well, a mythic significance that makes them emblematic of the way in which ills such as disease and hunger stalk humanity: indeed, the Hydra is an apt metaphor for the ever-renewing nature of bodily need.³³ Some of Hercules' labors, furthermore, for example, the descent to the Underworld, have this more general significance directly: Hercules faced death itself, for humanity's sake. In short, Cicero's use of Hercules betrays the fact that he has no clear way of drawing the line between human and non-human assaults, or even between assaults by animals and assaults by other malign aspects of the natural world.

We can add that Cicero himself is aware of this larger significance of the figure of Hercules. Indeed, he seems quite fascinated with this character, who, having endured risk to save humanity from various dangers, then found his body devoured by unendurable pain. In *Tusculan Disputations* (II.20–22), discussing the question whether pain is the greatest of evils (a question on which he ultimately defends the Stoic line that pain is not an evil), Cicero takes time to translate into elegant Latin verse of his own the passage of Sophocles' *Trachiniae* in which Hercules depicts the assaults of the fatal poison upon his organs. This is among the most graphic passages in all of Greek literature in its depiction of

³²See Michele L. Landis, "Let me next time be 'tried by fire': disaster relief and the origins of the American welfare state 1789–1874," *Northwestern Law Review*, 92 (1998), 967–1034. Landis argues that Americans have always been reluctant to give relief unless they believe the person to have been the victim of something like a natural disaster, that comes on them from outside; in a dissertation in progress, she argues that Roosevelt understood this, and used the rhetoric of natural disaster to mobilize aid during the Depression. Even the term "The Depression" positioned an economic catastrophe as a quasi-flood or hurricane.

³³For a related myth used to exemplify this point about the bodily appetites, see Plato's account of the Danaids who had to carry water in a sieve, in *Gorgias* 494.

bodily pain; the pain is seen as an invasion, akin to an assault. The poison “clinging bites and tears my vital organs, and pressing heavily drains the breath from my lungs; now it has drunk up all my discolored blood. My body, used up by this terrible conflict, dwindles away.”³⁴ The passage makes it clear that the assaults of monsters were nothing compared to this one. It seems fair for us to remind Cicero of this passage, given his evident fascination with it.

Suppose, however, we think of assault as *iniuria*, another person’s wrongful act. The text suggests this, clearly. Then we may be able to let Cicero off the hook concerning animals and natural catastrophes—though it is still not terribly clear why, from the victim’s viewpoint, such a line should be considered salient. Have we now given him a consistent way of maintaining that there is no passive injustice when people are hungry and impoverished, and so on? I believe not. For obviously enough, we cannot assume that their hunger and poverty is not caused by another person or persons’ wrongful act. Given that hunger is typically caused not so much by food shortage as by lack of entitlement to food, it is a thoroughly human business, in which the arrangements of society are profoundly implicated.³⁵ With poverty, this is even more clear. Just because it is difficult to decide whom to blame, that does not mean that no wrongful act has occurred and that no response need be made. Most nations have the capacity to feed all their people, if they had a just system of entitlements. Where war is concerned, we sometimes understand that we can judge a wrong has taken place without being exactly clear on who did it: we do not always require that there be an easily recognizable “bad guy” such as Hitler or Saddam Hussein or Milošević, before we undertake an act of humanitarian intervention, or declare war on a nation that has wronged another (though clearly the presence of such a “bad guy” gets Americans going more easily—witness the failure to intervene in Rwanda).

Moreover, we should at least consider that some of the wrongdoers may be ourselves. Through aid, we can feed all the world’s people, we just do not. Of course, in the context of the present argument it would be question begging to assert that the failure to give material aid across national borders is *iniuria*. So too, however, would be the assertion that our failure to aid involves no *iniuria*. At the very least, we should concede that the question of our own moral rectitude has not been resolved.

On any understanding of the distinction between aggression and non-aggression, then, Cicero’s refusal to extend his analysis of “passive injustice” to failures to give material aid looks unconvincing. If aggression is catastrophe,

³⁴O multa dictu gravia, perpressu aspera,
Quae corpore exanclata atque animo pertuli. . . .
Haec me irretivit veste furiali inscium,
Quae lateri inhaerens morsu lacerat viscera
Urguensque graviter pulmonum haurit spiritus:
Iam decolorem sanguinem omnem exsorbuit.
Sic corpus clade horribili absumptum extabit.

³⁵See Amartya Sen, *Poverty and Famines* (Oxford: Clarendon Press, 1981).

there are many natural and social catastrophes that have no clear “bad guy”; if aggression is wrongful action, there is almost certain to be wrongful action afoot, when people are starving and in deep poverty, even though we cannot easily say whose wrongful action it is. And yet, most of us do continue to think in something like Cicero’s way, feeling that it is incumbent on us (maybe) to save people from thugs and bad guys, but not incumbent on us to save them from the equally aggressive deprivations of hunger, poverty and disease. Hercules knew better.

I have argued that Cicero’s distinction is not fully coherent, even to one who accepts the Stoic doctrine. And yet it also gets a lot of mileage from that doctrine, because Stoic moral theory permits us to salve our conscience about our failure to aid our distant fellows, telling ourselves that no serious harm has befallen them. Let us therefore, turn our attention to that doctrine.

D. THE FALSITY OF THE STOIC DOCTRINE

The Stoic view about external goods has been lurking around, providing a motivation for some of Cicero’s arguments, a consolation in connection with others. But insofar as Cicero, or his modern descendants, would be disposed to reply by appealing to the Stoic doctrine that external goods are unnecessary for the good human life, we must now say that this doctrine is false. People do indeed have amazing powers of resistance, and a dignity that can frequently surmount the blows of fortune. But this does not mean that these blows are unimportant. Moreover, they profoundly affect the very parts of the person that are of greatest interest to the Stoics: mentality, moral power, the power to form confirming associations with other human beings. The Stoic position seems to be: either these things are external blows, in which case they do not touch what really matters, or they are the result of some moral weakness in the person, in which case they do matter but the person herself is to blame. But this is a false dichotomy: the fact that moral character can sometimes survive the blows of fortune unaffected does not show that the blows of fortune do not deeply affect it, or that any such effect is the result of weak or bad character. The surmounter of fortune is an exception that does not show the moral culpability of those who yield to depression and hopelessness. Moreover, such a surmounter is very likely to have had the goods of fortune in at least some measure at some time: a good enough home in childhood, parents who nourished self-regard, and good enough nutrition when crucial faculties are developing.

Do we need to say this? Is there any danger that our modern Ciceronians will avail themselves of such a self-evidently false doctrine? I fear that there is. On another occasion I would be prepared to argue that Adam Smith’s account of the operations of the market, in *The Wealth of Nations*, is deeply in the grip of the false doctrine: he is prepared to let the market do its worst with little constraint, partly because he believes that the poor do not suffer at their very core, retaining

a dignity that life's blows cannot remove. And, more important, many modern defenders of the market have a similar belief: that poverty does not really affect the will, and that, when we see the will affected, it must consequently be the result of personal weakness or failure. This is the Stoics' false dichotomy: either unimportant or in the control of will. Thus, as we know too well, poverty is often treated as a moral failing, even by people who would not so treat the damages done to a person by rape or torture or even racial discrimination. In the area of the duties of material aid, Stoicism lives on.

When differences between nations are at issue, differences that really do seem too large to be a matter of indifference, such modern Stoics cannot quite bring themselves to blame each and every individual citizen of those nations for being shiftless and lazy. But then a substitute is quickly found: blame of the nation, or the people, for sluggishness or bad planning, or stupid management of their economy. Thus, for example, one frequently hears India's poverty blamed on its socialist government, instead of the despoliation of resources and the damage to self-rule inflicted by years of empire. Of course it is not precisely false that India has made some foolish moves in the management of its economy. These include excessive reliance on a socialist bureaucracy in general economic matters; but they also include failures to take strong government action in matters of health and education, and basic protections of liberty and safety.³⁶ What even the toughest critics of the Indian state should grant, however, is that other nations are to blame in many ways for the current miserable situation. Insisting on the falsity of Stoic doctrine is a first necessary step to placing these important issues on the table.

The Stoic false dichotomy has deep roots, and is not so easy to evade. For we do not want to treat human beings as simply the passive recipients of whatever nature dishes out. We want to say, with Kant and the Stoics, that there is a dignity that shines out even when nature has done its worst. Indeed, if we do not say this we are in danger of losing the very basis for claims of aid: for if there is no longer a human being there, but simply a substance that has been pushed around in various ways by life, we no longer know why we have stringent duties to support that substance. Thus we need to be able to say that there is something about human beings that persists throughout the blows of chance, supplying us with a basis for our moral duties—and that this something is equal, providing a basis for attitudes of equal respect and concern—and yet, also, that the things that matter to human life can be deeply affected. I believe that the Stoics get into difficulty on this point precisely because they are so determined to insist that the basis for moral duties is never effaced by life's contingencies and hierarchies. Like their predecessors the Cynics, they want to say that wealth, rank, birth, freeborn status, ethnicity, nationality, and even sex are all morally irrelevant, in the sense

³⁶ See A. Sen and J. Drèze, *India: Economic Development and Social Opportunity* (Delhi: Oxford University Press, 1995).

that they do not create differences in fundamental human worth. But, like the Cynics, they think that maintaining this requires maintaining, as well, that free status, citizenship, wealth, etc., do not matter at all for the things that are most important in life. They seem to be afraid that if they did admit the importance of external goods they would be in danger, once again, of creating plural races of human beings, with different degrees of dignity.³⁷ Because they are determined to insist that all humanity is equal, they refuse to acknowledge the depth at which humanity can be deformed by circumstances.

There is no easy solution to this dilemma, and it affects us every time we want to talk about poverty or social injustice. For we want to portray the claim of human dignity, and yet to insist that human dignity can itself be defiled by life. We should not solve this problem by the Stoic device of saying that the damages of luck do not affect the part of a human being that is the source of human worth. But then how should we proceed, if we also do not want to say that luck has turned these humans into mere animals? Here, I believe, we need to operate with a flexible multi-levelled notion of human capability. We should say that the innate power to develop higher-level human capacities is the source of our moral duties to others, but that this power can be thwarted in development, so that the more developed forms (of reasoning, moral character, sociability, and so forth) never fully mature, or are blocked in expression.³⁸ To give a turtle a merely animal level of life is morally permissible; to give a human being (someone with those basic powers) a merely animal level of living, in which characteristic human powers of choice and sociability are starved, is immoral and impermissible. Much more can be said about this central issue: but we can see that the Stoic view is no easily dismissed absurdity; nor has modern moral thought come to a satisfactory consensus on how to handle the issue.

VI. WHAT IS LEFT?

We have removed some of the main props for Cicero's distinction of duties into two kinds, one strict and one less strict. Let us now consider his remaining arguments.

A great advantage of Cicero's discussion is that it does not simply assume that national boundaries are of obvious moral relevance; nor does he rely on mysterious ideas of blood and belonging that frequently substitute for argument in these matters. Instead, he believes that we need to point to some feature or features of our fellow citizens that justifies differential treatment. Indeed, even in the case of family he does not fall back on an allegedly obvious relevance of

³⁷Compare the closely related observations of Noam Chomsky in *Cartesian Linguistics* (New York: Harper and Row, 1966), when he notes that empiricist theories that see the human being as a product of its circumstances have frequently been linked with racism and social hierarchy, while Cartesian rationalism insists that all human beings are fundamentally equal in worth.

³⁸See my *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), ch. 1.

consanguinity: perhaps the prevalence of adoption of heirs in the Roman middle and upper classes helps him avoid a pitfall of some modern discussions. So, while I shall be critical of some of his specific arguments, I think we should applaud their general direction: nationality in and of itself supplies no sufficient moral argument for a difference of duties. Nation, and indeed family, are proxies for other morally significant characteristics.³⁹ But once we make this step, the door is wide open to asking whether these features really do coincide with co-nationality or with shared family membership; other people situated elsewhere may possibly share with our co-nationals the relevant features. Thus most of my criticisms of Cicero in this section take advantage of an avenue of debate opened up by Cicero himself.

1. *Property rights.* Cicero will insist that there is a fundamental part of justice itself that has implications for material redistribution. For, as we recall, he defined justice partly in terms of respect for property rights, understood as justified by the luck of existing distributions. He argued that once property is appropriated, no matter how, taking it away is the gravest kind of violation. Clearly it is his purpose to use that argument to oppose any state-mandated redistributive policies, such as Caesar's attempts at land reform. But this argument has implications for the entire issue of benevolence: for if I have a right to something, and it is egregiously bad for someone to take it away from me, then it would seem peculiar to say that I even have a strict *moral* duty to give it away to someone else.

Thus modern Ciceronians might grant everything I have said about the unfortunate problems in Cicero's distinction of duties and yet hold that property rights are so extremely important that by themselves they justify making the duties of benevolence at best imperfect duties. I believe that both Richard Epstein and Robert Nozick would take this line.

On the other hand, any such thinker who starts off from Cicero is bound to notice the thinness and arbitrariness of his account of these rights. Why should it actually be the case that "each should hold what falls to the share of each, and if anyone takes anything from this he violates the law of human association"? Why not say, instead, that such claims to ownership are always provisional, to be adjudicated along with claims of need? By emphasizing need himself, as a legitimate source of moral claims, Cicero has left himself wide open to this objection.

Here is where we should say that Cicero's highly partisan politicking distorts his philosophy. His Stoic forebears, as he well knows, thought all property should be held in common;⁴⁰ he himself has staked his entire career on an opposition to any redistributive takings. So it is no accident that he skates rather rapidly over the whole issue of how property rights come into being, and neglects

³⁹See Goodin, "What is so special?" and Shue, *Basic Rights*, pp. 135 ff., 142 ff.

⁴⁰For the relevant texts, see Malcolm Schofield, *The Stoic Idea of the City* (Cambridge: Cambridge University Press, 1991; reissued with a new Introduction by University of Chicago Press, 1999).

to consider alternative accounts. But the modern reader needs to pause. By now in the history of philosophy, we have too many different competing accounts of property rights to be at all satisfied by the thin account that Cicero (and Nozick) hand us, unless some compelling argument is given as to why we should prefer that account to other available accounts.⁴¹

2. *Gratitude for nurture.* A stronger and more interesting argument is Cicero's contention that citizens owe gratitude for their nurture to parents, relatives, and especially the republic. This gives them reasons to give their resources to those who have expended resources on them. This argument offers a good justification for at least some asymmetry in our duties of material aid. It seems unlikely, however, that it justifies Cicero's conclusion that we only have duties to people at a distance when it costs us absolutely nothing—a conclusion that modern Ciceronians eagerly embrace.

3. *Need and dependency.* Another good argument Cicero makes is that some people depend on us in a very personal way. Our own children, for example, have needs that only we are likely to be able to meet well. In addition to those intimate needs, I think he is saying, they also have expectations of material aid that only we are likely to meet, and in that way if we let them down they are likely to suffer greatly.

Several things in this argument seem right. It seems right that some duties to children can be met only in a context of intimacy; something similar probably holds of fellow citizens, whose knowledge of one another's history and goals helps them relate well in political life. But it seems questionable whether the duties of material aid are like this. Of course giving money is often done obtusely, and money, to be wisely used, needs to be used with knowledge of local circumstances. But that is a different point. The *need* for money can in principle be met by getting resources from abroad, so long as the actual user is intelligent about the local scene. Perhaps parents should give love and attention to their own children, but a lot of their money to international welfare agencies, and similarly for fellow citizens.

As to Cicero's point that the children rely on our material aid and would be bereft without it, we can say that this is an artifact of current arrangements, and can hardly be used to justify current arrangements. It seems likely that a good way of organizing the care of children will involve a certain measure of parental responsibility and parental control over resources; similarly, a good way of organizing citizenship will almost surely involve various forms of local responsibility and local control. But as to how much, and whether this is at all incompatible with strong duties of transnational redistribution, Cicero has said nothing.

⁴¹Cicero, of course, is much worse than Nozick, because he does not even require a legitimate starting point, and has no theory of just transfer.

We might even grant to Cicero that families are usually the best performers of duties to children, and that nations, similarly, are the best protectors of various interests of citizens—without treating these duties as special duties in any deep or fundamental way. That is, we may see the so-called special duties as good ways of channeling the general duties we have to other humans worldwide. This seems to have been the position of the original Greek Stoics; it is also Adam Smith's position in at least some very important passages.⁴² Whether this is the correct position about either nations or families requires further argument. My point is that Cicero has said nothing here to rule it out.

4. *Thick fellowship.* Cicero's most interesting claim for the republic is that our participation in it makes claims on our human faculties that other more distant associations do not. We share in speech and reason in a variety of ways when we associate with our fellow citizens, thus confirming and developing our humanity in relation to them. This is not the case with the foreign national, unless that person is a guest on our soil. For this reason, Cicero thinks, we owe the republic more material aid than we do to foreign nations and nationals. The idea is presumably that we have reasons to make sure that the institutions that support and confirm our humanity prosper.

One might complain, first, that Cicero's point was already of dubious validity in his own time, since already Rome had complex civic and political ties with many parts of the world, and non-Italians were not yet, though some of them later became, Roman citizens. His son is off studying philosophy in Greece; his philosophical descendant Seneca was soon to be born in Spain. North Africa, Gaul and Germany, though often crudely caricatured in imperialist writings,⁴³ were known to be the homes of people with whom Romans had many forms of cultural and human exchange. So citizenship and fellowship were not coextensive even then.

In our day, when we develop and exercise our human powers, we are increasingly associating with people elsewhere. Networks such as the international women's movement may supply people with some of their most fundamental confirming associations. So even if Cicero had made a good argument for the restriction of our duties, it would be less weighty today than formerly.

But thinking about international networks today shows us some reasons why we should doubt Cicero's argument. That is, why should it be the case that only those people who have already managed to join an international network have duties of material aid to people in other nations? Ignorance and neglect are, it would appear, their own justification. If, like all too many Americans, I manage

⁴²See *The Theory of Moral Sentiments*, VI.iii: "Of universal benevolence." For a related view, see Goodin, "What is so special?", and my essay in *For Love of Country*, ed. J. Cohen (Boston: Beacon Press, 1996).

⁴³On Horace's depiction of the Carthaginians, see above note 13. Tacitus' *Germania* is a good example of the extremes of this tendency under the Empire, but it was already afoot during the Republic.

my life in such a way that I have minimal knowledge of and contact with any other part of the world, I am thereby absolved of any duties to that world. This cannot be right.

Nor does the argument seem persuasive in any case as an argument about material resources. It might be that the networks I am in claim a larger proportion of my time, or my attention, or my work. But my money? Why should the fact that I share forms of life with my fellow citizens mean that I should deprive some child in India of a chance to live? The connections are too undeveloped for Cicero's argument to persuade.

5. *Accountability.* We might read Cicero's previous argument to make, as well, the following point. Our own republic is ours. One of the forms of association that we share, in that fine institution of the republic that Cicero is struggling to preserve, is mutual accountability, and accountability of public policy to citizens. This might be said to give us some reasons to use our money on a form of government that had this desirable feature. Does it give us reasons to support republican government all over the world, or does it give us special reasons to focus our material aid on our own? Here we might combine the accountability point with the points about need, dependency and gratitude, and say that our own has an especially strong claim on our resources.

I think that there is something in this argument. But it also suggests that at least some of our resources might be well used in supporting other instances of republican government. Its main point is that institutions of a certain type are good protectors of people, because of their responsiveness to people's voices: this makes them good ways of channeling duties of aid. But once again, this is compatible with the duties themselves being fully general.⁴⁴ Certainly the argument does not get us anywhere near to Cicero's strong conclusion that no aid outside the nation is morally required if that will be even minimally costly.

In short, Cicero has some decent arguments that justify a partial asymmetry in our material duties: the arguments from gratitude, need, association and accountability all do at least some work. But none justifies his radical confinement of duties to the interior of the republic. Another consideration, both in his day and now, is surely playing a part.

6. *The difficulty of assigning the duties.* Implicit in Cicero's argument is a consideration he never fully develops: it is just too difficult to assign the relevant duties, once we get beyond the boundaries of the republic. Within the compass of the republic, we have a pretty good understanding of who owes what to whom. But once we start thinking internationally, it all seems quite bewildering and even hopeless. There are too many needy recipients, and there are all the many different levels of both giver and receiver: persons, groups, nongovernmental

⁴⁴See, similarly, Shue, *Basic Rights*, pp. 145 ff. In "Mediating duties," Shue notes that general duties of this sort will not be in the strict sense perfect duties, since they will take the form that I have a duty to aid either X or someone relevantly like X. But a duty of this type may nonetheless be highly stringent.

organizations, governments. As Cicero remarks: “the resources of individuals are limited, and the needy are an unlimited horde (*infinita multitudo*).” How can we possibly say to whom we owe the finite resources we have, unless we do draw the line at our friends and fellow nationals?

This problem is not recognized for the duties of justice because we imagine we can give respect and truthfulness and non-rape and non-torture and non-aggression to everyone, and there is no difficult distributional problem (until we start thinking of really supporting these policies with money!). Justice looks as if it can be universally distributed without cash; material aid obviously cannot. I have argued that this is a false asymmetry, but if we attack the asymmetry we are then left with the problem of assigning the relevant duties for all transnational duties, and thus we have made things harder and not easier.

I have no answers to these tough questions here. To answer them well will require working out theories of institutional versus individual responsibility,⁴⁵ and theories of just transfer between nations.⁴⁶ We do not yet have such theories, although we have good accounts of many aspects of them. We also will need to get clearer about what those duties require: equality? a Rawlsian difference principle? a substantial threshold level of basic goods? Again, we have refined alternatives before us in the domestic case, but only sketches at the transnational level. What is clear, however, is that the difficulty of these problems does not mean that we should fall back on the Ciceronian doctrine, with its multiple evasions. It means that we should continue our work.

⁴⁵Unpublished work by Michael Green seems to me to get us going on this question in a more promising way than any other work I know.

⁴⁶Both Henry Shue and Thomas Pogge have made very promising outlines of such theories. Shue seems to me correct in his insistence that, although at a deep level, all duties are duties of persons to other persons, institutions play a crucial role of mediating those duties, both for reasons of efficiency and for reasons of respite; see also Nagel, *Equality*.