Duties of Justice, Duties of Material Aid: Cicero's Problematic Legacy

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On October 28, 2000, the Academy’s Midwest Center hosted the 1838th Stated Meeting at the Chicago Cultural Center. Midwest Center Vice President Roger B. Myerson presided over the event. At the regional induction ceremony, Academy Executive Officer Leslie C. Berlowitz joined Mr. Myerson in greeting newly elected members from the Midwest. The following is a condensed version of the evening’s communication, presented by Martha C. Nussbaum. The speaker is Ernst Freund Professor of Law and Ethics at the University of Chicago, where she holds appointments in the Law School, the Divinity School, and the Department of Philosophy.

Author’s note: The full version of this paper (forthcoming, *Journal of Political Philosophy*) was presented at a conference on cosmopolitanism and nationalism at Stanford University, April 15–17, 1999, and at a session on cosmopolitanism at the Central Division of the American Philosophical Association, May 1999. It was part of my series of Castle Lectures at Yale University in March 2000—a series that will also include consideration of the Cynic and Stoic background of Cicero’s account, and its legacy in Grotius, Kant, and the foundations of modern international law. This project is linked to my work on the “capabilities approach,” which spells out basic guarantees that should be made to all citizens as a necessary basis of a decent life; see *Women and Human Development: The Capabilities Approach* (Cambridge University Press, 2000).

I. The Statesmen’s Bible

A child born this year in the United States has a life expectancy of 76.4 years.* A child born in Sierra

Leone can expect to live 34.7 years. Clean water, health services, sanitation, maternal health and safety, and adequate nutrition are all distributed very unevenly around the world. The accident of being born in one country shapes the life chances of every child.

What do our theories of international law and morality have to say about this situation? Very little. Although we have many accounts of aid at a distance, we have virtually no consensus on this question. Some of our major theories of justice are silent about it, simply starting from the nation-state as the basic unit. International law has not progressed far either. Although many international documents address second-generation rights (economic and social rights) in addition to 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 their own state. Most would admit that we are members of a larger world community and bear some obligation to give material aid to poor people in other nations. But we have no clear picture of what those obligations are.

The primitive state of our thinking on this issue cannot be explained by saying that we have not thought about international obligations. In some areas we have sophisticated theories that command wide consensus: theories of the proper conduct of
war and of proper conduct to the enemy during war; theories about torture and cruelty to persons; theories about the rape of women and other transnational atrocities; and theories about aggressive acts toward foreign nationals, whether on our soil or abroad. All these we have worked out. Our theories of international law and justice have been dealing with them at least from the first century B.C., when Cicero described the "duties of justice" in his work *On Duties* (*De Officiis*)—a work enormously influential in forming the education of statesmen and of thinkers such as Grotius, Kant, and the founders of international law and modern political philosophy.

I argue that some of our valuable insights into the "duties of justice," as well as our primitive thinking about material aid, can be attributed to Cicero. In *On Duties* he argues that duties of justice are very strict and require high moral standards across national boundaries. Duties of material aid, however, are elastic and give room to prefer the near and dear. Indeed, Cicero thinks we positively ought to prefer the near and dear, giving material aid outside our borders only when that can be done without sacrifice to ourselves.

We need to begin by summarizing Cicero's argument, in order to be able later to identify both its helpful insights and its influential confusions.

II. The Duties of Justice

Cicero's general account of the duties of justice (*justitia*) has two parts. Justice requires not doing any harm to anyone, unless provoked by a wrongful act. This is how Cicero thinks fundamentally about justice and injustice. Second, justice requires "using common things as common, private possessions as one's own." Cicero holds that it is a fundamental violation of justice to take property that is owned by someone else. He says that taking property "violates the law of human fellowship." But his account of the origin of the relevant property rights is extremely obscure and unconvincing. He also observes that the failure to prevent an
injustice is itself an injustice—an important insight to which we shall soon return. Cicero is clear that justice requires us to treat adversaries with respect and honesty. Trickery must be avoided. Even those who have wronged you must be treated morally. There is a limit to vengeance and punishment.

Cicero then turns from these general observations to the conduct of war. Henceforth, he does not distinguish assault from property crime—and, of course, war mingles the two subcategories of injustice. He insists that negotiated settlement is preferable to war, since the former involves behaving humanly, whereas the latter belongs to beasts. War should be a last resort when negotiations have failed, and it is justified only when one has been grievously wronged. It should be limited to what will make it possible to live in peace afterwards. After conflict has ended, the vanquished should be treated fairly and even received into citizenship in one's own nation when possible.

During conflict, the foe is to be treated mercifully. Cicero would permit an army to surrender unharmed even after the battering ram has touched the walls, which is more lenient than traditional Roman practice. Promises made to the enemy must be kept. Cicero ends his discussion of justice by noting that the duties of justice are extended even to slaves.

In general, we may 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.

In Book III Cicero returns to the duties of justice, elaborating on his claim that they are the basis for a transnational law of humanity. Since the useful often conflicts with the honorable, he writes, we need a rule. The rule is to never use violence or theft against any other human for our advantage. This rule gives rise to a universally binding law of nature. Cicero says that it is absurd for us to hold to this principle when our family or friends are concerned but to deny that it holds for all relations.
among citizens. But then it is equally absurd to hold to it for fellow citizens and deny it to foreigners. People who make such a distinction, he writes, “tear apart the common fellowship of the human kind.”

This part of Book III makes it very clear that Cicero’s duties of justice are fully cosmopolitan. National boundaries are morally irrelevant.

III. The Duties of Material Aid

Duties of justice are universal and impose strict obligations. Very different is Cicero’s next group of duties: giving material aid to others. He says that these are basic to human nature, but there are many constraints. Our gifts must not do harm, we must not impoverish ourselves, and we have to make sure the gift suits the recipient. Throughout, there is a role for judgment. If other things are equal, we should help the most needy.

Cicero says that human fellowship is best served if the people to whom one has the closest ties get the most benefit. He enumerates the various degrees of association. In no case does his argument for the closeness of the connection rest on biology or heredity. One relevant feature is shared human practice: Cicero praises friendship as a powerful source of duties of aid. But his highest praise is reserved for shared political institutions.

Cicero proposes a flexible account that recognizes many criteria as pertinent to duties of aid—gratitude, need and dependency, political and friendly association—but that also preserves flexible judgment in adjudicating conflicting claims. What is clear, however, is that people outside our own nation always lose.

IV. A Lurking View About the Good

Why is it acceptable to Cicero that this asymmetry holds? He thinks it terrible to contemplate a human assaulting or stealing from another. Yet if the same people are starving and my nation has a
surplus, it seems to him just fine. There are many things that explain these attitudes, including Cicero's controversial account of property rights. But there is another consideration.

In the *De Officiis*, Cicero's views lie closer to orthodox Stoicism than in most of his other works. The Stoic thesis that we should rise above the passions is inseparable from their view that external things, the gifts of fortune, are irrelevant to the well-lived life. The wise person scorns all such things. He does not get upset at the loss of a fortune, or health, or reputation and honor, because all that is trivial. This Cicero endorses: the courageous person is "great and lofty in soul, despising human things." In short, then, we can afford not to worry about the evenhandedness of our beneficence, because the really strong person—any of us at our best—does not need these things.

V. Does the Distinction Stand Up?

It is time to ask some questions. We need 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 is that if we are really thoroughgoing Stoics, we should not care about just treatment any more than about material aid. All these things are externals. To a person who is truly free within, slavery, torture, and rape are no worse than poverty. The Stoics were quite explicit about this. The wise person is free, though he may be a slave. The sage on the rack is happy. The person who sees things aright will not care about contempt and abuse. But if this is so, one rationale for the distinction between the two types of duties disappears. If humanity is owed a certain sort of treatment from the world, it would seem that 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 and rape are no more damaging than poverty. It is incoher-
ent to salve one's conscience on the duties of material aid by thinking that these things are unnecessary for true flourishing while insisting so strictly on the absolute inviolability of duties of justice, which pertain to other external things human beings need.

I believe that much modern thought about duties suffers from this same incoherence. We believe 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 go further, rejecting slavery. But denying people material aid seems to us not in the same category. We do not feel that we are torturing or raping people when we deny them the things that they need to live. Yet poverty, of course, does make a difference. The human being is not 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.

B. Interdependence and Interweaving

Even if we convince ourselves that humanity imposes duties of justice but none of material aid, we still have a problem: justice costs money. Any political and legal order that protects people against torture, rape, and cruelty needs material support. There need to be lawyers, courts, police, and other administrative officers, presumably supported by taxes. Americans often miss this point, thinking that money spent on welfare and relief of poverty is money spent but that the police, the courts, the fire department—everything that is required to maintain a system of contract, property rights, and personal safety—is free. That is clearly false. In nations where the state is impoverished, legal rights suffer: freedom of travel and public safety are jeopardized, and personal security is not protected by effective law enforcement.

Such problems internal to each nation already put the Ciceronian project in trouble. The problem is
magnified when we think about what an effective system of international law requires. Maintaining a system of global justice involves massive expenses. In that sense the United States is at best muddled and at worst hypocritical when it sounds off about human rights and yet opposes attempts to create expensive institutions—or even to pay United Nations dues. Caring about basic human rights means spending money, not just talking fine talk.

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 halfhearted 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 aggressive war, torture, rape, etc. Duties of material aid, by contrast, look like they require us to do a great deal. That intuitive idea is central in contemporary thinking when we suppose that duties of material aid would impose a great burden on our nation, while 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 expensive. But someone may say, If we decide not to spend this money, violations may occur, but the violators won't be us. We can consistently draw a line—if not where the old line between justice and material aid went, at least between acting and refraining. If we refrain from cruelty, torture, etc., we are doing no wrong, even if we are unwilling to spend money on people at a distance, even where justice is in play.

To this argument the best reply was given by Cicero himself. In 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. 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. . . .

Cicero makes an important contribution in this fascinating section. He grants that the active/passive distinction makes sense. There is a morally relevant distinction between actively doing wrong 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. Making unjust war is one bad thing, but not protecting your fellows when you have the resources to do so is another. There are many reasons, he writes, that people behave like this: they don't want hard work, they don't want to make enemies, they are simply lazy. But none of these excuses the bad behavior.
Clearly, Cicero means to blame people who will not serve their own nation, and to defend the life of committed public service. He 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 important allies, but I do not see it anywhere: the active sort of injustice is defined generally, as assault "against anyone," and the ensuing account of the passive sort seems equally broad.

Cicero does not elaborate on duties imposed by the requirement to avoid passive injustice. Does it mean only "if you can without any sacrifice to yourself"? This reading seems ruled out by his attack on the motives of people who won't help because they don't 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, Cicero seems to limit the passive sort to warding off actual attacks or assaults. He doesn't think that hunger and poverty are assaults 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 unconvincing to treat the two types of harm asymmetrically.

At this point we must part company with Cicero, viewing the discussion of passive injustice as suggestive but underdeveloped. The important point is that Cicero is right. It is no good to say "I have done no wrong" if one sits by when one could save fellow human beings. That is true of assault, and it is true of material aid. 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 depredations of hunger, poverty, and disease. Cicero has let in a consideration that is fatal to his own argument and to its modern descendants.
I have argued that Cicero’s distinction is not fully coherent, even with acceptance of the Stoic doctrine that external goods are not important. Yet that distinction also gets mileage from that doctrine, because Stoic moral theory permits us to salve our conscience about our failure to aid our distant fellows.

D. The Falsity of the Stoic Doctrine

It is time, then, to say that the Stoic doctrine is false. People do have amazing powers of resistance and a dignity that can 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 that these things are external blows, and they don’t touch what really matters, or that they are the result of some moral weakness in the person, in which case they do matter, but the person herself is to blame.

This is a false dichotomy; that moral character could 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 who does not show the moral culpability of those who yield to depression and hopelessness. Moreover, such a surmounter is very likely to have had previous good fortune: a good-enough home in childhood, parents who nourished self-regard, and good nutrition when crucial faculties were developing.

Do we need to say this? Is there any danger that our modern Ciceronians will use such a self-evidently false doctrine? I fear that there is. 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 material aid, Stoicism lives on.
VI. What Is Left?

Let us return to Cicero's argument for preferring the near and dear, to ask what we can salvage from it that should move us to think there might be some asymmetry in our duties. He brings in six considerations.

1. Property rights. Cicero defines justice partly in terms of property rights, understood as justified by the luck of existing distributions. He argues that once property is appropriated, no matter how, taking it is the gravest violation. If I have a right to something, and it is egregiously bad for someone to take it away, then it would seem peculiar to say that I have a moral duty to give it away.

Modern Ciceronians might grant everything I have said about the problems in Cicero's distinction of duties and yet hold that property rights are so important that they justify making the duties of beneficence imperfect duties. On the other hand, any such thinker is bound to notice the thinness and arbitrariness of his account of these rights. Why should it 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 claims to ownership are provisional, to be adjudicated along with claims of need? By emphasizing need as a legitimate source of moral claims, Cicero has left himself wide open to this objection.

2. Gratitude for nurture. A stronger argument is Cicero's contention that citizens owe gratitude for their nurture to parents, relatives, and especially their republic. This gives them reasons to give 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. However, it does not justify Cicero's conclusion that we have duties to people at a distance only when it costs us absolutely nothing.

3. Need and dependency. Cicero argues that some people depend on us in a very personal way. Our own children have needs that only we are likely to
meet well. If we let them down, they are likely to suffer greatly. Several things in this argument seem right: some duties to children can be met only in a context of intimacy; something similar probably holds of fellow citizens. But it seems questionable whether the duties of material aid are like this. 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.

4. *Thick fellowship.* The most “modern” claim that Cicero makes for the republic—one that is central to modern discussions of these issues—is that our participation in it makes claims on our human faculties that other, more distant associations do not. We share, he says, 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 more material aid to the republic 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 that Cicero’s point was already of dubious validity in his own time, since Rome already had complex civic and political ties with many parts of the world. In our day, we increasingly associate with people elsewhere. Networks such as the international women’s movement may supply people with some of their most fundamental confirming associations. Even if Cicero had made a good argument for the restriction of our duties, it would be less weighty today.

But thinking about international networks today shows why we should further doubt Cicero’s argument. Why should it be that only those people who have already managed to join an international network have duties of material aid to people in other nations? Are ignorance and neglect their own justification? If, like many Americans, I have minimal knowledge of and contact with any other part
of the world, am I absolved of any duties to that world? This cannot be right.

5. Accountability. We might read Cicero's previous argument to suggest that one of the forms of association that we share, in that fine institution of the republic, is mutual accountability, including accountability of public policy to citizens. This gives us reasons to use our money on a form of government that has this desirable feature. Does it give us reasons to support republican government all over the world, or does it give us reasons to focus our material aid on our own? We might combine the accountability point with the points about need, dependency, and gratitude, and say that our own has a strong claim on our resources.

There is something in this argument. But it also suggests that at least some resources might be used to support other republican governments. Its main point is that institutions of a certain type are good protectors of people, because of their responsiveness; this makes them good for channeling duties of aid. Certainly, the argument does not get us anywhere near Cicero's strong conclusion that no aid outside the nation is morally required if that will be even minimally costly.

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.

6. The difficulty of assigning the duties. Implicit in Cicero's argument is a consideration he never fully develops: it is 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 transnationally, it is quite bewildering. There are too many needy recipients, and there are all the different levels of both giver and receiver: persons, groups, nongovernmental organizations, governments, corporations. As Cicero remarks, "the resources of
individuals are limited, and the needy are an unlimited horde.” How can we 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 nonrape and nonaggression to everyone, and there is no difficult distribution problem (until we start thinking of supporting these policies with money). Justice looks as if it can be universally distributed without expense; material aid obviously cannot. I’ve argued that this is a false asymmetry. But if we attack the asymmetry, we are left with the problem of assigning the relevant transnational duties.

I have no answers to these tough questions. To answer them well will require working out theories of institutional versus individual responsibility, and theories of just transfer between nations. We don’t yet have such theories. We have refined alternatives in the domestic case but only sketches at the transnational level. What is clear, however, is that we should not fall back on the Ciceronian doctrine with its multiple evasions; we should continue our work.