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Can a Duty or a Right Be Held Disjunctively?

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Abstract. This paper defends Matthew Kramer's novel proposal that sometimes an individually borne duty can be owed to correlative right-holders disjunctively. It extends the proposal, suggesting that sometimes an individually held right entails correlative duties that are borne disjunctively. Drawing on a suggestion from Zofia Stemplowska, the paper argues that this extension of Kramer's proposal can be developed into a new solution to Onora O'Neill's famous claimability objection to natural human rights to goods and services. The idea is that my human right to subsistence supplies—to take one example—entails preinstitutional correlative duties borne by a disjunction of the agents who could help me secure subsistence.

1. Introduction

In his lead article, Matthew Kramer (2026 [this issue]) argues that a duty can be owed disjunctively. Kramer imagines a legal system in which what he calls the Eleemosynary Obligation Proposition is true:

> Suppose that the system of governance in some country has enacted a law that requires every adult with an annual income above the level of $300,000 to donate at least 10% of his or her after-tax earnings each year to any of the charities on the official register of such organizations. […] To whom is that duty owed? […] There is no overarching collectivity of the charities to which a duty would be owed, nor is the duty requiring the payment of at least 10% of one's after-tax income owed to each charity individually […]. Rather, the duty is owed to the charities disjunctively. […] There is claim-right/duty correlativity, but the position correlative to the eleemosynary duty of each adult is occupied by the registered charities disjunctively. (Kramer 2026, [6–9])

The example involves a duty owed disjunctively. The final sentence—insisting that there is genuine claim-right/duty correlativity—suggests that the charities disjunctively hold a claim-right. I want to probe this possibility, and ask whether it opens an avenue for addressing Onora O'Neill's well-known concern that moral human rights to goods and services are problematic because they are preinstitutionally unclaimable (see, e.g., O'Neill 2005).

Kramer's example is of a *duty borne individually* (by each taxpayer) that correlates with a *claim held disjunctively* (by the disjunction of registered charities). In addressing O'Neill's worry, I will ask whether disjunctions can bear duties

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correlating with individually held claims. My conclusion about the possibility of disjunctive claim-holding or disjunctive duty-bearing is uncertain but hopeful: We will encounter two problems with the idea, first concerning the link between rights and claiming (a link highlighted by, e.g., Feinberg 1970; Gilbert 2018; May 2015; Skorupski 2010), and second concerning the interpretation of Kramer's Interest Theory (a theory I find independently plausible as an account of natural or moral rights: see Cruft 2019). Neither problem is insurmountable, but they point to the need for more work if we are to follow Kramer and admit disjunctive universal quantification into the forms of quantification that determine who bears duties and holds rights.

2. O'Neill's Claimability Objection

O'Neill famously argues that universal preinstitutional human rights to goods and services—unlike rights to liberty—are problematically unclaimable:

> [T]he correspondence of universal liberty rights to universal obligations is relatively well-defined even when institutions are missing or weak. For example, violation of a right not to be raped or a right not to be tortured may be clear enough, and the perpetrator may even be identifiable, even when institutions of enforcement are lamentably weak. But the correspondence of universal rights to goods and services to obligations to *provide or deliver* remains entirely amorphous when institutions are missing or weak. Somebody who receives no maternity care may no doubt *assert* that her rights have been violated, but unless obligations to deliver that care have been established and distributed, she will not know where to press her claim, and it will be systematically obscure whether there is any perpetrator, or who has neglected or violated her rights. (O'Neill 2000, 105; see also O'Neill 2015, 77)

While this is not meant by O'Neill to impugn human rights to goods and services, but rather to stress that we have moral duties to institutionalise them so that they can exist as genuinely claimable rights, the argument plays into politically dangerous ideological theses about the lesser status of rights to goods and services (e.g., as "second generation" or nonclassical human rights). Showing that moral human rights to goods and services can be claimable has therefore become an important task for those who want to defend their place as human rights of the first order.

3. Using Kramer on Universal Quantification in Response to O'Neill

The literature contains several ingenious ways of responding to O'Neill by interpreting rights to goods and services as claimable. In Kramer's terms, these ways involve different forms of universal quantification over the duty-bearer correlative to a given individual's moral human right to goods and services.

On some views, we should regard my moral right to maternity care as correlating with a duty held by others in an allocation governed by a distributive universal quantifier: *Each person individually* bears the correlative duty. But what could this correlative duty then be? We can distinguish three options involving distributive universal quantification. (1) One is that everyone individually has a duty to provide me with maternity care. But this is both very demanding on everyone, and would result in huge overproduction of maternity care for me. (2) An alternative view that still allocates the

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correlative duty through distributive universal quantification says that everyone has a duty to make an equal contribution towards the cost of my maternity care, contributions that when totted up would result in enough to provide me with maternity care. This is a little more plausible although still problematic: O'Neill (2000, 135) notes that it is absurd to say that my right to a good entails a duty on each to provide me with an "aliquot morsel" of that good; further, this approach leaves it very likely that the overall cost of my maternity care will not be provided, as at least some are likely to fall short and not provide their share. (3) A better version of the approach appeals to some intermediate principles of fairness that restrict the contributory duties to a narrower class of duty-bearers. There are many such proposals in the literature, e.g., that those who are nearest to, are best placed to help, share community with, or contribute to the deprivation of the person in need of maternity care should provide it (Barry 2005; Kamm 2007, chaps. 11 and 12; Miller 2007, 99–107; see also Tomalty 2014). Such approaches are all quite plausible, and all involve distributive universal quantification to allocate the correlative duty, in that they all say that each and every individual *who satisfies the criterion provided by the relevant principle* has a duty to play their principle-determined part in providing maternity care for me.

But we should notice that the second and third versions of the distributive universal quantification approach above result in duties whose content is not quite what we expect when we assert a human right to maternity care. On the second approach, my human right to maternity care turns out to be a human right *that you provide me with an equal share of the cost of my maternity care*; on the third approach, it turns out to be a human right *that you do your fair part towards providing me with maternity care*, even though for many people that "fair part" might mean doing nothing. Such human rights lack the simplicity of my right not to be tortured, which really does entail a right that you not torture me for any given "you" (see Cruft 2022). If we want to maintain that there is a genuine *human right to maternity care for me* even though its correlative duty-bearers do not as individuals have a duty to provide maternity care for me, but only to provide their share or part, then we would have to reject the Hohfeldian axiom that a right to φ (i.e., to maternity care) correlates with a duty to provide φ (to provide maternity care). Instead, in such cases the right to φ correlates with a duty to *do one's part or share in providing* φ.

We can rescue the Hohfeldian axiom and preserve the intuitively attractive content of human rights to goods and services by taking the correlative duties to be governed by an *aggregative* universal quantifier. According to Kramer, aggregative universal quantification "ascribes some property to all the members of the relevant domain as an overarching collectivity or assemblage" (Kramer 2026, [5]). Following similar suggestions by Wringe (2010), I have argued elsewhere (Cruft 2019, 153–6) that my human right to maternity care correlates with a duty on *humanity as a whole* to provide me with maternity care. A different but related idea central to international human rights law allocates *to my state* the duty correlating with my human right to maternity care: My state has to provide such care, or at least ensure it is provided (Fellmeth 2016). Both approaches have problems: The state-based approach fails to ensure that uniform treatment is owed to all humans given differences between states, and seems to leave stateless people without human rights (for these concerns and more, see Sreenivasan 2012); the humanity-based approach depends on the metaphysically challenging idea that humanity is enough of an agent to bear duties (see Stemplowska 2022).

Kramer's final form of universal quantification—the disjunctive form—seems to offer a promising alternative. Recall that Kramer's Eleemosynary Obligation

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Proposition sets up a duty borne by each individual correlating with claim-rights held disjunctively across the designated charities. In relation to O'Neill's challenge, we should instead consider a human right held individually by each human (such as the right to medical care or poverty relief) correlating with duties borne disjunctively. I think that Zofia Stemplowska's proposed response to O'Neill exemplifies this approach. Of the individually borne duties correlating with a human right to relief from poverty, Stemplowska writes:

> Why could we not, for instance, allow all those whose rights against poverty generate the duties in question to claim assistance from anyone (i.e., to select anyone) who has not taken reasonable steps to fulfill her or his duty (to whomever and in whatever reasonable way she or he might choose)? Only if a person has already taken such steps, or has only delayed taking them to a reasonable extent, could she now avoid being selected. (Stemplowska 2009, 482)

This looks logically comparable to Kramer's Eleemosynary Obligation Proposition, but now with disjunctive duty-bearers and individual claim-holders: As a holder of the human right to poverty relief, I can—says Stemplowska—press my claim against anyone who has not already taken reasonable steps to fulfil their duty of poverty relief in relation to others. My claim here correlates with a duty owed disjunctively by anyone who has not already fulfilled the same duty in relation to others.

Note that Stemplowska's approach avoids departing from the Hohfeldian axiom in the way that I highlighted earlier as a negative consequence of a *distributive* universal quantificational interpretation. Stemplowska's approach allows that a human right to φ (in this case, to the provision of poverty relief) correlates with a duty to φ (to provide poverty relief). It is just that the allocation of this duty is disjunctive: It is to be fulfilled by any one of the multitude of humans who have not already fulfilled a similar duty for others. The approach also avoids the problems I found with *aggregative* universal quantification as applied to the relevant cases: We do not have to ascribe duties either to a metaphysically problematic agent (humanity at large) or to an agent whose capabilities vary for different humans (the state).

4. Right-Holders and Duty-Bearers Claim, Act, Communicate: Can the Disjunctive Approach Accommodate This?

Despite its appeal, the disjunctive approach—whether Kramer's disjunctive claim-holders or Stemplowska's disjunctive duty-bearers—might seem a nonstarter. For right-holders can normally *make claims*, respectful duty-bearers *act* (or refrain) and the bare logical idea of correlativity seems most naturally interpreted as, in part, reflecting the fact that right-holders and duty-bearers can normally *communicate and interact* as claimants, owers of duties, agents acting on each other. But such claims, actions, and communication can seem problematic when "performed" by or on disjunctions rather than by or on either individuals, aggregated conjunctions of individuals, or groups with their own identities. Can a claim be pressed by or against a disjunction? Can a disjunction act or be acted on?

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If not, then given the problems for nondisjunctive responses to O'Neill (as summarised in Section 3 above), we might have to conclude that preinstitutional human rights are moral versions of what Kramer calls "inchoate legal entitlements": "Ascriptions of such entitlements consist in assertions that certain interests should be given some legal recognition as yet unspecified" (Kramer 2024, 131).

I am unsure what an inchoate *moral* entitlement would be—perhaps a "manifesto right" in Feinberg's sense, as O'Neill (2000) suggests. But note that there seems nothing inchoate about the legal duties created by the Eleemosynary Obligation Proposition: It is very clear what that proposition demands of each taxpayer, and Kramer would certainly not classify these duties as inchoate. It is also clear that Hohfeldian correlativity could not allow a genuine specified duty to correlate with an inchoate entitlement. (Indeed as Kramer describes them, inchoate entitlements are outside the ambit of Hohfeld's machinery.) So I think we should try to make sense of the idea that just as the Eleemosynary Obligation Proposition establishes specific legal duties correlating with genuine noninchoate but disjunctively distributed legal claim-rights, so preinstitutional human rights to goods and services are genuine specified moral rights correlating with noninchoate disjunctively distributed moral duties.

This pushes us back to the questions of the preceding paragraphs: Can a claim be pressed by or against a disjunction? Can a disjunction act or be acted on? First, consider individuals either *pressing claims against* or *acting on or for* disjunctions. Stemplowska shows us how an individually held claim can be pressed against a disjunctive duty-bearer: Any one disjunct (in this case, any one person) can be picked by the claim-holder and pressed to fulfil the claim.[1] Similarly, the bearer of Kramer's legal Eleemosynary Obligation picks one charity (or more than one) to receive her legally required contribution, and thereby performs her individual duty-fulfilling action by doing what it requires for one disjunct.

Now consider disjunctions *pressing claims* or *fulfilling their duties*. The latter is quite readily conceptualizable: Where a disjunction holds a duty, e.g., to provide poverty relief for me (as in Stemplowska's example), it is easy to see that this is fulfilled whenever any one of its members provides the poverty relief. The former—disjunctions pressing claims—is rather harder to imagine. How can the disjunction of charities sue for fulfilment of Kramer's eleemosynary obligation, or simply communicate their claim on their own behalf in the manner distinctive of claim-holders? To whom should any damages for nonfulfilment be paid? Could any one charity sue or receive damages on its own? It seems to me that the best interpretative route here involves some individual—a charity or someone else—*representing* the disjunctively related charities in the actions just mentioned. This representation relationship is already found with regard to rights and duties

[1] Because we are thinking about a *moral* claim, we might then ask the following: Would the selected disjunct have a complaint of unfairness at being singled out? In Stemplowska's example this seems unlikely, partly I think because in our modern world there are so many people in need of poverty relief that my picking out any one person to relieve *my* poverty would still leave everyone else disjunctively liable to relieve *others'* poverty. But in a world where only a handful of people suffered from poverty, and their claims to poverty relief were held disjunctively against all others, it might seem that any individual pressed to fulfil one of the rare claims could insist that it would be fairer to hold a lottery among the disjuncts to see who should fulfil the claim.

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held by individuals (e.g., babies or animals who cannot represent themselves) and by groups (e.g., states or humanity). It enables claims to be made on behalf of or against, and actions to be performed on or by, parties who cannot communicate or press claims or receive damages themselves. Why can't the communicative-claiming aspects of right-holding or duty-bearing be shouldered by a representative, in the case of disjunctively held claims or disjunctively borne duties? This needs further explanation to explain how representation for a disjunction might work: It is one of the areas for further work to make good on the idea of duties owed by or to disjunctively quantified parties.

5. The Interest Theory and the Disjunctive Approach

Is the disjunctive approach compatible with Kramer's Interest Theory? I have argued elsewhere against Interest Theory accounts of legal or conventional rights: In my view they place an implausible conceptual limit on what lawmakers can do, making it impossible for law or convention to introduce duties that necessarily serve someone's interests but are not owed to them as rights, or to introduce rights that are owed to someone without bearing any relation to their interests (Cruft 2019, 27–30). To take a well-used example, the Interest Theory has to insist that because of the way it necessarily serves typical children's and parents' interests, the British state's legal duty to make child-benefit payments is owed to children and parents as their legal claim-rights, even if lawmakers deny this and interpret the duty as legally owed only to someone else, say the collectivity as a whole.

Despite this concern, I believe the Interest Theory offers a strong account of our preinstitutional natural claim-rights: It makes such rights mark out those duties necessarily related to an individual's interests (Cruft 2019, 105–9). Kramer formulates his Interest Theory as follows, and for him it applies as readily to legal as to natural moral rights:

> **Interest Theory of Right-Holding:** Individually necessary and jointly sufficient for the holding of a claim-right by *X* are (1) the fact that the duty correlative to the claim-right deontically and inherently protects some aspect of *X*'s situation that on balance is typically beneficial for a being like *X*, and (2) the fact that *X* is a member of the class of potential holders of claim-rights. (Kramer 2024, 179)

In the lead essay Kramer (2026, [9]) writes that "when I contend that [the position of claim-right-holder correlative to the eleemosynary duty is] occupied by the registered charities disjunctively, [… this] is something that follows straightforwardly from the Interest Theory." Does it? Fulfilment of an individual taxpayer's eleemosynary duty will necessarily "protect some aspect" of the situation of some of the registered charities that is on "balance typically beneficial for them"—in that they will receive money from the taxpayer. Either one or another or some others among the registered charities will necessarily receive this benefit. So Kramer seems correct to maintain that the Interest Theory will accord the correlative claim-rights to the charities disjunctively.

Against this, a critic might observe that only the charity (or charities) selected by the duty-bearer is placed in a situation that is typically beneficial. The other charities

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will not be placed in such a position. How then can the latter charities be included among the disjuncts that disjunctively hold the correlative claim right? In reply, Kramer should advert to the details of his Interest Theory: The duty must "inherently" protect an aspect of the right-holder's situation that is on balance typically beneficial. Kramer glosses "inherently" thus:

> The protection bestowed on the situation of a holder of a claim-right by the duty correlative to the claim-right is *not a matter of happenstance*. Rather, *whenever* that duty *exists with its specified content*, it confers deontic protection on some aspects of the situation of the right-holder that is typically beneficial on balance for someone like the right-holder. (Kramer 2024, 179, my emphases)

Now, I would say that the selection of a particular charity by the duty-bearer is in this context "a matter of happenstance." All we can say when asked to specify the parties that are necessarily "typically benefit[ted] on balance" *whenever* the eleemosynary duty exists *with its specific content* is the following: that the benefited parties will be either one or more of the registered charities. This is all we can say because this is all that is entailed by the existence of the eleemosynary duty with its specific content. We cannot say that any specific party will be benefited. But we can and should say that *one or more* of the registered charities will necessarily be benefited in the "typical on balance" sense. The charities taken disjunctively are the parties "inherently" protected in the relevant sense. So in my view Kramer's Interest Theory really does allocate the correlative claim-rights disjunctively: The disjunction of registered charities holds the claim-right.

Against this again a critic might continue to press the fact that the specific one or two charities selected by the taxpayer will benefit individually, while the others will not. Is it perhaps therefore the case that each charity *individually* holds a legal claim-right to be paid-if-selected-by-the-taxpayer-in-question? This might be right, but by introducing a condition into the content of the duty (the duty to be paid *if selected*) this suggestion here departs from Kramer's example, which is focused on the unconditional eleemosynary duty to pay, as specified in law by the Eleemosynary Obligation Proposition. Kramer should therefore be unworried by this further conditionalized duty.

A different problem—which I think ultimately doesn't stick—arises from the fact that the charities as an *aggregate or collective* will also benefit necessarily from fulfilment of the eleemosynary duty, in that at least some of their members will benefit. This would not be true if the charities when taken together formed a properly structured collective that had a separate "corporate" status: Then benefiting one member need not benefit the whole, as the good of the whole would be separate from the good of the members. But when conceived as a mere disordered aggregate composed of no more than the conjoining of each charity, the charities so aggregated seem in my view to be benefited whenever one of their members is benefited. Is there therefore also a legal claim-right held by the collective of all charities that payment be made to one of their members—a claim-right correlative to the eleemosynary duty?

This suggestion—that the duty to make the eleemosynary payment is owed not only to the charities disjunctively but also aggregatively—seems to be denied by Kramer (2026, [6]) when he writes that "there is no overarching collectivity of the

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charities to which [the] duty would be owed." Perhaps "overarching" signals a corporate, structured collectivity. But if not, then *contra* Kramer the duty seems to correlate with claims held both disjunctively and aggregatively. Against this thought, we should notice that the same thesis about aggregates can make trouble for claim-rights allocated straightforwardly to individuals by distributive universal quantification. The earlier reasoning about aggregates suggests that if your not murdering me serves my interests, then it also serves the interests of any unstructured aggregate that includes me—and so all such aggregates hold rights correlating with your duty not to murder me. This is surely a *reductio ad absurdum*. Kramer and other Interest Theorists need to find a way to prevent *the fact that serving an individual's interests serves unstructured aggregates containing that individual* from making lots of unstructured aggregates count as right-holders. This is not a problem distinctive to the issue of disjunctive right-holding.

Finally, we should note that the problems above spring from the difficulties of thinking about how a duty correlating with a disjunctively allocated claim-right fulfils the disjunctively allocated right-holders' interests. Matters seem more straightforward when considering individually held claim-rights entailing disjunctively allocated correlative duties—as in Stemplowska's account of the duties correlative to moral human rights to food. In such a case where individual rights-holders are identified straightforwardly by distributive universal quantification, it seems that the Interest Theory unproblematically asks us to focus in on each right-holder and asks whether and how the disjunctively allocated duties would serve the interests of that individual.

6. Conclusion

I believe Kramer is the first theorist to propose and clarify explicitly the idea that an individually borne duty could correlate with claim-rights allocated by disjunctive universal quantification. This idea suggests the further idea that an individual's claim-right could correlate with disjunctively allocated duties. In this comment paper, I've considered some problems for these ideas, but I think ultimately the disjunctive notion survives the worries, though much more needs to be said. The approach also offers a fruitful line of thinking about the duties correlative to moral human rights to goods and services, addressing O'Neill's claimability objection.

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