

Cambridge University Press

978-1-107-11630-6 - Justice Across Boundaries: Whose Obligations?

Onora O'Neill

Excerpt

[More information](#)*Introduction***Do good fences make good neighbours?**

In his simple and deep poem *Mending Wall* Robert Frost imagines a dialogue with his New England neighbour about mending the crumbling drystone wall that separates their farms, where cattle no longer run. He points out that the wall is now not needed:

There where it is we do not need the wall:
He is all pine and I am apple orchard.
My apple trees will never get across
And eat the cones under his pines, I tell him.

His taciturn neighbour remains unconvinced:

He only says, 'Good fences make good neighbours.'

Frost then poses questions that now animate many discussions of justice in a globalising world:

Spring is the mischief in me, and I wonder
If I could put a notion in his head:
'Why do they make good neighbours? Isn't it
Where there are cows? But here there are no cows.
Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offence.
Something there is that doesn't love a wall,
That wants it down.'

Are walls and fences, borders and boundaries, needed for good relations and for justice? Or do they impose and perpetuate injustice? What violations are likely if they are no longer maintained? Can the 'walling in or walling out' that borders create and maintain be justified? Is the 'mischief' that tempts Frost to be rejected or embraced? Walls have been built and mended to exclude and include since time

immemorial: walled cities and forts, garden walls and farm fences, the Great Wall of China, Hadrian's Wall, the Berlin Wall, the walls of apartheid townships and the West Bank Barrier (its very name disputed) all aim to 'wall in and wall out'. But when and how do the exclusions they maintain make for a more and when for a less just world?

Boundaries and borders

We live in a world of innumerable structures that 'wall in and wall out', and in particular of countless boundaries and countless boundary crossings. The boundaries that we often think of as borders usually separate states or lesser jurisdictions, and for the most part form clear demarcations. Other boundaries are fuzzier. They include boundaries between societies and nations, between languages and religions, between ideologies and cultures, between ecologies and economies.

Those who control well-defined borders may seek to regulate the passage of people (especially of foreigners), of goods, of aid and trade, of money and weapons, and even of ideas and information. Typically they aim to control who and what will be allowed to cross, and who or what will be detained, obstructed or prevented from crossing (at times with patchy success). So a fundamental task for political philosophy is to consider whether and how varying sorts of borders, and the inclusions and exclusions they create, can be justified; and whether and how appeals to less sharply defined boundaries – national and cultural, religious and ideological – may be relevant to justifications of state borders. Although many accounts of justice insist that its principles are universal, this does not determine the reach of justice: principles can combine universal form with restricted scope.

So it is not surprising that both state borders and other boundaries pose deep and interesting problems for discussions of justice. Borders can be used to secure, alter, undermine or destroy justice, variously understood. This is not generally because their location is disputed: although that happens often enough, it is usually not philosophically interesting. The deeper problems have less to do with the locations of borders, than with their configuration, that is with the types of action they permit or prevent, and with the justification of the inclusions and exclusions that they impose. All justification is demanding, but the justification of inclusions and exclusions often raises particularly difficult demands: do arguments that seek to establish the scope of justice

Introduction

3

have to address both those included and those excluded? Does it matter if demarcations are not justified to 'outsiders'?¹

Aspirational versions of moral cosmopolitanism often claim that the borders of states should be made more porous in more ways to more sorts of people and to a greater range of activities. Some point towards a better institutionalised cosmopolitan future, in which various sorts of differences are not seen as justifying exclusions or inclusions, and so to a more extensive institutional cosmopolitanism. Yet it is evident that many would-be enthusiasts for cosmopolitan justice are reluctant to endorse a monolithic world state, and are uncertain whether a world of fewer or more porous boundaries could provide greater stability, or security or justice.

Less ambitious, and seemingly more modest and realistic accounts of global justice insist, on the contrary, that at least some of the demarcations that are defined by state borders, and the inclusions and exclusions they maintain, may be needed for justice. The old saying that *good fences make good neighbours* expresses a wary anti-cosmopolitanism, that sees some inclusions and exclusions as helpful, perhaps even as necessary, if justice is to be realised or maintained. These themes animate claims both about moral cosmopolitanism and about institutional anti-cosmopolitanism, and have become central to philosophical and practical discussions of justice in a globalising world. Here I aim to explore and hope to contribute to the underlying arguments that matter for these debates.²

Part I Hunger across boundaries

With high hopes I decided in the mid 1970s that a focus on the rights of the hungry would offer a useful approach to establishing at least some of the basic claims of justice in a world where some suffer extreme yet remediable deprivation. In the postwar world, appeals to rights – often, but not always, specifically to the human rights proclaimed in the Universal Declaration of 1948 – were on the way to becoming the most salient ethical vocabulary. While there were then few detailed philosophical investigations of rights, I thought there was headway to be made.

¹ Cf. Simon Caney, *Justice beyond Borders: A Global Political Theory* (Oxford University Press, 2005), on borders as shaping justifications.

² Several earlier essays on justice and borders are included in my *Bounds of Justice* (Cambridge University Press, 2000).

Cambridge University Press

978-1-107-11630-6 - Justice Across Boundaries: Whose Obligations?

Onora O'Neill

Excerpt

[More information](#)

There were certainly problems to be addressed: the news at that time was full of reports of famine and extreme poverty in many parts of the world, including Biafra, Cambodia and Ethiopia (few knew about the great Chinese famine of 1958–62); of hurtling population growth; and of the effects of the 1973 oil crisis on the poorest. Despite the ongoing green revolution, there was scant evidence of any demographic transition, of any end to the Cold War, of the surging economic growth later achieved in some (but not other) poor states, or of the mushrooming of cross-border activities that fuelled not only greater prosperity for many, but rampant global corruption and the emergence of a peripatetic class of the super-rich. All these profound changes lay far ahead: indeed many of them emerged only because of changes in the effectiveness and effects of border controls that came about with the end of the Cold War and the spread of various forms of economic liberalisation.

Unsurprisingly, much of the ethical literature on poverty and development before these changes focused on the extreme case of hunger and famine. The most widely accepted ethical approach was utilitarian, and the most discussed contribution was Peter Singer's 'Famine, affluence and morality'.³ I admired his work, but thought that utilitarian approaches depended on extravagant assumptions that could not do the required heavy ethical lifting. I aspired to do more with less, and hoped that an appeal to rights would provide a more economical and plausible starting point to address ethical questions about hunger and famine. The first three chapters in the collection start from considerations about rights. But they also reveal difficulties in that starting point, and put forward reasons for locating rights in a wider framework in which obligations and agency are seen as more basic. In these papers, as in most of the later chapters here, I relied on traditional conceptions of rights – of natural rights, moral rights, fundamental rights – rather than appealing only and specifically to human rights. However, in some of the later chapters I consider both the justification and some of the practical implications of human rights as set out in the Universal Declaration of 1948.⁴

In Chapter 1 'Lifeboat Earth' I tried to show that we can do without either utilitarian or broader consequentialist assumptions, and argued that robust conclusions could be established by starting with rights. However,

³ Peter Singer, 'Famine, affluence, and morality', *Philosophy and Public Affairs* 1 (1972), 229–43.

⁴ Chapter 7 'Positivists, pluralists and the justification of human rights', below, 120–33, focuses on the justification of human rights; Chapter 12 'The dark side of human rights', below, 193–207, considers what has to be added to human rights if they are to guide action.

Introduction

5

I deliberately did not invoke the temptingly capacious yet amorphous 'right to life'⁵ that has been central to so many ethical debates, particularly in bioethics. I hoped that starting from a more modest, widely accepted assumption that everyone has (at least!) a right not to be killed unjustifiably would beg fewer questions, and would be enough to show that action violates rights if its distributive effects unjustifiably lead to additional deaths. 'Lifeboat Earth' has probably had more readers than any other paper I have published, and I have been persuaded to include it unamended in this collection, despite the fact that I soon reached the disappointing conclusion that a minimal right not to be killed unjustifiably does not provide a sufficient ethical basis for an approach to the ethical questions raised by hunger and famine, let alone for a wider view of global justice. The reasons that led me to this conclusion are developed in other papers in this collection.

Although I remain convinced that utilitarian arguments are inadequate for guiding action, I came to think that appeals to rights could have bite only if combined with arguments to show *who* should act, and *what* they should do. Rights could be realised only if the counterpart obligations were held by competent agents. The second paper, Chapter 2 'Hunger, rights and obligations', was written as something of a 'manifesto piece' for this line of thought, which it sets out in plain and direct terms. During the 1980s I developed this approach in more detail in a number of other articles, and in a book.⁶

The third chapter in Part I, 'Rights to compensation', examines a different, perennially popular, rights-based approach. Rights to compensation seek to assign obligations to address poverty and famine to those whose action caused them. An apparent advantage of the approach is that it provides clarity about who is to carry the counterpart obligations. With some regret, I concluded that this approach too does not offer a convincing way of responding to distant hunger or destitution, and may indeed be a distraction. Rights to compensation are relevant where hunger and poverty and hunger have demonstrably arisen from the wrongdoing of identifiable

⁵ Disagreements about the right to life became and remain central in philosophical and more popular discussions of the legalisation of abortion, and of other novel reproductive technologies.

⁶ They include 'The moral perplexities of famine relief' in Tom Regan (ed.), *Matters of Life and Death* (New York: Random House, 1980), 260–98; extensively revised editions, 1986, 1993 (with the title changed to 'Ending world hunger' and pagination to 235–79 in the latter); 'Rights, obligations and needs', *Logos* 6 (1985), 29–47, most recently reprinted in Thomas Pogge and Keith Horton (eds.), *Global Ethics: Seminal Essays* (St. Paul, MN: Paragon, 2008); and *Faces of Hunger: An Essay on Poverty, Development and Justice* (London: George Allen & Unwin, 1986).

others. While it is all too true that there have been great historic injustices, it is also all too often uncertain whose unjust action contributed to whose present poverty, and all too clear that much present poverty and hunger has multiple causes, and is often in large part unattributable to any competent agents who could be required to compensate. Appeals to rights to compensation gesture towards competent agents who are to shoulder obligations to compensate, but they do so with a wavering finger. I concluded that only a clearer focus on action and obligation could support a convincing and broader account of obligations of justice.

Part II Justifications across boundaries

From the early 1980s my understanding of global poverty was transformed by reading Amartya Sen's wonderful *Poverty and Famines*.⁷ Once I had fully grasped how deeply hunger and deprivation are shaped both by institutional structures and by everyday economic transactions, the idea that rights to compensation can make a major contribution to global justice seemed unconvincing, although it remains perennially popular. From then on I tried to take a strictly forward-looking and practical view of just responses to hunger and destitution. A practical approach cannot assume that culprits can generally be identified and made to compensate for all injury or harm suffered. Yet if justice is to be secured it is necessary to specify the obligations of competent agents of change.

The chapters in Part II address questions that arise if justifications are to reach across boundaries. Western political philosophy has been deeply shaped by the thought that justice is internal to communities, cities or states, so may and perhaps must be bounded. Although versions and elements of *ius gentium*, and of international justice and law, have been with of us since antiquity, they have generally been seen as applying only in limited ways to justice between *bounded* communities, cities or states, or to ways in which bounded communities, cities or states deal with *outsiders*. Until recently, few have thought through the institutional and practical implications of abandoning these limited claims in favour of institutionalised forms of cosmopolitanism.

Arguments for instituting a more cosmopolitan system of justice across boundaries are not merely arguments that the *scope* of justice should be enlarged, in the ways in which it may be when a state adds to its territory

⁷ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981).

Introduction

7

or extends the franchise. They are more often arguments for making borders more porous in specific ways – and thereby perhaps less effective in other specific ways. Interestingly, many of the political arguments invoked for making borders more porous, even during the present era of globalisation, appeal to *state* interests: free trade may increase national (i.e. state) prosperity; free movement of ideas could improve understanding between states and national security; free movement of (some) people would improve national prosperity. Such arguments, it seemed to me, would not be adequate to justify a more complete opening of borders, which would dissolve or undermine the very conceptions of national and state interest to which they appealed. So I proceeded more circumspectly.

Chapter 4 'Justice and boundaries' considers whether the claim that principles of justice are universal provides enough to show that they should stretch across boundaries. I concluded that this move is unconvincing because universal form and universal scope are different matters. The mere fact that principles of justice are universal in form does not entail any specific view about their proper scope, or about the merits or failings of any form of institutional cosmopolitanism. In Chapter 5 'Ethical reasoning and ideological pluralism', I considered some difficulties that can arise where the beliefs and conceptual capacities of those who are separated by various sorts of boundaries differ, with the consequence that they may not follow or be persuaded by reasoning that seems adequate to others on the far side of various boundaries, who do not share their outlook. Chapter 6 'Bounded and cosmopolitan justice' continues these themes and compares communitarian justifications that ostensibly work within certain boundaries (or 'spheres'), that are seen as limits of justice, and the 'semi-cosmopolitan' positions supported by the conceptions of public reason defended by John Rawls and many others.

The last chapter in Part II, 'Positivists, pluralists and the justification of human rights', turns to the prospect of justifying the human rights declared and widely accepted in the post-World War II world. Human rights are but one version of the idea that human beings have rights: a uniquely successful and assertive version, but not immune from philosophical investigation, criticism or (if possible) justification. A number of distinguished political philosophers have done penetrating work on the justification of human rights, especially since the millennium, but all too much discussion and advocacy of human rights is still conducted (and accepted) on the basis of arguments from authority. The agreement of states, of the international community, of the *bien pensants*, is all too often taken as sufficient warrant, even by those who would reject arguments

from authority in many other contexts. Here I consider a possible way of justifying the rights set out in the Universal Declaration without either arguing from authority, or building on contentious metaphysical or theological claims.

Part III Action across boundaries

The chapters in Part III turn from justifications to some of the preconditions for respecting and realising rights. They argue that appeals to abstract rights are never enough, yet are indispensable. The indeterminacy of rights – like the indeterminacy of other ethical principles – is essential if agents and agencies are to enact obligations of justice in varying circumstances. Many of the problems said to arise because rights are ‘too abstract’ reflect no more than unsustainable views both of abstraction and of what it would be to respect rights. These chapters also discuss a range of considerations that matter if rights are to be respected and realised, including the task of assigning the necessary counterpart obligations, the capacities of the agents and agencies to whom they are assigned, and the circumstances in which they act. And once again the final chapter addresses questions about enacting human rights.

Chapter 8 ‘From Edmund Burke to twenty-first-century human rights’ discusses Edmund Burke’s classical criticisms of abstraction, and suggests that his line of thought neither targets nor undermines the prospect of institutionalising abstract rights, but rather allows for their varied enactment in differing circumstances. Burke saw abstraction neither as avoidable nor as fatal, but rather as indispensable yet insufficient.

Chapter 9 ‘From statist to global conceptions of justice’ argues that the practical tasks of enacting and securing justice should not question specific borders, but should focus on the capacities for action of the agents and agencies that are to respect or realise justice. In particular, a practical approach to rights needs to take account both of the specific powers and of the diversity of non-state actors, many of them not intrinsically territorial, whose activities often cross state and other boundaries. Chapter 10 ‘Global justice: whose obligations?’ argues that rights are not taken seriously unless they are anchored in obligations, and that obligations are not taken seriously unless they are anchored in realistic accounts of the capabilities and vulnerabilities of the agents and agencies that are to carry them, and that doing so requires attention to the highly variable nature of boundaries and borders, and the specific inclusions and exclusions they maintain.

Chapter 11 'Agents of justice' returns to the lurking statism of many accounts of the practical implications of rights and explores ways in which a wider range of non-state agencies may contribute to justice. It argues that states are not invariably the primary agents of justice, and that, even where they are primary, other non-state agents and agencies may have obligations that go beyond complying with the just requirements of states.

The final chapter in this part, like the last chapter in Part II, turns specifically to human rights. Chapter 12 'The dark side of human rights' looks at some ways in which assigning obligations to respect and realise human rights to states have shaped discussions of their realisation, and discusses some of the costs of linking human rights too closely to state actors. It is unclear how far the scope of justice can be extended if obligations to respect and realise rights are assigned primarily to intrinsically anti-cosmopolitan intuitions.

Part IV Health across boundaries

The essays in the final part address some questions that arise in thinking about health and justice in a globalising world. Health is one of several areas (climate and technological change are others) in which the role of state borders in defining the scope of justice can be particularly problematic. I argue that a great deal of work in bioethics has taken too little account of this reality, usually not because it explicitly relies on statist assumptions (they are often implicit), but because it takes an individualistic approach that is often appropriate for clinical ethics, but not for the ethics of public health, which is always affected by disparities in global health.

Chapter 13 'Public health or clinical ethics: thinking beyond borders' examines some of the costs of the intense focus of much contemporary bioethics on doctor–patient relationships, on informed consent, and on the just distribution of health care to individuals. This focus has often marginalised public health issues, and the importance of sustaining and improving the health of poorer populations, and other global health issues. An adequate public health ethics needs to be anchored in political philosophy rather than in ethics, and to take a realistic view of ways in which both state and non-state actors can affect population health. In consequence neither individual autonomy nor informed consent can be seen as fundamental to the ethics of health.

Chapter 14 'Broadening bioethics: clinical ethics, public health and global health' asks whether public health measures are genuine 'global

Cambridge University Press

978-1-107-11630-6 - Justice Across Boundaries: Whose Obligations?

Onora O'Neill

Excerpt

[More information](#)

10

Introduction

public goods', in which everybody has an interest. It argues that while many public health measures, including many targeted health interventions, may have beneficial externalities, they are not genuine global public goods.

The papers in this collection criticise certain views of human rights, but maintain that those rights matter for justice. I am critical, in the main, of discussions of human rights that are silent or vague about the agents of justice, or about their specific duties, and assume without argument that the relevant duties all fall on states. In my view we do not take rights seriously unless we seek to show *who* ought to do *what* for *whom*, and the duties that do fall on states are typically second-order duties to enable and require other agents and agencies to act. I am all too aware that the many colleagues, students and audiences on whom I have pressed these thoughts may have become weary of my refrain, but I remain unrepentant.