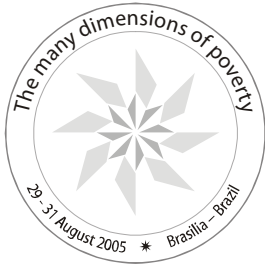


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Recognized and Violated by International Law: The Human Rights of the Global Poor

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Thomas W. Pogge
Center for Applied Philosophy and Public Ethics/ Australian National
University – Australia

E M B A R G O

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Recognized and Violated by International Law: The Human Rights of the Global Poor^{*}

Thomas W. Pogge

Various human rights are widely recognized in codified and customary international law. These human rights promise all human beings protection against specific severe harms that might be inflicted on them domestically or by foreigners. Yet, international law also establishes and maintains institutional structures that greatly contribute to violations of these human rights: Fundamental components of international law systematically obstruct the aspirations of poor populations for democratic self-government, civil rights, and minimal economic sufficiency. And central international institutions, like the WTO, IMF, and World Bank, are designed so that they systematically contribute to the persistence of severe poverty.

1. Human Rights and Correlative Duties

Supranational, national and subnational systems of law create various human rights. The content of these rights and of any corresponding legal obligations and burdens depends on the legislative, judicial and executive bodies that maintain and interpret the laws in question. In the aftermath of World War II, it has come to be widely acknowledged that there are also moral human rights, whose validity is independent of any and all such governmental bodies. In their case, in fact, the dependence is thought to run the other way: Only if they respect moral human rights do governmental bodies have legitimacy, that is, the capacity to create moral obligations to comply with, and the moral authority to enforce, their laws and orders.

Human rights of both kinds can coexist in harmony. Whoever cares about moral human rights will grant that laws can greatly facilitate their realization. And human rights lawyers can acknowledge that the legal rights and obligations they draft and interpret are meant to give effect to pre-existing moral rights. In fact, this acknowledgment seems implicit in the common phrase ‘internationally recognized human rights.’ It is clearly expressed in the Preamble of the *UDHR*, which presents this *Declaration* as stating moral human rights that exist independently of itself. This acknowledgement bears stressing because the distinction between moral and legal human rights is rarely drawn clearly. Many are therefore inclined to believe that our human rights are whatever governments declare them to be. This may be true of legal human rights. But it is false, as these governments have themselves acknowledged, of moral human rights. Governments may have views on what moral human rights there are — their endorsement of the *UDHR* and various subsequent human rights covenants and treaties expresses one such view. But even all governments together cannot legislate such rights out of existence.

The widespread recognition of moral human rights is important because it makes room for an independent critical assessment of existing international law. A more limited such assessment is possible even within the law itself — one can investigate how well international law complies with the human rights it itself recognizes. But such a purely internal assessment is vulnerable to legal change. The critical potential of legal human rights can be sapped through revisions of the law — through explicit reformulation or amendment (“anti-terrorism” legislation), through adjudications that render other parts of the law coherent with human rights by diluting the latter, or through precedents that modify customary international law (recognizing preemptive occupations or the status of “enemy combatants”). Dependent as they are on good arguments rather than the good will of those in power, moral human rights provide a more solid basis for critical assessment, and I base

^{*} Many thanks to Roland Pierek for very helpful comments and suggestions.

my case upon them. In doing so, I conceive human rights and their correlative duties quite narrowly to ensure that the moral premises I invoke are widely acceptable. I do not contend that human rights are exhausted by what I invoke — only that human rights require at least this much.

I focus on the human rights of the global poor because the great human rights deficits persisting today are heavily concentrated among them. Socio-economic human rights, such as that ‘to a standard of living adequate for the health and well-being of oneself and one’s family, including food, clothing, housing, and medical care’ (*UDHR* § 25) are currently, and by far, the most frequently violated human rights. Their widespread violation also plays a decisive role in explaining the global deficit in civil and political human rights which demand democracy, due process, and the rule of law: Very poor people — often physically and mentally stunted due to malnutrition in infancy, illiterate due to lack of schooling, and much preoccupied with their family’s survival — can cause little harm or benefit to the politicians and officials who rule them. Such rulers therefore have far less incentive to attend to the interests of the poor compared with the interests of agents more capable of reciprocation, including foreign governments, companies, and tourists.

For purposes of this essay, we may think of the very poor narrowly as those who lack secure access to the minimum requirements of human existence — safe food and water, clothing, shelter, basic medical care and basic education. This narrow and absolute definition of severe poverty corresponds roughly to the World Bank’s ‘\$2/day’ international poverty line. A household in the United States counts as poor by this standard today (2005) only if its entire annual consumption expenditure per person falls below US\$1043 (www.bls.gov/cpi/home.htm). Some 2735 million human beings — 44 percent of the world’s population — are officially considered to be living below this poverty line, many of them far below it.¹

The effects of severe poverty are staggering. It is estimated that 831 million human beings are chronically undernourished, 1197 million lack access to safe water and 2747 million lack access to basic sanitation (UNDP 2004: 129-30). About 2000 million lack access to essential drugs (www.fic.nih.gov/about/summary.html). Some 1000 million have no adequate shelter and 2000 million lack electricity (UNDP 1998: 49). Some 876 million adults are illiterate (www.uis.unesco.org) and 250 million children between 5 and 14 do wage work outside their household — often under harsh or cruel conditions: as soldiers, prostitutes, or domestic servants, or in agriculture, construction, textile or carpet production.² Roughly one third of all human deaths, 18 million annually, are due to poverty-related causes, easily preventable through better nutrition, safe drinking water, cheap re-hydration packs, vaccines, antibiotics, and other medicines.³ People of

¹ According to Chen and Ravallion (2004: 153) who have managed the World Bank’s income poverty assessments for well over a decade. They also report that 1089 million human beings lived on less than half this amount (\$1/day). It is likely that flaws in the World Bank’s methodology cause it to understate the world poverty problem (Reddy and Pogge 2006).

² The UN International Labor Organization (ILO) reports that ‘some 250 million children between the ages of 5 and 14 are working in developing countries — 120 million full time, 130 million part time’ (www.ilo.org/public/english/standards/ipecc/simpoc/stats/4stt.htm). Of these, 170.5 million children are involved in hazardous work and 8.4 million in the ‘unconditionally worst’ forms of child labor, which involve slavery, forced or bonded labor, forced recruitment for use in armed conflict, forced prostitution or pornography, or the production or trafficking of illegal drugs (ILO 2002: 9, 11, 17, 18).

³ In 2002, there were about 57 million human deaths. The main causes highly correlated with poverty were (with death tolls in thousands): diarrhea (1798) and malnutrition (485), perinatal (2462) and maternal conditions (510), childhood diseases (1124 — mainly measles), tuberculosis (1566), malaria (1272), meningitis (173), hepatitis (157), tropical diseases (129), respiratory infections (3963 — mainly pneumonia), HIV/AIDS (2777) and sexually transmitted diseases (180) (WHO 2004: 120-5).

color, females, and the very young are heavily overrepresented among the global poor, and hence also among those suffering the staggering effects of severe poverty.⁴

Despite the undisputed great importance of basic necessities for human life, the existence of social and economic human rights is controversial, especially in the United States which never ratified the *International Covenant on Social, Economic, and Cultural Rights*. Much of this controversy is due to the false assumption that a human right to freedom from poverty would entail correlative positive duties. Such human-rights-imposed positive duties to aid and protect any human beings who would otherwise suffer severe deprivations are widely rejected in the United States and in other affluent countries. But what is rejected here is not a specific class of rights, but a specific class of duties: *positive* duties. Those who deny that very poor foreigners have a human-rights-based moral claim to economic assistance typically also deny that foreigners have any other human-rights-based moral claims to aid or protection — against genocide, enslavement, torture, tyranny, or religious persecution. What these people actually reject are not human rights as such, or any particular category of human rights. They reject human-rights-imposed positive duties and therefore *any* human rights specified so that they entail correlative positive duties.

While some passionately reject such human-rights-imposed positive duties and others passionately endorse them, I simply leave them aside here, without prejudice. To keep my argument widely acceptable, I conceive human rights narrowly as imposing only negative duties. This way, my argument can be acceptable to those who reject human-rights-imposed positive duties, because they generally endorse stringent negative duties not to torture, not to rape, not to destroy crops and livestock needed for survival. And my argument can also be acceptable to those who endorse human-rights-imposed positive duties because, by failing to invoke such duties, I am not denying them.

Negative duties are of two main kinds: interactional and institutional. The human right not to be tortured is violated by torturers as well as by many of those who cooperate in imposing social institutions under which human beings foreseeably suffer torture. The latter category includes in the first instance bureaucrats and politicians who permit or even order torture. But it also includes ordinary citizen who make an uncompensated contribution to the imposition of social institutions that foreseeably give rise to an avoidable human rights deficit. For example, through their uncompensated support of a grievously unjust regime, many Germans facilitated the human rights violations it foreseeably gave rise to. They participated in a collective crime and thereby violated the human rights of its victims, even if they never personally killed or tortured or otherwise harmed anyone directly.⁵

Even conservatives and libertarians, who often present themselves as rejecting subsistence rights, will recognize as human rights violations some institutional arrangements that foreseeably and avoidably produce life-threatening poverty — the feudal systems of France’s Ancien Régime or tsarist Russia, for instance, or Stalin’s economic policies during 1930-33, which caused some 7-10 million famine deaths among peasants, mostly in the Ukraine, whom he considered hostile to his regime.

⁴ Children under five account for about 60% or 10.6 million of the annual death toll from poverty-related causes (UNICEF 2005: inside front cover). The overrepresentation of females is documented in UNIFEM 2001, UNDP 2003 (310-330), and UNRISD 2005.

⁵ With the word “uncompensated,” I mean to exempt people like Oskar Schindler (as depicted in Spielberg’s movie). Through his manufacturing activities and tax payments, Schindler cooperated in imposing the social institutions and policies of Nazi Germany. But doing this allowed him to compensate (more than adequately) for his contributions to harm through protection efforts for its victims. His conduct complied with the negative duties imposed on him by the human rights of the victims of the Third Reich — no less fully than if he had left Germany. In fact, Schindler did much better by these victims than he would have done by emigrating.

In what follows, I leave interactional negative duties aside as well and base my argument entirely on institutional negative duties correlative to human rights. I contend that most of the vast human rights deficits persisting in today's world can be traced back to institutional factors — to the national institutional arrangements in many so-called developing countries, for which their political and economic elites bear primary responsibility, as well as to present global institutional arrangements, for which the governments and citizens of the affluent countries bear primary responsibility. Focusing on the latter subject, I argue that current global institutional arrangements as codified in international law constitute a collective human rights violation of enormous proportions to which most of the world's affluent are making uncompensated contributions.

The *moral* plank of my argument was concisely stated 57 years ago:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized (UDHR § 28, cf. § 22).

I read this Article in light of four straightforward interpretive conjectures:

- (1) Alternative institutional designs that do not satisfy the requirement of Article 28 can be ranked by how close they come to enabling the full realization of human rights: Any social system ought to be structured so that human rights can be realized in it as fully as is reasonably possible.
- (2) How fully human rights *can* be realized under some institutional design is measured by how fully these human rights generally are, or (in the case of a hypothetical design) generally would be, realized in it.
- (3) An institutional design *realizes* a human right insofar as (and fully if and only if) this human right is *fulfilled* for the persons upon whom this order is imposed.
- (4) A human right is fulfilled for some person if and only if this person enjoys *secure access to the object of this human right*.

Taking these four conjectures together, Article 28 should be read as holding that the moral quality, or justice, of any institutional order depends primarily on the extent to which it affords all its participants secure access to the objects of their human rights: Any institutional order is to be assessed and reformed principally by reference to its relative impact on the realization of the human rights of those on whom it is imposed.⁶ An institutional order and its imposition are human-rights-violating if and insofar as this order foreseeably gives rise to a substantial and avoidable human rights deficit.

2. How Features of the Present Global Order Cause Massive Severe Poverty⁷

Each day, some 50,000 human beings — mostly children, mostly female and mostly people of color — die from starvation, diarrhea, pneumonia, tuberculosis, malaria, measles, perinatal conditions and other poverty-related causes. This continuous global death toll matches that of the December 2004 tsunami every week, and it matches, every three years, the entire death toll of World War II, concentration camps and gulags included.

⁶ “Relative impact,” because a comparative judgment is needed about how much more or less fully human rights are realized in this institutional order than they would be realized in its feasible alternatives.

⁷ Part 2 of this paper is adapted from a longer essay, ‘Severe Poverty as a Human Right’ forthcoming in Thomas Pogge: *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor* (Oxford: Oxford University Press 2005). UNESCO’s permission for this adaptation is gratefully acknowledged.

I believe that most of this annual death toll and of the much larger poverty problem it epitomizes are avoidable through minor modifications in the global order that would entail at most slight reductions in the incomes of the affluent. Such reforms have been blocked by the governments of the affluent countries, which are ruthlessly advancing their own interests and those of their corporations and citizens, designing and imposing a global institutional order that, continually and foreseeably, produces vast excesses of severe poverty and premature poverty deaths.

There are three main strategies for denying this charge. One can deny that variations in the design of the global order have any significant impact on the evolution of severe poverty worldwide. Failing this, one can claim that the present global order is optimal or close to optimal in terms of poverty avoidance. And, should this strategy fail as well, one can still contend that the present global order, insofar as it is suboptimal in terms of poverty avoidance, is not *causing* severe poverty but merely failing to alleviate such poverty (caused by other factors) as much as it might. I will discuss these three strategies in this sequence.

2.1 The Purely Domestic Poverty Thesis

Those who wish to deny that variations in the design of the global institutional order have a significant impact on the evolution of severe poverty explain such poverty by reference to national or local factors alone. John Rawls is a prominent example. He claims that, when societies fail to thrive, ‘the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in poorer societies are likely to be oppressive government and corrupt elites’ (Rawls 1993: 77). He adds that ‘the causes of the wealth of a people and the forms it takes lie in their political culture and in the religious, philosophical and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues. ... the political culture of a burdened society is all-important ... Crucial also is the country’s population policy’ (Rawls 1999: 108). Accordingly, Rawls holds that our moral responsibility with regard to severe poverty abroad can be fully described as a ‘duty of assistance’ (ibid. 37-8, 106-20).

It is well to recall briefly that existing peoples have arrived at their present levels of social, economic, and cultural development through an historical process that was pervaded by enslavement, colonialism, even genocide. Though these monumental crimes are now in the past, they have left a legacy of great inequalities which would be unacceptable even if peoples were now masters of their own development. In response, it is often said that colonialism is too long ago to contribute to the explanation of poverty and inequality today. But consider the 30:1 inequality in *per capita* income in 1960, when Europe released Africa from the colonial yoke. Even if Africa had consistently enjoyed growth in *per capita* income one full percentage point above Europe’s, this inequality ratio would still be 19:1 today. At this rate, Africa would be catching up with Europe at the beginning of the 24th century.

Consider also how such a huge economic inequality entails inequalities in the competence and bargaining power that Africans and Europeans can bring to bear in negotiations about the terms of their interactions. Relations structured under so unequal conditions are likely to be more beneficial to the stronger party and thus tend to reinforce the initial economic inequality. This phenomenon surely plays some role in explaining why the inequality in *per capita* income has actually increased to 40:1, showing that, since decolonization, average annual growth in *per capita* income was 0.7% less in Africa than in Europe. Rawls (implausibly) finds such entrenched economic inequality morally acceptable when it originates in earlier choices freely made within each people. But his justification is irrelevant to this world, where our enormous economic advantage is deeply tainted by how it accumulated over the course of *one* historical process that has devastated the societies and cultures of four continents.

Let us leave aside the continuing legacies of historical crimes and focus on the empirical view that, at least in the post-colonial era which brought impressive growth in global *per capita* income, the causes of the *persistence* of severe poverty, and hence the key to its eradication, lie within the poor countries themselves.

Many find this view compelling in light of the great variation in how the former colonies have evolved over the last forty years. Some of them have done very well in economic growth and poverty reduction while others exhibit worsening poverty and declining *per capita* incomes. Is it not obvious that such strongly divergent national trajectories must be due to differing *domestic* causal factors in the countries concerned? And is it not clear, then, that the persistence of severe poverty is due to local causes?

However oft-repeated and well-received, this reasoning is fallacious. When national economic trajectories diverge, then there must indeed be local (country-specific) factors at work that explain the divergence. But it does not follow that global factors play no role in explaining this divergence. And it certainly does not follow that global factors play no role in explaining how the *overall* incidence of severe poverty develops over time.

Exposure of the popular fallacy does not yet settle the issue. Dramatic divergences in national poverty trajectories do not prove that global institutional factors exert no powerful influence on the evolution of severe poverty worldwide. But is there such an influence? It is hard to doubt that there is. In the modern world, the traffic of international and even intranational economic transactions is profoundly shaped by an elaborate system of treaties and conventions about trade, investments, loans, patents, copyrights, trademarks, double taxation, labor standards, environmental protection, use of seabed resources and much else. These different aspects of the present global institutional order realize highly specific design decisions within a vast space of alternative design possibilities. It is incredible on its face that all these alternative ways of structuring the world economy would have produced the same evolution in the overall incidence and geographical distribution of severe poverty worldwide. The discussion of this question will continue in Section 2.2 and Subsection 2.3.3.

2.2 The Panglossian View of the Present Global Order

Once it is accepted that how we structure the world economy makes a difference to the evolution of poverty worldwide, it becomes interesting to examine the present global institutional order in regard to its relative impact on severe poverty. Here it is often claimed that we live, in this regard, in the best of all possible worlds: that the present global order is optimal or nearly optimal in terms of poverty avoidance.

A commonsensical way of doubting this claim might develop a counter-hypothesis in four steps: First, the interest in avoiding severe poverty is not the only interest to which those who negotiate the design of particular aspects of the global institutional order are sensitive. Any such negotiators are likely to be sensitive also to the interest of their home government in its domestic political success and, partly as a consequence of this, sensitive to their compatriots' interest in economic prosperity. Second, at least with negotiators for the more affluent states, these 'nationalist' interests are not (to put it mildly) perfectly aligned with the interest in global poverty avoidance. In negotiations about the design of the global order, particular decisions that are best for the governments, corporations, or citizens of the affluent countries are sometimes not best in terms of avoiding severe poverty in the developing world. Third, when faced with such conflicts, negotiators for the affluent states generally (are instructed to) give precedence to the interests of their own country's government, corporations and citizens over the interests of the global poor. Fourth, the affluent states enjoy great advantages in bargaining power and expertise. With only 15.5% of the world's population, the high-income countries have 80.4% of the world's income (World Bank 2005: 257) and can therefore exact a high price for access to their gigantic markets. Their advantages in bargaining power and expertise enable the affluent states and their negotiators to deflect the design of the global order from what would be best for poverty avoidance toward a better accommodation

of the interests of the governments, corporations and citizens of the affluent countries. These four steps lead to the commonsensical counterhypothesis: We should expect that the design of the global institutional order reflects the shared interests of the governments, corporations and citizens of the affluent countries more than the interest in global poverty avoidance, insofar as these interests conflict.

There is a great deal of evidence that this counterhypothesis is true. There is much evidence that the present rules of the game favor the affluent countries by allowing them to continue protecting their markets through quotas, tariffs, anti-dumping duties, export credits and subsidies to domestic producers in ways that poor countries are not permitted, or cannot afford, to match.⁸ Other important examples include the WTO regulations of cross-border investment and intellectual property rights.⁹

Such asymmetrical rules increase the share of global economic growth going to the affluent countries and decrease the share of global economic growth going to the poor countries relative to what these shares would be under symmetrical rules of free and open competition. The asymmetries in the rules thus reinforce the very inequality that enables the governments of the affluent countries to impose these asymmetries in the first place.¹⁰ This inequality has grown vast: The ratio in average income between the fifth of the world's people living in the highest-income countries and the fifth living in the lowest income countries 'was 74 to 1 in 1997, up from 60 to 1 in 1990 and 30 to 1 in 1960. [Earlier] the income gap between the top and bottom countries increased from 3 to 1 in 1820 to 7 to 1 in 1870 to 11 to 1 in 1913' (UNDP 1999: 3). For 2003, the corresponding ratio appears to have been 66 to 1 (World Development Indicators database, my calculation).

⁸ In a recent speech, 'Cutting Agricultural Subsidies' (globalenvision.org/library/6/309), World Bank chief economist Nick Stern stated that in 2002 the rich countries spent about \$300 billion on export subsidies for agricultural products alone, roughly six times their total development aid. He said that cows receive annual subsidies of about \$2,700 in Japan and \$900 in Europe — far above the annual income of most human beings. He also cited protectionist anti-dumping actions, bureaucratic applications of safety and sanitation standards, and textile tariffs and quotas as barriers to developing country exports: 'Every textile job in an industrialized country saved by these barriers costs about 35 jobs in these industries in low-income countries.' Stern was especially critical of escalating tariffs — duties that are lowest on unprocessed raw materials and rise sharply with each step of processing and value added — for undermining manufacturing and employment in developing countries, thus helping to confine Ghana and Cote D'Ivoire to the export of unprocessed cocoa beans, Uganda and Kenya to the export of raw coffee beans, and Mali and Burkina Faso to the export of raw cotton. He estimated that full elimination of agricultural protection and production subsidies in the rich countries would raise agricultural and food exports from low and middle-income countries by 24% and total annual rural income in these countries by about \$60 billion (about three quarters of the global poor live in such rural areas).

⁹ The Trade-Related Aspects of Intellectual Property Rights (TRIPs) Treaty was concluded in 1995. For a discussion of its content and impact, cf. UNDP (2001: ch. 5), Correa (2000), Juma (1999), Watal (2000), Pogge (2005a), and www.cptech.org/ip.

¹⁰ In what follows, I use income inequalities to substantiate this point. Yet, inequalities in wealth are, of course, even greater (cf. UNDP 1999: 3; UNDP 1998: 30), because well-off persons typically have more net worth than annual income, while the poor typically own less than one annual income.

These ratios compare national average incomes via market exchange rates.¹¹ The trend picture is no more encouraging when one compares the incomes of households worldwide via purchasing power parities: For the first five years of the present globalization period, ‘world inequality has increased ... from a Gini of 62.8 in 1988 to 66.0 in 1993. This represents an increase of 0.6 Gini points per year. This is a very fast increase, faster than the increase experienced by the US and UK in the decade of the 1980’s. ... The bottom 5 percent of the world grew poorer, as their real incomes decreased between 1988 and 1993 by ¼ [!], while the richest quintile grew richer. It gained 12 percent in real terms, that is it grew more than twice as much as mean world income (5.7 percent)’ (Milanovic 2002: 88). As trend data about poverty and malnutrition also confirm,¹² the global poor are not participating proportionately in global economic growth.

These facts should suffice to refute the Panglossian view: The present design of the global order is not, and nowhere near, optimal in terms of poverty avoidance. This value would be better served, for instance, if the poorest countries received financial support toward hiring first-rate experts to advise them how to articulate their interests in WTO negotiations, toward maintaining missions at WTO headquarters in Geneva, toward bringing cases before the WTO, and toward coping with the mountains of regulations they are required to implement. Poverty avoidance would also be better served if these countries faced lesser constraints and handicaps on their exports into the affluent countries: The \$700 billion reported annual loss in export opportunities due to rich-country protectionism (UNCTAD 1999) amounts to over 10% of the aggregate gross national incomes of all developing countries combined. Poverty avoidance would also be better served if the WTO Treaty had included a global minimum wage and minimal global constraints on working hours and working conditions in order to constrain the current ‘race to the bottom’ in which poor countries competing for foreign investment are outbidding one another by offering ever more exploitable and mistreatable workforces. Poverty avoidance would also be better served if the Law of the Sea Treaty guaranteed the poor countries some share of the value of harvested seabed resources (cf. Pogge 2002: 125-6) and if the affluent countries were required to pay for the negative externalities we impose on the poor: for the pollution we have produced over many decades and the resulting effects on their environment and climate, for the rapid depletion of natural resources, for the contribution of our sex tourists to the AIDS epidemic in Asia and for the violence caused by our demand for drugs and our war on drugs.

Examples could be multiplied. But I think it is clear that there are feasible variations to the present global order that would dramatically reduce the incidence of severe poverty worldwide, far below the current, staggering figures. This order is *not* optimal in terms of poverty avoidance.

¹¹ Many economists find this misleading, claiming that the comparison should instead be made in terms of purchasing power parities (PPPs) and that the ‘true’ quintile inequality ratio would then be found to be ‘only’ 13:1. However, market exchange rates are the more appropriate measure for assessing the bargaining power and expertise countries can bring to bear in international negotiations. Market exchange rates are also the appropriate measure for assessing the *avoidability* of poverty (the fact that a mere 1% of the national incomes of the highest-income countries would suffice to raise the national incomes of the lowest-income countries by 66%). For comparing standards of living, market exchange rates are indeed inappropriate. But general-consumption PPPs are also problematic for the assessment of very low incomes because the consumption expenditure pattern of the very poor differs greatly from the pattern of international consumption expenditure on which PPPs are based. By using PPPs, we are in effect saying that the poor are not all that much worse off than we are because services are so much cheaper where they live. But this cheapness of labor does not benefit them as consumers, because they must concentrate their meagre funds on basic necessities. See Reddy and Pogge (2006) for details.

¹² The UNDP reports annually on the number of undernourished, which has been stuck around 800 million. For 1987-2001, Chen and Ravallion (2004: 153) report a 7-percent drop in the population living below \$1/day but a 10.4-percent rise in the population below \$2/day.

2.3 Is the Present Global Order Merely Less Beneficial Than It Might Be?

As the first two possible lines of defense have turned out to be indefensible, attention turns to the third: Can one say that the global institutional order, though clearly and greatly suboptimal in terms of poverty avoidance, is nonetheless not harmful to the global poor and therefore not a violation of their human rights? Let us turn to this last challenge to my view.

This challenge is especially important if one leaves undisputed, as I have here done, the narrow account of human rights violations according to which agents can be condemned as human rights violators only if they *actively* cause human rights to be underfulfilled, in violation of a *negative* duty. Appealing to this narrow account, the countries shaping and imposing the present global order could argue as follows: It is true that the incidence of severe poverty is greater under the present regime than it would be under some of the outlined variations thereof that would create or improve for the global poor access to medicines and vaccines, basic schooling, school lunches, safe water and sewage systems, housing, power plants and networks, banks and microlending, road, rail and communication links, and export opportunities into the developed world. But it does not follow that the existing global order *causes* excess poverty or excess poverty deaths, that it *harms* or *kills* anyone, or that it *violates* human rights. The design of this order is merely failing to benefit people, failing to be as protective of human life as it might be. And the same should then be said about our decision to impose the existing global institutional order rather than a more poverty-avoiding alternative: This decision does not cause excess poverty or excess poverty deaths, is not violating human rights by harming and killing people. It is merely failing to benefit people and failing to prevent human deaths. Collectively (just as individually), we are at most failing to do all we can to fulfill human rights.

This defense strategy appeals to something like the distinction between acts and omissions. Its objective is to diminish the moral significance of the rich states' decision to impose the present global order rather than a foreseeably more poverty-avoiding alternative by assigning this decision the status of a mere omission. Now the relevant countries are clearly active in formulating the global economic rules they want, in pressing for their acceptance, and in prosecuting their enforcement. This is undeniable. To be plausible, the defense strategy must then apply the act/omission distinction at another place: not to how the relevant governments are related to the global rules, but to how these global rules are related to the excess poverty. The idea must be that the rules governing the world economy are not actively causing excess poverty, thus harming and killing people, but merely passively failing to prevent severe poverty, failing to protect people from harm.

The distinction between acts and omissions is difficult enough when applied to the conduct of individual and collective agents. The application of such a distinction to social institutions and rules is at first baffling. When more premature deaths occur under some system of rules than would occur under a feasible alternative, we might say that there are excess deaths under the existing regime. But how can we sort such excess deaths into those that the existing rules *cause* (bring about) and those these rules merely *fail to prevent* (let happen)? Let us examine three ideas for how this defense strategy can be made to work.

2.3.1 Invoking Baseline Comparisons

The apparently empirical question whether 'globalization' is harming or benefiting the global poor plays a major role in public debates about the present global order and, more specifically, the WTO treaties and the roles of the International Monetary Fund (IMF), the World Bank, the G7/G8 and the OECD (Organization for Economic Cooperation and Development). Harm and benefit are comparative notions, involving the idea of people being worse off, or better off. But what is the implied baseline to which the current fate of the global poor is to be compared? What is the

alternative fate in comparison to which they are either worse off (and therefore being harmed) or better off (and therefore being benefited by globalization)?

In most cases, it turns out, the popular debate is about the question whether severe poverty worldwide has been rising or falling in the period since this globalization process began in the late 1980s. This question is hotly debated, with considerable career prizes awarded to any economists with a good story of declining poverty.

Yet, this debate is irrelevant to the moral assessment of this globalization process, epitomized by the WTO framework, which the governments of the developed West have pressed upon the world. The moral charge before us is that governments, by imposing a global institutional order under which great excesses of severe poverty and poverty deaths persist, are violating the human rights of many poor people. The plausibility of this charge is unaffected by whether severe poverty is rising or falling. To see this, consider the analogous charges that slaveholding societies harmed and violated the human rights of those they enslaved or that the Nazis violated the human rights of those they confined and killed in their concentration camps. These charges can certainly not be defeated by showing that the rate of victimization declined (with fewer people being enslaved or killed each year than the year before). Of course, the words 'harm' and 'benefit' are sometimes appropriately used with implicit reference to an earlier state of affairs. But in the case at hand, such an historical baseline is irrelevant. For even if it were true that there is not as much severe poverty in the world today as there was 15 years ago (but see note 12), we could not infer therefrom that the present global order is (in a morally significant sense) *benefiting* the global poor. Drawing this inference, we would beg the whole question by simply assuming the incidence of severe poverty 15 years ago as the appropriate no-harm baseline. Just as the claim that the Nazis violated the human rights of those they killed cannot be refuted by showing that the number of such killings was in decline, so the claim that the imposition of the present global order violates the human rights of those who live in and all too often die from severe poverty cannot be refuted by showing that their numbers are falling (cf. Pogge 2005b: 55-8).

No less inconclusive than such *diachronic* comparisons are *subjunctive* comparisons with an historical baseline. Even if it is true that there is not as much severe poverty under the present WTO regime as there would now be if the preceding regime (GATT) had continued, we cannot infer therefrom that the present global institutional order is (in a morally significant sense) benefiting the global poor. Drawing this inference, we would once again beg the question by simply assuming the incidence of severe poverty as it would have evolved under continued GATT rules as the appropriate no-harm baseline. By the same reasoning the military junta under Senior General Than Shwe could be said to be benefiting the Burmese people provided only that they are better off than they would now be if the predecessor junta under General Ne Win were still in power. And by the same reasoning we could argue that the regime of Jim Crow laws (www.nps.gov/malu/documents/jim_crow_laws.htm) did not harm African Americans in the US South because they were better off than they would have been had slavery continued.

Sometimes subjunctive comparisons are presented with an historical baseline that is defined by reference to a much earlier time. Thus it is said that Africans today are no worse off than they would now be if there had never been any significant contacts with people outside Africa. In response, we should of course question to what extent there are knowable facts about such a remote alternate history. We should also, once again, question the moral relevance of this hypothetical involving continued mutual isolation: If world history had transpired without colonization and enslavement, then there would — *perhaps* — now be affluent people in Europe and very poor ones in Africa. But these would be persons and populations entirely different from those now actually living there, who in fact are very deeply shaped and scarred by their continent's involuntary encounter with European invaders. So we cannot tell starving Africans that *they* would be starving and *we* would be affluent even if the crimes of colonialism had never occurred. Without these crimes there would not be the actually existing radical inequality which consists in *these* persons being affluent and *those* being extremely poor.

Similar considerations also refute the moral relevance of subjunctive comparison with a *hypothetical* baseline — the claim, for instance, that even more people would live and die even more miserably in some fictional state of nature than in this world as we have made it. In response, there are many different ways of describing the ‘state of nature,’ and it is unclear from the received literature offering and discussing such descriptions how one of them can be singled out as the morally uniquely appropriate specification. Moreover, it is doubtful that *any* coherently describable state of nature on this planet would be able to match our globalized civilization’s record of sustaining a stable death toll of 18 million premature deaths per year from poverty-related causes (cf. Pogge 2002: 136-9). If no such state of nature can be described, then it cannot be said that the present global order is benefiting the global poor by reducing severe poverty below what it would be in a state of nature. Finally, it still needs to be shown showing how the claim that some people are being harmed now can be undermined by pointing out that people in a state of nature would be even worse off. If such an argument existed, would it not show that anything one person or group does to another counts as a harming only if it reduces the latter below the state-of-nature baseline? If we are not harming the 2735 million human beings we are keeping in severe poverty, then enslavement did not harm the slaves either, if only they were no worse off than people would be in the relevant state of nature.

Baseline comparisons do not then afford a promising ground for denying that the present global institutional order involves violations of the human rights of those impoverished under it — or, indeed, for defending any other institutional schemes from the charge that they involve human rights violations. Recall, for instance, the early decades of the US, when men designed and imposed an institutional order that greatly disadvantaged women. The claim that the imposition of this order violated the human rights of women cannot be refuted by any diachronic comparison with how women had fared before, under British rule. It cannot be refuted by any subjunctive comparison with how women would have been faring under continued British rule or in a state of nature. What matters is whether the imposition of the institutional order in question foreseeably led to severe burdens on women which were reasonably avoidable through a more even-handed institutional design (cf. Pogge 2005b: 61).

2.3.2 *Invoking the Consent of the Global Poor*

Another common way of denying that the present global institutional order is harming the poor, violating their human rights, is by appeal to the venerable precept of *volenti non fit iniuria* — no injustice is being done to those who consent. Someone physically abusing another is not harming him in the morally relevant sense if he has given prior consent to such treatment, for money perhaps or masochistic pleasure. Likewise, a social order under which excess poverty persists is not harming the poor if they have previously consented to the imposition of this order. And consent they surely did! Membership in the WTO is voluntary. Since the poor themselves have signed on to the rules as they are, the imposition of these rules cannot be characterized as harming them.

This line of argument is thoroughly refuted by four mutually independent considerations. First, appeal to consent can defeat the charge of human rights violation only if the human rights in question are alienable and, more specifically, waivable by consent. Yet, on the usual understanding of moral and legal human rights, they cannot be so waived: Persons cannot waive their human rights to personal freedom, political participation, freedom of expression, or freedom from torture. Persons can promise, through a religious vow perhaps, to serve another, to refrain from voting, or to keep silent. But, wherever human rights are respected, such promises are legally unenforceable and thus do not succeed in waiving the right in question. There are various reasons for conceiving human rights in this way: A person changes over time, and her later self has a vital interest in being able to avoid truly horrific burdens her earlier self had risked or incurred. Moreover, the option of placing such burdens on one’s future self is likely to be disadvantageous even to the earlier self by encouraging predators seeking to elicit a waiver from this earlier self through manipulation of her or

of her circumstances — for instance, by getting her into a life-threatening situation from which one then offers to rescue her at the price of her permanent enslavement (Pogge 1989: 49-50). Finally, waivers of human rights impose considerable burdens on third parties who will be (more or less directly) confronted with the resulting distress of people enslaved or tortured or starving.

Second, even assuming that human rights to basic necessities are waivable, an appeal to consent cannot justify the severe impoverishment of children who are greatly overrepresented among those suffering severe poverty and its effects (note 2). Of roughly 18 million annual deaths from poverty-related causes, 10.6 million are children under five (note 4). Does anyone really want to claim that these small children have consented to our global order — or that anyone else is entitled to consent to their horrifying fate on their behalf? Insofar as the present global order is, foreseeably, greatly suboptimal in terms of avoiding severe poverty of children, the claim that this order violates their human rights cannot be blocked by any conceivable appeal to consent.

Third, most countries containing severely impoverished people were and are not meaningfully democratic. For example, Nigeria's accession to the WTO, on 1 January 1995, was effected by its vicious military dictator Sani Abacha. Myanmar's, on the same day, by the notorious SLORC junta (State Law and Order Restoration Council). Indonesia's, on the same day, by murderous kleptocrat Suharto. Zimbabwe's, on 5 March 1995, by brutal Robert Mugabe. And that of Zaire (since renamed the Congo), on 27 March 1997, by hated dictator Mobutu Sese Seko. These rulers consented — presumably for good prudential reasons. But does their success in subjecting a population to their rule by force of arms give such mass murderers the right to consent on behalf of those they are oppressing? Does this success entitle *us* to count the rulers' signatures as the populations' consent? On any credible account of consent, the answer is no. We cannot invalidate the complaint of those now suffering severe poverty by appealing to the prior consent of their ruler when this ruler himself lacks any moral standing to consent on their behalf.

Fourth, insofar as very poor people did and do consent, through a meaningfully democratic process, to some particular global institutional arrangement, the justificatory force of such consent is weakened when this consent is compelled. Thus it is doubtful that taking all your possessions could be justified by consent you gave when doing so was your only escape from drowning after a boating accident. To be sure, you are better off penniless than dead, and in this sense your consent was rational. But it remains tainted by the fact that you had no other tolerable option.

The justificatory force of consent given in calamitous circumstances is even weaker when the calamity is partly due to those whose conduct this consent is meant to justify. If your boating accident was caused by your would-be rescuer, for example, your consent to give her your possessions if she rescues you is of even more dubious justifying force. Poor countries need trade for development. They do not get fair trading opportunities under the WTO regime; but one that failed to sign up would find its trading opportunities even more severely curtailed. Any poor country is forced to decide about whether to sign up to the WTO rules against the background of other rules that it cannot escape and that make it extremely costly not to sign up. One such rule is, for instance, that the people and firms of the developing world may not freely offer their products and services to people in rich countries. This rule enables the rich countries to exact a price for whatever limited access to their markets they are prepared to offer. Part of this price is that the intellectual property rights of rich-country corporations must be respected and enforced. Poor-country governments must help collect rents for those corporations, thereby driving up the cost of pharmaceuticals for their own populations. Paying this price makes sense perhaps for poor countries, given their calamitous circumstances. But this calamity is due to a rule that the rich countries impose unilaterally, without any consent by the poor.¹³

¹³ The discussion of the 'emerging norm of democratic governance' in Susan Marks (2000) runs parallel to my thoughts here in three respects: The notion that the populations of the poor countries are somehow consenting to the conditions that are being imposed on them plays an important

One may think that this rule is so natural and obvious that any calamity it may entail cannot be attributed to those who are imposing it: Surely, any country is entitled to restrict access to its territory and markets as it pleases, regardless of the economic consequences for foreigners. Well, not too long ago, the rich countries proclaimed the opposite to be natural and obvious, when they forcefully insisted on their right to sell opium in China for example.¹⁴ And the claimed right of the US, Canada, Australia and New Zealand to exclude outsiders from their territories and markets is further undermined by the historical path on which their present occupants have come to possess them.

It is worth mentioning in this context yet another popular fallacy often adduced in justification of the *status quo*. As elaborate empirical research shows, poor countries that embrace the new global rules perform better, economically, than countries that don't. This is taken to prove that the new global rules benefit the poor countries. To see the fallacy, consider this parallel reasoning. Suppose empirical research had shown that around 1940 smaller European states collaborating with the fascist alliance performed better than the rest. Would this have proved that the new dominance of this fascist alliance was good for small European states? Of course not. Drawing this conclusion, one would be conflating two separate questions: First, *given* the dominance of fascism in Continental Europe, is it better for a small state to cooperate or not? Second, is the fascist dominance in Continental Europe itself better for small European states than, say, the hypothetical dominance of parliamentary democracies? However obvious the fallacy is in this case, its analogue is endlessly adduced in the contemporary globalization debates, where many fail to distinguish the two analogous questions: First, *given* the dominance of the rich countries and of their rules and organizations (WTO, World Bank, IMF, OECD, G7), is it better for a poor country to cooperate or not? Second, is the dominance of these rich-country rules and organizations itself better for the poor countries than, say, the full abolition of protectionist constraints?

2.3.3 Invoking the Flaws of the Poor Countries' Social Institutions and Rulers

A further, popular way of denying that the present global institutional order is harming the poor points once more to the great differences among developing countries' economic performance. The success stories — such as the Asian tigers and China — show that poor countries *can* defeat severe poverty under the global order as it is, hence that this order is not inhospitable to poverty eradication. Poor people in countries where severe poverty is not melting away therefore have only their own social institutions and governments to blame.

This reasoning involves a some-all fallacy. The fact that *some* individuals born into poverty become millionaires does not show that *all* such persons can do likewise (cf. Cohen 1988: 262-3). The reason is that the pathways to riches are sparse. They are not rigidly limited, to be sure, but even an affluent country clearly cannot achieve the kind of economic growth rates needed for everyone to become a millionaire (holding fixed the value of the currency and the real income millionaires can now enjoy). The same holds true for developing countries. The Asian tigers (Hong Kong, Taiwan, Singapore and South Korea) achieved impressive rates of economic growth and poverty reduction. They did so through a state-sponsored build-up of industries that mass produce low-tech consumer

ideological role in the rich countries. Even genuinely democratic governance in poor countries cannot actually justify these conditions. And progress toward such democratic governance is nonetheless desirable. The next subsection (2.3.3) substantiates the additional point that present international law, shaped in the interest of the affluent countries, exerts a powerful influence *against* democratic governance in the poor countries.

¹⁴ In the middle of the 19th century, Great Britain and other Western powers prosecuted a series of 'opium wars' against China. The first invasion was initiated in 1839 when Chinese authorities in Canton (Guangzhou) confiscated and burned opium brought in illegally by foreign traders (www.druglibrary.org/schaffer/heroin/opiwar1.htm).

products. These industries were globally successful by using their considerable labor-cost advantage to beat competitors in the developed countries and by drawing on greater state support and/or a better-educated workforce to beat competitors in other developing countries.¹⁵ Building such industries was hugely profitable for the Asian tigers. But if many other poor countries had adopted this same developmental strategy, competition among them would have rendered it much less profitable.

Over the last two decades, China has been the great success story, achieving phenomenal growth in exports and per capita income. So China's example is now often used to argue that the rules of the world economy are favorable to the poor countries and conducive to poverty eradication. These arguments commit the same some-all fallacy. Exporters in the developing countries compete over the same heavily protected rich-country markets (note 8). Thanks to its extraordinary ability to deliver quality products cheaply in large quantities, China has done extremely well in this competition. But this great success has had catastrophic effects in many other developing countries by reducing their exporters' market share and export prices. To be sure, the world economy as presently structured is not a constant-sum game, where any one player's gain must be another's loss. Yet, outcomes are strongly interdependent. We cannot conclude, therefore, that the present global institutional order, though less favorable to the poor countries than it might be, is still favorable enough for all of them to do as well as the Asian tigers and then China have done in fact.

Still, could the poor countries on the whole not do much better under the present global order than they are doing in fact? And must the present global order then not be acquitted of responsibility for any excess poverty that would have been avoided if the political elites in the poor countries were less corrupt and less incompetent?

Suppose the two sets of relevant causal factors — the global institutional order and the economic regimes and policies of the countries in which severe poverty persists — were symmetrically related so that each set of factors is necessary for the current reproduction of severe poverty worldwide. Then, if we insist that the global factors must be absolved on the ground that modification of national factors would suffice to eradicate world poverty, defenders of national factors could insist, symmetrically, that these national factors must be absolved on the ground that modification of global factors would suffice to eradicate world poverty. Acquitting both sets of factors on these grounds, we would place their cooperative production of huge harms beyond moral criticism.

The implausibility of such an assessment can perhaps be illustrated through a more straightforward interactional case. Suppose two upstream tribes release pollutants into a river on which people downstream depend for their survival. And suppose that each of the pollutants causes only minor harm, but that, when mixed, they react to form a lethal poison that kills many people downstream. In this case, both upstream tribes can deny responsibility, each insisting that the severe harm would not materialize if the other upstream tribe stopped its polluting activity. Such a denial is implausible. Both upstream tribes are required to stop the severe harm they cause together. They can cooperate jointly to discharge this responsibility. Failing that, each has a duty to stop its pollution and each is fully responsible for any harm that would not have materialized but for the pollutants it has released (cf. Pogge 2005b: 63-4).

The persistence of severe poverty worldwide is importantly analogous to the harms suffered by the people downstream. It is true — as the defenders of the rich countries and of their present globalization project point out — that most severe poverty would be avoided, despite the current unfair global order, if the national governments and elites of the poor countries were genuinely committed to 'good governance' and poverty eradication. It is also true — as the defenders of

¹⁵ It also helped that the US, eager to establish healthy capitalist economies as a counterweight to Soviet influence in the region, allowed the tigers free access to its market even while they maintained high tariffs to protect their own.

governments and elites in the poor countries insist — that most severe poverty would be avoided, despite the corrupt and oppressive regimes holding sway in so many developing countries, if the global institutional order were designed to achieve this purpose. This mutual finger-pointing serves both sides well, convincing many affluent citizens in rich and poor countries that they and their government are innocent in the catastrophe of world poverty. But on reflection it is clear that, while each side is right in pointing at the other, neither is right in acquitting itself. Like the two upstream tribes, each side is fully responsible for its marginal contribution to the deprivations they together produce. The ‘multiplicative’ cooperation of causal factors thus not merely fails to decrease, but *increases* total responsibility. This is analogous to how two criminals, if each makes a necessary contribution to a homicide, are each legally and morally fully responsible for that single death.

This response suffices to maintain the responsibility of the citizens and governments of the rich countries: They can be responsible for the severe poverty of even those people who would not be poor if their countries were better governed.

Still, by assuming symmetry between the two sets of relevant causal factors, the response is too simple, failing fully to expose the responsibility of the rich countries and of their globalization project. There is one important asymmetry. While national institutional arrangements and policies in the poor countries have very little influence on the design of the global order, the latter has a great deal of influence on the former. Yes, the social institutions and policies of many poor countries are far from optimal in terms of domestic poverty avoidance. But substantial improvement in this set of causal factors is unlikely so long as global institutional arrangements remain the way they are. The global institutional order exerts its pernicious influence on the evolution of world poverty not only directly, in the ways already discussed, but also indirectly through its influence on the national institutions and policies of the developing countries. Oppression and corruption, so prevalent in many poor countries today, are themselves very substantially produced and sustained by central features of the present global order.

It was only in 1999, for example, that the developed countries finally agreed to curb their firms’ bribery of foreign officials by adopting the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.¹⁶ Until then, most developed states did not merely legally authorize their firms to bribe foreign officials, but even allowed them to deduct such bribes from their taxable revenues, thereby providing financial inducements and moral support to the practice of bribing politicians and officials in the poor countries.¹⁷ This practice diverts the loyalties of officials in these countries and also makes a great difference to which persons are motivated to scramble for public office in the first place. Developing countries have suffered staggering losses as a result, most clearly in the awarding of public contracts. These losses arise in part from the fact that bribes are priced in: Bidders on contracts must raise their price in order to get paid enough to pay the bribes. Additional losses arise as bidders can afford to be non-competitive, knowing that the success of their bid will depend on their bribes more than on the substance of their offer. Even greater losses arise from the fact that officials focused on bribes pay little attention to whether the goods and services they purchase on their country’s behalf are of good quality or even needed at all. Much of what developing countries have imported over the decades has been of no use

¹⁶ The convention came into effect in February 1999 and has been widely ratified since (www.oecd.org/home).

¹⁷ In the United States, the post-Watergate Congress sought to prevent the bribing of foreign officials through its 1977 Foreign Corrupt Practices Act, passed after the Lockheed Corporation was found to have paid — not a modest sum to some third-world official, but rather — a US\$2 million bribe to Prime Minister Kakuei Tanaka of powerful and democratic Japan. Not wanting its firms to be at a disadvantage vis-à-vis their foreign rivals, the US was a major supporter of the Convention, as was the non-governmental organization Transparency International, which helped mobilize public support in many OECD countries.

to them — or even harmful, by promoting environmental degradation or violence (bribery is especially pervasive in the arms trade). Preliminary evidence suggests that the new *Convention* is ineffective in curbing bribery by multinational corporations.¹⁸ But even if it were effective, it would be difficult to purge the pervasive culture of corruption that is now deeply entrenched in many developing countries thanks to the extensive bribery they were subjected to during their formative years.

The issue of bribery is part of a larger problem. The political and economic elites of poor countries interact with their domestic inferiors, on the one hand, and with foreign governments and corporations, on the other. These two constituencies differ enormously in wealth and power. The former are by and large poorly educated and heavily preoccupied with the daily struggle to make ends meet. The latter, by contrast, have vastly greater rewards and penalties at their disposal. Politicians with a normal interest in their own political and economic success can thus be expected to cater to the interests of foreign governments and corporations rather than to competing interests of their much poorer compatriots. And this, of course, is what we find: There are plenty of poor-country governments that came to power or stay in power only thanks to foreign support. And there are plenty of poor-country politicians and bureaucrats who, induced or even bribed by foreigners, work against the interests of their people: *for* the development of a tourist-friendly sex industry (whose forced exploitation of children and women they tolerate and profit from), *for* the importation of unneeded, obsolete, or overpriced products at public expense, *for* the permission to import hazardous products, wastes, or factories, *against* laws protecting employees or the environment, and so on.

To be sure, there would not be such huge asymmetries in incentives if the poor countries were more democratic, allowing their populations a genuine political role. Why then are most of these countries so far from being genuinely democratic? This question brings further aspects of the current global institutional order into view.

It is a very central feature of this order that any group controlling a preponderance of the means of coercion within a country is internationally recognized as the legitimate government of this country's territory and people — regardless of how this group came to power, of how it exercises power and of the extent to which it is supported or opposed by the population it rules. That such a group exercising effective power receives international recognition means not merely that we engage it in negotiations. It means also that we accept this group's right to act for the people it rules, that we, most significantly, confer upon it the privileges freely to dispose of the country's natural resources (international resource privilege) and freely to borrow in the country's name (international borrowing privilege).

The *resource privilege* we confer upon a group in power is much more than mere acquiescence in its effective control over the natural resources of the country in question. This privilege includes the power¹⁹ to effect legally valid transfers of ownership rights in such resources. Thus a corporation that has purchased resources from the Saudis or Suharto, or from Mobuto or Sani Abacha, has thereby become entitled to be — and actually *is* — recognized anywhere in the world as the legitimate owner of these resources. This is a remarkable feature of our global order. A group that overpowers the guards and takes control of a warehouse may be able to give some of the merchandise to others, accepting money in exchange. But the fence who pays them becomes merely the possessor, not the owner, of the loot. Contrast this with a group that overpowers an elected

¹⁸ 'Plenty of laws exist to ban bribery by companies. But big multinationals continue to sidestep them with ease' — so the current situation is summarized in 'The Short Arm of the Law,' (*Economist* 2 March 2002: 63-65, at 63).

¹⁹ As understood by Wesley Hohfeld (1964), a power involves the legally recognized authority to alter the distribution of first-order liberty rights, claim rights and duties. Having a power or powers in this sense is distinct from having power (i.e., control over physical force and/or means of coercion).

government and takes control of a country. Such a group, too, can give away some of the country's natural resources, accepting money in exchange. In this case, however, the purchaser acquires not merely possession, but all the rights and liberties of ownership, which are supposed to be — and actually *are* — protected and enforced by all other states' courts and police forces. The international resource privilege, then, is the legal power to confer globally valid ownership rights in a country's resources.

This international resource privilege has disastrous effects in poor but resource-rich countries, where the resource sector constitutes a large segment of the national economy. Whoever can take power in such a country by whatever means can maintain his rule, even against widespread popular opposition, by buying the arms and soldiers he needs with revenues from the export of natural resources and with funds borrowed against future resource sales. The resource privilege thus gives insiders strong incentives toward the violent acquisition and exercise of political power, thereby causing coup attempts and civil wars. Moreover, it also gives outsiders strong incentives to corrupt the officials of such countries who, no matter how badly they rule, continue to have resources to sell and money to spend.

Nigeria is a case in point. It produces about 2 million barrels of oil per day which, depending on the oil price, fetch some \$10-20 billion annually, or more, one quarter to one half of GDP. Whoever controls this revenue stream can afford enough weapons and soldiers to keep himself in power regardless of what the population may think of him. And so long as he succeeds in doing so, his purse will be continuously replenished with new funds with which he can cement his rule and live in opulence. With such a powerful incentive, it cannot be surprising that, during 28 of the past 35 years, Nigeria has been ruled by military strongmen who took power and ruled by force.²⁰ Nor can it be surprising that even a polished elected president fails to stop gross corruption: Olusegun Obasanjo knows full well that, if he tried to spend the oil revenues solely for the benefit of the Nigerian people, military officers could — thanks to the international resource privilege — quickly restore their customary perks.²¹ With such a huge price on his head, even the best-intentioned president could not end the embezzlement of oil revenues and survive in power.

The incentives arising from the international resource privilege help explain what economists have long observed and found puzzling: the significant *negative* correlation between resource wealth (relative to GDP) and economic performance.²² Two Yale economists confirm this explanation through a regression analysis, which shows that the causal link from resource wealth to poor economic performance is mediated through reduced chances for democracy.²³ Holding the global

²⁰ Cf. 'Going on down,' in *Economist* (8 June 1996: 46-8) A later update says: 'oil revenues [are] paid directly to the government at the highest level The head of state has supreme power and control of all the cash. He depends on nobody and nothing but oil. Patronage and corruption spread downwards from the top' (*Economist* 12 December 1998: 19). Cf. also www.eia.doe.gov/emeu/cabs/nigeria.html.

²¹ Because Obasanjo was the chair of Transparency International's Advisory Council (cf. note 17), his election in early 1999 had raised great hopes. These hopes were sorely disappointed. Nigeria still ranks at the bottom of TI's own Corruption Perception Index (www.transparency.org/cpi/2004/cpi2004).

²² This 'resource curse' or 'Dutch disease' is exemplified by many developing countries which, despite great natural wealth, have achieved little economic growth and poverty reduction over the last decades (UNDP 2004: 184-7; UNDP 2003: 278-81).

²³ 'All petrostates or resource-dependent countries in Africa fail to initiate meaningful political reforms. ... besides South Africa, transition to democracy has been successful only in resource-poor countries' (Lam and Wantchekon 1999: 31). 'Our cross-country regression confirms our theoretical insights. We find that a one percentage increase in the size of the natural resource sector [relative to

order fixed as a given background, the authors do not consider how the causal link they analyze itself depends on global rules that grant the resource privilege to any group in power, irrespective of its domestic illegitimacy.

The *borrowing privilege* we confer upon a group in power includes the power to impose internationally valid legal obligations upon the country at large. Any successor government that refuses to honor debts incurred by an ever so corrupt, brutal, undemocratic, unconstitutional, repressive, unpopular predecessor will be severely punished by the banks and governments of other countries. At minimum it will lose its own borrowing privilege by being excluded from the international financial markets. Such refusals are therefore very rare, as governments, even when newly elected after a dramatic break with the past, are compelled to pay the debts of their ever so awful predecessors.

The international borrowing privilege makes three important contributions to the incidence of oppressive and corrupt elites in the developing world. First, this privilege facilitates borrowing by destructive rulers who can borrow more money and can do so more cheaply than they could do if they alone, rather than the whole country, were obliged to repay. In this way, the borrowing privilege helps such rulers maintain themselves in power even against near-universal popular discontent and opposition.²⁴ Second, the international borrowing privilege imposes upon democratic successor regimes the often huge debts of their corrupt predecessors. It thereby saps the capacity of such democratic governments to implement structural reforms and other political programs, thus rendering such governments less successful and less stable than they would otherwise be. (It is small consolation that putschists are sometimes weakened by being held liable for the debts of their democratic predecessors.) Third, the international borrowing privilege strengthens incentives toward coup attempts: Whoever succeeds in bringing a preponderance of the means of coercion under his control gets the borrowing privilege as an additional reward.²⁵

The ongoing international resource and borrowing privileges are complemented by the international treaty privilege, which recognizes any person or group in effective control of a country as entitled to undertake binding treaty obligations on behalf of its population, and the international arms privilege, which recognizes such a person or group as entitled to use state funds to import the arms needed to stay in power. Like the erstwhile official tolerance of the bribing of poor-country officials, these privileges are highly significant features of the global order which tend to benefit the governments, corporations and citizens of the rich countries and the political-military elites of the poor countries at the expense of the vast majority of ordinary people in the poor countries. Thus, while the present global order indeed does not make it impossible for some poor countries to achieve genuine democracy and sustained economic growth, central features of it contribute greatly to poor countries' failing on both counts. These features are crucial for explaining the inability and

GDP] generates a decrease by half a percentage point in the probability of survival of democratic regimes' (ibid. 35). See also Wantchekon (1999).

²⁴ Because they have collateral to offer, the rulers of resource-rich developing countries have enjoyed greater freedom than their peers to supplement their income from resource sales by imposing huge debt service burdens on their countries (UNDP 2004: 202-5). Needless to say, little of the borrowed funds were channeled into productive investments, e.g. in education and infrastructure, which would augment economic growth and generate additional tax revenues that could help meet interest and repayment obligations. Much was taken for personal use or expended on 'internal security' and the military.

²⁵ The undemocratic character of the international borrowing and treaty privileges is discussed by Crawford (1994), who focuses paradigmatically on the *Tinoco Arbitration* and thus on the second of the three problems I have outlined. His discussion of the pros and cons of honoring the 'standard of effective control' thus misses the important contributions this standard makes to incentivizing and entrenching undemocratic acquisitions and exercises of governmental power.

especially the unwillingness of these countries' leaders to pursue more effective strategies of poverty eradication. And they are crucial therefore for explaining why global inequality is increasing so rapidly that substantial global economic growth since the end of the Cold War has not reduced income poverty and malnutrition (cf. note 12) — *despite* substantial technological progress and global economic growth, *despite* a huge reported poverty reduction in China,²⁶ *despite* the post-Cold-War 'peace dividend,'²⁷ *despite* a 32-percent drop in real food prices since 1985,²⁸ *despite* official development assistance and *despite* the efforts of international humanitarian and development organizations.

2.4 Conclusion

In just 15 years since the end of the Cold War, some 270 million human beings have died prematurely from poverty-related causes, with some 18 million more added each year. Much larger numbers of human beings must live in conditions of life-threatening poverty that make it very difficult for them to articulate their interests and effectively to fend for themselves and their families. This catastrophe was and is happening, foreseeably, under a global institutional order designed for the benefit of the affluent countries' governments, corporations and citizens and of the poor countries' political and military elites. There are feasible alternative designs of the global institutional order, feasible alternative paths of globalization, under which this catastrophe would have been largely avoided. Even now severe poverty could be rapidly reduced through feasible reforms that would modify the more harmful features of this global order or mitigate their impact.

Take the unconditional international resource privilege for example. It is beneficial to the affluent countries by giving us access to a larger, cheaper and more reliable supply of foreign natural resources, because we can acquire ownership of them from anyone who happens to exercise effective power without regard to whether the country's population either approves the sale or benefits from the proceeds. Unconditional international resource and borrowing privileges are also highly advantageous to many a putschist or tyrant in the poor countries, for whom they secure the funds he needs to maintain himself in power even against the will of a large majority of his compatriots. Such privileges are, however, an unmitigated disaster for the global poor who are being dispossessed through loan and resource agreements over which they have no say and from which they do not benefit.²⁹

The example illustrates the clear-cut injustice of the present global institutional order. It also illustrates that this injustice does not consist in too little aid being dispensed to the poor. There is still so much severe poverty, and so much need for aid, only because the poor are systematically impoverished by present institutional arrangements and have been so impoverished for a long time during which our advantage and their disadvantage have been compounded. Eradicating severe

²⁶ The number of Chinese living below \$1/day is reported to have declined by 31%, or 97 million, and the number of Chinese living below \$2/day by 19%, or 137 million, between 1987 and 2001 (Chen and Ravallion 2004: 153).

²⁷ Thanks to the end of the Cold War, military expenditures worldwide have declined from 4.7% of aggregate GDP in 1985 to 2.9% in 1996 (UNDP 1998: 197) and to about 2.8% or \$956 billion in 2003 (Stockholm International Peace Research Institute). If global military expenditures were still at the old 4.7% level, they would have been \$665 billion higher in 2003 than they actually were (at 4.7% of the \$34,491 billion global product for 2003).

²⁸ The World Bank Food Index fell from 139.3 in 1980 to 100 in 1990 and then to 90.1 in 2002. These statistics are published by the World Bank's Development Prospects Group. Cf. www.worldbank.org/prospects/gep2004/appendix2.pdf, 277.

²⁹ Cf. Pogge (2002: ch. 6), for an idea about how to modify the international resource and borrowing privileges.

poverty at a morally acceptable speed would impose substantial costs and opportunity costs on the affluent countries (note 34). But acceptance of such costs is not generous charity, but required compensation for the harms produced by unjust global institutional arrangements whose past and present imposition by the affluent countries brings great benefits to their citizens.³⁰

Given that the present global institutional order is foreseeably associated with such massive incidence of avoidable severe poverty, its (uncompensated) imposition manifests an ongoing human rights violation — arguably the largest such violation ever committed in human history. It is not the *gravest* human rights violation, in my view, because those who commit it do not intend the death and suffering they inflict either as an end or as a means. They merely act with willful indifference to the enormous harms they cause in the course of advancing their own ends while going to great lengths to deceive the world (and sometimes themselves) about the impact of their conduct. But still, the *largest*.

To be sure, massive poverty caused by human agency is certainly not unprecedented. British colonial institutions and policies are blamed for up to a million poverty deaths in the Irish Potato Famine of 1846-49 and for about three million poverty deaths in the Great Bengal Famine of 1943-44. Up to 30 million poverty deaths in China during 1959-62 are traced to Mao Tse-Tung's insistence on continuing the policies of his 'Great Leap Forward' even when their disastrous effects became apparent. Still, these historical catastrophes were of more limited duration and even at their height did not reach the present and ongoing rate of 18 million poverty deaths *per annum*.

The continuing imposition of this global order, essentially unmodified, constitutes a massive violation of the human right to basic necessities — a violation for which the governments and electorates of the more powerful countries bear primary responsibility. This charge cannot be defeated through appeal to baseline comparisons, by appeal to the consent of the global poor themselves, or by appeal to other detrimental causal factors that the present global order may merely do too little to counteract.

3. The Promise of Global Institutional Reform

Human rights impose on us a negative duty not to contribute to the imposition of an institutional order that foreseeably gives rise to an avoidable human rights deficit without making compensating protection and reform efforts for its victims. In analogy to the negative duties not to break a promise or contract and not to make emergency use of another's property without compensation, this negative institutional duty may impose positive obligations on advantaged participants: obligations to compensate for their contribution to the harm. Such compensation can take the form of protection efforts, perhaps through donations to international NGOs such as Oxfam, or it can focus on institutional reform. Let me comment on the importance of the latter option.

In the modern world, the rules governing economic transactions — both nationally and internationally — are the most important causal determinants of the incidence and depth of severe poverty and of the human rights deficit more generally. They are most important because of their great impact on the economic distribution within the jurisdiction to which they apply. Thus, even relatively minor variations in a country's laws about tax rates, labor relations, social security, and access to health care and education can have a much greater impact on poverty than even large changes in consumer habits or in the policies of a major corporation. This point applies to the global institutional order as well. Even small changes in the rules governing international trade, lending, investment, resource use, or intellectual property can have a huge impact on the global incidence of life-threatening poverty.

³⁰ Cf. Pogge (2002: ch. 8), proposing such a compensation scheme in the form of a Global Resources Dividend.

Another reason why rules governing economic transactions are the most important causal determinants of the incidence and depth of poverty in the modern world derives from their greater visibility. To be sure, like the conduct of individual and collective agents, rule changes can have unintended and even unforeseeable effects. But with rules it is much easier to diagnose such effects and to make corrections. Assessing adjustments of the rules within some particular jurisdiction is relatively straightforward: One can try to estimate how a rise in the minimum wage, say, has affected the unemployment rate and *per capita* income in the bottom quintile. (Of course, there are other things happening in the economy besides the change in the minimum wage, so the exercise is complex and imprecise. Still, exercises of this sort can be done, and *are* done, sufficiently well in many countries.) It is more difficult, by contrast, to assess the relative impact of variations in the conduct of individual or collective agents. Such an assessment can be confined to the persons immediately affected — for example, to the employees of a corporation or to the inhabitants of a town in which an aid agency is running a project. But such a confined assessment is always vulnerable to the charge of ignoring indirect effects upon outsiders or future persons.

A further reason why rules governing economic transactions are the most important causal determinants of the incidence and depth of poverty in the modern world is because morally successful rules are so much easier to sustain than morally successful conduct. This is so, because individual and collective agents are under continuous counter-moral pressures not merely from their ordinary self-interested concerns, but also from their competitive situation as well as from considerations of fairness. These phenomena are illustrated by the case of competing corporations, each of which may judge that it cannot afford to pass up immoral opportunities to take advantage of its employees and customers because such unilateral self-restraint would place it at an unfair competitive disadvantage vis-à-vis its less scrupulous competitors. Domestically, this sort of problem can be solved through changes in the legal rules that require all corporations, on pain of substantial penalties, to observe common standards in their treatment of customers and employees. Corporations are often willing to support such legislation (to improve the image of their industry, perhaps) even while they are unwilling to risk their competitive position through unilateral good conduct.

Similar considerations apply in the international arena, where corporations and governments compete economically. Given their concern not to fall behind in this competition and not to be unfairly handicapped through unilateral moral efforts and restraints, it is perhaps not surprising (though still appalling) that individuals, corporations and governments have been so reluctant to make meaningful efforts toward eradicating global poverty.³¹ Again, it is possible that affluent governments and corporations could be brought to do a lot more by accepting and complying with legal rules that apply to them all and thereby relieve each of the fear that its own good conduct will unfairly disadvantage it and cause it to lose ground against its competitors. Successful efforts to reduce poverty within states exemplify this model of structural reform rather than individual moral effort.

³¹ Their current effort amounts to \$12.7 billion annually — 0.05% of the gross national incomes of the affluent countries — consisting of \$7 billion annually from individuals and corporations (UNDP 2003: 290) and \$5.7 billion annually from governments for basic social services (http://millenniumindicators.un.org/unsd/mi/mi_series_results.asp?rowId=592). Aggregate official development assistance is some 12 times higher, but the vast majority of it is spent for the benefit of agents more capable of reciprocations, as is well expressed in this statement recently removed from the USAID's main website: 'The principal beneficiary of America's foreign assistance programs has always been the United States. Close to 80 percent of the U.S. Agency for International Development's (USAID's) contracts and grants go directly to American firms. Foreign assistance programs have helped create major markets for agricultural goods, created new markets for American industrial exports and meant hundreds of thousands of jobs for Americans.'

To be sure, this thought is not new, and governments have been very reluctant to commit themselves, even in joint mutuality, to serious global anti-poverty measures. Their solemn promise to halve global poverty by 2015 has been reiterated — in cleverly weakened formulations³² — but has yet to result in serious implementation efforts. Official development assistance (ODA) from the affluent countries, once supposed to reach 1%, then 0.7% of their combined GNPs, has actually shrunk throughout the 1990s, from 0.33% in 1990 to 0.22% in 2000.³³

This discouraging historical evidence suggests that improvements in the global institutional order are difficult to achieve and difficult to sustain. However, this fact does not undermine my hypothesis that such structural improvements are *easier* to achieve and much *easier* to sustain than equally significant unilateral improvements in the conduct of individual and collective agents. We know how much money individuals, corporations and the governments of the affluent countries are now willing to set aside for global poverty eradication: about \$12.7 billion annually (note 31). This amount is very small in comparison to the harms inflicted on the global poor by evident injustices in the present global order (discussed in part 2 above). It is very small also in comparison to what would be required for substantial progress: The amount needed in the first few years of a serious offensive against poverty is closer to \$300 billion annually.³⁴ It is not realistic to hope that we can achieve such a 27-fold increase in available funds through a moral change of heart of the relevant agents: affluent individuals, major corporations and the governments of the rich countries. It is *more* realistic — though admittedly still rather unrealistic — to achieve substantial progress on the poverty front through institutional reforms that make the global order less burdensome on the global poor. Accepting such reforms, affluent countries would bear some opportunity costs of making the international trade, lending, investment and intellectual-property regimes fairer to the global poor as well as some costs of compensating for harms done — for example by helping to fund basic health facilities, vaccination programs, basic schooling, school lunches, safe water and sewage systems, basic housing, power plants and networks, banks and microlending, road, rail and communication links where these do not yet exist. If such a reform program is to gain and maintain the support of the

³² At the World Food Summit in Rome, organized by the FAO in November 1996, the 186 participating governments agreed to ‘pledge our political will and our common and national commitment to achieving food security for all and to an on-going effort to eradicate hunger in all countries, with an immediate view to reducing the *number* of undernourished people to half their present level no later than 2015’ (*Rome Declaration*, my emphasis). The *UN Millennium Declaration* proclaimed in September of 2000 commits states ‘to halve, by the year 2015, the *proportion* of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger’ (my emphasis). While the old formulation aimed for a 50% reduction in the number of poor people between 1996 and 2015, the new formulation — taking advantage of the 45%-increase projected for 1990-2015 in the population of the developing countries and a large 1990-2000 poverty reduction in China — aims for only a 19% reduction between 2000 and 2015. See Pogge (2004) for fuller analysis.

³³ Cf. UNDP (2002: 202). The US led the decline by reducing its ODA from 0.21 to 0.10% of GNP in a time of great prosperity culminating in enormous budget surpluses (ibid.). After the invasions of Afghanistan and Iraq, ODA is now growing, in part through disbursements to these and neighboring states (General Musharraf’s Pakistan is now the largest ODA recipient). For 2003, ODA is reported at 0.15% for the US and at 0.25% for the affluent countries collectively (www.oecd.org/dataoecd/19/52/34352584.pdf).

³⁴ Cf. Pogge (2002: ch. 8), basing this ballpark figure on the aggregate poverty gap relative to the World Bank’s higher \$2/day poverty line. Amazingly, \$300 billion is only 0.87% of the global product or 1.08% of the combined gross national incomes of the affluent countries (World Bank 2005: 257) — considerably less than the annual US defense budget (ca. \$400 billion) or the annual ‘peace dividend’ the developed West is reaping from the end of the Cold War (ca. \$527 billion, cf. note 27).

citizens and governments of affluent countries, it must distribute such costs and opportunity costs fairly among them in a reliable and transparent way, assuring them that their competitive position will not be eroded through others' non-compliance.

The path of global institutional reform is far more realistic and sustainable for three obvious reasons. First, the costs and opportunity costs each affluent citizen imposes on herself by supporting structural reform is extremely small relative to the contribution this reform makes to avoiding severe poverty. The reform lowers your family's standard of living by \$900 annually, say, while improving by \$300 annually the standard of living of hundreds of millions of poor families. By contrast, a unilateral donation in the same amount would lower your family's standard of living by \$900 annually while improving by \$300 annually the standard of living of only three poor families. Given such pay-offs, rational agents with some moral concern for the avoidance of severe poverty will be far more willing to support structural reform than to sustain donations.³⁵ Second, structural reform assures citizens that costs and opportunity costs are fairly shared among the more affluent, as discussed. And third, structural reform, once in place, need not be repeated, year after year, through painful personal decisions. Continual alleviation of poverty leads to fatigue, aversion, even contempt. It requires affluent citizens to rally to the cause again and again while knowing full well that most others similarly situated contribute nothing or very little, that their own contributions are legally optional and that, no matter how much they give, they could for just a little more always save yet further children from sickness or starvation. Today, such fatigue, aversion and contempt are widespread attitudes among citizens and officials of affluent countries toward the 'aid' they dispense and its recipients.

For these reasons, I believe that today's vast human rights deficit, especially among the global poor, is best addressed through efforts at global (and national) institutional reform. Relatively small reforms of little consequence for the world's affluent would suffice to eliminate most of this human rights deficit, whose magnitude makes such reforms our most important moral task.

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³⁵ I owe full appreciation of the importance of this point to a discussion with Derek Parfit.

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International Poverty Centre

SBS – Ed. BNDES, 10º andar
70076-900 Brasilia DF
Brazil

povertycentre@undp-povertycentre.org
www.undp.org/povertycentre
Telephone +55 61 2105 5000