

SECTION X

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INTERNATIONAL  
ECONOMIC LAW

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## CHAPTER 20

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# THE ROLE OF INTERNATIONAL LAW IN REPRODUCING MASSIVE POVERTY

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## I. INTRODUCTION

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Each day, some 50,000 human beings—mostly children, mostly female and mostly people of colour—die from starvation, diarrhoea, pneumonia, tuberculosis, malaria, measles, perinatal conditions, and other poverty-related causes. Most of this death toll and the much larger poverty problem it epitomizes are avoidable through minor modifications in the global order that would entail only slight reductions in the incomes of the affluent. Such reforms have been blocked by the governments of the affluent countries which, advancing their own interests and those of their corporations and citizens, are designing and imposing a global institutional order that, continually and foreseeably, produces vast excesses of severe poverty and premature poverty-related 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 close to optimal in terms of poverty avoidance. Should this strategy fail as well, one can still contend that the present global order is not *causing* severe poverty but merely failing to alleviate such poverty as much as it could. I discuss these three strategies in order.

## II. 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’.<sup>1</sup> He adds that:

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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.<sup>2</sup>

FN:2

Accordingly, Rawls holds that our moral responsibility with regard to severe poverty abroad can be fully described as a ‘duty of assistance’.<sup>3</sup>

FN:3

In response, one might detail the continuing legacies of colonialism, slavery, and genocide which have shaped the political culture of many presently poor societies. Leaving these aside, let me focus on the empirical view that, in the post-colonial era, 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 fifty years. Some of them have achieved solid 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. We can see this by considering a parallel case. There may be great variations in the performance of students in one class. These must be due to student-specific factors. Still, it does not follow that these ‘local’ factors fully explain the performance of a class. Teacher and classroom quality, teaching times, reading

<sup>1</sup> Rawls, J., ‘The Law of Peoples’, in Shute, S. and Hurley, S. (eds.), *On Human Rights, The Amnesty Lectures of 1993* (New York: Basic Books 1993), 77.

<sup>2</sup> Rawls, J., *The Law of Peoples, With ‘The Idea of Public Reason Revisited’* (Cambridge, Mass.: Harvard University Press, 1999), 108.

<sup>3</sup> *Ibid.* 37–8, 106–20.

materials, libraries, and other 'global' factors may also play an important role. Dramatic contrasts of success and failure, among students or among less developed countries, do not then show global factors to be causally inert. In the former case, such global factors can greatly influence the overall progress of a class; they can influence the distribution of this progress by being differentially appropriate to the needs and interests of different students; and they can affect the student-specific factors, as when a sexist teacher causes or aggravates motivational deficits in his female students. Analogous to these three possibilities, global institutional factors may greatly influence the evolution of severe poverty worldwide.

Exposure of this popular fallacy does not, however, settle the issue. Dramatic divergences in national poverty trajectories do not prove that decisions about the design of global institutional arrangements do not exert a 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 intra-national economic transactions is profoundly shaped by an elaborate system of treaties and conventions about trade, investments, loans, patents, copyrights, trademarks, double taxation, labour standards, environmental protection, use of seabed resources, and much else. These different parts 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.

### III. THE PANGLOSSIAN VIEW OF THE PRESENT GLOBAL ORDER

If the design of the global institutional order makes a difference, then what has been the impact of the actual design of this order on the evolution of severe poverty worldwide? Here it is often claimed that we live, in this regard, in the best of all possible worlds: that the present global order is nearly optimal in terms of poverty avoidance.

A commonsense way of questioning 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. Such negotiators are likely to care also about their home government's political success and their compatriots' economic prosperity. Second, these nationalist interests are often in tension with the interest in global poverty avoidance. Third, when faced with such conflicts, negotiators for the affluent states generally give precedence to the interests of their own country's government, corporations, and citizens over the interests of the global poor. Fourth,

FN:4 with 77% of the world's social product,<sup>4</sup> the high-income countries enjoy great advantages in bargaining power and expertise, which enable their negotiators to deflect the design of the global order from what would be best for poverty avoidance. Given these four steps, we should expect the design of the global institutional order to reflect 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 much evidence that this counter-hypothesis is true. The present rules favour 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.<sup>5</sup> Other important examples include the World Trade Organization (WTO) regulations on cross-border investment and intellectual property rights, such as the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Treaty of 1995.<sup>6</sup>

FN:6 Such asymmetrical rules increase the share of global economic growth going to the affluent and decrease the share going to the poor 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 affluent countries to impose these asymmetries in the first place. Branko Milanovic<sup>7</sup> reports that real incomes of the poorest 5% of world population declined 20% in the 1988–93 period and another 23% during 1993–8, while real global *per capita* income increased by 5.2% and 4.8% respectively. In 1998, income inequality between the top and bottom 10% of humanity was 71:1 at purchasing power parities (PPPs) and 320:1 at market exchange rates.<sup>8</sup>

FN:7 We can confirm and update his findings with later data. The World Bank reports that, in the high-income Organization for Economic Co-operation and Development (OECD) countries, household final consumption expenditure *per*

<sup>4</sup> World Bank, *World Development Report 2008* (New York: Oxford University Press, 2007), 335.

<sup>5</sup> The monstrosity of these subsidies is frequently lamented by establishment economists such as former World Bank chief economist Nick Stern; (<[siteresources.worldbank.org/INTRES/Resources/stern\\_speech\\_makingtr-workforpoor\\_nov2002.pdf](http://siteresources.worldbank.org/INTRES/Resources/stern_speech_makingtr-workforpoor_nov2002.pdf)>).

<sup>6</sup> See Pogge, T., *World Poverty and Human Rights, Cosmopolitan Responsibilities and Reforms* (2nd edn., Cambridge: Polity Press, 2008), ch. 9, and <[www.cptech.org/ip](http://www.cptech.org/ip)>. All websites were most recently checked in Sept. 2008.

<sup>7</sup> Milanovic, B., *Worlds Apart, Measuring International and Global Inequality* (Princeton: Princeton University Press, 2005), 108.

<sup>8</sup> *Ibid.* 107–8. Many economists prefer to make such comparisons at PPPs. But market exchange rates are the more appropriate measure for estimating the influence (bargaining power and expertise) parties can bring to bear. Market exchange rates are also the appropriate measure for assessing the *avoidability* of poverty. For comparing standards of living, market exchange rates are indeed inappropriate. But PPPs are also problematic for assessing very low incomes because the poor must concentrate their consumption on basic necessities, which are cheaper in poor countries but not as affordable as PPPs would suggest. Reddy, S., and Pogge, T., 'How *Not* to Count the Poor', in Anand, S., Segal, P., and Stiglitz, J. (eds.), *Debates in the Measurement of Global Poverty* (Oxford: Oxford University Press, 2009). Also at [www.socialanalysis.org](http://www.socialanalysis.org).

*capita* (constant 2000 US Dollars) rose 56.3% in real terms during the period 1984–2004. Consumption expenditure reportedly rose a respectable 48.6% at the median, 36.2% at the 20<sup>th</sup> percentile, 32.6% at the 10<sup>th</sup> percentile, and a mere 9.6% over the entire 20-year period at the 1st percentile.<sup>9</sup> There is a clear pattern: global inequality is increasing, and the global poor are not participating proportionately in global economic growth. This pattern is further confirmed by trend data about malnutrition and poverty. The number of malnourished, reported annually by the United Nations Development Programme (UNDP), has ~~been stuck around 800 million for over a decade~~<sup>10</sup>—even while the ranks of the hungry are thinned by millions of deaths each year from poverty-related causes. For 1987–2005, Chen and Ravallion<sup>11</sup> report a 19% drop in the population living below \$1.25 per day but a 6% rise in the population below \$2.50 per day (2005 PPP).

Falling further and further behind, the global poor become ever more marginalized, with their interests ignored in both national and international decision-making. Annual spending power under \$200 per person does not command much attention from international negotiators when *per capita* incomes in the affluent countries are some 200 times higher. And the interests of poor African countries do not carry much weight when the combined gross national incomes of 26 of them, representing over 400 million people, fall short of the annual sales volumes of the world's largest corporations.

Increasing income inequalities accumulate into even larger inequalities of wealth. A World Institute for Development Economics Research (WIDER) study<sup>12</sup> estimates that in 2000 the bottom 50% of the world's adults together had 1.1% of global wealth while the top 10% had 85.1% and the top 1% had 39.9%. The authors stress that their study may understate global wealth inequality because the super-rich are typically not captured in household surveys.<sup>13</sup>

These data should suffice to refute the Panglossian view: the present design of the global order is not optimal in terms of poverty avoidance. It is clear how this value could be better served: the poorest countries should receive financial support toward hiring 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 all the regulations they are required

<sup>9</sup> See <iresearch.worldbank.org/PovcalNet/jsp/index.jsp> (16 June 2007). Full calculations are on file with the author.

<sup>10</sup> UNDP, *Human Development Report 2007/2008* (Houndsmills: Palgrave Macmillan, 2007), 90. Also at <http://hdr.undp.org/en/reports/global/hdr2007>. ~~Compare preceding annual reports. The FAO expects the number to exceed 1 billion in 2008 on account of food prices which have more than doubled since the beginning of 2006 (<www.news.com.au/dailytelegraph/story/0,22049,24363012-5001028,00.html>).~~

<sup>11</sup> Chen, S., and Ravallion, M., 'The Developing World is Poorer than We Thought, but no Less Successful in the Fight against Poverty', table 8, *World Bank Policy Research Working Paper WPS 4703* (Aug. 2008), available at econ.worldbank.org.

<sup>12</sup> Davies, J. B., Sandstrom, S., Shorrocks, A., and Wolff, E. N., *The World Distribution of Household Wealth*, WIDER, 5 Dec. 2006, app. 1, table 10a. At <www.wider.unu.edu>.

<sup>13</sup> *Ibid.*, p. 31.

to implement. Poor countries should face reduced barriers to their exports and should not have to pay for market access by collecting billions in economic rents for 'intellectual property'. The WTO Treaty should include a global minimum wage and minimal global constraints on working hours and working conditions in order to halt the current 'race to the bottom' where poor countries competing for foreign investment must outbid one another by offering ever more exploitable workforces. The affluent countries should be 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, and for the violence caused by our demand for drugs and our war on drugs.

Examples could be multiplied. There clearly are feasible variations to the present global order that would dramatically reduce severe poverty worldwide, far below the current, staggering figures. This order is *not* optimal in terms of poverty avoidance.

#### IV. IS THE PRESENT GLOBAL ORDER MERELY LESS BENEFICIAL THAN IT MIGHT BE?

Can one say that the global institutional order, though clearly and greatly sub-optimal in terms of poverty avoidance, is nonetheless not harming the global poor, not violating their human rights?

This third defense strategy appeals to something like the distinction between acts and omissions. It seeks to diminish the moral significance of the rich states' decision to impose the present design of the global order rather than a foreseeably more poverty-avoiding alternative by assigning this decision the status of a mere omission. Now the rich countries are clearly active in formulating the global economic rules they want, in pressing for their acceptance, and in pursuing their enforcement. The defence 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 excessive poverty. The idea must be that the rules governing the world economy are not actively causing excessive 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 individual and collective agents. Its application to social institutions and rules is at first baffling. When more premature deaths occur under a system of rules than would occur under a feasible alternative, we might say that there are excessive deaths under the existing regime. But how can we distinguish between those excessive deaths that

the existing rules *bring about* and those that these rules merely *fail to prevent*? Let us examine three ideas for how this defence strategy can be made to work.

## 1. First Idea: Invoking Baseline Comparisons

There is much debate about the apparently empirical question of whether ‘globalization’ is harming or benefiting the global poor. Harm and benefit are comparative notions, involving the idea of people being worse or better off. But what is the implied baseline here—the alternative fate in comparison to which the global poor are either worse off (and therefore harmed) or better off (and therefore benefited by globalization)?

In most cases, it turns out, the popular debate is about whether poverty worldwide has been rising or falling since the latest globalization push began in the 1980s. Yet, this debate is morally irrelevant. The charge 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 parallel 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. Of course, the words ‘harm’ and ‘benefit’ are sometimes appropriately used with implicit reference to an earlier state of affairs. But such a historical baseline is irrelevant here. For even if there were less severe poverty today than there was 15 years ago, we could not infer that the present global order is (in a morally significant sense) *benefitting* the global poor. This inference 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 United States (US) violated the human rights of black slaves in the 1850s cannot be refuted by showing that such slaves were better off than in earlier decades, so the claim that the imposition of the present global order violates the human rights of the poor cannot be refuted by showing that their numbers are falling.<sup>14</sup>

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No less inconclusive than such *diachronic* comparisons are *subjunctive* comparisons with a historical baseline. Even if severe poverty were below what it now would be if the preceding regime had continued, we cannot infer that the present regime is benefiting the poor. This inference would again beg the question by 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*

<sup>14</sup> See Pogge, T., ‘Severe Poverty as a Violation of Negative Duties’, *Ethics and International Affairs*, 19/1 (2005), 55, 55–8.

under Than Shwe could be said to be benefiting the Burmese people provided that they are better off than they would now be if the earlier *junta* under Ne Win were still in power.

Sometimes subjunctive comparisons are presented with a historical baseline 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 significant contacts with outsiders. In response, we should question whether there are knowable facts about such a remote alternate history. We should also, once again, question the moral relevance of this hypothetical baseline 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 refute the moral relevance of subjunctive comparison with a *hypothetical* baseline—the claim, for instance, that greater numbers of people would live and die even more miserably in some fictional state of nature. Many such states have been described, and it is unclear how one can be singled out as the 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.<sup>15</sup> If no such state of nature can be described, then the present global order cannot be said to benefit the global poor by reducing severe poverty below a state-of-nature baseline. Finally, how can the claim that some people are being harmed now be undermined by pointing out that people in a state of nature would be even worse off? If such an argument succeeded, would it not show that *anything* done to another counts as harm only if it reduces the latter below the state-of-nature baseline? If we are not harming the 3.4 billion 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.

I conclude that baseline comparisons of the three kinds we have considered are unsuitable for defending any institutional scheme from the charge that it harms or violates human rights. Severe burdens and disadvantages people suffer under some institutional scheme cannot be justified by any diachronic comparison with how such people had fared before or by any subjunctive comparison with how such

<sup>15</sup> See Pogge, T., *World Poverty and Human Rights* (above, n. 6), 136–9.

people would have been faring under some preceding regime or in a state of nature. What matters is whether the institutional order in question foreseeably leads to severe burdens that are reasonably avoidable.<sup>16</sup>

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## 2. Second Idea: Invoking the Consent of the Global Poor

Another common way of denying that the present global order is harming the poor invokes the venerable precept *volenti non fit iniuria*—no injustice is done to the consenting. Global institutional arrangements cannot be harming the poor when participation, for example, in the WTO, is voluntary.

This line of argument is refuted by four mutually independent considerations. First, appeal to consent cannot defeat a charge of human rights violation given that, on the usual understanding of moral and legal human rights, they are inalienable and thus cannot be waived by consent. Second, an appeal to consent cannot justify the severe impoverishment of children who are greatly over-represented among those suffering severe poverty and its effects. Third, most of the severely impoverished live in countries that lack meaningful democracy. Thus Nigeria's accession to the WTO was effected by its military dictator Sani Abacha, Myanmar's by the notorious SLORC *junta*, Indonesia's by Suharto, Zimbabwe's by Robert Mugabe, and the Congo's by dictator Mobutu Sese Seko. These rulers' success in subjecting people to their rule does not give them the moral authority to consent on behalf of those whom they are oppressing. Fourth, insofar as very poor people do consent, through a meaningfully democratic process, to some global institutional arrangements, the justificatory force of such consent is weakened by their having no other tolerable option, and weakened even further by the fact that their calamitous circumstances are partly due to those whose conduct this consent is meant to justify. 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 must decide about whether to accept the WTO rules against the background of other rules that it cannot escape and that make it extremely costly to decline.

It is worth mentioning in this context another popular fallacy often adduced in defence of the *status quo*. As empirical research shows, poor countries embracing the new global rules perform better, economically, than countries that do not. This is taken to prove that the new global rules benefit the poor countries. This inference depends on conflating two claims: (A) *Given* the dominance of the rich countries and their rules and organizations, it is better for a poor country to cooperate. (B) The dominance of these rich-country rules and organizations is better for the poor countries than alternative institutional arrangements. Once

<sup>16</sup> See Pogge, T., 'Severe Poverty as a Violation of Negative Duties' (above, n. 14), 61.

these claims are properly distinguished, it is obvious that (B) does not follow from (A).

### 3. Third Idea: 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 invokes the success stories—the Asian tigers and China—to show that any poor country can defeat severe poverty under the existing global order.

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.<sup>17</sup> The reason is that the pathways to riches are sparse. They are not rigidly limited, but it is clearly impossible to achieve the kind of economic growth rates needed for everyone to become a millionaire. The same holds for formerly poor countries. The Asian tigers achieved impressive rates of economic growth and poverty reduction through a state-sponsored build-up of industries that mass produce low-tech consumer products. These industries were globally successful by using their considerable labour-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 poor countries. Building such industries was hugely profitable for the Asian tigers. But if many more 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 favourable to the poor countries and conducive to poverty eradication. These arguments commit the same some-all fallacy. Exporters in the poorer countries compete over the same heavily protected rich-country markets. Thanks to its extraordinary ability to deliver quality products cheaply in large quantities, China has done extremely well. But this great success has greatly reduced market share and export prices for firms in many poorer countries. 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 favourable to the poor countries than it might be, is still favourable enough for all of them to do as well as the Asian tigers and then China have done in fact.

This is not to deny that most severe poverty could be avoided, despite the current unfair global order, if the national Governments and elites of the poor countries

<sup>17</sup> See Cohen, G. A., *History, Labour, and Freedom* (Oxford: Clarendon Press, 1988), 262–3.

were genuinely committed to ‘good governance’ and poverty eradication. But this claim provides no moral defence of the rich countries and their present globalization project if it is also true that most severe poverty could be avoided, despite the corrupt and oppressive regimes holding sway in so many less-developed countries, if the global institutional order were designed to achieve this purpose. If we acquit causal factor A because of the necessary contribution made by B, we must acquit B as well because of the necessary contribution by A. But since we cannot acquit both for harm they knowingly produce together, we must conclude that each is responsible for much of the harm.<sup>18</sup>

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Still, by assuming symmetry between the two sets of causal factors, this response is too simple, failing to fully expose the responsibility of the rich countries and of their globalization project. There is an 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. 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 poorer 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*.<sup>19</sup> 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 incentives and moral support for the practice of bribing politicians and officials in the poor countries. This practice diverts the loyalties of officials in these countries and also makes a great difference to which persons are motivated to stand for public office in the first place. Poor countries have suffered staggering losses as a result, most clearly in the awarding of public contracts. Preliminary evidence suggests that the new Convention is ineffective in curbing bribery by multinational corporations. And banks in the rich countries continue to invite corrupt rulers and officials in the poorer countries to move and invest their earnings from bribery and embezzlement abroad. Raymond Baker<sup>20</sup> estimates such illicit transfers from poor to rich countries to total at least \$500 billion annually. Such practices have created a pervasive culture of corruption now deeply entrenched in many poor countries.

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Bribery and embezzlement are part of a larger problem. The political and economic elites of poor countries interact with their domestic inferiors, on the one

<sup>18</sup> See Pogge, T., ‘Severe Poverty as a Violation of Negative Duties’ (above, n. 14), 62–4.

<sup>19</sup> The convention came into effect in Feb. 1999 and has been widely ratified, see <[www.oecd.org/home](http://www.oecd.org/home)>.

<sup>20</sup> Baker, R., *Capitalism’s Achilles Heel* (New York: John Wiley and Sons, 2005).

hand, and with foreign governments and corporations, on the other. These two constituencies differ enormously in wealth and power. The former are mostly poorly-educated and heavily preoccupied with the daily struggle to survive. The latter have vastly greater rewards and penalties at their disposal. Politicians with a normal interest in their own political and economic success thus cater to the interests of foreign governments and corporations rather than to competing interests of their much poorer compatriots. There are plenty of poor-country governments that have come to power or remained in office solely as a result of foreign support. And there are many 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 with forced exploitation of children and women, *for* the importation of unnecessary, 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.

In most poor countries, these incentive asymmetries are aggravated by the lack of genuine democracy. This democratic deficit also has global roots. It is a central feature of our global institutional order that any group controlling a preponderance of the means of coercion within a country is internationally recognized as the legitimate government of the country's territory and people—regardless of how this group came to power, of how it exercises power, and of how much popular support it has. International recognition means not merely that we engage such a group in negotiations, but also that we accept its right to act for the people it rules and thereby authorize it to sell the country's resources and to dispose of the proceeds of such sales, to borrow in the country's name and thereby to impose debt service obligations upon it, to sign treaties on the country's behalf and thus to bind its present and future population, and to use state revenues to buy the means of internal repression. This global practice goes a long way toward explaining why so many countries are so badly governed.

The *resource privilege* we confer upon *de facto* rulers includes the power to effect legally valid transfers of ownership rights over resources. A corporation that has purchased resources from a tyrant thereby becomes entitled to be—and actually *is*—recognized anywhere as their legitimate owner. 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 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.

This international resource privilege has disastrous impact in poor countries whose 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 broad 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. And it 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.

The incentives arising from the international resource privilege help explain the significant *negative* correlation between resource wealth (relative to Gross Domestic Product (GDP)-) and economic performance. This 'resource curse' is exemplified by many less developed countries which, despite great natural wealth, have achieved little economic growth or poverty reduction.<sup>21</sup> This explanation has been confirmed by two economists from Yale who, using a regression analysis, demonstrate that the causal link from resource wealth to poor economic performance is mediated through reduced chances for democracy:

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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 . . . 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 GDP] generates a decrease by half a percentage point in the probability of survival of democratic regimes.<sup>22</sup>

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Holding the global 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 ruling group regardless of its domestic illegitimacy.

The *borrowing privilege* we confer upon de-facto rulers includes the power to impose internationally valid legal obligations upon the whole country. A later government that refuses to honour debts incurred by a corrupt, brutal, undemocratic, unconstitutional, repressive, unpopular predecessor will be severely punished by the banks and governments of other countries. At a 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

<sup>21</sup> UNDP, *Human Development Report 2007/2008* (above, n. 10), 278–80.

<sup>22</sup> Lam, R. and Wantchekon, L., 'Dictatorships as a Political Dutch Disease', Working Paper 795 (Yale University, 1999), 31, 35.

after a dramatic break with the past, are compelled to pay the debts of their awful predecessors.

The international borrowing privilege makes three important contributions to the high incidence of oppressive and corrupt rulers in less developed countries. First, it facilitates borrowing by destructive rulers, who can borrow more money and can do so more cheaply than they could do if they alone were obliged to repay, and thereby helps such rulers maintain themselves in power even against near-universal popular opposition. Second, the international borrowing privilege imposes the often huge debts of their corrupt predecessors upon democratic successor regimes. It thereby saps the capacity of democratic governments to implement structural reforms and other political programmes, 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.

Like the formerly tax-deductible bribery of poor-country officials and the complicity by banks in the embezzlement of public funds, the four privileges just discussed are significant features of our global order, greatly benefiting the governments, corporations, and citizens of rich countries and the political-military elites of poor countries at the expense of the vast majority of ordinary people in poor countries. Thus, while the present global order indeed does not make it strictly impossible for poor countries to achieve genuine democracy and sustained economic growth, central features of this order greatly contribute to poor countries' failing on both counts. These features are crucial for explaining the inability and particularly the unwillingness of these countries' leaders to eradicate poverty more effectively. And they are crucial, therefore, to 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—*despite* substantial technological progress and global economic growth, *despite* huge reported poverty reduction in China,<sup>23</sup> *despite* the post-Cold-War 'peace dividend',<sup>24</sup> *despite* substantial declines

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<sup>23</sup> The number of Chinese living below \$1.25 per day (2005 PPP) is reported to have declined by 65%, or 378 million, and the number of Chinese living below \$2.50 per day (2005 PPP) by 36%, or 356 million, between 1987 and 2005 (Chen, S., and Ravallion, M., 'The Developing World is Poorer than We Thought, but no Less Successful in the Fight against Poverty' (above, n. 11), table 8).

<sup>24</sup> 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, *Human Development Report 1998* (New York: Oxford University Press, 1998), 197) and to about 2.6% or \$1035 billion in 2004 (<yearbook2005.sipri.org/ch8/ch8>). Today, this global peace dividend is worth nearly \$1,000 billion annually.

FN:25 In real food prices,<sup>25</sup> despite official development assistance, and despite the efforts of international humanitarian and development organizations.

## V. THE PRESENT GLOBAL ORDER MASSIVELY VIOLATES HUMAN RIGHTS

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In just 19 years since the end of the Cold War, well over 300 million human beings have died prematurely from poverty-related causes, with some 18 million more added each year. Much larger numbers 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.

This conclusion is quite distinct from the usual calls for more aid 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. It is true, eradicating severe poverty at a morally acceptable speed would impose substantial costs and opportunity costs on the affluent countries. 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.

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

<sup>25</sup> ~~The World Bank Food Index fell (in constant 1990 dollars) from 176.7 in 1980 to 100 in 1990 and then to 96.9 in 2002. These statistics are published by the World Bank's Development Prospects Group. See <[www.worldbank.org/prospects/gep2004/appendix2.pdf](http://www.worldbank.org/prospects/gep2004/appendix2.pdf)>, 277.~~

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 it is still the *largest* such human rights violation.

## VI. 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 compensatory protection and reform efforts for its victims. Analogous 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 individual efforts (donations to efficient non-governmental organizations) or of bilateral or multilateral government aid programs. Or it can focus on institutional reform. I close with some comments on this 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 scope of human rights deficits. 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, labour relations, social security, and access to health care and education can have a much greater impact on poverty than 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.

Rules governing economic transactions are important also for their greater visibility. To be sure, rule changes, too, 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. (Other things are 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 point is that morally successful rules are 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 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 that individuals, corporations, and governments have been so reluctant to make meaningful efforts toward eradicating global poverty.<sup>26</sup> Again, it is possible that affluent governments and corporations could be brought to do much 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.

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<sup>26</sup> Their current effort amounts to approximately \$20 billion annually—0.05% of the gross national incomes of the affluent countries—consisting of \$7 billion annually from individuals and corporations (UNDP, *Human Development Report 2003* (New York: Oxford University Press, 2003), 290), and another \$12 billion (2006) annually from governments in official development assistance (ODA) for basic social services (<[mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=593&crd=>](http://mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=593&crd=>)). Aggregate official development assistance is some 9 times higher, but most of it is spent for the benefit of agents more capable of reciprocation, 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 jointly, to serious global anti-poverty measures. Their solemn promise to halve global poverty by 2015 has been reiterated—in cleverly weakened formulations—but has yet to result in serious implementation efforts.<sup>27</sup> Official development assistance (ODA) from the rich 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.<sup>28</sup> With the ‘war on terror’, ODA is reported to have grown back in 2007 to 0.27% of the rich countries’ combined GNIs due to dramatic growth in spending on Musharraf’s Pakistan and post-occupation Afghanistan and Iraq.<sup>29</sup> Yet, even this new \$104 billion level is only a third of what is needed to eradicate severe poverty—and only a tiny fraction of this assistance is actually spent for this purpose.

This discouraging 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 affluent countries are now willing to spend on global poverty eradication: about \$20 billion annually.<sup>30</sup> This amount is very small in comparison to the harms inflicted on the global poor by clear injustices in the present global order. It is also very small in comparison to what would be required to achieve substantial progress: the amount needed in the first few years of a serious offensive against poverty is closer to \$300 billion annually.<sup>31</sup> It is not realistic to hope that we can achieve such a 15-fold increase in available funds through appeals to the morality of the relevant agents: affluent individuals, corporations, and the governments of 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 micro-lending, road, rail, and communication links where these do not yet exist. If such a reform programme is to gain and maintain

<sup>27</sup> Pogge, T., ‘The First UN Millennium Development Goal, A Cause for Celebration?’, *Journal of Human Development*, 5/3 (2004), 377–97.

<sup>28</sup> UNDP, *Human Development Report 2002* (New York: Oxford University Press, 2002), 202. Also at <hdr.undp.org/reports/global/2002/en>.

<sup>29</sup> <mdgs.un.org/unsd/mdg/SeriesDetail.aspx?srid=568&crid=>. <sup>30</sup> See n. 26, above.

<sup>31</sup> See Pogge, T., *World Poverty and Human Rights* (above, n. 6), ch. 8. Amazingly, \$300 billion is only 0.6% of the global product or 0.8% of the combined gross national incomes of the affluent countries, World Bank, *World Development Report 2008* (above, n. 4), 335.

support from citizens and governments of affluent countries, it must distribute such costs and opportunity costs fairly among them. Transparency will be required in order to assure each of these actors that their competitive position will not be eroded by the non-compliance of others.

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 an average family's standard of living by \$900 annually, say, while improving the standard of living by \$300 annually for 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. 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 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.