

3. Are we violating the human rights of the world's poor?*

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3.1 INTRODUCTION

Answering the title question requires explicating its meaning and examining the empirical evidence. The first task is begun in this introduction, which gives a rough account of the two groups whose relation is to be queried: the world's poor and 'we'. Section 3.2 then proposes a specific understanding of what it means to *violate* human rights, arguing that a human rights violation involves a specific causal relation of agents to a human rights deficit. This understanding includes not only interactional violations (perpetrated directly by agents) but also institutional violations (caused through the imposition of institutional arrangements). Based on the explication of the question in Sections 3.1 and 3.2, Section 3.3 provides evidence for the existence of a supranational institutional regime that foreseeably and avoidably produces massive human rights deficits. By collaboratively imposing this institutional scheme, we are indeed violating the human rights of the world's poor.

Following the *Universal Declaration*, we might define a poor person as one who does not have access 'to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.'¹ This is a vague definition, but clearly includes a large percentage of the world's population. In 2005, when the average weekly income was \$66, half the world's people were living on less than \$9 a week. Most of them lacked the income necessary

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¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) art 25.

for basic survival and sustenance according to the *Universal Declaration's* definition. This includes almost all those who, in 2005, belonged to the poorest 30 percent of humanity and thus lived on less than \$4 a week. Even with substantially lower prices of basic necessities, their standard of living cannot plausibly be deemed adequate.²

By 'we' I mean citizens of developed countries who have sufficient mental maturity, education, and political opportunities to share responsibility for their government's foreign policy and for its role in designing and imposing supranational institutional arrangements. This definition takes for granted that citizens of developed countries share a collective responsibility for what their government does in their name. While children and people with serious mental disabilities are excluded from this responsibility, I would not want to exclude others on account of their low income or poor education. If poor or poorly educated citizens recognize such a responsibility and act on it, then who has the standing to tell them that they have no such responsibility and need not bother? On the other hand, I am also not prepared to point the finger at a laid-off steel worker or struggling single mother in today's United States, for example, and accuse her of failing to live up to her citizen responsibilities.³ What matters here is the judgement each of us reaches about ourselves. I believe that I share responsibility for my country's policies,

² The data used in this paragraph were kindly supplied by Branko Milanovic, principal economist in the World Bank's Development Research Group, in an email on 25 April 2010. He calculated the 2005 median as \$465 per person per year and the 30th percentile as \$211. Milanovic is the leading authority on the measurement of inequality, and his published work contains similar albeit somewhat less updated information. See Branko Milanovic, *The Haves and Have-Nots: A Brief and Idiosyncratic History of Global Inequality* (Basic Books 2011). Inequality and poverty data are usually adjusted according to purchasing power parities (PPPs). I reject this practice as unjustified in the case of inequality because it conflicts with revealed-preference data: affluent people who could easily move to cheaper locations do not do so, and this shows that they get something of value in return for the higher prices they pay for the goods and services they consume. In the case of poverty measurement, a price adjustment is indeed appropriate. But the PPPs for individual household consumption expenditure commonly used for this purpose are inappropriate here because they reflect the prices of all the goods and services that households worldwide consume and thereby give far too little weight to the prices of basic foodstuffs, which are cheaper in poor countries but not as much cheaper as PPPs suggest. For detailed analysis, see Thomas Pogge, *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Polity Press 2010) 79–85, endnote 127 at 213.

³ This topic has been the subject of an exchange between Debra Satz and me. See Debra Satz, 'What Do We Owe the Global Poor?' (2005) 19 *Ethics and*

and I explain what human rights deficits I hold myself co-responsible for, and why. Reflecting on this analysis, you must judge for yourself whether you share responsibility for your country's policies and, if so, what human rights violations you are implicated in as a result.

3.2 WHAT DOES IT MEAN TO VIOLATE A HUMAN RIGHT?

Human rights violations involve *causal responsibility by agents* for the *non-fulfilment of a human right*. These two aspects of human rights violations are treated respectively in Sections 3.2.1 and 3.2.3. Section 3.2.2 is a brief interlude on the normativity of human rights: their relation to morality and the law. Section 3.2.4 concludes Section 3.2 by discussing the concept of a human rights violation emerging from the preceding sections.

3.2.1 Non-fulfilment

A particular human right of some particular person is unfulfilled when this person lacks secure access to the object of that human right. This object is whatever the human right is a right to: for example, freedom of movement, equal political participation, basic education or freedom from assault. With regard to the human rights of the global poor, the most immediately relevant human right is the right to secure access to an adequate standard of living. But those lacking such access typically lack secure access to the objects of other human rights as well. For example, many people are compelled by poverty to enter employment relations in which they are subject to serious abuse by factory supervisors or domestic employers. Many women are exposed to assault and rape because they cannot afford to divorce their husband, cannot afford a secure dwelling or must fetch water from distant locations. Others are sold into prostitution by their relatives or fall prey to traffickers who abduct them or promise them a living wage abroad. Most poor people are vulnerable to humiliation, dispossession, or personal domination because they lack the means to defend their legal rights.

What then is the normative significance of the empirical distinction between fulfilment and non-fulfilment of a particular human right of a particular person? By asserting a human right to some object, one is

International Affairs 47, 50–51; Thomas Pogge, 'Severe Poverty as a Violation of Negative Duties' (2005) 19 *Ethics and International Affairs* 55, 80–83.

making at least the following two claims. First, one is claiming that such secure access serves important interests of the right holder or other human beings.⁴ Second, one is claiming that these important interests justify some significant duties on the part of other agents to ensure that human beings actually have secure access to the objects of their human rights. The second claim fails where security of access cannot be affected by human conduct: human beings cannot, at present, ensure immortality or perfect memory, for instance. And it also fails where the counterpart obligations would be too onerous: the importance of the interest in secure access to sexual intimacy is offset by the burdens that assuring such access would place upon others.

That a human right exists presupposes that the second claim can be made good. But it does not follow that such counterpart obligations exist whenever this human right is unfulfilled. When a person is without food or shelter, her human right to an adequate standard of living may be unfulfilled even while there are no obligations on the part of others because no one can reach her to supply what she lacks. A similar conclusion seems compelling when someone is without food or shelter in a social context where all others who could assist her are likewise desperately short. Here rendering assistance is too onerous to be required. But such scenarios do not undermine the case for the existence of the human right in question because it is not true across the board that there are never any counterpart obligations. When human beings today lack access to a minimally adequate standard of living, there typically are others who can plausibly be deemed required to help ensure secure access to basic necessities. So the human right asserted in Article 25 of the *Universal Declaration* is well grounded because its non-fulfilment triggers obligations in some cases. This same point can be made in terms of a distinction between duties and obligations. Duties are general; obligations specific. For example, someone may have a general duty to keep her promises and a derivative obligation to return a book. A duty may generate obligations only in certain circumstances: one's duty to keep one's promises generates no obligations if one has made no promises, for instance; and one's duty to give, when one reasonably can, food to hungry persons generates no obligations when there are no hungry people or when one is desperately short of food oneself. Though there is no obligation in these situations, this does not defeat the assertion

⁴ Freedom of speech and expression, for example, are important not merely to those who would communicate, but also to all those who have such communications available to them or gain when injustice and ill treatment are deterred by the fear of publicity.

of the duty so long as this duty does generate obligations in other situations that do or can arise in the world as we know it.

What, then, are the duties correlative to a human right and, more specifically, to the human right to a minimally adequate standard of living? A good step towards answering this question involves examining the respect-protect-fulfil triad that has become a staple of international agency thinking in this area. This triad goes back to Henry Shue's seminal book *Basic Rights*, which argues that each basic right gives rise to three distinct correlative duties: to avoid depriving, to protect from deprivation, and to aid the deprived.⁵

Inspired by this typology, Philip Alston and Asbjorn Eide popularized the triad in the 1980s.⁶ It was then carefully elaborated in the famous General Comment 12, adopted in 1999 by the UN Committee on Economic, Social and Cultural Rights. This General Comment says in its Article 15:

The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfil*. In turn, the obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters.⁷

⁵ Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (2nd edn, Princeton University Press 1996) 60.

⁶ Philip Alston, 'International Law and the Right to Food' in Asbjorn Eide, Wenche Barthe Eide, Susantha Goonatilake, Joan Gussow and Omawale (eds), *Food as a Human Right* (United Nations University Press 1984) 162, 169–174; see generally Philip Alston and Katarina Tomaševski (eds), *The Right to Food* (Martinus Nijhoff Publishers 1984).

⁷ UN Committee on Economic, Social, and Cultural Rights, 'General Comment on The Right to Adequate Food' (12 May 1999) UN Doc E/C.12/1999/5 [hereinafter General Comment 12], available at <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (accessed on 1 May 2012) (follow '12 The Right to Adequate Food (art 11)' hyperlink).

These reflections largely accept two limitations widely taken for granted in the world of international relations: namely that human rights impose counterpart duties only on states and that any person's human rights normally impose counterpart duties only upon the state or states under whose jurisdiction she falls through physical presence or a legal bond of citizenship or residency. I highlight these limitations because I will later question them along with the comfortable belief they sustain: namely, that the unfulfilled human rights of impoverished foreigners abroad impose human-rights-correlative obligations only on their respective governments and compatriots and none upon ourselves.

3.2.2 Human Rights in Relation to Law and Morality

The two limitations are deeply entrenched in the impressive body of human rights law that has emerged since World War II both internationally and in many national jurisdictions. But human rights are not merely part of the law but also a moral standard that all law ought to meet. Law has incorporated human rights in a way that points beyond itself: to a normativity that does not depend on the law for its existence and cannot be revised or repealed by legislative or judicial fiat or by treaties or international custom. This point is articulated in the legal separation from customary international law of *ius cogens*, a set of norms whose validity is understood to transcend the discretion of states.⁸ The point is also prominent in many legal documents, for instance in the very first words of the *Universal Declaration*, which call for the '*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family*' (my emphases).⁹ With this formulation, echoed in frequent appeals to 'internationally *recognized* human rights', governments present themselves as recognizing certain rights in law rather than as creating these rights *de novo*. Their use of the word 'inalienable' reinforces this conclusion: an inalienable right is a right that its holders cannot lose, not through anything they do themselves (waiver or forfeiture), nor through anything others do, such as an alteration of the law. National and international human rights law is then not declaring itself the source of human rights but, on the contrary, asserting that all human beings have certain human rights regardless of whether these are recognized in their jurisdiction or indeed anywhere at all. Human rights

⁸ *Ius cogens* is generally taken to include at least norms prohibiting aggressive war, genocide, slavery, torture, military aggression and piracy.

⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR) pmbl.

are set forth in the law in a way that implies that these rights existed before they were codified and would continue to exist even if governments were to withdraw their legal recognition.

Born of the horrendous abuse of law in Nazi Germany, this self-restraint of the law is a great advance in human civilization. Endorsing it just because governments did would miss the essence of their endorsement. Governments have taken this step in a way that clearly recognizes that it is right independent of their endorsement. They have recognized that the Nazis, had they won the war, could not have abolished human rights (though they could, of course, have systematically violated them in their law and practice). The advance should be endorsed in this spirit. The legal texts in which governments formulate human rights and explicate their correlative duties do, of course, deserve close attention. But when studying them one should understand that they are not, by their own self-conception, definitive. Whether there are human rights, what human rights there are, and what duties these human rights entail – these questions are not settled by the texts alone. Both Shue and the authors of General Comment 12 approach the questions in this spirit and I will follow their example.

3.2.3 From Non-fulfilment to Violation

What is the relationship between the non-fulfilment of a human right and its violation? Here we must differentiate the various kinds of causal pathways by which one agent's conduct may affect human rights fulfilment. General Comment 12 draws a fourfold distinction. Reconstructing it without the artificial limitation to states, one can say that human rights may give agents four distinct kinds of duties: duties to *respect* human rights, duties to *protect* (secure access to the objects of) human rights, duties to *provide* (secure access to) the objects of human rights, and duties to *facilitate* human rights fulfilment. My discussion of these four kinds of duties focuses on cases where a breach of the duty counts as a human rights violation. This excludes breaches of human-rights-correlative duties by uninvolved bystanders who can protect or provide at reasonable cost. They are not human rights violators if they refrain. An unfulfilled human right manifests a human rights violation only if there are agents actively causing the un-fulfilment of the human right in question even while they could and should have known that their conduct would have this effect.

The most straightforward human rights violations involve breaches of *duties to respect*, that is, duties 'not to take any measures that result in preventing' a human being from having secure access to the object of a

human right. As this negative formulation indicates, these are conceived as negative duties: duties that can be honoured by remaining passive and can be breached only by taking action. They forbid any action that is reasonably avoidable and foreseeably causes some human being to be prevented from enjoying secure access to the object of a human right.

Duties to protect and duties to provide are both positive: requiring active intervention. Breaching duties of either kind does not then count as a human rights violation. The two positive duties are distinguished by reference to the type of threat that triggers them and by the mode of intervention they require. Duties to protect require agents to take *preventive* action when the fulfilment of human rights is endangered by *social* threats: by other agents who are, perhaps inadvertently, disposed to act in ways that render such access insecure. The duty requires that one render the objects of human rights secure by preventing either the potentially harmful actions or their potentially harmful effects. Duties to provide require not a blocking of the threat but a neutralizing of its harmful effects. Duties of the two kinds are substitutional in that one becomes moot insofar as the other is discharged: if UN troops break the siege of a city and thereby restore its usual food supply, the obligation to provide food to its population dissolves; conversely, if the UN provides food to the city's people, it staves off the human-rights-based obligation to break the siege.

Duties to respond to natural disasters that threaten the fulfilment of human rights are generally classified as duties to provide. Exemplified in human rights documents (including General Comment 12), this is an unfortunate practice because it obscures the fact that, as in the case of social threats, the task can be discharged in two fundamentally different ways: by preventing the harm from reaching people or by assisting them in coping with it. The common label draws attention to the latter approach; and nearly all international efforts in regard to natural disasters are indeed focused on assistance *ex post* rather than on (often more cost-effective) prevention *ex ante*. A good step towards correcting this irrational bias would break out duties to protect human beings from natural disasters as a separate category of human-rights-correlative duties.

Being positive, duties to protect and to provide are largely irrelevant to the topic of human rights violations as defined. Yet two further points should be made about them here. First, those who prevent effective conduct pursuant to a duty to protect or to provide typically breach a duty to respect and can then be labelled human rights violators. For example, those who ordered General Roméo Dallaire not to confiscate the weapons that the Interahamwe militias were assembling in Kigali in

1993–1994 were breaching their duty to respect human rights, assuming they could and should have known that Dallaire’s assessment of what these weapons were intended for was essentially correct.¹⁰ Their prevention of his initiative was an *active* intervention that foreseeably led to avoidable genocide.

Second, even a failure to protect or provide can constitute a human rights violation in cases where the agent has assumed a special role that involves protecting or providing (secure access to) objects of human rights. For example, when a police officer remains passive when he sees a violent assault, he is not merely breaching his duty to protect (as a civilian bystander might), but also his negative duty to respect human rights: the duty not to assume an office and then to fail to perform its associated tasks. This is analogous to the case of promising discussed above, where the duty not to break one’s promises, though negative, may generate positive obligations to do as one had promised. Likewise with the roles of police officer, lifeguard, physician and the like: one is violating human rights when one takes on such a role and then fails to meet its requirements in a way that foreseeably and avoidably renders insecure others’ access to the objects of their relevant human rights.

Explicating duties to facilitate, General Comment 12 prescribes that ‘the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.’¹¹ Transcending the respect-protect-fulfil triad, General Comment 12 clearly conceives duties to facilitate as distinct from duties to provide and also as important enough to be distinguished as a separate category. This reflects the recognition that the extent to which human rights are fulfilled depends on the totality of background conditions prevailing in a society. Some such background conditions are subject to human modification only in minor ways or very slowly. But the effect of even these conditions is shaped by other background conditions that are very much under human control. Of greatest importance here is the way the state structures and organizes a society. For example, the structure of a society’s economy profoundly affects the distribution of income and wealth; the organization of its criminal justice system greatly influences what dangers citizens face from criminal activities; and the design of its education system makes a large difference to the opportunities various groups of citizens have to effectively participate in politics and to defend their legal rights. Badly

¹⁰ See Pogge (n 2) 168–169.

¹¹ General Comment 12 (n 7).

organized societies pose massive threats to the objects of their members' human rights. In response to these threats, one can impress upon the governing elites and other citizens the importance of their duties to respect, protect, and provide. But such appeals are of limited use in a society in which members of the elite can embezzle with impunity or in which citizens who work to protect the rights of fellow citizens are persecuted and subjected to arbitrary mistreatment by organizations whose status and legal basis are murky. What such a society needs is structural reform: reorganization.

Duties to facilitate are then a crucial addition which highlights the vital importance of institutional design for human rights fulfilment. This importance is overlooked on a purely interactional understanding of human rights fulfilment which can, somewhat simplistically, be put as follows: 1) human rights would be universally fulfilled if all agents complied with their duties to respect; 2) some agents fail to do this and their disposition to violate human rights triggers duties to protect; 3) the willingness or ability of agents to comply with their duties to protect is insufficient to deter and prevent all breaches of duties to respect; 4) this fact, along with the occurrence of natural disasters which may also undermine human rights fulfilment, triggers duties to provide, that is, duties to help people overcome impediments that obstruct or render insecure their access to the objects of their human rights.¹²

The purely interactional analysis of human rights deficits must then be complemented by an institutional analysis which traces such deficits back not to wrongful conduct of individual and collective agents, but to injustice in the design of social institutions: in the rules and procedures, roles and agencies that structure and organize societies and other social systems. The two kinds of analysis are often complementary. Thus, each instance of slavery involves agents who (typically with violence or intimidation) subject a human being to their domination; and the persistence of slavery on a massive scale involves unjust social institutions such as the legal protection of property rights in persons or (in modern times) the massive reproduction of life-threatening poverty and the effective non-recognition by national legal systems of the human rights

¹² Such an account of 'waves of duties' is suggested in Jeremy Waldron, 'Rights in Conflict' (1989) 99 *Ethics and International Affairs* 503, 510. See also Henry Shue's 1996 Afterword to his *Basic Rights* (n 5) 156. Both authors understand how important attention to the design and reform of institutional arrangements is for human rights fulfilment. See also Thomas Pogge, 'Shue on Rights and Duties' in Charles Beitz and Robert Goodin (eds), *Global Basic Rights* (Oxford University Press 2009) 113.

of poor foreigners from less-developed countries.¹³ Similarly, each marital rape is a moral crime committed by a husband; and persistent high prevalence of marital rape exhibits institutional injustice in legislation and training of police and judicial officers.

Contrasting with these cases of complementarity, there are also many cases where institutional analysis reaches beyond interactional analysis and thus enables intelligent responses to human rights deficits that, on a purely interactional analysis, remain elusive. Thus, poverty and hunger are nowadays typically systemic: arising in the context of some economic order from the effects of the conduct of many market participants who cannot foresee how their decisions, together with those of many others, will affect specific individuals or even the overall incidence of poverty and hunger. While it is straightforward what husbands must not do in order to respect their wives' human right to physical security, it may be quite unknowable what market participants must not do to respect others' human right to an adequate standard of living. This human right can best be realized through suitable socioeconomic institutions, and the countries that have realized this right have in fact done so through appropriate institutional design.

While institutional analysis with a moral purpose goes back a long way,¹⁴ its recent exemplar is John Rawls's great work *A Theory of Justice*.¹⁵ While focusing on social institutions and more specifically on the basic structure of a national society existing under modern conditions, this work's normative message is addressed to the citizens of such a national society, offering to explicate for them their 'natural duty of justice' which, Rawls believes, 'requires us to support and to comply with just institutions that exist and apply to us ... [and] to further just arrangements not yet established'.¹⁶ His argument for such a natural duty importantly highlights how citizens can institutionally control socioeconomic deprivations and inequalities even when they cannot do so

¹³ The number of slaves today is commonly estimated to be around 27 million. 'There are more slaves today than were seized from Africa in four centuries of the trans-Atlantic slave trade. The modern commerce in humans rivals illegal drug trafficking in its global reach – and in the destruction of lives.' Andrew Cockburn, '21st Century Slaves' (September 2003) *National Geographic*, available at <http://ngm.nationalgeographic.com/ngm/0309/feature1/> (accessed 1 May 2012).

¹⁴ For an important milestone in the Anglophone discussion see Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* J. H. Burns and H. L. A. Hart (eds), (Oxford University Press 1996).

¹⁵ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

¹⁶ Ibid 115; see also ibid 246, 334.

through individual protection or provision efforts. But Rawls's argument also involves a serious and highly influential flaw, namely the unthinking presupposition that citizens' duties with regard to the social institutions they are involved in designing or upholding are one and all positive duties. In an elaborate mapping exercise, Rawls explicitly classifies our natural duties in regard to institutional design as positive, likening them to the positive duties of mutual aid and mutual respect while contrasting them with the negative duties not to injure and not to harm the innocent.¹⁷ Reiterating the widely shared assumption that 'when the distinction is clear, negative duties have more weight than positive ones,'¹⁸ Rawls thereby marginalizes our responsibility for the justice of our shared social institutions.

Political thinkers and jurists writing after Rawls have unquestioningly accepted his classification without recognizing how important and contestable it is. Thus General Comment 12 demands that 'the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.'¹⁹ And Shue's complex formulation is also a positive one: casting our relevant responsibility as one to design institutions that avoid the creation of strong incentives to violate human rights – rather than one *not* to design or uphold social institutions that create strong incentives to violate human rights.

The problem here is not one of scope: there are no citizen duties that Rawls and his successors fail to mention. The problem concerns the duty's character and weight. On the now conventional view, a society's social institutions have important effects on the lives of its members, and the government and the citizenry therefore ought to improve these institutions so as to promote their justice (Rawls) or rights fulfilment (Shue). But this positive duty cannot explain the special responsibility agents have in regard to social institutions they themselves are involved in designing or upholding. It cannot explain, for instance, why during the colonial period the government and citizens of Portugal had a far weightier responsibility to promote the fulfilment of human rights in Brazil and Mozambique than in Mexico or Sudan.

My concern to complement this account can be introduced with a dramatic analogy. Imagine a driver who encounters a badly hurt child by the side of the road. Being local, the driver knows how to get the boy quickly to the nearest emergency room. She can see that her failure to

¹⁷ Ibid 109.

¹⁸ Ibid 114.

¹⁹ General Comment 12 (n 7).

drive him there may well cost him his life. Given all this, her duty to aid people in need generates a stringent obligation to drive the boy to the hospital.

Let us now add another detail to the story, namely that it was the driver herself who caused the boy's condition: talking on her cell phone, she hit the boy after seeing him too late and reacting too slowly. This new information does not affect the initial conclusion that she should drive the boy to the hospital. But this conclusion is now backed by an additional and weightier moral reason: if the boy dies, she will have killed him. Her negative duty not to kill thus generates another, even more stringent obligation of identical content: she must drive the boy to the hospital as fast as she safely can.

The key point of the analogy is that citizens generally have two obligations to make their society's social institutions more just. One derives from their general positive duty to promote the justice of social institutions for the sake of safeguarding the rights and needs of human beings anywhere. The other derives from their negative duty not to collaborate in designing or imposing unjust social institutions upon other human beings. In regard to a citizen's home society, the content of these two obligations is essentially the same. But they differ in stringency. Other things equal, it is worse to let an injustice persist if one is complicit in it than if one is merely an uninvolved bystander. If the injustice manifests itself in human rights deficits, then one is a human rights violator in the first case but not in the second. This provides an additional, stronger, and non-instrumental rationale for why typical Turkish citizens should focus their political reform efforts on Turkey in preference to Paraguay. If Turkey is so organized that substantial and avoidable human rights deficits persist, then Turkish citizens participate in a human rights violation. They are not similarly implicated in Paraguay's institutional injustice.²⁰

General Comment 12 is right to recognize that the fulfilment of human rights is greatly affected by social institutions and right to acknowledge, by breaking out positive duties to facilitate as a separate category, human responsibilities in regard to institutional design. To this must be added, however, another category of negative duties not to collaborate in the design or imposition of social institutions that foreseeably and avoidably cause human rights to be unfulfilled. These duties are close to duties to

²⁰ Section 3.3 will explore the possibility that Turkish citizens may, through their government, be implicated in the design or imposition of unjust supra-national institutional arrangements that contribute to Paraguay's human rights deficit.

facilitate in their focus on social institutions and the related purpose of reducing human rights deficits through institutional reform. They are close to duties to respect in their essentially negative character: it is only by breaching duties to respect or duties not to collaborate that one can become a violator of human rights.

3.2.4 Human Rights and Supranational Institutional Arrangements

As the foregoing shows, the concept of a human rights violation is a relational predicate, involving specific responsibilities by particular agents in regard to unfulfilled human rights. When many Paraguayans are unable to attain an adequate standard of living, then this may indicate a human rights violation on the part of Paraguay's political and economic elite insofar as they are collaborating in the imposition of unjust social institutions in Paraguay and also insofar as they are abusing their indigenous servants or employees. The same human rights deficit indicates merely a breach of positive duty on the part of an affluent citizen of Turkey who – even if she leaves undone things she could easily do toward protecting, providing, or facilitating secure access by Paraguayans to the objects of their human rights – is not involved in abusing them or in designing or imposing upon them unjust social institutions. And the same human rights deficit may not indicate any breach of duty on the part of impoverished citizens of Sierra Leone or indeed of most of Paraguay's poor themselves – the former are simply unable to improve the living conditions of poor Paraguayans and the latter cannot reasonably be said to be morally required to undertake political action toward realizing their own and each other's human rights when such action would be excessively risky or costly for them.

Let us recap two central points about the notion of a human rights violation. One is a call to resist the tendency to deflate the term 'human rights violation' by using it broadly to cover all avoidable cases of unfulfilled human rights. If possible, the expression should be saved from the political preachers and media windbags ever in search of stronger expressions to show that they care more than the rest. Human rights violations are not tragic events, like the destruction of a town by a meteorite, nor even culpable failures to give aid or protection. Human rights violations are crimes actively committed by particular agents who should be identified and then be persuaded to change their ways or else stopped.

The other point is that human rights violations come in two varieties, one of which has – unsurprisingly – been overlooked. There is the interactional variety, where individual or collective agents do things that,

as they intend, foresee, or should foresee, will avoidably deprive human beings of secure access to the objects of their human rights. And there is the institutional variety, where agents design and impose institutional arrangements that, as they intend, foresee, or should foresee, will avoidably deprive human beings of secure access to their human rights. That the latter variety is overlooked among those who enjoy the privilege of theorizing about justice and human rights is related to the fact that its recognition would bring into full view a large crime against humanity that is now going on and in which these theorists and their readers are involved. This crime is the design and imposition of unjust supranational institutional arrangements that foreseeably and avoidably cause at least half of all severe poverty which in turn is by far the greatest contributor to the current global human rights deficit.

Consciously or unconsciously, normative theorists obscure this crime in two main ways. The traditional obfuscation presents national borders as moral watersheds. Each state is responsible for the fulfilment of human rights in its territory, and the responsibility of foreign actors is limited to (at most) a positive duty of assistance.²¹

There is an emerging contemporary obfuscation. Its emergence and success owes much to the phenomenon of globalization. Transforming the traditional realm of international relations, one central component of globalization has been the creation of an increasingly dense and influential global system of rules along with a proliferating set of new international, supranational, and multinational actors. These transnational rules and actors reach deep into the domestic life of especially the poorer national societies by shaping and regulating not only the ever-growing share of interactions that traverse national borders, but increasingly also purely domestic interactions. In view of the evidently profound effects that these transnational rules and actors have on the lives of human beings worldwide, it has become ever more palpably untenable to claim for them a morality-free zone in which the concept of justice has no application.²² So the contemporary approach does the next best thing by acknowledging a duty to *facilitate* the realization of human rights. In addition to positive duties to contribute to the remedial protection and provision of missing objects of human rights, agents are now assigned the additional duty to promote the realization of human rights through the

²¹ Rawls exemplified this traditional view, limited to the recognition of such a positive duty of assistance. See John Rawls, *The Law of Peoples* (Harvard University Press 1999) 37, 106–119.

²² As had been done, in the wake of Rawls, by Thomas Nagel, 'The Problem of Global Justice' (2005) 33 *Philosophy and Public Affairs* 2, 113.

improvement of institutional arrangements. As with the other two positive duties, this new duty is understood as 'imperfect', leaving its bearers much discretion over what and how much they will do. From there it is only a small step to the position the United States set forth in an 'interpretative statement' it issued in regard to the Rome Declaration on World Food Security: 'the attainment of any 'right to food' or 'fundamental right to be free from hunger' is a goal or aspiration to be realized progressively that does not give rise to any international obligations'.²³

The contemporary obfuscation represents a step forward in its acknowledgement that the proliferating supranational institutional architecture is neither causally nor morally neutral. But by assigning us, in regard to these supranational institutional arrangements, an open-ended task of improvement, the contemporary obfuscation presents this responsibility as exclusively positive and thereby reinforces a central doctrine of the traditional obfuscation: the only way foreigners can violate human rights is through violent cross-border intervention. Though recognizing that our design of supranational institutions has important effects on human rights fulfilment worldwide, the contemporary obfuscation still hides an important possibility: that the existing supranational institutional order is fundamentally unjust and 'progressive improvement' therefore an inadequate response. There was a time when people talked about the improvement of slavery – about legislative changes that might facilitate more tolerable living conditions by curbing rapes, beatings, and splitting of families, by reducing back-breaking labour, and by guaranteeing minimally adequate food, shelter and leisure. But as slavery came to be recognized as fundamentally unjust, the only adequate response to it was abolition. An institutional injustice is not something to be gradually ameliorated at one's leisure. It must be eliminated through institutional reforms as fast as reasonably possible pursuant to a negative duty not to impose unjust social institutions and, in particular, ones that foreseeably give rise to a reasonably avoidable human rights deficit. In this regard, severe poverty and slavery are on a par: when social institutions avoiding these deprivations are reasonably possible, then the imposition of social institutions that perpetuate these deprivations constitutes a violation of the human rights of those whom these institutions enslave or impoverish.

²³ World Food Summit, *Report of the World Food Summit*, Annex II, UN Doc. WFS 96/REP, available at <http://www.fao.org/wfs/> (accessed 1 May 2012).

3.3 WE ARE VIOLATING THE HUMAN RIGHTS OF THE WORLD'S POOR: THE EMPIRICAL EVIDENCE

We are now ready to examine my central claims: there exists a supra-national institutional regime that foreseeably produces massive and reasonably avoidable human rights deficits; and by collaboratively imposing this severely unjust institutional order, we are violating the human rights of the world's poor.

Section 3.2.4 has shown how normative theorists sustain this injustice by allowing no space in their catalogues of duties for a negative duty not to collaborate in the imposition of unjust institutional arrangements. This section will show how empirical theorists sustain the injustice by arguing that globalization is good for the poor (3.3.1) and that the remaining causes of poverty are domestic to the societies in which it persists (3.3.2). Section 3.3 concludes with some reflections on what we ought to do in light of the actual causes of global poverty (3.3.3).

It may be useful to precede the discussion with a brief reminder of the state of human rights fulfilment today. About half of all human beings live in severe poverty and about a quarter live in extreme or life-threatening poverty. They appear in statistics such as the following: 925 million people are chronically undernourished,²⁴ 884 million lack access to improved drinking water,²⁵ 2.5 billion lack access to improved sanitation,²⁶ and almost 2 billion lack regular access to essential medicines.²⁷ Over 1 billion lack adequate shelter,²⁸ 1.6 billion lack

²⁴ UN Food and Agriculture Organization '925 Million in Chronic Hunger Worldwide' (13 September 2010), available at <http://www.fao.org/news/story/jp/item/45210/icate/> (accessed 1 May 2012).

²⁵ UNICEF, 'New UNICEF Study Shows MDGs for Children Can Be Reached Faster With Focus on Most Disadvantaged' (7 September 2010), available at www.unicef.org/media/media_55913.html (accessed 1 May 2012).

²⁶ UNICEF, 'What We Do: Water, Sanitation and Hygiene' (last modified 6 July 2010), available at <http://www.unicef.org/wash/> (accessed 1 May 2012).

²⁷ World Health Organization (WHO), 'WHO Medicines Strategy: Countries at the Core – 2004–2007' (2004) at 3, WHO Doc. WHO/EDM/2004.5, available at <http://apps.who.int/medicinedocs/pdf/s5416e/s5416e.pdf> (accessed 1 May 2012).

²⁸ UN Human Settlements Programme, 'The Challenge of Slums: Global Report on Human Settlements 2003' (2003) UN Doc HS/686/03E, at XXV, available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=1156> (accessed 1 May 2012).

electricity,²⁹ 796 million adults are illiterate,³⁰ and 215 million children are child labourers.³¹ About one-third of all human deaths, 18 million each year, are due to poverty-related causes.³²

3.3.1 Is Globalization Good for the Poor?

One way of disputing the claim that we are violating the human rights of the poor is by arguing that, because the percentage of very poor people has been declining (the first Millennium Development Goal, MDG-1, is phrased in these terms), globalization and the supranational institutional arrangements it has brought must be good for the poor. This argument employs an invalid inference. The relevant standard is not whether the lot of the poor has improved in the past quarter century of globalization, but rather whether we could have found a feasible alternative path of globalization, evolving some alternative scheme of supranational institutions, which would have led to a much smaller human rights deficit at the end of that period. If there is some such feasible alternative scheme, then we are violating the human rights of the poor by imposing upon them the current institutional arrangements. By analogy, suppose someone denied that the institutional order authorizing and enforcing black slavery in the United States in 1845 violated the human rights of slaves by pointing out that the number of slaves had been shrinking, that the nutritional situation of slaves had steadily improved and that brutal treatment (such as rape, whipping and splitting of families) had also been in decline. Do such facts weaken, *in any way*, the claim that the institution of slavery violated the human rights of slaves? If the answer is no, then the mere fact that the worst hardships of poverty have been declining cannot refute the claim that the imposition of the current global institutional order violates their human rights. The relevant question is not whether and how much the global human rights deficit has been

²⁹ UN Habitat, 'Our Work: Urban Energy', available at <http://www.unhabitat.org/content.asp?cid=2884&catid=356&typeid=24&subMenuId=0> (accessed 1 May 2012).

³⁰ EFA Global Monitoring Report Team, *The Hidden Crisis: Armed Conflict and Education* (UNESCO 2011) 1, available at <http://unesdoc.unesco.org/images/0019/001907/190743e.pdf> (accessed 20 July 2013).

³¹ International Labour Organization, 'Topics: Child Labour', available at <http://www.ilo.org/global/topics/child-labour/lang-en/index.htm> (accessed 1 May 2012).

³² World Health Organization, *Global Burden of Disease: 2004 Update* (2008) 54-59 Table A1.

declining but rather whether and how much the design of the supra-national institutional arrangements we impose contributes to the human rights deficit that remains.³³

Bearing this commonsense standard in mind, let us observe how various segments of the human population have fared during the globalization period.³⁴

Table 3.1 Evolution of Global Household Income 1988–2005

Segment of World Population	Share of Global Household Income 1988	Share of Global Household Income 2005	Absolute Change in Income Share	Relative Change in Income Share
Richest 5 Per cent	42.87	46.36	+3.49	+8.1%
Next 5 Per cent	21.80	22.18	+0.38	+1.7%
Next 15 Per cent	24.83	21.80	−3.03	−12.2%
Second Quarter	6.97	6.74	−0.23	−3.3%
Third Quarter	2.37	2.14	−0.23	−9.7%
Poorest Quarter	1.16	0.78	−0.38	−32.8%

³³ This paragraph draws on my reply to Matthias Risse in Thomas Pogge, ‘Severe Poverty as a Violation of Negative Duties’ (n 3) 55–58. For a more extensive discussion of baselines for assessing institutional harm, see Thomas Pogge, ‘Severe Poverty as a Human Rights Violation’ in Thomas Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford University Press 2007).

³⁴ These data were kindly supplied by Branko Milanovic of the World Bank in a personal email communication. See Email from Branko Milanovic (n 2).

As the table shows, the richest ventile (twentieth) of the global income distribution has gained substantially over the globalization period, while the poorest four-fifths have lost ground. With the losses most severe in the poorest quarter, there has been dramatic polarization: in a mere 17 years, the ratio between the average incomes in the top ventile and the poorest quarter has skyrocketed from 185 to 297. The table also shows that, surprisingly, the world poverty problem – so unimaginably large in human terms – is tiny in economic terms. In 2005, the shortfall of the world's poor from an adequate standard of living was about 2 per cent of global household income or 1.2 per cent of world income (the sum of all gross national incomes).³⁵ This global poverty gap could have been filled almost twice over, just from the *gain* in the share of the richest ventile during the period 1988–2005. Given these facts, it would be very implausible to deny that the massive poverty persisting today is reasonably avoidable.

With the poorest quarter losing one third of its already absurdly small share of global household income, it is not surprising that very large numbers of human beings continue to subsist well below an adequate standard of living. The most credible figures we have on this front are the numbers of undernourished people as provided by the UN Food and Agriculture Organization.³⁶

³⁵ This accords roughly with the World Bank's PPP-based tally which counted 3085 million people as living in severe poverty in 2005 and estimated their collective shortfall – the global poverty gap – at 1.13 per cent of world income. See Thomas Pogge (n 2) 69.

³⁶ Data mostly from Food and Agriculture Organization and World Food Program, *The State of Food Insecurity in the World 2010: Addressing Food Insecurity in Protracted Cases* (FAO 2010), see also above n 24. Number of undernourished in 2008 from Food and Agriculture Organization 'Number of hungry people rises to 963 million' (9 December 2008), available at www.fao.org/news/story/en/item/8836/ (accessed 20 July 2013). Percentages for 2008–2010 are calculated by using figures from the Human Population Clock, available at <http://galen.metapath.org/popclk.html> (accessed 1 May 2012). Counting those living below \$1.25 per person per day at 2005 purchasing power parities, the World Bank produces a much prettier extreme poverty trend. But its calculations depend on several dubious methodological decisions including the use of overly broad consumer price indices and PPPs for individual household consumption. For extended discussion see Thomas Pogge (n 2) Chapter 4.

Table 3.2 Evolution of Undernourishment 1969–2010

Period	Undernourished Persons in Millions	Undernourished Persons as a Percentage of World Population
1969–1971	878	26
1979–1981	853	21
1990–1992	843	16
1995–1997	788	14
2000–2002	833	14
2005–2007	848	13
2008	963	14
2009	1023	15
2010	925	14

The data cannot prove conclusively that there was no feasible alternative path of supranational institutional design that would have avoided the catastrophic losses in the income share of the poor while still achieving a reasonable rate of global economic growth and would thereby have led to a much smaller human rights deficit. But the data do make this possibility wildly implausible.³⁷ Its implausibility becomes

³⁷ For a more extensive discussion, see Thomas Pogge, 'Responses to the Critics' in Alison Jagger (ed.), *Thomas Pogge and His Critics* (Polity Press 2010) 175, 175–191. Since this chapter went to press, the FAO, sporting a 'revised and improved methodology', has dramatically altered its hunger numbers. It revised the 1990 number of undernourished people upward by 19 per cent and the 2008–2010 numbers of undernourished people downward by 10, 15, and 6 per cent, respectively (comparing Table 3.2 above with Food and Agriculture Organization, International Fund for Agricultural Development and World Food Programme, *The State of Food Insecurity in the World* (FAO 2012) 9). The much better-looking trend produced by these revisions brings the FAO into conformity with the World Bank's poverty numbers and avoids an embarrassing failure to achieve the soon-to-expire first Millennium Development Goal. But the soundness of the FAO's new methodology is another matter. According to it, persons are counted as undernourished only if they live below the *caloric* requirements of a *sedentary* lifestyle for a *full year*: "undernourishment" has been defined as an extreme form of food insecurity, arising when food energy availability is inadequate to cover even minimum needs for a sedentary lifestyle ... *a state of energy deprivation lasting over a year*' (ibid, 50). This definition makes it

even clearer as we reflect on the strongly antidemocratic and pro-wealthy path that globalization has taken. Globalization involves the emergence of complex and ever more comprehensive and influential bodies of supranational laws and regulations that increasingly pre-empt, constrain, and shape national legislation. Such supranational rules are not formulated through the kind of transparent, democratic procedures that characterize national law-making in the countries that have reached a basic level of domestic justice. Rather, supranational rules largely emerge through intergovernmental negotiations from which the general public and even the majority of weaker governments are effectively excluded. Only an unusually small number of 'players' can exert real influence over supranational rule-making: powerful organizations, prominently including large multinational corporations and banks, as well as very rich individuals and their associations and the ruling 'elites' of the most powerful developing countries. These richest and most powerful agents are best positioned to engage in cost-effective lobbying. They can reap huge gains from favourable supranational rules and therefore can afford to spend large sums acquiring the necessary expertise, forming alliances with one another, and lobbying the stronger governments (G7, G20) that dominate supranational rule-making. Ordinary citizens, by contrast, typically find it prohibitively costly to acquire the necessary expertise and to form alliances that are large enough to rival corporate influence. In the absence of global democratic institutions, globalization sidelines the vast majority of human beings, who have no way of influencing the formulation and application of supranational rules, and greatly enhances the rule-shaping powers of a tiny minority of those who are already the richest and most powerful. (Many of them foresaw this, of course, and therefore strongly supported the ongoing globalization push.) Their interests are diverse, and so they are competing and bargaining with one another – each seeking to shape and reshape supranational rules to be as favourable as possible to itself. There are winners and losers in these contests, some elite players fail in their efforts to shape in their favour the

biologically impossible for anyone doing serious physical labour (such as construction workers, agricultural labourers, or rickshaw drivers) to be counted as undernourished because no such person could have survived for more than a year on less than the calories sufficient to cover merely the minimum activity level associated with a sedentary lifestyle. Yet such persons evidently can, and many of them do, suffer from hunger. For a fuller critique of the FAO's new methodology, see Frances Moore Lappé, Jennifer Clapp, Molly Anderson, Robin Broad, Ellen Messer, Thomas Pogge, and Timothy Wise, 'How We Count Hunger Matters' (2013), 27 *Ethics and International Affairs* 251.

rules that stand to impact them the most. Yet, the rules do get captured by some elite players and, as a group, they consequently grow their share of global wealth and expand their advantage over the rest of humankind. This, in turn, further increases their capacity to influence the design and application of the rules in their own favour and, unintentionally but no less inexorably, keeps the poorer half of humankind in dire poverty.

Therefore it is not surprising that the institutional design shift upward, from the national to the supranational level, is further marginalizing humanity's poorer majority, who have no way of influencing supranational negotiations, and is further increasing the absolute and relative wealth and power of a tiny minority, who can monopolize such influence. The rapid global polarization of the last 20 years is a foreseeable effect of a highly undemocratic globalization path and the regulatory-capture opportunities it offers.

3.3.2 Are the Causes of the Persistence of Poverty Purely Domestic?

Empirical theorists provide a second line of defence of the status quo by arguing that the causes of the persistence of poverty are domestic to the societies in which it persists. The observed polarization is not one phenomenon, driven by supranational institutional arrangements, but rather two phenomena: good progress in well-organized Western countries, which maintain high levels of social justice and decent rates of economic growth, and mixed progress in many other countries, which pay little attention to social justice and whose economic growth is often held back by a range of local natural, cultural, or political impediments. Two sets of empirical findings are adduced as evidence for this picture. One is that the overall gap between affluent and developing countries is no longer growing as China and India, in particular, have been maintaining long-term rates of economic growth that are considerably above those of Europe, North America, and Japan.³⁸ This is taken to show that supranational rules are not biased against poor countries and that the main driver of polarization today is rising *intra*-national inequality which is under domestic control and each country's own responsibility.

In response, one might point out that, over the recent globalization period, growth in GDP per capita has been very substantially lower in the

³⁸ See World Bank, *World Development Report 2010: Development and Climate Change* (2010) 378–379.

low-income countries than in the high income countries.³⁹ But the more important point is that the increase of intra-national economic inequality in nearly all countries is no longer under easy domestic control but rather driven by the increasingly important role that supranational rules play in constraining and shaping national legislation and in governing domestic markets for goods, services, labour, and investments.

The influence of supranational rules is in some cases direct and immediate and in other cases mediated through competition. As an example of a direct and immediate influence, consider an important part of the World Trade Organization (WTO) regime, namely the 1994 Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement which requires WTO members to institute national intellectual property regimes that award and enforce product patents of at least 20-year duration on new medicines and thus suppress the manufacture and sale of competing generic products. This requirement massively aggravates poverty by increasing the cost of medicines that poor people, far more vulnerable to disease, have much greater need for. Often, poor people cannot afford the medicines they would have been able to buy in the absence of TRIPS and then spend money on inferior (often counterfeit) products, or else go without medicine altogether, and suffer chronic disease or even premature death as a result, with devastating effects on their family's livelihood.⁴⁰

As an example of the influence of supranational rules mediated by competition, consider that the WTO Treaty, while mandating open and competitive global markets with enforcement of uniformly strong intellectual property rights, contains no uniform labour standards that would protect workers from abusive and stressful working conditions, from absurdly low wages, or from excessive working hours. It thereby draws poor countries into a vicious 'race to the bottom' where they, competing for foreign investment, must outbid one another by offering ever more exploitable workforces. Under the conditions of WTO globalization, workers cannot resist a deterioration of their terms of employment because, if they secure more humane working conditions, many of them will end up unemployed as jobs are moved abroad.

Massive increases in domestic inequality are to be expected, then, in developing countries. And we do indeed find this phenomenon in nearly

³⁹ World Bank, GDP per capita growth (annual per cent), available at <http://data.worldbank.org/indicator/NY.GDP.PCAP.KD.ZG/countries/1W-XQ-EG-SYMA-IR-SA?display=graph> (accessed 20 July 2013).

⁴⁰ See Thomas Pogge, 'The Health Impact Fund and Its Justification by Appeal to Human Rights' (2009) 40 *Journal of Social Philosophy* 4, 542.

all developing countries for which good data are available, countries as diverse as Argentina, Bangladesh, Costa Rica, the Dominican Republic, Ecuador, Hungary and Jamaica.⁴¹

China is an especially interesting case, because it contains nearly a fifth of humanity and is the leading poster child of globalization. During the period 1990–2004, China reportedly achieved spectacular 236 per cent growth in per capita gross national income.⁴² But the same period also saw a stunning increase in inequality. While the income share of the top tenth rose from 25 to 35 per cent, that of the poorest fifth fell from 7.3 to 4.3 per cent.⁴³ This means that the ratio of the average incomes of these two groups increased from 6.8 to 16.3 as average income in the top tenth rose by 370 per cent while average income in the poorest fifth rose by only 98 per cent. To be sure, an income gain of 98 per cent over 14 years is not bad at all. But China's poor paid a high price for it in terms of marginalization, humiliation and oppression by the emerging economic elite whose greatly expanded share of Chinese household income gives them much greater opportunities to influence political decisions, to give unfair advantages to their children, and to dominate the poor in direct personal interactions. The poor would have been much better off with more equal economic growth, even if this would have been somewhat less rapid.

We find a similar phenomenon in the other leading country of the twenty-first century, the United States. In line with the Kuznets Curve hypothesis, the US experienced gradual income equalization from the beginning of the Great Depression until the beginning of the current globalization period. Contrary to the Kuznets hypothesis, this period was followed by a dramatic income polarization that progressed most rapidly in the 1990s. Table 3.3 tells the story, and the data from the Internal Revenue Service (more fine-grained than those available for China) show, in particular, that the relative gains were heavily concentrated at the very

⁴¹ United Nations University World Institute for Development Economics Research (UNU-WIDER), World Income Inequality Database, V2.0c (May 2008), available at http://www.wider.unu.edu/research/Database/en_GB/database (accessed 1 May 2012).

⁴² Calculated from World Bank data by dividing each year's GNI (in current Yuan) by China's population that year, then using China's GDP deflator to convert into constant 2005 Yuan.

⁴³ Distribution data for 1990 from the World Bank as cited in Camelia Minoiu and Sanjay Reddy, 'Chinese Poverty: Assessing the Impact of Alternative Assumptions' (2008) 54 *Review of Income and Wealth* 4, 572, 577, Table 1. Distribution data for 2004 is from World Bank, 'World Development Indicators' (2008) 68, Table 2.8.

top, where a mere 400,000 now earn as much as the poorest 150 million. The top 0.01 per cent of US households (c. 14,400 tax returns) quadrupled their share of US household income and increased their advantage in average income over the poorer half of Americans six-fold, from 375:1 to 2214:1. The richest ventile is the only one that gained ground; all other ventiles saw their share of US household income decline, with relative losses greatest at the bottom.⁴⁴

Table 3.3 Evolution of US Household Income 1928–2008

Segment of US Population	Share of US Household Income 1928/29	Share of US Household Income 1980/81	Share of US Household Income 2007/08	Absolute Change in Income Share 1980/1–2007/8	Relative Change in Income Share
Richest 0.01 per cent	5.01	1.33	5.54	+4.21	+318%
Next 0.09 per cent	6.22	2.17	5.81	+3.64	+168%
Next 0.9 per cent	11.92	6.53	10.89	+4.36	+67%
Next 4 per cent	14.38	13.09	15.37	+2.28	+17%
Next 5 per cent	10.48	11.48	11.39	–0.09	–1%
Next 15 per cent		24.63	21.14	–3.49	–14%
Second Quarter		25.61	19.45	–6.16	–24%
Poorest Half		17.72	12.51	–5.21	–29%

This income polarization in the US, and the consequent economic and political marginalization of the US poor, underscore the point that increasing intra-national inequality is a widespread phenomenon that, while certainly influenced by domestic factors and resistible by domestic

⁴⁴ The top five rows of the table present data from Facundo Alvaredo, Tony Atkinson, Thomas Piketty and Emmanuel Saez, 'Top Incomes Database', available at <http://g-mond.parisschoolofeconomics.eu/topincomes/> (accessed 2 April 2011). The remaining three rows present data provided by Mark Robyn and Gerald Prante, 'Tax Foundation, Summary of Latest Federal Individual Income Tax Data' (Table 5), available at www.taxfoundation.org/publications/show/250.html (accessed 2 April 2011). Because the data come from different sources, columns 2–4 do not quite sum up correctly. But this should not disturb the table's point which is to display the rapid polarization of the US income distribution documented in the rightmost column.

political processes, is favoured and facilitated by the WTO globalization of the last decades. US polarization can moreover highlight a useful political point: if the poorest 90 per cent of the US population had a better understanding of their own interests, they would be potential partners in a coalition aimed at democratizing globalization: aimed at reducing the near-monopolistic power of the small global elite now steering the evolution of the supranational institutional architecture. To win them as allies we can appeal to their interests, but also, of course, to their commitment to human rights which are the core theme of this article. Let me conclude then by highlighting some of the main features of the present supranational institutional arrangements that are especially detrimental to the realization of human rights.

I give this account in opposition to the usual rosy story which, if it acknowledges the massive persistence of severe poverty at all, explains it by two factors: corrupt and oppressive regimes in many poor countries and the 'leaky bucket' of development assistance. Both these explanations have an element of truth. But the first fails to explain the high prevalence of corrupt and oppressive regimes, and the second fails to explain why the income share of the poor is falling, and rapidly so.

My own explanation can redeploy the metaphor: the assets of the poor are like a leaky bucket, continuously depleted by massive outflows that overwhelm the effects of development assistance, which, in any case, are puny. We take great pride in our assistance, boasting, for example, of the billions we spend annually on assistance to poor countries. Yet we ignore the vastly larger amounts that we extract from the poor without compensation. Consider the following examples.

First, affluent countries and their firms buy huge quantities of natural resources from the rulers of developing countries without regard for how such leaders came to power and how they exercise power. In many cases, this amounts to collaboration in the theft of these resources from their owners: the country's people. It also enriches their oppressors, thereby entrenching the oppression: tyrants sell us the natural resources of their victims and then use the proceeds to buy the weapons they need to keep themselves in power.⁴⁵

Second, affluent countries and their banks lend money to such rulers and compel the country's people to repay it even after the ruler is gone. Many poor populations are still servicing debts incurred, against their

⁴⁵ See Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (2nd edn, Polity Press 2008) Chapter 6; Leif Wenar, 'Property Rights and the Resource Curse' (2008) 36 *Philosophy and Public Affairs* 2–32.

will, by dictators such as Suharto in Indonesia, Mobutu in the Congo, and Abacha in Nigeria. Again, we are participating in theft: the unilateral imposition of debt burdens on impoverished populations.

Third, affluent countries facilitate the embezzlement of funds by public officials in less developed countries by allowing their banks to accept such funds. This complicity could easily be avoided: banks are already under strict reporting requirements with regard to funds suspected of being related to terrorism or drug trafficking. Yet Western banks still eagerly accept and manage embezzled funds, with governments ensuring that their banks remain attractive for such illicit deposits. Global Financial Integrity (GFI) estimates that less developed countries have in this way lost at least \$342 billion annually during the period 2000–2008.⁴⁶

Fourth, affluent countries facilitate tax evasion in the less developed countries through lax accounting standards for multinational corporations. Since they are not required to do country-by-country reporting, such corporations can easily manipulate transfer prices among their subsidiaries to concentrate their profits where they are taxed the least. As a result, they may report no profit in the countries in which they extract, manufacture or sell goods or services, having their worldwide profits taxed instead in some tax haven where they only have a paper presence. GFI estimates that, during the period 2002–2006, trade mispricing deprived less developed countries of \$98.4 billion per annum in tax revenues.⁴⁷

Fifth, affluent countries account for a disproportionate share of global pollution. Their emissions are prime contributors to serious health hazards, extreme weather events, rising sea levels, and climate change, to which poor populations are especially vulnerable. A recent report by the Global Humanitarian Forum estimated that climate change is already seriously affecting 325 million people and is annually causing \$125 billion in

⁴⁶ Dev Kar and Karly Cucio, *Illicit Financial Flows from Developing Countries: 2000–2009* (Global Financial Integrity 2011). For comparison, official development assistance during this period averaged \$87 billion annually, of which only \$9 billion was allocated to ‘basic social services’, United Nations, ‘Millennium Development Goal Indicators’, available at <http://unstats.un.org/unsd/mdg/Search.aspx?q=bss%20oda> (accessed 4 March 2011).

⁴⁷ Ann Hollingshead, *The Implied Tax Revenue Loss from Trade Mispricing* (Global Financial Integrity 2010) 15, Table 2, available at http://www.gfintegrity.org/storage/gfip/documents/reports/implied%20tax%20revenue%20loss%20report_final.pdf.

economic losses, as well as 300,000 deaths, of which 99 per cent are in less developed countries.⁴⁸

Finally, affluent countries have created a global trading regime that is supposed to release large collective gains through free and open markets. The regime is rigged; it permits rich states to continue to protect their markets through tariffs and anti-dumping duties and to gain larger world market shares through export credits and subsidies (including about \$265 billion annually in agriculture alone) that poor countries cannot afford to match.⁴⁹ Since production is much more labour-intensive in poor than in affluent countries, such protectionist measures destroy many more jobs than they create.

3.3.3 What Ought We To Do?

Taken together, these supranational institutional factors generate a massive headwind against the poor.⁵⁰ This headwind overwhelms the effects of public and private foreign aid, perpetuating the exclusion of the poor from effective participation in the globalized economy and their inability to benefit proportionately from global economic growth. This problem may be solvable through huge increases in development aid, but such continuous compensation is neither cost-effective nor sustainable. It is far better to develop institutional reforms that would reduce the headwind, and eventually turn it off. This would mean seeing the world poverty problem not as a specialist concern at the margins of grand politics but as an important consideration in all institutional design decisions.

The world's leading governments could mainstream the imperative of poverty avoidance in this way. But Western governments are unlikely to do this unless there is voter demand or at least voter approval. As of now, the opposite is the case. Even while the hardships suffered by poor people are rising (partly as a result of the US-caused global financial crisis), voters in the United States are putting foreign aid at the bottom of

⁴⁸ Global Humanitarian Forum, *The Anatomy of a Silent Crisis* (Geneva Global Humanitarian Forum 2009) 1, 78.

⁴⁹ Organization for Economic Cooperation and Development, *Agricultural Policies in OECD Countries* (OECD 2009).

⁵⁰ That this headwind is at most weak and uncertain has been forcefully argued by Cohen. Joshua Cohen, 'Philosophy, Social Science, Global Poverty' in Alison Jagger (n 37) 18–45. See also my reply. Thomas Pogge, 'Responses to the Critics' in Alison Jagger (n 37) 175–250. With luck, this dispute will stimulate more and better empirical research on what the effects of various supranational institutional design decisions actually are.

the list of expenditures to be preserved.⁵¹ Voters in Continental Europe are somewhat more supportive of foreign aid, with voters in Germany, Italy, France, and Spain holding that more of the needed budget cuts should come out of the military budget.⁵² These more supportive voter attitudes are reflected in higher European outlays for official development assistance (ODA), which are 0.45 per cent of gross national income versus 0.20 per cent for the United States.⁵³ Both rates are far below the Western promise of the 1970s to bring ODA rates up to 0.70 per cent – a promise that only five small countries (Denmark, Sweden, Norway, Luxembourg, and the Netherlands) have been honouring. It should also be noted that much foreign aid is spent for the benefit of domestic exporters or ‘friendly’ governments; out of \$120 billion spent annually on ODA, only about \$15.5 billion is spent on ‘basic social services,’ that is, on reducing poverty or its effects.⁵⁴

Citizen attitudes clearly matter. If citizens of Western states cared about the avoidance of poverty, then so would their politicians. But an individual citizen may still feel powerless to change anything and may then reject any responsibility for the massive persistence of severe poverty. This rejection clearly could not excuse a majority of citizens. Given the stakes, the members of such a majority should organize themselves or otherwise ensure that politicians understand that they must seriously address the world poverty problem if they want to succeed in politics. But if – as is actually the case – a large majority of one’s fellow citizens is not ready to prioritize the world poverty problem, then there may indeed be little that a few willing citizens can do to change their country’s policies and posture in international negotiations. Should citizens in this situation be considered implicated in their country’s human rights violation even if they cannot prevent it?

⁵¹ A recent CNN poll (21–23 January 2011) found that 81 per cent of Americans are in favour of reductions in foreign aid. CNN, ‘Opinion Research Corporation Poll – Jan 21 to 23, 2011’ (25 January 2011), available at <http://i2.cdn.turner.com/cnn/2011/images/01/25/rel2d.pdf> (accessed 4 March 2011).

⁵² Tony Barber, ‘Strong Public Support for Spending Cuts Across Europe’ (12 July 2010) *Financial Times*, available at <http://www.ft.com/cms/s/0/8f9e61c0-8ce2-11df-bad7-00144feab49a.html#axzz1FbgLKgVc> (accessed 4 March 2011).

⁵³ See UN Statistics Division, ‘Net ODA as Percentage of OECD/DAC Donors GNI’ (23 June 2010), available at <http://unstats.un.org/unsd/mdg/Search.aspx?q=bss%20oda> (accessed 4 March 2011).

⁵⁴ Ibid ‘Net ODA, million US\$’ and ‘ODA to basic social services, million US\$’.

One might argue for an affirmative answer on the following ground: such citizens could emigrate to one of the poorer countries, thereby disconnecting themselves from their erstwhile country's policies and marginally weakening this country. Emigration may indeed be a plausible decision in cases of great injustice – it made sense, for instance, for Herbert Ernst Karl Frahm (the later Willy Brandt) to leave Germany as the Nazis were consolidating power. But in developed Western societies today, democratic institutions remain basically intact, and efforts to stir the conscience of one's compatriots are not futile. Moreover, there is a far better way for citizens to avoid sharing responsibility for the human rights violations their government is committing in their name. Citizens can compensate for a share of the harm for which their country is responsible by, for example, supporting effective international agencies or non-governmental organizations. Such compensation is typically less burdensome for citizens, and it also reduces the human rights deficit in which these citizens are implicated. To make room for this compensation option, our human-rights-correlative negative duty in regard to social institutions should then be amended. We ought not to collaborate in the design or imposition of social institutions that foreseeably cause a human-rights deficit that is reasonably avoidable through better institutional design – unless we fully compensate for our fair share of the avoidable human rights deficit.

How might compensation work? Suppose one accepts the earlier estimate that those lacking an adequate standard of living in 2005 would have needed another 2 per cent of global household income to reach this low level of sufficiency. And suppose that your household's per capita income in 2005 was about \$15,000, placing you in the middle of the second ventile. Since the top two ventiles in 2005 had 68.54 per cent of global household income, a transfer of 2.9 per cent of their collective income to the poor would have been theoretically sufficient to eradicate severe poverty. Had you in 2005 reduced the global poverty gap by \$435 (=2.9 per cent of \$15,000), then you would have been sure to have compensated for your fair share of the harm that we, through our governments, are collectively imposing on the world's poor.⁵⁵

⁵⁵ This calculation should be refined in various ways. First, even a just supranational institutional order, carefully designed towards human rights realization, would not avoid poverty completely, so we may not be collectively responsible for the entire poverty gap. Second, some have job-related reasons to live in an area with high prices (especially for shelter) which may reduce their fair share. Third, some people poorer than ourselves, those in the third and fourth ventiles at least, might also be expected to make compensating contributions.

3.4 CONCLUSION

To show that we are indeed violating the human rights of the world's poor, I have proceeded in two main steps. Section 3.2 set forth a conception of what it means to violate a human right, arguing that 'human rights violation' is a relational predicate, involving right holders as well as duty bearers, with the latter playing an active role in causing the human rights of the former to be unfulfilled. Widely neglected is one very common kind of such violations involving the design and imposition of institutional arrangements that foreseeably and avoidably cause some human beings to lack secure access to the objects of their human rights. Just as one is actively harming people when one takes on the office of lifeguard and then fails to do one's job, so we are actively harming people when we seize the authority to design and impose social institutions and then fail to shape them so that human rights are realized under them insofar as this is reasonably possible. As argued in Section 3.3, we violate the human rights of billions of poor people by collaborating in the imposition of a supranational institutional scheme that foreseeably produces massive and reasonably avoidable human rights deficits.

It is easy to walk away from this conclusion with the comment that its empirical support has not been established beyond any doubt. As I indicated above, it is certainly *possible* that no feasible alternative design of supranational institutional arrangements could have led to a smaller global human rights deficit. But to live comfortably with the belief that we have only positive assistance duties towards the world's poor, we need more than a slight doubt of my conclusion. This is especially true in light of the amazing lack of serious unbiased inquiry into the effects of existing global institutional arrangements. Are we going to tell the poor majority of our contemporaries that, as we haven't carefully examined the causal effects of the institutional arrangements we are (in collaboration with their ruling elites) imposing on the world, we cannot be certain that these arrangements are doing massive avoidable harm – and may

Fourth, people richer than ourselves should be expected to contribute more than a proportional (2.9 per cent) share of their incomes. You can easily find reasons for reducing your fair share. But in view of the horrendous deprivations suffered by the world's poor, in view of the near universal failure of our peers to make the required compensating contribution, and in view of our undeserved good fortune to be born among the privileged (and perhaps to be more privileged than anyone would be under just institutional arrangements), we have every reason to err on the side of overcompensation.

therefore reject as insufficiently corroborated the claim that we are violating their human rights? With much evidence supporting the view that supranational institutional arrangements we are involved in imposing contribute greatly to the persistence of the huge current human rights deficit, we ought to press for more careful study of these arrangements and their effect and for feasible reforms that make these arrangements more protective of the poor. Each of us should also do enough towards protecting poor people to be confident that one is fully compensating for one's fair share of the human rights deficit that we together cause.