

## Chapter 2

# Are We Violating the Human Rights of the World's Poor?

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**Abstract** In this chapter I argue that we are violating the human rights of the world's poor. To show this I proceed in two main steps. Section 2.1 sets 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 life-guard 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. By examining the empirical evidence then I argue in Sect. 2.2 that 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. In the concluding part of Sect. 2.2 and the subsequent conclusion I reflect on the moral consequences for citizens in the affluent countries and present some ideas how compensation might work.

**Keywords** Human rights violation • Institutional arrangements • Right holders • Duty bearers

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## 2.1 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'. Part 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 Parts 1, 2, and 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' (Universal Declaration of Human Rights 1948). This is a vague definition, but clearly includes a large percentage of the world's population. In 2011, when the average monthly income per person was \$394, half the world's people were living on less than \$80 per person per month (converted at market exchange rates). Most of them lacked the income necessary for basic survival and sustenance according to the *Universal Declaration's* definition. This includes almost all those who, in 2011, belonged to the poorest quarter of humanity and thus lived on less than \$30 per person per month. Even with substantially lower prices of basic necessities, their standard of living cannot plausibly be deemed adequate.<sup>1</sup>

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

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<sup>1</sup> 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 24 December 2014. He calculated the 2011 median as \$965 per person per year and the 25th percentile as \$361. Milanovic is the leading authority on the measurement of inequality, and his published work contains similar albeit somewhat less updated information (see Milanovic 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 (2010b, 79–85, endnote 127 at 213).

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.<sup>2</sup> What matters here is the judgment each of us reaches about ourselves. I believe that I share responsibility for my country's policies, 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.

## 2.2 What Does It Mean to Violate a Human Right?

Human rights violations involve *causal responsibility by agents* for the *non-fulfillment of a human right*. These two aspects of human rights violations are treated respectively in Sects. 2.2.1 and 2.2.3. Section 2.2.2 is a brief interlude on the normativity of human rights: their relation to morality and the law. Section 2.2.4 concludes Part 2 by discussing the concept of a human rights violation emerging from the preceding sections.

### 2.2.1 Non-fulfillment

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 that expose them 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 lure them abroad with the false promise of a living wage. Most poor people are

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<sup>2</sup>This topic has been the subject of an exchange between Debra Satz and me (see Satz 2005, 50–51; Pogge 2005, 80–83).

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 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.<sup>3</sup> 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 defended. 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 access to basic necessities. So the human right asserted in Article 25 of the *Universal Declaration* is well grounded because its non-fulfillment triggers stringent 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 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 toward answering this question involves examining the respect-protect-fulfill triad that has become a staple of international agency thinking in this area. This triad goes back to

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<sup>3</sup>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.

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 (Shue 1996).

Inspired by this typology, Philip Alston and Asbjorn Eide popularized the triad in the 1980s (Alston 1984, 162, 169–174, see generally Alston and Tomaševski 1984). 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 *fulfill*. In turn, the obligation to *fulfill* 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 *fulfill* (*facilitate*) means the State must proactively 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 *fulfill* (*provide*) that right directly. This obligation also applies for persons who are victims of natural or other disasters (UN 1999).

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.

### 2.2.2 *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. Nevertheless 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.<sup>4</sup> The point is also prominent in many

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<sup>4</sup>*Ius cogens* is generally taken to include at least norms prohibiting aggressive war, genocide, slavery, torture, military aggression and piracy.

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) (UDHR 1948, preamble). 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 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.

### 2.2.3 *From Non-fulfillment to Violation*

What is the relationship between the non-fulfillment 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 fulfillment. General Comment 12 draws a fourfold distinction. Reconstructing it without the artificial limitation to states, one can say that human rights may give agents duties of four distinct kinds: 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 fulfillment. 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. Their failure to do this does not make them human right violators. An

non-fulfillment human right manifests a human rights violation only if there are agents actively causing the non-fulfillment 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 honored 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 fulfillment 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 fulfillment 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 (Pogge 2010b, 168–169). 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' (UN Committee on Economic, Social, and Cultural Rights 1999). 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 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 that 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.<sup>5</sup>

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 of poor foreigners from less-developed countries.<sup>6</sup> 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,<sup>7</sup> its recent exemplar is John Rawls's (1971) great work *A Theory of Justice*. 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

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<sup>5</sup>Such an account of 'waves of duties' is suggested in Waldron (1989, 503, 510; see also the Afterword of Shue 1996, 156). Both authors understand how important attention to the design and reform of institutional arrangements is for human rights fulfilment (see also Pogge 2009b, 113).

<sup>6</sup>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' (Cockburn 2003).

<sup>7</sup>For an important milestone in the Anglophone discussion see Bentham (1996[1789]).

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’ (ibid., p. 115; see also ibid., p. 246, 334). His argument for such a natural duty importantly highlights how citizens can institutionally control socio-economic deprivations and inequalities even when they cannot do so 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 (ibid., p. 109). Reiterating the widely shared assumption that ‘when the distinction is clear, negative duties have more weight than positive ones,’ (ibid., p. 114) 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’ (UN Committee on Economic, Social, and Cultural Rights 1999). 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 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.<sup>8</sup>

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 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.

### ***2.2.4 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

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<sup>8</sup>Part 3 will explore the possibility that Turkish citizens may, through their government, be implicated in the design or imposition of unjust supranational institutional arrangements that contribute to Paraguay's human rights deficit.

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.<sup>9</sup>

There is an emerging contemporary obfuscation. Its emergence and success owes much to the phenomenon of globalization. Transforming the traditional realm

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<sup>9</sup>John Rawls exemplified this traditional view, limited to the recognition of such a positive duty of assistance (see Rawls 1999, 106–119).

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.<sup>10</sup> 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 positive duty to promote the realization of human rights through the 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' (World Food Summit 2012).

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 labor, 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

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<sup>10</sup>As had been done, in the wake of Rawls, by Thomas Nagel (2005).

these deprivations constitutes a violation of the human rights of those whom these institutions enslave or impoverish.

### **2.3 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 supranational 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 2.2.4 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 part will show how empirical theorists sustain the injustice by arguing that globalization is good for the poor (2.3.1) and that the remaining causes of poverty are domestic to the societies in which it persists (2.3.2). Part 3 concludes with some reflections on what we ought to do in light of the actual causes of global poverty (2.3.3).

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: 795 million people are chronically undernourished (FAO 2015), 884 million lack access to improved drinking water (UNICEF 2015), 2.4 billion lack access to improved sanitation (UNICEF 2015), and almost 2 billion lack regular access to essential medicines (WHO 2004). Some 1.6 billion lack adequate shelter (UN – Habitat 2015), 1.2 billion lack electricity (UN – Habitat 2012), 757 million adults are illiterate (UNESCO 2015), and 168 million children are child laborers (ILO 2015). About one-third of all human deaths, 18 million each year, are due to poverty-related causes (WHO 2008).

#### ***2.3.1 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 during and at the end of that period. If there is some such feasible alternative scheme, then we are violating the human

**Table 2.1** Distribution of global household income 2011

Segment of world population	Share of global household income 2011 in percent
Richest 5 %	42.77
Next 5 %	19.49
Next 15 %	22.71
Second quarter	10.64
Third quarter	3.17
Poorest quarter	1.22

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 world's poor were even worse off at some earlier time 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 declining but rather whether and how much the design of the supranational institutional arrangements we impose contributes to the human rights deficit that remains.<sup>11</sup> The question is, in particular, whether the world economy could have been, or could now, be restructured so as to mitigate the existing socio-economic inequalities. The following table shows the distribution of global household income in 2011, basically unchanged from 1988.<sup>12</sup>

The Table 2.1 shows that, surprisingly, the world poverty problem – so unimaginably large in human terms – is tiny in economic terms. In 2011, 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).<sup>13</sup>

The distribution of global private wealth is even more unequal, with the richest 1 percent now holding 50.4 percent of all such wealth, (Credit Suisse 2015, 19) while the poorer half of humanity has been reduced to roughly 0.6 percent, about as much as the richest 67 individuals (0.0000009 percent of humanity). (Moreno 2014).

The data cannot prove conclusively that there was no feasible alternative path of supranational institutional design that would have led to considerably larger income

<sup>11</sup>This paragraph draws on my reply to Matthias Risse in Pogge (2005) 'Severe Poverty as a Violation of Negative Duties'. For a more extensive discussion of baselines for assessing institutional harm, see Pogge 2007b.

<sup>12</sup>These data were kindly supplied by Milanovic, Branko of the World Bank in a personal email communication. See Email from Branko Milanovic (n 1).

<sup>13</sup>This accords roughly with the World Bank's PPP-based tally which counted 3.085 million people as living in severe poverty in 2005 and estimated their collective shortfall – the global poverty gap – at 1.13 % of world income (see Pogge 2010b, 69).

and wealth shares for the global 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.<sup>14</sup> Its implausibility becomes 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 favorable 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 favorable as possible to itself. There are winners and losers in these contests, some elite players fail in their efforts to shape in their favor the 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 favor 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 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

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<sup>14</sup>For a more extensive discussion, see Pogge 2010a.

effect of a highly undemocratic globalization path and the regulatory-capture opportunities it offers.

### 2.3.2 *Are the Causes of the Persistence of Poverty Purely Domestic?*

Empirical theorists provide a second line of defense 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. 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, GDP growth in the poorest countries has just barely managed to keep up with population growth. As a consequence, growth in GDP per capita has been lower in the low income countries than in the high income countries.<sup>15</sup> 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, labor, 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

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<sup>15</sup> World Bank, GDP per capita growth (annual per cent), <http://data.worldbank.org/indicator/NY.GDP.PCAP.KD.ZG/countries/1W-XQ-EG-SYMA-IR-SA?display=graph> Accessed 25 October 2015.

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 (Pogge 2009a, 542).

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 labor 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 all developing countries for which good data are available, countries as diverse as Argentina, Bangladesh, Costa Rica, the Dominican Republic, Ecuador, Hungary and Jamaica (UNU-WIDER 2008).

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% growth in per capita gross national income.<sup>16</sup> But the same period also saw a stunning increase in inequality. While the income share of the top tenth rose from 25 to 35%, that of the poorest fifth fell from 7.3 to 4.3%.<sup>17</sup> 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% while average income in the poorest fifth rose by only 98%. To be sure, an income gain of 98% 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 pro-

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<sup>16</sup>Calculated from World Bank data by dividing each year's GNI (in current RMB) by China's population that year, then using China's GDP deflator to convert into constant 2005 Yuan.

<sup>17</sup>Distribution data for 1990 from the World Bank as cited in Minoiu, Camelia and Reddy, Sanjay (2008, 572, 577, Table 1) Distribution data for 2004 is from World Bank (2008, 68, Table 2.8.).



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