

IV—THE INFLICTION OF SUBSISTENCE DEPRIVATIONS AS A PERFECT CRIME

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Genuine acknowledgement of a fundamental human right entails prohibiting and classifying as a violation behaviour that predictably deprives persons of the object of the right. There is widespread acknowledgement of a fundamental human right to subsistence. There is also widespread agreement that much severe poverty should be attributed to persons' being actively deprived of the means of subsistence. However, the causal chains that result in these subsistence deprivations are generally of a scale and complexity that cannot be captured by either of the two main accounts of human rights violations, the interactional or the institutional accounts. Thus, while the plunder or destruction of persons' means of subsistence are widespread, they do not generally take either an interactional or an institutional form. I argue that an adequate account of fundamental human rights should acknowledge a category of structural human rights violations, and that many subsistence deprivations should be classified as a structural violation, responsibility for which is shared by the international community. The principal juridical implication of recognition of a structural violation is that it poses a deep challenge to the moral legitimacy of existing global and domestic legal, social and economic structures themselves, insofar as they have failed to adequately recognize a fundamental human right.

A central aspect of the moral force of fundamental human rights is that they impose correlative duties that have a special moral stringency and are rightfully enforced. Fundamental human rights are rock-bottom moral claims of paramount moral importance, held by every human being simply in virtue of their universal moral status, against treatment that is incompatible with minimally adequate recognition of that moral status. They mark off a minimum moral threshold that constitutes, in Shue's words, 'everyone's minimum reasonable demand against the rest of humanity' (1996, p. 19).

The notion of a human rights violation signifies treatment that is morally intolerable, both in the sense that it has crossed that moral threshold—it is beyond the pale—and in the sense it ought not be tolerated; persons can justifiably demand not be treated in this way, and if just legal and social structures are in place, they can rightfully seek the juridical enforcement of this demand. One important role of fundamental human rights is to function as a benchmark by which to test the moral legitimacy of existing legal systems, in terms of whether or not they recognize and enforce fundamental human rights. The juridical enforcement of duties not to violate human rights is crucial to protecting and empowering those who would otherwise be utterly vulnerable to severely unjust treatment.

A striking feature of contemporary human rights discourse is that widespread affirmations of a fundamental human right to subsistence have gone hand in hand with an ongoing failure to specify and enforce global and domestic rules compliance with which would achieve universal enjoyment of the right, and to classify deprivations of the means of subsistence as a human rights violation. Moreover, this classification is not readily accommodated by either of the two dominant accounts of human rights violations, the interactional and institutional accounts.

I focus here on the negative duty not to deprive people of the means of subsistence. (I also take the right to subsistence to impose positive duties, but set them aside here.) For ease of exposition I use the phrase ‘subsistence deprivations’ to refer to cases in which persons have been actively deprived of the means of the subsistence (either of access to uncontaminated water and fertile land sufficient to grow enough to meet their nutritional needs or of a realistic opportunity to earn an income sufficient to purchase adequate subsistence). I argue here that an adequate account of human rights should acknowledge a third category of human rights violations, that of structural violations, and that it should classify subsistence deprivations as a structural violation. The principal juridical implication of recognition of a structural violation is that it poses a deep challenge to the moral legitimacy of existing legal and social structures themselves, in so far as they have failed to adequately recognize a fundamental human right.

As I shall argue, the reason that neither the institutional nor the interactional accounts of human rights violations can readily classify subsistence deprivations as a human rights violation is that neither

can adequately accommodate the complexity of the causal chains that result in such deprivations. Both accounts presuppose a one-to-one link between particular victims and particular perpetrators, where the perpetrators are the agents who can be identified as being specifically responsible for the severe harm inflicted on those victims. Establishing a violation requires showing a clear causal link between particular agents' actions or policy decisions and the harm inflicted on particular victims, and showing that the harm is the intended or foreseeable result of those actions or decisions. I call this the 'perpetrator model' of responsibility for a human rights violation.

On the interactional account, the perpetrator is the agent who directly inflicts a severe harm on a particular victim. Paradigm violations are acts of torture, grievous assault, and so on. On the institutional account, the perpetrators of violations are official agents of coercive institutional structures. Establishing a violation generally requires showing that the severe harm to particular victims can be traced back to particular policy decisions, made intentionally or at least knowingly by official agents within an authoritative decision-making structure and coercively imposed. Thus, paradigm violations are momentous policy decisions, such as the decision to implement the Final Solution; international human rights law was heavily influenced by the Nuremberg trials, which prosecuted a handful of official agents for their role in instigating and orchestrating a programme of genocide.

Current international law takes socio-economic human rights, including the right to subsistence, to be claims against right-holders' own governments: the right-holders' government is the addressee of the right, with sole responsibility for fulfilling the primary duty to respect the right to subsistence, and sole accountability for its actual violation. The international community is taken to be under a back-up responsibility to enforce and facilitate fulfilment of this primary duty, but it is not held to be under a specific legally binding duty, let alone a primary duty non-fulfilment of which itself constitutes a violation. In accordance with this model, Kenneth Roth recommends that subsistence deprivations should be classified as violations (and thus be the appropriate target of human rights organizations such as Human Rights Watch) only when they can be linked to arbitrary or discriminatory governmental conduct (Roth 2004, p. 69).

This exclusive focus on the current policies of right-holders' own governments is severely truncated. First, it lacks historical depth. As

I shall argue, the transfer of sole responsibility for respecting citizens' socio-economic rights to the governments of newly decolonized countries, despite widespread recognition that after years of colonial plunder and imposition of extractive social institutions this left them with 'a virtually impossible task' (Mutua 2008, p. 28), constituted a legal loophole by which the former colonial powers that had been enriched by this colonial plunder could put an end to claims to a share of the riches of empire.

The state-based model also lacks geographical width. In placing the international community in a secondary, back-up role, this model seems to preclude *ex ante* the possibility that the international community might be actively contributing to the incidence of severe poverty and thereby share responsibility for actually violating the right to subsistence.

A notable exception to the reluctance to classify severe poverty as a violation is the work of Thomas Pogge. He defends an institutional analysis of human rights violations, and argues that there is a coercively imposed global institutional order, the operation of which is responsible for the infliction of most existing severe poverty. He concludes that this constitutes a massive human rights violation, and takes direct responsibility for this violation to lie with official agents of that global institutional order, on the ground that they are knowingly implementing policies that are in themselves describable as foreseeably inflicting most existing severe poverty: 'responsibility for decisions that foreseeably result in millions of avoidable deaths rests in the first instance with the politicians and negotiators who make them. Such . . . people have knowingly committed some of the largest human rights violations the world has ever seen' (Pogge 2005, pp. 78–9). Pogge actually draws a comparison between these decisions and the decision by officials of the Nazi Party to instigate a programme of genocide. Pogge takes the responsibility of individual agents to be to avoid collaborating in violations perpetrated by official agents.

Pogge's argument has crucial insights. However, his top-down model of responsibility for the infliction of severe poverty, according to which official agents of a coercive global institutional order can be singled out as the perpetrators of a crime against humanity on the ground that they are knowingly implementing policies that foreseeably cause millions of deaths, is enormously (and, I will argue, unnecessarily) contentious.

While Pogge takes the distinction between the interactional and institutional accounts of human rights violations to be exhaustive, I shall argue for a third category of violation, that of structural violation, where the term ‘structure’ simply refers to *any* ongoing patterned behaviour. As I shall argue, if a predictable combined effect of existing patterns of behaviour is to actively deprive a vast number of the object of a fundamental human right, and if these deprivations could be avoided under feasible alternative structures through the introduction of rules and regulations (or the reform of existing ones), then the patterns instantiate a structural violation—even if it is not possible to establish a one-to-one link between deprivation suffered by particular victims and particular agents’ actions or policy decisions. I aim to show that norms and rules that fail to recognize as a violation ongoing patterns of behaviour that predictably deprive persons of the means of subsistence, and fail to specify and enforce regulations that prohibit such deprivations, are incompatible with genuine recognition of a right to subsistence; they pay mere lip-service to it. We should therefore acknowledge as a violation subsistence deprivations that arise, not from blatant direct plunder and pillage (interactional violations), or through particular laws that are plausibly in themselves describable as inflicting severe poverty (institutional violations), but through more subtle mechanisms, including legal loopholes or a sheer absence of regulations.

In understanding responsibility for this violation, I contend, we need to move away altogether from the perpetrator model. Direct responsibility for a structural violation is not confined to official agents (though official agents are likely to have a greater degree of responsibility), but is very broadly shared. But the notion of liability that is principally relevant is not that of liability to condemnation and punishment, but that of shared liability to the economic cost of the measures needed to *prevent* a violation. An analogy for this kind of responsibility more illuminating than the Nuremberg model (which prosecuted a handful of official agents for a violation in the past) was the widely shared duty to achieve the abolition of slavery, which underpinned entire economies and ways of life.

§I briefly analyses the interactional and institutional accounts of human rights violations and their inapplicability to the persistence of severe poverty. §I.1 discusses the interactional model, §I.2 discusses the state-based model assumed in international law, and §I.3 discusses Pogge’s institutional account. §II turns a defence of

subsistence deprivations as a structural violation. §§II.1 and II.2 argue that ongoing global as well as domestic economic, social, political and legal structures predictably and avoidably deprive a vast number of the means of subsistence. §II.3 argues that genuine acknowledgement of the right to subsistence entails recognizing that this constitutes a violation, and enforcing regulations that prohibit subsistence deprivations. §II.4 examines the nature of the duty to implement structural reform.

I

The Inapplicability of the Interactional and Institutional Accounts of Human Rights Violations.

1. *The Interactional Account.* The interactional account takes the role of human rights to be that of governing persons' direct interactions with one another, and prohibiting the direct infliction of harm by a particular agent on a particular victim. Paradigm violations are acts that inflict severe physical harm (torture, arbitrary killing, and so on).

However, subsistence deprivations rarely arise from a particular agent's plundering or destroying a particular victim's means of subsistence. Rather, the harm is the combined effect of numerous structures, activities and practices involving the behaviour of a vast number of agents.

While plunder plays a central role in the underpinnings of severe poverty,¹ it does not generally take an interactional form. The causal chains are usually far more complicated. The plunder involves complex, large-scale processes under which the world's resources come to be partitioned and possessed by a small fraction of the world's population, while the global poor are deprived of access to even enough resources for subsistence. Similarly, the physical destruction or degradation of persons' means of subsistence (such as access to fertile land and uncontaminated drinking water) is generally the combined effect of the activities of a vast number of agents.

The obvious alternative is the institutional account, to which I now turn.

¹ Kaushik Basu argues powerfully for this (2011; see especially pp. 5 and 209–10).

2. *The State-Based Institutional Model.* Current international law takes the addressee of most human rights, with sole responsibility for fulfilling the primary duty to respect such rights, to be the right-holders' own government. Paradigm violations are acts of mass atrocity instigated or perpetrated by government officials against a civilian population, and the role of the international community is held to be to protect persons against violations perpetrated by their own government.

In accordance with this model, sole accountability for violations of the right to subsistence is held to lie with right-holders' governments, and the international community is held to be under a secondary back-up, remedial responsibility, to facilitate and enforce governments' primary duty to respect the right. It should be noted that this very framing seems to preclude *ex ante* the possibility that the international community might share responsibility for actually violating the right to subsistence.

A striking feature of this state-based model, when applied to the right to subsistence, is that it lacks historical depth. Since severe poverty is embedded in *enduring* social structures, an adequate analysis of its underlying causes has to examine the history of these structures. Every country now burdened with chronic severe poverty had a history of being subjected to severe injustice by colonial powers. Colonized countries were saddled with the imposition of extractive institutions, and the plunder of their natural and social resources.

Under colonialism there was a rising tide of voices from colonized countries demanding a share of the riches of empire. Arguably one of the motivations behind colonial powers' agreeing to decolonization was to put an end to such claims (Burke 2012, pp. 427–48). During colonialism, the colonial powers could hardly avoid accountability for the realization of the socio-economic rights of those subject to their colonial rule. When decolonization was achieved, this accountability was transferred to the governments of the newly decolonized countries.

At the time of decolonization, it was acknowledged that these countries lacked the social institutions and resources to secure universal fulfilment of basic socio-economic rights, including the right to subsistence, among their citizens. But instead of inferring that these rights imposed rectificatory duties on former colonial powers, to help get the newly decolonized countries on their feet after a

prolonged period of colonial plunder, the rights were in effect watered down; in view of limited resources internal to poor countries, the rights were understood as progressively realizable.

Thus, with decolonization, the battle for recognition that socio-economic rights should be conceived as actionable claims to a share of the riches of empire, such that these rights imposed legally binding duties on former colonial powers, was lost. Development aid by affluent countries came to replace demands for recognition of legally binding duties, and the aid was framed in remedial terms, as a back-up responsibility. Moreover, the secondary responsibility to offer assistance is vaguely worded. It is far from being framed as a strict, mandatory duty, let alone a duty non-fulfilment of which constitutes a human rights violation.

The distinction between primary duties to respect the right to subsistence and a back-up responsibility to provide aid to facilitate fulfilment of this primary duty is highly significant. First, primary duties not to violate human rights have a special, peremptory moral force. In particular, they trump considerations of domestic interests. By contrast, in the face of numerous competing domestic demands on resources and electoral imperatives, a remedial responsibility to offer assistance is in practice likely to be outweighed by domestic considerations.

Second, only those who violate primary duties incur the label ‘human rights violators’, signifying that their behaviour is beyond the pale. Makau Mutua criticizes contemporary human rights discourse for its application of the trope of violator, victim and hero, with its casting the international community in the role of the human rights heroes, protecting victims against acts of savagery perpetrated by principally African leaders (Mutua 2002, ch. 1). It should be noted that the very framing of the right to subsistence in international law casts the international community in the role of facilitating and enforcing the duty to respect the right (and thus as protecting persons *against* violations of the right), and precludes *ex ante* the possibility that the international community might share responsibility for actually violating the right.

Third, duties not to violate human rights are rightfully enforced. It is for this reason that recognition of these duties can challenge unjust power structures and empower those who would otherwise be overwhelmingly vulnerable to socio-economic forces beyond their

control, to the point of being deprived of any realistic opportunity to obtain the means of subsistence.

I suggest that transfer of sole responsibility for the fulfilment of primary duties to respect socio-economic rights to the governments of newly decolonized countries constituted a perfect moral loophole by which the former colonial powers could avoid recognition of stringent legally binding duties, but that morally it lacked credibility. In so far as affluent countries have been enriched through the theft of natural and social resources from other countries under colonialism, some of the resources of affluent countries rightfully belong to other countries. Ongoing failure to pay rectification for this constitutes ongoing theft. Given the dire need for resources in these countries for the fulfilment of basic socio-economic rights, this ongoing theft has continued to play a key causal role in deprivations of these rights.²

Another striking aspect of the state-based model dominant in current international law is that in positioning the international community in a remedial role, it does not readily accommodate the role played by *current* features of global social institutions and practices in actively contributing to the incidence of severe poverty. While there has been an important recent move towards acknowledging the human rights responsibilities of multinational organizations, with UN Guiding Principles on Business and Human Rights (2011) proposed by John Ruggie, it remains the case that they are not legally binding. The inadequacy of confining responsibility for respecting the right to subsistence to right-holders' own governments is particularly flagrant if we consider the features of global economic interaction that undermine the capacity of struggling democracies to fulfil this duty, such as patent laws, 'odious debt', and structural adjustment programmes.

3. *Thomas Pogge's Institutional Analysis.* Thomas Pogge argues that there is a coercively imposed global institutional order, and that its rules engender most existing severe poverty. He argues that this constitutes a massive human rights violation and crime against humanity, and takes direct responsibility for this violation to lie with official agents of this global institutional order, who are responsible for the design of its rules.

² Daniel Butt (2009) offers a compelling analysis and defence of duties of rectification.

Pogge's focus is on the transnational institutional arrangements in recent decades. He does discuss historic injustice such as colonialism and slavery, but in the context of the duty of powerful economic actors not to take advantage of a superior bargaining power—which can be traced back to such historic injustice—to press for grossly unfair terms of global economic interaction. He argues that these rules have been so slanted that even minor reforms of them would have eliminated most existing severe poverty.

A full analysis of Pogge's argument and of the critiques it has generated is beyond the scope of this paper. I shall highlight three features of it that are particularly contentious.

The first is his claim that official agents are knowingly implementing policies that foreseeably inflict severe poverty. Although there is in fact widespread agreement that severe poverty is the predictable combined effect of global as well as domestic structures—including among critics of Pogge's argument—one criticism of his top-down model is that it is generally hard to trace a one-to-one link between the subsistence deprivations suffered by particular victims and specific policy decisions by particular official agents. As Saladin Meckled-Garcia, for example, argues, it is generally the case that the international economic policies of governments of affluent countries do not in themselves inflict severe poverty on particular individuals (2013). Meckled-Garcia further argues that such governments cannot be held responsible for the overall impact of global economic interaction on the incidence of severe poverty, and that their policy of maximizing domestic economic growth is not in itself clearly unreasonable, given that they are accountable to their own citizens. Accordingly, he argues, while it is sometimes the case that some of these governments' policies do indeed in themselves foreseeably result in the infliction of severe poverty, this is not generally the case; and it is certainly not plausible to describe these governments' policies as foreseeably leading to the infliction of most existing severe poverty.

Turning to global social institutions such as the World Bank, the IMF and the WTO, it is widely argued that they lack the authoritative decision-making structure of domestic social institutions, and function principally as forums for trade negotiations between member states.

There have indeed been cases of certain economic policies of the World Bank and the IMF that have turned out to have caused or exacerbated subsistence deprivations. Moreover, it has been forcefully argued that this should have been predicted, and resulted in part

from complacent economic assumptions. However, when it has become sufficiently clear that a particular policy can be linked to severe harms to individuals, these agencies have changed their policies. Once more, then, it is generally not possible to pinpoint specific policy decisions, knowingly made and coercively imposed by officials of these organizations, that are describable as foreseeably inflicting severe poverty.

Rather, the staff are generally highly motivated to *reduce* global poverty. The principal problem, I suggest, is that they lack the mandate and the authority to translate this moral purpose into action by introducing and enforcing coordinated global rules to regulate global economic interaction in a way that would avoid subsistence deprivations.

A second aspect of Pogge's argument that has been widely criticized is his claim that the rules of the global institutional order are responsible for the infliction of most existing severe poverty. It has been widely argued that this exaggerates the role of global social institutions, and underestimates the role of domestic social institutions, in such poverty (see, for example, Satz 2005). It should be emphasized that Pogge takes the corruption in many poor countries to play a major causal role in the persistence of severe poverty, but he argues that certain global economic rules, such as the international resource and borrowing privileges, encourage and facilitate this corruption. In response it has been argued that reforms of these two privileges, together with trade reforms, would not be enough to prevent most existing severe poverty.

A third contentious component of Pogge's argument is his analysis of the negative duty correlative to the right to subsistence, as the duty 'not to collaborate in upholding a coercive institutional order that avoidably restricts the freedom of some so as to render their access to basic necessities insecure without compensating by protecting its victims or working for its reform' (Pogge 2002, p. 70). It has been widely argued that this duty is neither really negative nor really correlative (see, for example, Hayward 2008, Patten 2005). It fails to distinguish between cases in which global institutions actively contribute to severe poverty and cases in which they fail to do enough to reduce or eliminate it.

A crucial feature of the duties *correlative* to fundamental human rights is that non-fulfilment of them constitutes a violation of the right. For example, the duty correlative to the right against torture is

the duty not to inflict such torture. The agent who violates a correlative duty is responsible for actually violating the right, and so incurs the label ‘human rights violator’. Pogge argues that the reason he takes the right to subsistence to impose only negative correlative duties is that if he were to take it to impose positive correlative duties, that would entail labelling as human rights violators agents who failed to *provide* right-holders with the means of subsistence, which he finds an implausible implication. But given that on his analysis of this negative correlative duty, it is neither robustly negative nor straightforwardly correlative, then Pogge’s own argument faces the same objection: that it is not plausible to label those who fail to fulfil the duties as human rights violators.

Indeed, Pogge himself argues that the term ‘under-fulfilment’ of the right to subsistence may be more appropriate than ‘violation’. Thus, while he starts out with the claim that the global institutional order is responsible for the infliction of most existing severe poverty, and that official agents of that order are responsible for a massive human rights violation and crime against humanity, he then offers a philosophically contentious analysis of the negative duty correlative to the right to subsistence in light of which he concludes that the term ‘under-fulfilment’ is more applicable. But if the term ‘under-fulfilment’ is more appropriate than ‘violation’, this is in tension with his earlier claim that the operation of global institutional order constitutes a massive human rights violation. The worry, then is that he ends up watering down the force of his original claim.

Nevertheless, while Pogge’s analysis of the extent of the role played by global social institutions is contentious, most critics of Pogge’s argument agree with his rejection of what he calls ‘the domestic poverty thesis’: the claim that underlying causes of severe poverty are internal to poor countries. Indeed, that thesis is itself an extreme and widely discredited claim. The problem with Pogge’s top-down institutional analysis of severe poverty as a human rights violation is that many, and perhaps most, subsistence deprivations cannot be traced back to individual momentous policy decisions that clearly cause millions of poverty-related deaths. They are the combined effect of myriad quotidian administrative decisions in line with directives to maximize domestic economic growth, which are in turn in line with delegates’ accountability to their domestic constituents, in conjunction with the fact that global economic institutions lack the mandate to regulate global economic interaction so as to

safeguard against subsistence deprivations. Therefore the negative overall combined effect of global economic interaction on the global poor is more plausibly attributed to the weakness and rudimentary nature of global social institutions, and the absence of global rules and norm enforcement mechanisms to regulate global economic interaction to safeguard against subsistence deprivations, rather than to specific policy decisions knowingly made and coercively imposed by agents acting in an official capacity within an authoritative decision-making structure.

Meckled-Garcia (2013, p. III) concludes that in the absence of global social institutions with authoritative decision-making powers, such as Pogge's top-down institutional analysis presupposes, the effects of 'the existing global economic order ... in the form of life-threatening severe poverty', 'grotesque' as they are, cannot be identified as a violation, because there is no wrongdoing that could be identified as a violation and no agents who could be held responsible for it. I now argue, conversely, that the ongoing failure to have *introduced* and enforced coordinated global regulations, compliance with which would avoid subsistence deprivations, itself constitutes a structural violation. I thereby aim to defend some of Pogge's core insights, while avoiding the problematic aspects of his argument.

My argument relies only on the empirical claim that a predictable combined effect of global as well as domestic economic interaction is to deprive a vast number of the means of subsistence. It is therefore compatible with a network model of the causal chains that result in subsistence deprivations, such that the combined effect need not be traceable to specific policy decisions, knowingly made and coercively imposed, that foreseeably result in the infliction of severe poverty. It therefore contrasts with the top-down model assumed by Pogge's institutional account.

A second difference from Pogge's argument is that it is also neutral on how responsibility should be divided up between domestic and global social institutions. An unfortunate result of the debate about Pogge's claim that the global institutional order is responsible for the infliction of most existing severe poverty is that it has deflected attention away from the key questions, of whether there are *some* aspects of global economic structures that contribute to severe poverty, and whether there are feasible reforms that would avoid this.

The third respect in which my argument differs from Pogge's is that it appeals to a straightforward and philosophically

uncontentious account of the negative duty correlative to the right to subsistence, as the duty not to deprive persons of the means of subsistence. Since this duty is robustly negative and clearly correlative, non-fulfilment of it straightforwardly constitutes a *violation* (as opposed to non-fulfilment) of the right to subsistence. (I also take the right to subsistence to impose positive correlative duties, but that requires a distinct argument which I set aside here.) My argument, therefore, aims to accommodate a hugely complex and multi-dimensional analysis of the causal underpinnings of subsistence deprivations, but apply to it a straightforward analysis of the negative duty correlative to the right to subsistence.

II

Subsistence Deprivations as a Structural Violation. My argument is based on a defence of four claims. The first is that a predictable combined effect of existing global as well as domestic structures is that a vast number of individuals are actively deprived of secure access to the means of subsistence. The second is that there are feasible and feasibly achievable alternative structures under which subsistence deprivations would be avoided. This would require the specification and enforcement of a coordinated global schema of rules and regulations, compliance with which would avoid subsistence deprivations. Thus, the first two claims entail that existing global and domestic structures predictably and avoidably deprive a vast number of reasonably secure access to the means of subsistence.

The third claim is that norms and rules that fail to classify as a violation ongoing patterns of behaviour that predictably and avoidably deprive persons of secure access to the means of subsistence are inconsistent with genuine recognition of the right to subsistence.

The fourth claim is that agents who participate in the structures are under a shared duty of basic justice to implement the structural reforms needed to prevent subsistence deprivations.

I now turn to a defence of these claims.

1. *Existing Structures Predictably Deprive a Vast Number of Reasonably Secure Access to the Means of Subsistence.* By the term ‘structure’ I mean any ongoing patterned behaviour. There is no assumption that the patterns arise from agents’ compliance with the

rule of a coercive legal basic structure. They also arise from mores, moral norms, and systems of role responsibilities, such as the business norm of confining employees' role responsibilities to that of maximizing shareholder profit. There is a complex interdependence between formal coercive laws and moral norms or social mores: the latter both underpin, and are reinforced by, the former (Lane 2012).

An important distinctive feature of the notion of severe poverty as a structural violation is that the time frame relevant to analysing this violation is liable to be vastly longer than the time frame relevant to analysing institutional and interactional violations. Since severe poverty is embedded in *enduring* social, political and economic structures, the historical underpinnings of severe poverty are intrinsically relevant to the analysis of it as a structural violation. Another implication of the enduring nature of structures is that the notion of a structural violation includes the impact on future generations of current structures (such as economic structures that cause resource depletion and environmental degradation).

This constitutes one key contrast with interactional and institutional violations, which take place over a specific, discrete time period, and constitute dramatic deviations from the status quo. Interactional violations paradigmatically constitute gross physical violations (such as grievous assault, torture, and mass killing). The conditions that foster this violence (such as weak or corrupt social institutions and extreme resource scarcity) and their historical and geopolitical underpinnings are not viewed as intrinsically relevant to the violation.

Institutional violations consist in specific, momentous policy decisions, paradigmatically decisions to orchestrate mass atrocity against civilian populations. As we have seen, the state-based model assumed in international law, applied to the right to subsistence, focuses on *current* decisions by right-holders' own governments. Accordingly, severe poverty is analysed as a violation only in so far as it can be traced to arbitrary or discriminatory government conduct. The colonial history of countries in Africa and elsewhere is not taken to be relevant to identifying the duties and responsibilities imposed by the right to subsistence.

Pogge's focus is on decisions by official agents of the global institutional order in the time period since decolonization. His central claim is that these decisions are in themselves plausibly describable as foreseeably inflicting most existing severe poverty. He does

mention grievous historical injustice, but principally in the context of the current duty of official agents of the global institutional order not to take advantage of the superior economic and military bargaining power conferred on them in part by historic unjust enrichment through colonial plunder. Moreover, he sets aside the continuing legacies of historic crimes to focus on refuting the claim that ‘at least in the postcolonial era, which brought impressive growth in global per capita income, the causes of the persistence of severe poverty ... lie within the poor countries themselves’ (Pogge 2010, p. 33). In response, he argues that transnational institutional arrangements have been so skewed that fairly minor reforms of them, such as fairer trade rules, would have eliminated most existing severe poverty. On his analysis, then, grievous historical injustices are not *intrinsically* relevant to the assessment of severe poverty as a violation. They are relevant only in so far as they illuminate the ways in which powerful economic actors have exploited their superior bargaining position to impose grossly unfair global economic rules.

For this reason, Pogge faces a difficult burden of proof, of showing that the rules of the existing global economic order are so slanted that making them less slanted would be enough to avoid most existing severe poverty. Accordingly, much of the debate his argument has generated has focused on the extent to which severe poverty should be attributed to domestic factors such as corruption, and the extent to which it should be attributed to global factors, such as the international resource and borrowing privileges that encourage and facilitate the exercise of non-democratic power, together with unfair trade rules. A central criticism of Pogge’s argument has been that he underestimates the former and exaggerates the latter.

But if severe poverty is analysed as a structural violation, then the parlous state of the social institutions of many decolonized countries should be viewed against the background of the ongoing failure by former colonial powers to take steps to rectify the lasting impact of colonial plunder and the imposition of extractive social institutions.

There is a straightforward libertarian principle that rectification is owed for resources obtained through theft and plunder. Otherwise put, one cannot rightfully inherit property holdings acquired (at least in part) through plunder without inheriting the liabilities, in the form of rectification, incurred in the process by which these holdings were acquired. What form the rectification should have taken is a complex and difficult question, but it clearly required a genuine

concerted effort to counter the economic marginalization facing newly decolonized countries, and to implement trade policies that would support their economic growth. Therefore the rectification that was owed went beyond correcting for trade laws slanted in favour of the most economically powerful countries. Moreover, this duty of rectification is uncontroversially derived from a straightforward negative duty that no libertarian would reject. The ongoing failure to acknowledge and fulfil a duty of rectification constitutes ongoing theft and plunder, and impugns the moral legitimacy of the existing global distribution of resource and property holdings.

Even under the most favourable circumstances, the development of sound inclusive social institutions could not have been achieved by the newly decolonized countries overnight, and yet that was the implicit assumption underlying the logic of transferring to their new governments sole responsibility for the respecting of socio-economic rights. Moreover, factors such as tax rules that predominantly benefit wealthy corporations and undermine the capacity of struggling democracies to mobilize domestic resources through tax revenue constitute a continuation of the outright predatory logic of colonialism.

The North was also enriched by a process of industrialization that involved using up far more than an equitable share of fossil fuels and of the absorptive capacity of the Earth. Since both these resources are finite, the North has thereby deprived countries that have not yet fully industrialized of their share (Hayward 2008, Shue 2014). This constitutes another form of structural plunder, of the earth's natural resources and absorptive capacity. Moreover, the North is continuing to use up these resources at an inordinate rate for luxury emissions, to the point of jeopardizing access to the means of subsistence for the present poor and future generations (such as uncontaminated water).

A structural analysis shifts the focus from discrete actions and policy decisions over a specific discrete time period, and zooms out to consider the combined effects of the ongoing patterns of behaviour of a vast number of agents that have deep historical roots and will in turn have a significant impact on future generations. From this perspective, it is clear that global as well as domestic legal, economic and political structures actively deprive persons of, or jeopardize their access to, the means of subsistence on a vast scale. While the structural underpinnings of subsistence deprivations are immensely

complex, this complexity should not obscure the fact that what the combined effects of the ongoing patterns of behaviour themselves do amount to is the widespread depriving of the object of a fundamental human right.

2. *Feasible Alternative Structures.* Preventing subsistence deprivations would require coordination of a level of complexity such that it could only be achieved through the institutional specification, allocation and enforcement of a global schema of duties and regulations, compliance with which would avoid such deprivations. There are indefinitely many schemas that would achieve this, but they each constitute different ways of implementing the same overarching shared duty: to avoid depriving persons of the means of subsistence. The right to subsistence simply poses a constraint on the minimal moral legitimacy of global and domestic structures: that their combined effect does not amount to predictably and avoidably depriving persons of the means of subsistence.

3. *Genuine Acknowledgement of a Right to Subsistence Entails Acknowledging and Prohibiting Subsistence Deprivations.* Adequate acknowledgement of a fundamental human right entails acknowledgement of the negative correlative duty to avoid depriving the right-holder of the object of the right. It also entails acknowledging as a human rights violation behaviour that deprives persons of the object of the right, and prohibiting such treatment.

The object of the human right to subsistence is reasonably secure access to the means of subsistence. Therefore the negative duty correlative to the right to subsistence is the duty not to deprive persons of, or jeopardize, their access to the means of subsistence. This duty is straightforwardly both negative and correlative. Accordingly, non-fulfilment of this duty straightforwardly constitutes a human rights violation. Genuine acknowledgement of the human right to subsistence thus entails acknowledging this correlative negative duty, and acknowledging as a violation behaviour that predictably and avoidably deprives persons of or jeopardizes their access to the means of subsistence.

It is important to avoid conceiving the duties correlative to human rights, and the nature of human rights violations, in a way that would arbitrarily restrict their applicability to certain social contexts. Behaviour that predictably and avoidably destroys or

jeopardizes persons' means of subsistence should be classified as a violation, even if it does not take an interactional or institutional form. The notion of a structural violation brings moral and juridical scrutiny to bear on the combined effects of ongoing patterns of behaviour of a vast number of agents, and applies to these patterns a straightforward analysis of the negative duty correlative to the right to subsistence: if such patterns predictably and avoidably deprive a vast number of the means of subsistence, they should be classified as a violation.

This can be analysed as structural violence in a literal sense: the structures are depriving persons of the means of subsistence, thereby causing their physical deterioration, the blighting of their lives, and likely premature death. This contrasts with the notion of structural injustice, analysed by Iris Marion Young (2011). She conceives structural injustice as structures under which certain people are highly vulnerable to domination or to being subject to rights violations. A structural violation, by contrast, consists in structures that themselves predictably deprive persons of the object of a fundamental human right.

Genuine recognition of a fundamental human right to subsistence entails recognizing as a violation ongoing patterns of behaviour that predictably and avoidably deprive persons of the means of subsistence, and enforcing a prohibition on such behaviour. This prohibition requires specifying, allocating and enforcing a schema of duties compliance with which would avoid subsistence deprivations. Conversely, ongoing failure to have introduced such a schema is incompatible with genuine recognition of the right to subsistence.

One important role of fundamental human rights is to serve as a benchmark by which to determine whether existing legal and socio-economic structures are minimally just. A classic example of this was the deep moral challenge that the human right against slavery posed to legal and socio-economic structures under which some persons were classified as others' property. The legal institution of slavery involved officially enforcing as a right a practice that ought to have been classified as a grievous human rights violation. It was therefore a particularly blatant human rights violation.

Structural violations of the right to subsistence are more subtle and insidious; they involve officially recognizing a right to subsistence, but failing to recognize as a violation behaviour that predictably deprives persons of the means of subsistence, or failing to

specify and enforce rules and regulations compliance which would avoid such deprivations. These structures pay mere lip-service to the right to subsistence. They fail to prohibit the plunder of an inordinate share of the world's resources, or protect against extreme economic powerlessness to the point of lacking any realistic opportunity to obtain the means of subsistence, or recognize that persons whose lives are blighted or altogether destroyed by this have been gravely wronged.

4. *Who Are the Duty-Bearers?* An important line of objection to this argument is that there is no agent (individual or collective) who has the capacity to implement the structural reform needed to avoid subsistence deprivations. Accordingly, I have failed to show how responsibility could be allocated for the alleged structural violation.

In contrast to the interactional account, claims against structural violations could not be claims against the conduct of each agent considered seriatim, given that subsistence deprivations are the combined effect of the behaviour of a vast number of agents. And in contrast to Pogge's top-down institutional account, I do not assume that the combined effect can be traced back to specific policy decisions made intentionally or knowingly or at the collective level. I therefore do not single out official agents of the global institutional order as the perpetrators of the violation.

I contend that agents who participate in the structures that result in subsistence deprivations are under a *shared* duty to implement the structural reform needed to prevent such deprivations. By the term 'shared duty', I mean a duty that is held by individual agents, but for whose fulfilment each agent has only partial responsibility. The notion of a shared duty should be understood distributively, as applying to the individual members of a group of agents. Thus the fundamental duty-bearers are individual agents. However, the capacity that is relevant to fulfilment of the shared duty is what the agents could achieve together; specifically, what would be made possible under alternative structures: through the introduction of alternative regulations, or the reform of existing ones, so as to restructure agents' behaviour in ways directed at avoiding subsistence deprivations. If we know that, between us, we are depriving a vast number of the means of subsistence, and that we could, together, avoid doing so through the introduction of coordinated global regulations, then we are under a shared duty to introduce those regulations.

Gunnar Björnsson offers an illuminating analysis of a shared duty as a demand that a group of agents care appropriately, understood distributively: it is a demand that the members of the group care appropriately (2014, pp. 115–19). What is required for a shared duty, then, is that if the members of the group were sensitive to features of the situation in ways that can reasonably be morally required, this would ensure, in normal ways, that the duty is fulfilled.

I suggest that in our contemporary social context, caring appropriately requires agents to give attention to, and take some degree of personal responsibility for, the combined effects of the structures in which we participate, even if we cannot be singled out as individually responsible for the severe harms inflicted on any particular individual. If the structures predictably deprive a vast number of the object of a fundamental human right, then due care requires us to implement the structural reforms needed to avoid the deprivations; if each agent—or, more plausibly, a sufficiently large subset of them—showed due care, the structural reforms would be achieved.

This differs from both the interactional and the institutional conceptions of the duties. In contrast to the institutional conception, the fundamental duty-bearers are individual agents. Whereas the institutional model singles out official agents as the perpetrators of human rights violations, and takes the responsibility of individual agents to be the avoidance of complicity with violations perpetrated by official agents, the structural model takes individual agents to share direct responsibility for the structural violation. However, in contrast to the interactional conception, claims against structural violations are not claims against the conduct of each *considered one by one*. They are claims against the rest of humanity to reform existing laws and the mores that underpin them, so as to restructure their behaviour in such a way that, between them, they avoid inflicting severe poverty.

An analogy that is more illuminating than the Nuremberg model is that of the widely shared responsibility to achieve the official abolition of slavery in the nineteenth century. Slavery instantiated all three types of violation. The interactional component consisted in the enslavement of other human beings. The institutional component was a set of laws that recognized and enforced property rights in other human beings. In addition, slavery was a structural violation that underpinned an entire economy and way of life.

The duty to abolish slavery was not *immediately* enactable (in fact, Lincoln thought it would take several generations to achieve). It

required a transformative shift in moral norms, so that a normal economic practice came to be recognized as a grievous human rights violation. It also required solving numerous coordination and collective action problems, and the official legal recognition and enforcement of the right against slavery played a crucial role in solving these problems. Jennifer Martinez (2008) discusses the role of international courts in achieving this. This legal recognition was a condition on the minimal moral justice of the legal systems.

Nevertheless, the duty to abolish slavery was enactable to all in the relevant sense: there were feasible economic and legal reforms under which it could be ended; bringing about these reforms was feasible if there was sufficient political will; and minimally adequate concern for the interests of those whose lives stood to be blighted or destroyed by slavery demanded this political will. The duty to abolish slavery was owed to all the victims of slavery, which is why it would have been inappropriate for Lincoln to have limited his goal to that of halving slavery within a certain number of years.

Similarly, ending subsistence deprivations requires solving numerous coordination and collective action problems, which would in turn require introducing and enforcing global rules. However, achieving their abolition is an urgent duty of basic justice owed to all those whose lives will otherwise be blighted or destroyed, and a condition on the minimal moral legitimacy of global and domestic structures.

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