

# Negative Duties, the WTO and the Harm Argument

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Citizens in rich countries should shoulder the burden of alleviating global poverty because they are harming the poor, or so many argue. But the baseline for assessing harm is often unclear. This paper recommends a baseline for harm as rights violations. This baseline makes it clear that many of the attributions of harm made by proponents of the harm argument, instead of representing cases of harms caused, are rather instances of benefits withheld from the poor. A moral case can be made that benefits should be extended by the rich countries toward poor ones, but this case will look very different from a case for responsibility for harm.

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One of the essential questions in the ethics of development is who should shoulder the burden of alleviating worldwide poverty. The most forceful answer to date says that citizens in rich countries should shoulder the burden because they are to blame for the plight of the poor. Western nations dominate the global institutional order and as a result their citizens share responsibility for its negative consequences.<sup>1</sup> These nations have been instrumental in setting up a system of rules that regulate global trade, investment and the allocation of property entitlements. Those rules profoundly shape the fate of people living in poor states, and contribute to the perpetuation of poverty and misery in their lives:

There are many ways in which it is clear that the rich *have* harmed the poor. Ale Nodye knows about one of them. He grew up in a village by the sea, in Senegal, in West Africa. ... The fish stock from which Nodye's father and grandfather took their catch and fed their families have been destroyed by industrial fishing fleets that come from Europe, China and Russia and sell their fish to well-fed Europeans who can afford to pay higher prices (Singer, 2010, pp. 29–30).

The repression of the citizens of Equatorial Guinea, and the denial to them of the revenues from the country's oil deposits, may strike outsiders as a cause for sympathy. ... This natural course of thinking about the situation in Equatorial Guinea overlooks a morally significant fact. Outsiders to Equatorial Guinea are already doing a great deal with regard to its citizens: outsiders are making their plight worse (Wenar, 2008, pp. 7–8).

I am arguing that the citizens and governments of the wealthy countries, by imposing the present global economic order, significantly contribute to the persistence of severe poverty and thus share institutional moral responsibility for it (Pogge, 2008, p. 121).

These claims are not entirely new. Indeed, in international relations theory they have been advanced by a number of theorists with different theoretical perspectives. Realists have long maintained that international institutions mainly exist as a smokescreen for the interests of the economic and military powers.<sup>2</sup> The strong do what they will, and the weak suffer what they must (Mearsheimer, 2003, p. 55; Warner and Finley, 1954, p. 402).<sup>3</sup>

Marxist and post-colonial thinkers have interpreted international politics through the lens of class conflicts that pit the capitalist, industrialized nations of the north against the agrarian, underdeveloped countries of the south (Gramsci and Hoare, 1971; Wallerstein, 1979). For instance, dependency theory, a spin-off from Marxism, argued that the quest for the economic expansion of advanced economies drains away resources from poor countries (Baran, 1957; Prebisch, 1950). While the former develop further, the latter succumb to economic depression and deeper poverty. For the realist, there is no solution to this self-help system in which the powerful get their way, short of a full-blown global leviathan to keep conflicting interests and displays of naked power in check. For the Marxist, the solution lies in transforming the capitalist mode of economic production into an economic system in which ownership of the means of production is more widely distributed, thus subverting the primary rationale for the exploitation of the poor by the rich.

In contrast to these international relations scholars, political philosophers have mounted a novel effort. They start from a moral premise that everyone shares, that is, the negative duty not to harm. Although the 'harm argument' takes various forms, its proponents share the claim that existing global practices are deeply implicated in causing harm and injustice. Therefore the citizens of Western nations that create and sanction these practices are responsible for compensating those affected by this harm.

This charge of blameworthiness has extensive implications for poverty alleviation programs, for institutional reform at the international level and even for domestic politics by possibly altering the distributional balance within countries. More specifically, many of the examples provided in support of the institutional harm argument make a compelling case that the patterns of interaction among countries require substantial changes in order to rectify the negative consequences of the global institutional scheme. However, the baseline for harm offered by such views is incomplete, and this fact weakens our ability to pass judgment on the liability of Western nations. In particular, when we specify with more precision what a negative duty not to harm entails, the relevance of the actions of Western states for their responsibility for poverty alleviation diminishes significantly.

The main aim of this article is to clarify the standard for evaluating claims of harm. It recommends one plausible baseline for harm as rights violations. This baseline makes clear that many of the attributions of harm made by proponents of the harm argument, instead of representing cases of *harms caused*, are rather instances of *benefits withheld* from the poor. A moral case can be made that benefits should be extended by the rich countries toward poor ones, but this case will look very different from a case for responsibility for harm. This is not to deny that people living in affluent countries harm the poor and share moral responsibility for it. It is only to say that the examples offered do not support the case for responsibility for harm on which its proponents want to rest arguments for redistribution across borders.

### Negative Duties and Harm

The harm argument relies on a distinction between actively causing harm and refraining from helping, or between negative duties and positive ones.<sup>4</sup> Attributions of moral responsibility on this account involve showing that the citizens in rich nations are actively causing

poverty. The harm argument therefore does not rest, as the initial arguments in the global justice debate did, on the idea that the rich have an obligation to help the poor because they can afford it (Beitz, 2000; Singer, 1972). Rather, the rich have acquired obligations because they share causal responsibility for creating global poverty. Therefore, to have a conception of poverty as harm is to regard poverty as the failure of a *negative duty* not to cause harm rather than of a *positive duty* to aid those in need.

The most problematic feature of the harm argument is that it does not distinguish properly between harms that result as a feature of regular interactions between people, meaning harms that are typically not blameworthy, and *undue harms*. When country A attacks country B, kills its civilians and depletes its economic resources in an unjust and prolonged war, country A is responsible for the deaths as well as for the economic poverty that ensues as a result of the conflict. This is a paradigmatic case of undue harm, as are colonialism, genocide, displacement, slavery and unjust imprisonment. However, when country A refuses to trade with country B, or to trade on terms that country B prefers, or when its fishing vessels deplete the fish reserves of international waters that abut the territorial waters of country B, the case for responsibility for harm is much less clear. Indeed, as I will argue in the next section, once we clarify what undue harm entails, some of these cases clearly do not qualify as examples of undue harm, and do not entail obligations for reparations. Many of the negative consequences resulting from interactions at the global level are the result of benefits that could be granted to poor countries to enhance their economic well-being, or the result of the primitive and incomplete norms that prevent the developing world from benefiting *as much as they could* from global resources and international trade.

For example, Thomas Pogge argues that the World Trade Organization (WTO) regime harms the poor because it ‘opens *our* markets *too little*’ (2008, p. 18, emphasis in original), and agreements such as the Trade Related Aspects of Intellectual Property Rights (TRIPS) have led to the deaths of many poor people who could otherwise have survived, because it denied the sick in underdeveloped countries access to cheap medicine (Pogge, 2008, p. 22). These and other rules of the WTO, imposed by the rich countries on the poor, result in harm and therefore the rich ‘bear then a collective responsibility for their governments’ role in designing and imposing this global order and for their governments’ failure to reform it toward greater human rights fulfillment’ (Pogge, 2008, pp. 178–9). Likewise, Loren Lomasky argues that ‘there is quite enough blame to go around, including blame ascribable to wealthy countries for committing injustices against their own citizens which simultaneously visit hardships on those in other countries who are least able to cope’ (2007, p. 215). Protectionist measures adopted by rich countries perpetrate injustice against the latter, by depriving them of access to large markets and by distorting their own markets and production processes (Lomasky, 2007, pp. 223–4).

Proponents of the harm argument resort to the vocabulary of rights violations to refer to the harms inflicted by the global economic order. Lomasky says that ‘to be blocked from buying and selling across borders is an unjustifiable restraint on liberty’, meaning that it is a violation of the liberal right of freedom of contract for domestic traders as well as foreign ones (Lomasky, 2007, p. 226). Leif Wenar maintains that a significant portion of international trade is based on stolen goods. Therefore, ‘the plainest criticism of global commerce

today is not that it violates some abstract distributive standard, but that it violates property rights' (2008, p. 2). Our consumption of natural resources is based on acquisitions from repressive, dictatorial countries. For example, Nigeria has witnessed a long train of authoritarian rulers who acquired power unlawfully via military coups and used their position as representatives of the Nigerian state to trade its oil abroad for revenue. The rulers have used this revenue to buttress their power and to oppress further a population that is already in dire need (Wenar, 2008, pp. 5–6). That Western countries recognize as legitimate any group with a monopoly on political power in a country, regardless of whether it has acquired the power lawfully or not, means that they agree to trade in stolen goods. Their actions contribute to dispossessing the local population, give tyrannical governments the means to violate further the rights of their poor citizens, and create incentives for others to stage military coups in order to become the beneficiaries of the resource privilege. Thus Wenar's main claim is that rich nations are directly complicit in poverty by dealing with corrupt dictators.

In contrast to claims of harms caused by individual countries, Pogge makes a systemic institutional point. Rights violations result from regulatory norms embodied in international treaties, created and sustained by the representatives of the powerful Western nations and intended to protect their interests at the expense of everybody else. A human right to X gives you 'a moral claim against all others that they do not harm you by cooperating, without compensating protection and reform efforts, in imposing upon you an institutional order in which you lack secure access to X' (Pogge, 2005, p. 67). Figures showing the extent of absolute poverty, the extent of inequality and the trend of the first two factors provide evidence of violations of human rights by the WTO and other international institutions (Pogge, 2008, p. 102).

Despite important differences with Pogge, Wenar also supports the systemic thesis about the ill effects of the global institutional order as a whole. For Wenar (2008, p. 9), the explanation for the stolen goods story rests with a 'defect in the system of global commerce', namely the failure of international institutions to enforce property rights. Developed nations are blameworthy because they have actively participated in the design of such institutions and continue to support them. While this story is at times read as one in which the rich nations are the main perpetrators of harm (Patten, 2005, p. 23; Satz, 2005), it need not be interpreted in this way. For example, Elizabeth Ashford (2006, p. 229) argues that the fact that the causal chains are too complicated to disentangle the responsibility of particular actors for chronic poverty does not negate the responsibility of such actors, especially when they participate in large institutional structures, and their effects add to or multiply the effects of other actors. Christian Barry (2005, p. 212) endorses the 'contribution principle' to explain that rich countries do not need to be the main cause, but rather merely to 'initiate, facilitate or sustain' a pattern of harmful outcomes.

Yet one reasonable objection to this way of casting the failings of the global institutional order is that the causes of poverty are mainly local. Skeptics point out that there is significant national-level variation in the levels of economic growth and economic well-being among the developing nations, which cannot be explained if the global order is the main causal determinant of poverty. Corruption, self-serving elites, misguided economic policies and inadequate domestic institutional capacities are more likely to determine poverty in the

developing world than inadequate global rules. One such skeptic is John Rawls, who in the *Law of Peoples* claimed that in societies that are poor, 'the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in poorer societies are likely to be oppressive governments and corrupt elites' (Rawls, 2001, p. 77).

Lomasky agrees. Thus he significantly departs from the other defenders of the harm argument when he sides with those who claim that the causes of poverty are mostly local (Lomasky, 2007, pp. 215–6, p. 218). But Pogge tenaciously resists this empirical characterization which he labels 'explanatory nationalism' (2008, p. 146). He is concerned that the view is misleading and it leads to a moral error in properly apportioning moral responsibilities. As citizens living in rich countries, who in turn uphold the regulatory norms of international institutions, 'we are deeply implicated in these harms', Pogge (2008, p. 148) insists. Pogge does not deny that local causes have real effects on poverty, and indeed he cannot. There is a wealth of economic research that supports explanatory nationalism. Daren Acemoglu and James Robinson (2012) articulate in *Why Nations Fail* the most widely shared view among economists, that domestic institutions are the main drivers of the success and failure in a society. Paul Collier explains that factors such as civil war, an abundance of natural resources that makes predation by government easy, and corrupt political elites explain much of the poverty of the bottom billion of the world's population. Many countries are poor because they are mired in military conflicts. Seventy-three per cent of the people in the bottom billion have recently experienced a civil conflict or continue to be in one (Collier, 2007, p. 17), and a civil war sets a country back on average 21 years. William Easterly (2002) points out that the more corrupt a country's leaders are, the less it tends to grow. Therefore, evidence about the local causes of poverty cannot be denied, and Pogge is careful to maintain that there are substantive global causes *in addition* to the local ones (Pogge, 2004, p. 263; 2008, p. 17).

The harm argument has received a lot of attention. Debra Satz (2005) and Rowan Cruft (2005) challenge the idea that the responsibility to the world's poor should be conceived exclusively in terms of negative duties. Satz also challenges the causal relevance of rich nations in perpetuating poverty. Mathias Risse (2005b) claims that the global order can be credited with significant benefits for the world poor rather than harms and is skeptical of an important implication of the harm argument, namely that outsiders can do much to improve the lot of the poor (Risse, 2005a). In a related critique, Joshua Cohen (2010) does not find support for the idea that the situation of the poor could be much improved by changing global rules. Erin Kelly and Lionel McPherson (2010) reject the strong egalitarian assumptions of the harm argument.

My focus is different. Although some critics emphasize the inadequacy of the baseline for judging harm (Patten, 2005), no alternative baseline has been articulated. Without it, we simply cannot assess whether there is an actual harm that can be blamed on some agent or institution as opposed to a condition that is unfortunate but for which no one is responsible. I will propose a moralized baseline founded on rights violations which, tested against the examples offered by the defenders of the harm argument, reveals that the problems they identify are often the unfortunate consequences of imprecise, weak or inexistent global rules. In addition, some of the examples of harm are cases of failures of

positive duties to help rather than negative duties not to harm. The next section provides a methodology for evaluating charges of undue harm. The following sections focus on the examples involving the WTO to show why those charges leveled against the Western world are, at least based on the evidence supplied so far, hard to sustain and that casting the negative effects of the global order as rights violations by the proponents of the harm argument is misleading.

### Some Methodological Suggestions

Those working in the tradition inspired by John Stuart Mill's harm principle notoriously struggled with the challenge of specifying what kinds of actions constitute instances of undue harm. Since 'virtually every kind of human conduct can affect the interests of others for better or worse to some degree', we need a notion of harm that distinguishes types of harm that are the appropriate subject of social regulation from those that are not (Feinberg, 1987, p. 12). The harm principle is too vague to be of any use because one can cause harm without being as a result either morally or legally responsible for it. Competition between two potential employees for a job results in someone losing the competition, and therefore being harmed; however, the winner is not morally responsible for the harm. Such situations are not ordinarily considered appropriate for attribution of moral blame.

In his influential book *Harm to Others*, Joel Feinberg distinguishes several relevant classes of harm. The most plausible candidate for considering an act harmful is if it constitutes a setback to interests. Interests are stakes people have in certain activities or states of affairs. Some interests are inconsequential, while other interests are very important. The most important are the 'distinguishable components of a person's wellbeing', such as physical security, nourishment, health and resources to pursue one's goals (Feinberg, 1987, p. 34). These are what Feinberg calls *welfare interests*. Yet not all invasions of a person's welfare interests should be considered morally problematic harms. Many classes of interest should be excluded, such as those that the victim has consented to by making risky bets which set back one's financial interest. The same is true of harms that result from fair competition (two businesses that vie for the same customers). Such competitions result in setback to substantive interests, but they do not produce the kinds of harm that we think should induce moral liability in the winner because they take place as part of a general practice that is conducive to the well-being of each.<sup>5</sup>

Welfare interests are typically safeguarded by specifying a set of rights attached to them.<sup>6</sup> Feinberg (1987, p. 34, p. 42) thinks the only way to make sense of harm is if it is a violation of a right. Feinberg was primarily concerned with setting the boundaries of public criminal law, but his insights are of wider import. Following Feinberg, we can say that moral harm is the invasion of a morally protected interest or moral right. Causing physical injury, coercively depriving someone of food and stealing money are all instances of moral, and in most places, legal harms. The identity of the agents committing these harms is irrelevant. They can be individuals, corporate agents, political institutions and so on.

It is helpful to note that, in a society, the responsibility of individuals and those of public institutions can lead in different directions. Take racial discrimination for instance. Individuals can engage in harmful acts of racial discrimination, yet public institutions can be geared towards reducing and eliminating instances of private discrimination. For example,

the Supreme Court ruling *Shelley v. Kraemer* in 1948 declared that private covenants which sought to perpetuate racial segregation in housing by binding white property owners not to sell to blacks were not enforceable in a public court. While the individuals entering those covenants were engaging in harmful discrimination, the public institutions were not. Indeed, they sought to correct it. The reverse can also be true. Many individuals in a society can treat others decently in their private interactions while public institutions engage in harmful practices. Systematic wrongful imprisonment (to punish political opponents) and lack of due process are harms committed through political institutions which do not entail that individuals mistreat each other in their private dealings. A third situation is also possible, where the institutions compound and magnify private harms. Slavery and the fugitive slave laws are an example of compounded harm.

Therefore a theory that provides an account of harm must lay down a list of morally important entitlements, or rights, whose violation counts as an instance of *undue moral harm*. Yet for a certain class of issues there is no standard of moral harm prior to a positive convention, such as a law, that establishes a benchmark against which harmful actions are judged and responsibility is assigned. The notion of harm as a violation of moral rights does not offer clear guidance in cases where an activity has a tendency to cause harm to certain people, but prohibiting it causes harm to the people who have an interest in engaging in it. Pollution is a case in point. A moral interest in human health must be balanced against the interests people have in driving cars, in generating electricity or in the production of goods that come from heavy industry. Attributing moral blame in this case involves judging the relative importance of conflicting interests.

Where this happens, '*no prior standard of wrongness exists*' (Feinberg, 1987, p. 230, emphasis added). The standard for imputing harm is created by the law or a regulatory agency that allocates permissions and restrictions to engage in certain activities, such as industrial pollution permits or limits for pollutants in car exhaust fumes. In this instance, the harm principle *does not offer any guidance* for attributions of moral blame, or for designing policy, except to legitimate efforts to restrict activities that have complex effects and to create standards for wrongdoing. Cases in which individuals acting separately do no harm, but the aggregate effect of their action tends to cause harm over time, are appropriate for such balancing of interests. They characterize the typical scenario for 'tragedy of the commons' problems. Farmers who gradually increase their use of a common pasture do not act wrongly. However, the potential for overgrazing and making everyone worse off calls for regulating the use of the pasture and assigning permissions and restrictions for the number of cattle that each farmer can have. Prior to setting up those restrictions, however, the farmers are not morally liable for harm.

This weighting does not apply to cases in which, on the one hand, some people's interests have been set back, but on the other hand there is no corresponding interest that other people have in engaging in activities that cause harm. Torture, slavery and child neglect are clear cases of liable harm because there are pre-political standards for moral harm and no justifiable interest to protect the activities of those who engage in those harms. But often the determination of which cases of harm rest on pre-political standards and which do not must come from political deliberation and be enshrined either in constitutional guarantees or other legal protections.

What are the lessons of this analysis for judging the harms caused by some countries in their dealings with other countries? First, the best way to conceive of negative duties not to harm is to think of them as obligations not to violate moral rights. Second, clarifying people's rights involves at times creating positive rules that balance conflicting interests where no prior standard of harm exists. At the very least, those who offer the institutional harm argument would have to supplement their account with a distinctive list of interests as rights whose violations would count as harms, and of types of action international institutions engage in that would be rights violating. Judged against this baseline, the harm argument is ambiguous and does not offer good guidance for attributing moral blame to the appropriate agents.

These suggestions drawn partially from Feinberg's extensive analysis of harm are not the only way to assemble standards for judging institutional responsibilities for harm, and there may be more comprehensive alternative accounts that can serve this purpose. Nonetheless, I think they represent a plausible mapping of the most important dimensions of evaluating allegations of moral harm. Without offering a defense here for this particular set of methodological suggestions, I will next apply them to evaluate allegations of moral harm committed by international institutions which generate responsibilities to alleviate poverty.

### **The WTO and the Problem of Undue Harm**

One of the essential sticking points of the harm argument is that the rules of international trade are harmful. This is paradoxical, given that the WTO is often hailed as an exemplar of a successful international institution (Barton *et al.*, 2008, p. 205; Goldstein *et al.*, 2007, p. 38). And in some ways it is. The purpose of the WTO, formerly known as GATT, is to reduce trade barriers that countries impose on one another. Recognizing that trade barriers are detrimental to economic growth and prosperity in general, countries have come together since the Second World War to overcome a collective action problem and negotiate multilateral reductions in trade barriers. For instance, a recent study found that the GATT/WTO increased trade by 43 per cent for pairs of participants in the organization, compared to pairs of non-participants over the duration of the regime, with the strongest benefits of an average increase of 136 per cent accruing after the first two years of GATT and of 93 per cent after the Torquay round (1950–1), respectively (Goldstein *et al.*, 2007, pp. 55–6). Moreover, trade increased for both industrial and non-industrial countries, although at different rates (Goldstein *et al.*, 2007, p. 56). This evidence shows that the WTO is moving in the right direction at a good pace. The statistics point to a positive role for the WTO, and this result, judged by Pogge's own support of the benefits of free trade for poor countries, should be celebrated.

What this means is that to say that the WTO harms the poor is to fail to disaggregate the effects of the actions of individual states from those of the organization of which they are now a part. If moral responsibility for tariffs and subsidies accrues at all, it accrues to individual countries, and *it accrues differentially*, based on their different degrees of protectionism. It is not a responsibility that the WTO acquires, because the WTO's *raison d'être* is precisely to reduce the barriers to trade and therefore reduce their negative effects. The institution is acting to mitigate and eliminate the harmful effects that the actions of their

individual members produce, just as laws that prohibit racial discrimination seek to mitigate and eliminate the harmful effects of racism that individuals display when acting on their own.

This is why Pogge's response to objections that highlight the positive effects of the WTO is inadequate. Pogge says that one may well believe that the WTO is overall improving the situation of the global poor, but 'improving', Pogge argues, simply means harming them less. Imagine a man who beats members of his family less often than he previously did. He is not 'improving' the situation of his family in any recognizable way (Pogge, 2008, p. 23). Even if the WTO has produced lower overall levels of poverty, it still harms the poor, but at a declining rate (Pogge, 2008, p. 23). But the abusive father simply offers the wrong analogy, because it suggests that the wrongdoing and the correcting behavior stem from the same agent. This is not, however, the case with the WTO. Trade barriers are the result of states acting independently. The WTO tries, albeit slowly or unsuccessfully at times, to move states to act in the opposite direction, by creating a framework within which they can commit to reducing those barriers.

If the harm argument fails to establish the responsibility of the WTO, it does not mean that developed countries are off the hook. As long as they maintain tariff and non-tariff barriers to trade, they harm developing countries because these barriers restrict their access to large markets, the proponents of the harm argument say. Farm subsidies in the US and the EU, tariffs on agricultural products and quantitative restriction on imports are all hurting producers in the developing world by denying them the ability to sell their products in Western markets. We can agree that these barriers harm the poor. But is this a case of undue harm?

Pogge would like to argue that it is. Pogge seeks to cast the effects of trade barriers on people in underdeveloped countries as violations of human rights. Elaborating, Pogge says that extensive and severe poverty shows the global economic order to be engaged in rights violations (Pogge, 2008, p. 102). The moral assessment of an institutional structure has to be responsive to information about three factors, he says: the extent of absolute poverty, the extent of inequality and the trend of the first two factors (Pogge, 2008, p. 102). The second, the extent of inequality, is a measure of relative poverty, and is a rough measure of the avoidability of poverty and the opportunity costs to the privileged of its avoidance.

This strategy of invoking rights seems appropriate, but there are several problems with Pogge's way of articulating what counts as a human rights violation. Staying with his point about systemic harm, Pogge (2005, p. 67; 2011, p. 16) describes a human right as a right not to have imposed on you an institutional order that is harmful. But this definition is too vague to be helpful. At the very least it requires showing that the international institutional order is harmful, and that its effects go beyond mere harm to cause undue harm, both of which are tall orders. The more general point is that such a definition is not specific enough to allow us to distinguish between cases of human rights violation and cases of non-violation, thus failing to perform one of the key functions of a definition of human rights.

Similar difficulties face Ashford and Barry's accounts. For Barry, responsibility is triggered by a causal connection in which an agent A initiates, facilitates or sustains the deprivation of agent B. If a policy in country A has contributed to acute deprivation in country B, then according to the contribution principle, country A is responsible for compensating country

B for its deprivation (Barry, 2005, pp. 212–3). But this is insufficient. The moral baseline requires that contributions to harm must be of a certain kind to warrant compensation. Country A bombing country B without reason triggers a justification for compensation, while country A deciding to stop buying country B's textiles does not, even if the effects on country B's textile-making industry are disastrous. In other words, it matters if the contribution is a direct violation of rights or an unfortunate consequence of normal and lawful exercise of economic liberties.

The same is true for cases in which multiple agents act in concert such that it is difficult to disentangle the causal responsibility of each. Ashford (2006, p. 229) says that individual agents which are part of a complex causal chain that causes chronic poverty are all responsible. Yet again the question is: what is the baseline against which this complex chain of causation's effects is judged? If individuals are separately but knowingly engaged in making parts for torture devices which are then used by robots to inflict physical harm (Ashford, 2006, p. 225), the case for the responsibility of these individuals is more straightforward, because they are part of a chain that causes clear and unambiguous human rights violations of another person's physical security. Yet the case of responsibility of various agents in a complex causal structure whose result is poverty is not clear because the baseline for causing poverty is not defined. Is poverty the result of violations of clear moral entitlements, such as deprivation of physical freedom, or the result of legal/institutional obligations that some have in virtue of their roles with respect to others, such as for instance caretakers in an orphanage? Until and unless this issue is settled, we cannot judge those involved in a complex chain of causation to be 'responsible' for harm and therefore liable for compensation.

A different way to read Pogge's complaints about the ill effects of international rules is that the extent of poverty is proof enough of human rights violations. But is there a right not to be poor? If such a right existed, what kinds of wrongs committed by third parties would constitute violations of this right? The first thing to note is that it simply does not follow from the fact that people are poor that somebody has violated their rights. People can be poor because of natural disaster, or because the economic system they live under is underdeveloped and underperforming. We can call these situations unfortunate, because people have been made or kept poor as a result, but we would not think of describing them, or at least it would be a stretch in ordinary moral language to describe them, as situations in which rights have been violated. These two examples are meant to invoke the intuition that rights violations require human agency. There being a situation of poverty does not prove that acts that violate people's rights have occurred.

Pogge anticipates this interpretation and says that the moral quality of an institutional order in which starvation occurs depends on whether and how that order is causally related to this starvation. It depends, that is, on the extent to which starvation could be avoided through institutional modification (Pogge, 2008, p. 116). But this is confusing. The fact that poverty could be avoided through the efforts of the rich does not show that the rich have caused it. Were I to be starving, the fact that someone could make me less hungry by providing me with food does not show that person to have caused my starvation.

Therefore, an institution or institutional system failing to realize human rights in so far as it is reasonably possible cannot be explained in terms of violations of clearly assignable

moral entitlements. The three types of data that feed information for moral evaluation – absolute poverty, relative poverty and their trend – cannot count as relevant data on their own, unless they result from violations of negative duties. Recall that Pogge employs inequality as a measure of the avoidability of poverty and the opportunity costs to the rich for its avoidance. But the question of whether the rich are responsible for the plight of the poor is distinct from the question of how the rich can alleviate poverty and what the costs are of doing so. The extent of inequality and of the opportunity costs for the rich in improving the condition of the poor, barring other information about the causal chain that produces the disparities, can only serve as a benchmark for assigning moral responsibility if one takes positive duties as dispositive, but not if one assumes, as the harm argument does, negative duties as a starting point. Violations by omission are not violations of negative duties unless they result from special obligations and roles.

Trade barriers are offered as a more specific example of rights violations. Yet they are not. Even if producers in developing countries could be made better off by more open trade, and therefore spread the wealth in their own societies, this example still does not count as a relevant kind of harm. The refusal to trade with someone, or trade on terms that are more favorable to them, is not a human rights violation. This is true even if the refusal to trade has negative consequences. Indeed, economists argue that trade barriers are detrimental all around for the people who would like to sell in Western markets, and also for the producers and consumers in the Western markets themselves. Subsidies create barriers to entry for new local producers just as they do for foreign producers, and the higher prices that result from trade tariffs and import quotas hurt local consumers by keeping prices artificially high. Trade barriers are not just detrimental to those who would like to export, but also counterproductive for creating a domestic competitive market.

However, the fact that trade barriers are misguided does not show that a *violation of rights* has taken place.<sup>7</sup> It may be callous not to lift restrictions on trade, but it is not a violation of the global poor's rights if rich nations fail to do so. Bad consequences are not evidence of violations of rights, even if consequences should matter in judging the relative acceptability of a system of rights in general, as Amartya Sen (1988) argues. The example of trade barriers does not support the case that international institutions facilitate harms that violate human rights.

Of course, Pogge (2007) has argued elsewhere that 'a right not to be hungry' or 'a right not to be poor' creates substantive demands on others. In so far as a right not to be poor is a right that generates positive obligations in others to help, it can be justified even absent any evidence of a direct connection between the actions of those obligated to relieve poverty and those who find themselves poor. Because this justification would entail a positive duty to help (Patten, 2005, p. 27), Pogge is in danger of being caught up in a slippage between his strong initial commitment to negative duties and positive duties to help those in need.<sup>8</sup>

Consequently, one needs to say more about the place of human agency in causing a setback to interests in not being poor in order to provide evidence of a failure of negative duties not to harm. Other examples show that the actions of the rich make the poor worse off without harming them in the relevant sense. Peter Singer (2010, pp. 29–30) discusses industrial fishing in international waters off the coast of Senegal, which has depleted the fish

stock and left the fishermen unable to earn their living and survive. This is indeed a terrible outcome. It is also a classic example of the tragedy of the commons, in which ocean resources are held in common by everyone, without any restriction on how much of those resources anyone can legitimately use for their own benefit. And although one could argue that the reason the poor fishermen are affected is because others resort to taking natural resources unfairly, what sets these tragedy of the commons problems apart is the fact that they are rife with cases of unfair advantage taking when a benchmark for fair shares does not exist.

Overfishing has indeed led over time to an aggregate harm, and must be urgently addressed, but the individual vessels or fishermen who continued to fish did not do anything inherently wrong or rights violating. Reversing overfishing requires a system of entitlements and restrictions in place in which the severe consequences for the Senegalese fishermen are made prominent. This system would, however, have to balance the interests of the Senegalese fishermen with the general interests of others in using ocean resources.

A similar objection can be raised against the TRIPS example. Pogge has worked more than any other political philosopher to argue convincingly that international agreements that codify intellectual property rights in drugs offer protections for the interests of drug manufacturers that are *too extensive*. TRIPS was created during the Uruguay round of 1986–94. This agreement has cemented among other things a patent protection for the producers of life-saving drugs lasting twenty years, during which time generic drug manufacturers are excluded from producing the same drugs. This means that generic drug manufacturers cannot sell medicine to patients who cannot afford the more expensive, patent-protected version (Pogge, 2008, p. 231). Millions of avoidable deaths happen because of these patent protections. Pogge argues persuasively that the consequences of a system of property should be taken into account when designing the fundamental rules of the property regime. This includes, among other things, the incentives for innovations, whether and to what extent first producers are entitled to protection for their creation, and the effects on the fundamental interests of others in getting access to life-saving medicine. Taking into account all of these factors, there is a strong case to be made that twenty years of patent protections for the pharmaceutical companies that spearhead innovation is too long.

Despite this legitimate concern with the bad effects of TRIPS, these effects are not evidence of undue harm. Legally defined intellectual property rights, much like fishing or pollution permits, offer standards for wrong action where none existed before. Such rights are a special, relatively new, hotly contested category of legal rights that seek to strike a precarious balance between acknowledging the efforts of those who invest resources in new ideas and allowing them to benefit from them on the one hand, and the interest of others in benefiting from those discoveries once they are made on the other hand. Focusing on actual or potential harms alone does not offer good guidance about how best to strike that balance, and in practice laws and treaties can strike it in the wrong place. TRIPS may well be such a case, as I believe it is. But this is not evidence of violation of the rights of the poor, because prior to the law allocating the right to manufacture and to access the drugs, the poor had no entitlement to them. This is not to deny that undue harms are being perpetrated on the poor by rich Western nations. It is only to suggest that the harm argument in its present form does not support the charge that violations of negative duties have occurred. And rather than being the result of exploitative regulatory norms, the harm

is often the result of primitive or nonexistent international norms. This fact more accurately isolates one of the causes of global suffering, which is explored further in the next section.

### **The Limits of the Existing Global Order**

Despite important positive effects over time, the WTO suffers from severe disabilities as an international organization. The utter failure of the latest round of negotiations, the Doha round launched in 2001, is a telling symptom. The WTO relies on a primitive organizational structure and archaic rules such as the consensus of all of its 153 members for its legislative decision making (Narlikar, 2005). It has inherited its organizational structure from GATT, which on its creation in 1948 was intended primarily as a bargaining vehicle among a small number of industrialized countries (Barton *et al.*, 2008, p. 38, p. 48). Instead of the substantive reform of its rules and practices that was needed for it to adapt to its much larger membership base and the wider diversity of interests represented among its members, the transition from GATT to the WTO in 1995 kept intact much of the same institutional design (Barton *et al.*, 2008, p. 208). And despite having formalized some rules about negotiations and treaty making during this transition, much of the negotiation process is still informal and opaque, and the developed countries continue to dominate agenda setting. This fact raises valid concerns about fairness within the trade regime and its effects on different constituencies. And the practical downsides are obvious. The disagreement of member countries over the agenda, concessions to developing countries and the demand for greater formalization, transparency and access to the legislative process has brought the institution to a standstill after Doha (Narlikar, 2005). And while the different features of the WTO institutional design have made it more difficult for the voice of countries with a smaller share of global trade to be effective, these features are disadvantageous across the board because they make it almost impossible to agree on new rules or modify existing ones. The problem with the WTO is that it is an agent that is captive to poor institutional design choices which negatively affect the ability of all its members to advance their goals in a mutually beneficial manner.

Consequently, the harm argument attributes too much agency to the different components of the global institutional order. Many of the harms its proponents discuss are the result of a young, immature institutional order, in which rules have unintended side effects, good rules are not properly enforced and clear rules are simply lacking. Take for instance the claim that the global property regime, which sanctions the resource privilege and the borrowing privilege, by its very nature harms the poor. What Wenar, Pogge and Singer call the 'property regime' is the result of a strong and unqualified norm of state sovereignty. The norm of state sovereignty protects morally important interests, such as self-determination, immunity against unjustified military interventions, and formal equality for states in international agreements. And while justified, one effect of this norm, at least under the current interpretation favored by international law, is that the property regime within states is a purely internal matter, and that self-serving political elites will manipulate internal autonomy to gain control over resources, thereby causing harms to the populations of those states. The international 'property regime' is not the result of property rules that favor the interest of the rich but rather the consequence of a poorly circumscribed norm defending state sovereignty.

Wenar says that when Western countries and private companies deal with dictators in poor countries, their actions are akin to buying stolen goods. Similarly, Singer claims that the international legal and political order recognizes Western countries as the rightful possessors of those goods, when instead they should be branded as criminals (Singer, 2010, p. 31). However, there is a crucial difference between knowingly buying stolen goods in normal (domestic) circumstances and trading with dictators. In domestic cases individuals trade in a context in which property entitlements are clear and relatively easy to ascertain. This is not the case in international trade. Within any country, whether resources are owned and managed privately or publicly, and who is entitled to trade them abroad, are not settled by international rules but by domestic ones, and Western partners acquire rights of ownership without being able to ascertain their validity. International law makes clear that the Mexicans are not entitled to property resources in Nigeria (without the consent of Nigerians); however it has little to say about how property rights are distributed within Nigeria. Property rights within countries are not transparent to outsiders, and it is a stretch to argue that whoever buys goods from those countries *knowingly* deals in stolen property. There are of course cases where that happens, but the examples these philosophers refer to are not representative of those cases, and can count, at most, as a *prima facie* argument that the international rules regarding state sovereignty should change.

The de facto entitlements in natural resources structured by the principle of sovereign independence do not constitute a property regime, one that *defines, assigns and clarifies* the legal status of *property rights* in land and natural resources. They are the consequence of other primary norms of international law, such as non-intervention, sovereign equality and territorial integrity. Wenar is engaged in a sustained effort to offer a viable alternative to default property entitlements supported by existing rules regarding state sovereignty. A property regime that settles conflicting claims over resources and generates rules of ownership is necessary, not because the existing property regime fails, but because there is no property regime in natural resources to speak of. The fact that weak, nonexistent or primitive rules abound in international law undermines the systemic point some of the proponents of the harm argument make, which is that international rules and institutions are the result of *active design and support* by rich nations, which are consequently responsible for their effects. While these nations have designed some components of the international order, the claim that the entire system is the result of the conscious design of a few powerful actors is overstated.

Even if Western nations are not responsible for buying stolen goods, they could be responsible in a different way. The 'resource privilege' and the 'borrowing privilege' *create perverse incentives* in resource-rich countries by facilitating coups and increasing the means through which dictators abuse their citizens. International loans and the trade in resources enable the oppression of people in developing countries. Making this charge does not depend on clarifying the entitlement to natural resources. For even if dictators would have legitimate authority for trading them, Western nations are responsible because of the way they participate, along with other agents, in perpetuating harm.

This line of argument also stands on a weak footing. Trade with corrupt governments has complex effects, and induces a myriad of incentives, all of which must be invoked for evaluating trade partners' moral responsibility. Indeed some argue that trade, investment and

financial support are the only ways to improve the condition of the worst off even if or especially if they live under oppressive regimes, because it is the only way to make some of the benefits of commerce trickle down to the masses, through access to jobs, goods, education and training and so on. Even if the trickle is small, and the dictators reap most of the benefits, it is better for the poor than no engagement. For example, the evidence we have from social science analyses on the effects of trade embargos suggests that cutting economic ties deepens poverty among the masses, does little to constrain political elites and does not influence the targeted states' policies (Allen and Lektzian, 2013). More research is needed of course to make a definitive case either way. Nonetheless, because trade has complex effects, the case for ascertaining the moral responsibility of Western nations toward people living in those countries becomes less straightforward. Responsibility could only be established if the main likely effects would be military coups and oppression, but they are not. This is not to say that Western nations are not causally involved with the harm committed by repressive regimes. Rather, causal and moral responsibility can be separated, and they are in this case because the position of Western nations when they engage in trade in the causal chain makes the connection between their actions and likelihood of harm tenuous.

## Conclusion

In many cases in which we attribute blame for poverty or deprivation we do not have a defensible or even clear baseline for doing so. Moral responsibility is in part a measure of whether states or international institutions engage in rights violations. For a certain class of rights that protect fundamental interests, such rights can be assessed pre-politically. For another large class they cannot, and we need positive conventions to establish what people's entitlements are to various goods or ways of being treated. Poverty triggers moral responsibility if it is a result of a clear violation of a pre-political moral entitlement (deprivation of physical freedom) or the result of a failure to fulfill a legal/institutional obligation. I have shown that many of the purported cases of harm advanced by the proponents of the harm argument cannot be described as rights violating. Not to take this distinction seriously is to prove too much, namely that virtually everyone is to blame for everyone else's misfortunes.

Incorrect diagnoses of the problems raised by international institutions set us on the wrong path to institutional reform. Misjudging the processes that have problematic effects in international politics endangers our ability to support and preserve good institutional structures on the one hand, and reform or discard dysfunctional ones on the other hand. Failing to apportion responsibility in the right ways also gets some agents off the hook too easily. Shifting the weight of moral blame to Western states and international institutions does not properly acknowledge the failings and responsibilities of the governments of poor countries, and of the people who live in them who actively support and benefit from unjust policies. This is an empirical, descriptive error that inhibits our ability to propose and engage in effective solutions to reduce poverty and suffering.

The widespread poverty still prevalent in the twenty-first century spotlights questionable patterns of interaction between states, international institutions and the world's poor. The political philosophers calling attention to these facts are positioned at the forefront of many

important debates on global justice. That powerful states have engaged and still engage in egregious patterns of harming the weak is an undisputed historical fact. If we join the debates about how to improve the situation of the globally worst off, we ought to make sure we calibrate our empirical and normative tools to the contours of the challenges at hand. I have offered a methodology for evaluating liability for harm and I have applied it to the WTO. Identifying the agents that cause harm and specifying the ways in which they do so is essential both for holding those agents accountable and for reforming the global order to enhance the protection of fundamental human interests.

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## Notes

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- 1 I am using, following the convention in the literature, the terms Western, developed and rich interchangeably to refer to affluent nations, with the caveat that the terms are approximate (Japan is developed and yet it is not Western).
- 2 For realists this is a descriptive statement about the dynamics of international relations, not a normative judgment about the appropriateness of the power relations within international institutions (Grieco, 1988; Mearsheimer, 1990; Waltz, 2001).
- 3 This insight from Thucydides is central to the realist world view.
- 4 Pogge says: '[O]ne might argue that the distinction between actively causing poverty and failing to prevent it has little or no moral importance. Allowing hunger to kill people whom one could easily save, even mere foreigners, is morally on a par with killing them, or at any rate little better. But I agree on this point ... that the distinction between actively causing poverty and merely failing to prevent it is morally significant in regard to both conduct and institutional design' (Pogge, 2008, p. 15, p. 136). There is active disagreement about whether the distinction between doing and allowing harm is tenable (Steinbock and Norcross, 1999), but for the purposes of this article I will follow Pogge in making the distinction.
- 5 I thank Chad Van Schoelandt for clarifying this point.
- 6 This is the standard view in analyses of human rights (Shue, 1996).
- 7 This point holds even if you think, as Lomasky does, that the state violates the rights of its citizens by restricting or denying them opportunities to trade with outsiders. This claim is consistent with saying that the rights of outsiders have not been violated because they do not have a right that specific others trade with them.
- 8 One does not need to understand a right not to be hungry as a right that generates positive obligations, and Amartya Sen has a rather unique understanding of such a right when he says that its function is not to determine what people are due here and now, but rather to act as 'a moral claim as to what should be valued, and what institutional structure we should aim for, and try to guarantee if feasible'. For Sen (1988), a right not to be hungry is a justification for reviewing existing institutional structures and policies.

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