

# Poverty, Agency, and Human Rights



# POVERTY, AGENCY, AND HUMAN RIGHTS

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*Edited by*

DIANA TIETJENS MEYERS

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# Contents

<i>Acknowledgments</i>	vii
<i>Contributors</i>	ix
Introduction—DIANA TIETJENS MEYERS	3
PART ONE: <i>Thinking Through the Meanings of Poverty</i>	
1. Surviving Poverty—CLAUDIA CARD	21
2. Poverty Knowledge, Coercion, and Social Rights: A Discourse Ethical Contribution to Social Epistemology—DAVID INGRAM	43
3. Rethinking Coercion for a World of Poverty and Transnational Migration—DIANA TIETJENS MEYERS	68
PART TWO: <i>Ethical Responses to Poverty</i>	
4. Responsibility for Violations of the Human Right to Subsistence—ELIZABETH ASHFORD	95
5. Global Poverty, Decent Work, and Remedial Responsibilities: What the Developed World Owes to the Developing World and Why—GILLIAN BROCK	119

vi *Contents*

6. Trafficking in Human Beings: Partial Compliance Theory,  
Enforcement Failure, and Obligations to Victims —LESLIE P.  
FRANCIS AND JOHN G. FRANCIS 146
7. “Are My Hands Clean?” Responsibility for Global Gender  
Disparities—ALISON JAGGAR 170 

PART THREE: *Promoting Development and Ensuring Agency*

8. Agency and Intervention: How (Not) to Fight Global  
Poverty—ANN E. CUDD 197
9. Empowerment Through Self-Subordination? Microcredit and  
Women’s Agency—SERENE J. KHADER 223
10. Paradoxes of Development: Rethinking the Right to  
Development—AMY ALLEN 249

PART 4: *Transnational Transactions and Human Rights*

11. Poverty, Voluntariness, and Consent to Participate in  
Research—ALAN WERTHEIMER 273
12. Children’s Rights, Parental Agency, and the Case for  
Non-coercive Responses to Care Drain—ANCA GHEAUS 299
13. Human Rights and Global Wrongs: The Role of Human Rights  
Discourse in Responses to Trafficking—JOHN CHRISTMAN 321
- Index* 347

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# Poverty, Agency, and Human Rights



# Introduction

*Diana Tietjens Meyers*

Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings. And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life.

—NELSON MANDELA, *speech in Trafalgar Square, 2005*

THIS COLLECTION IS premised on the belief that there is an urgent need for philosophers to analyze the moral underpinnings of the human rights that take aim at preventable, severe poverty and the human rights that bear on migration and the security and dignity of vulnerable populations. These broad concerns raise under-explored issues about the interplay between poverty and agency: the ways in which poverty impacts individual agency and imperils free choice and action, the implications of poverty's negative impact on individual agency with respect to conceptualizing and realizing social and economic human rights, and the relations between nonfulfillment of social and economic human rights and trafficking in persons and economically driven migration. Although there are numerous collections devoted to social and economic human rights and although it is widely agreed that mobilizing the agency of the intended beneficiaries of development programs is important to success, *Poverty, Agency, and Human Rights* is unique in virtue of its focus on interrelations between world poverty and individual agency.

Let me begin with a word about the first term of this volume's tripartite title—*poverty*. A quick glance at the World Bank's Poverty Data website (<http://data.worldbank.org/topic/poverty>) exposes the dimensions of the problem. In 2010 (the most recent data reported), 69.9 percent of people in sub-Saharan Africa were living on the equivalent of less than \$2 per day; 66.7 percent in South Asia; 29.7 percent in East Asia and the Pacific; 12 percent in the Middle East and North Africa; 10.4 percent in Latin America and the Caribbean; 2.4 percent in Europe and Central Asia. Troubling as those statistics

are, huge numbers of poor people are living on the equivalent of only \$1.25 per day, and the World Bank's calculating methods are widely considered to be conservative. Referencing poverty statistics for 2001, Thomas Pogge translates the percentages into more vivid terms. Half of all people alive at that time were living in severe poverty, and fifty thousand deaths daily (18 million annually) were due to poverty-related causes (Pogge 2007). Inspired by the work of Amartya Sen, the United Nations now uses a Human Development measure of poverty and development (<http://hdr.undp.org/en/humandev/>). Singling out three dimensions of well-being—health, education, and living standards—and multiple indicators of progress (or regress) on each dimension, Human Development Reports seek to assess quality of life rather than income level alone. Although there is controversy about the adequacy of both of these gauges of poverty, it is worth noting that both reach the same conclusion regarding poverty trends. Poverty is trending down. Nevertheless, poverty rates remain unconscionably high, and this collection takes its cue from that fact.

The contributors to this volume regard the geopolitical distribution, magnitude, and severity of poverty in today's world as unjust. Moreover, they regard realizing human rights—the civil and political rights that protect people from attack and guarantee their freedom, together with the social and economic rights that provide for education, safe and fair workplaces, medical care, social security, and the like—as a key element in the fight against this injustice. Yet among theorists there is much controversy about the normative status of human rights. Some dismiss human rights discourse as a form of Western imperialism. Some construe human rights as norms implicit in the concept of a human being or person (Nussbaum 1995; Griffin 2008). Some ground human rights in the consent states express when they ratify human rights treaties or the assent implied when victims and activists around the world invoke human rights to lodge complaints and demand redress (Donnelly 2013; Jaggard 2002; Ackerly 2008). Some treat human rights as political instruments that have come to play important moral roles in international affairs (Beitz 2001). And the forgoing is but a sampling of the spectrum of philosophical positions taken by proponents and opponents of human rights.

Theorists not only differ about the normative status of human rights, they are also divided about whether people have rights to the benefits specified by social and economic human rights. Joel Feinberg makes room for these contentious rights by distinguishing rights proper that confer valid claims on right-holders from rights in a “manifesto sense,” which constitute “permanent possibilities of rights” (1979). However, skeptics argue that because these rights lack addressees—persons or institutions that have a duty to provide the



benefits these rights purport to confer—they should not be counted as rights. United States human rights policy parallels the skeptical position. Whereas the United States ratified the International Covenant on Civil and Political Rights over two decades ago, it has never ratified the International Covenant on Economic, Social, and Cultural Rights.

Although there is no philosophical consensus about the moral legitimacy of decoupling liberty rights from anti-poverty rights—that is, recognizing civil and political rights but not social and economic rights—social and economic rights have found influential philosophical defenders. In his groundbreaking book, *Basic Rights*, Henry Shue argues that subsistence rights, including the rights to unpolluted air and water, adequate food, clothing and shelter, and minimal preventive healthcare, are necessary to the enjoyment of liberty rights (1980). Following Shue's lead, many other philosophers offer powerful reasons against cabining off social and economic rights and endorsing only liberty rights. Notably Thomas Pogge contends that social and economic human rights can be conceptualized without adverting to mandatory positive duties to furnish benefits to distant strangers (2007). Insofar as the rules governing economic relations refrain from imposing foreseeable, avoidable severe poverty on sizable populations, the institutions responsible for regulating intra- or international transactions honor their negative duty to respect social and economic rights. However, if these institutions adopt rules that foreseeably and unnecessarily lead to the harm of severe poverty (and in Pogge's view this is currently the state of play), they violate the human rights of those they impoverish, hence they are duty-bound to compensate them. In a similar spirit, the delegates to the 1993 World Conference on Human Rights in Vienna concluded:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

*Vienna Declaration and Programme of Action*

In these resounding words, the international political community joins Nelson Mandela in denying that there is a morally significant distinction between rights to positive benefits and rights to noninterference that justifies prioritizing the latter over the former.

It is important to bear in mind that the origins of human rights doctrine must be traced to a historic political movement mobilized in response to the

military and genocidal horrors of the Nazi era (Nickel 2007). Likewise, the development of human rights doctrine is an ongoing product of diplomatic negotiations and compromises. Although the transnational human rights regime of treaties and monitoring agencies is not rooted in any single philosophical tradition, human rights documents frequently appeal to values that have long been central to liberal political philosophy—including personhood, dignity, equality, and self-determination. The work of interpreting these values—fleshing them out in the human rights framework—and institutionalizing them through realized rights is a pressing political task. Yet there is clearly a place for philosophical reflection on and critique of the momentous transnational undertaking that is the emerging human rights regime.

The themes of protecting vulnerable human beings from harm and respecting the human capacity for autonomous agency recur in the chapters collected here. Viewed in this dual way, bearers of human rights are individuals at risk of abuse, and they are also agentic subjects who are capable of taking action to lead lives that are distinctively their own as well as taking action to uphold and promote human rights. Some of the chapters that follow accent the vulnerability or victim side of this equation—the kinds of suffering and the constraints that severe poverty brings with it. Others accent the agency side of this equation—the agency of people afflicted by severe poverty, the agency of people spared that affliction, or both. Several of the chapters synthesize all three topics—victimization by severe poverty in an LDDW economy (economy with a Large Deficit of Decent Work), taking action to overcome it by migrating to a more affluent state in search of work, and morally defensible responses on the part of destination states to such economically motivated migration. All of the chapters regard the two aspects—vulnerability to victimization and capacity for self-chosen action—as inextricable features of the lives of all persons. To secure the integrity and dignity of persons, then, human rights, including efforts to fulfill social and economic rights, must not only shield people from humanly caused and humanly preventable harm but they must also respect and support agentic capacities. Thus, *Poverty, Agency, and Human Rights* rejects paternalistic approaches to poverty alleviation and economic development while demanding an end to worldwide poverty as a matter of justice and honoring human rights.

I have divided the collection into four parts that address the following topics:

1. The subjective meanings of poverty for the poor as well as those who are well off and how these meanings shape agency

2. Ethically justifiable ways for persons and institutions in the Global North to exercise agency in response to poverty
3. Economic development strategies that secure the agency and empowerment of the intended beneficiaries
4. The constraints severe poverty imposes on agency and the moral significance of those constraints.

I now offer *précises* of the volume's thirteen chapters and link them to the themes I've sketched.

## Part 1: Thinking Through the Meanings of Poverty

The first trio of chapters considers the meanings of poverty from disparate angles. Claudia Card asks what poverty means from the perspectives of poor people (chapter 1). David Ingram asks how well-off people can gain knowledge about what poverty means to the poor (chapter 2). I ask whether one meaning of poverty is that it can function coercively (chapter 3). All ask how better understanding the meanings of poverty can lead to better social policy in regard to alleviating poverty.

Claudia Card's chapter, "Surviving Poverty," describes growing up poor in rural Wisconsin—the struggles of her own family and those of schoolmates whose families were poorer than hers—in order to motivate some proposals for mitigating the evil of poverty and enabling people mired in poverty to survive it. She begins by setting up a conceptual framework in which to reflect on poverty. She distinguishes atrocities, evils, and injustices, and she points out that different forms of poverty fall into different moral categories. She distinguishes survival in the sense of actively overcoming poverty from survival in the sense of what is preserved despite poverty, and she points out that while some people succeed in leaving poverty behind, many people spend their lives "treading water"—surviving but in constant danger of sinking into abject poverty. According to Card, experience of poverty must be parsed along all of these lines. But there is more to consider. The experience of poor people also varies along these dimensions—marked by shame or by pride, felt to be tolerable or intolerable, often accompanied by diminished agency yet compatible with conducting oneself decently. Although Card doubts that poverty will be eradicated any time soon, she believes that steps can and should be taken to mitigate poverty—to enable hope and to augment survival. In particular, she advocates (1) programs to ensure a healthy start in life and reliable care as needed over the course of a lifetime, and (2) protection

against violent crime as well as against being criminalized for your survival activities. While acknowledging the obstacles to reducing the vulnerability of the poor to criminalization, Card documents the suspiciously high arrest, conviction, and incarceration rates of poor people and urges that crimes such as sex work and selling marijuana be abolished. Again, measures such as these do not address the underlying causes of poverty, but rather they expand the scope of agency for the poor and make poverty more survivable.

In “Poverty Knowledge, Coercion, and Social Rights: A Discourse Ethical Contribution to Social Epistemology,” David Ingram turns our attention to the social scientific project of understanding poverty. Poverty knowledge, as Ingram dubs this project, has two aims—reducing suffering and empowering the weak. The latter is the focus of Ingram’s chapter. In particular, he sets out to expose how leading approaches to poverty knowledge obscure the ways in which poverty is coercive and lead to distorted accounts of how poor people experience their situation and cope with it. He starts by reviewing how quantitative methodologies produce statistical data that is amenable to being mustered to argue that income support programs, such as Aid to Families with Dependent Children, have failed and should be replaced with programs designed to change the behavior of poor individuals, such as workfare and capped benefits. Lost in the welter of numbers and the interpretations of them that elite scholars put forward are the voices of the poor and their interpretations of the choices they make. In Ingram’s view, a social scientific methodology anchored in Jürgen Habermas’s dialogical discourse theory would solicit the testimony of the poor, attend to their words empathetically, and put poverty knowledge on a new and better footing. Most important, this qualitative, participatory methodology would expose the heretofore concealed workings of social coercion in the lives of poor people—how poverty hems in agency by condemning individuals to choosing among options that render them vulnerable to domination and that threaten their livelihoods.

My contribution to this volume, “Rethinking Coercion for a World of Poverty and Transnational Migration,” grapples with one part of the question of coercion that Ingram raises. In particular, this chapter offers an account of the way in which severe poverty in what I call LDDW economies functions coercively and drives many individuals to migrate often without required visas. I begin by considering testimony concerning what is like to be extremely poor along with empirical studies of the connections between poverty and migration. I then invoke two bodies of legal doctrine—international refugee law and U.S. hostile environment discrimination law—to argue that severe poverty in LDDW economies constitutes a form of wrongful structural coercion.

Such poverty presents individuals with a no-win choice: either obey destination countries' restrictive immigration laws and endure lifelong immiseration, or defy destination countries' immigration laws and risk trafficking, arrest, and deportation. In failing to take economic human rights seriously in the Global South, the Global North fosters a coercive predicament that prompts many to attempt irregular migration. I urge therefore that destination states owe migrants a rethinking of their immigration policies.

## Part 2: Ethical Responses to Poverty

The chapters in part 1 explicate diverse ways in which poverty impinges on individual agency and raises moral issues. Part 2 considers the responsibilities of the Global North for poverty in the Global South and the ways in which the institutions and individuals of the Global North can discharge their obligations with regard to poverty in the Global South. Both Elizabeth Ashford (chapter 4) and Gillian Brock (chapter 5) give analyses of what better-off citizens of the affluent Global North owe to impoverished citizens of the Global South and the reasons why. Leslie Francis and John Francis give an account of what affluent destination states for trafficking in persons owe to victims of trafficking and why (chapter 6). Alison Jaggar gives a critique of the World Bank's influential 2012 report on gender and development, arguing that it is too soft on Global North actors (chapter 7).

Elizabeth Ashford's "Responsibility for Violations of the Human Right to Subsistence" argues that severe poverty in the Global South is a violation of the human right to the means of subsistence, identifies the duties that correlate with the right, and clarifies who bears responsibility for realizing the right. In contrast to Thomas Pogge, who defends an institutional view of the cause of poverty and the obligation to ameliorate it, Ashford endorses an interactional view. According to Ashford, the responsibility for inflicting severe poverty on vast numbers of people and thus for violating the human right to the means of subsistence must be understood as shared among many relatively well-off individuals. Not only do these individuals have negative obligations to refrain from conduct that prevents others from obtaining the means of subsistence but also they have positive obligations to support changes in economic policies that bring about widespread and severe poverty. Ashford maintains that fulfilling these obligations would reconfigure the harsh economic background conditions that conduce to violations of other human rights. Similar to the treatment of poverty as a form of coercion in chapters 2 and 3, Ashford's discussion of "subsistence contracts"—agreements to accept

violations of one human right in exchange for securing subsistence—shows why threats to subsistence must be eliminated as a necessary condition for realizing such uncontroversial human rights as the rights to safe workplaces, reasonable working hours, and fair wages.

Gillian Brock also emphasizes individual responsibility for the perpetuation of severe poverty in the Global South. She sets the scene for “Global Poverty, Decent Work, and Remedial Responsibilities: What the Developed World Owes the Developing World and Why” by inviting well-off readers to attend to the profound differences between their own life circumstances and the life circumstances typical among poor people in the Global South. In Brock’s judgment, there is no comparison between the opportunities and remedies most readers of her chapter take for granted and the exploitative “opportunities” and the absence of remedies that constrain the lives of people living in severe poverty in the Global South. Even the poverty in rural Wisconsin that Card describes (chapter 1) provides more scope for individual agency than the poverty that prevails in the Global South. Intuitively, the conditions and options faced by vast numbers of people in the Global South will strike many readers as unjust, and Brock’s aim is to solidify that intuition by specifying and defending a subset of duties that citizens of affluent nations owe to those enduring such dire poverty. To identify areas where Global North nations could make helpful changes, Brock canvasses some preconditions for beneficial development—first, an effective state that can collect taxes and spend the resources on public services and infrastructure and, second, an active citizenry that is able to organize and demand fair work conditions and pay scales. Poverty, Brock maintains, cannot be eradicated without the active agency of poor people and their governments. Like Ashford (chapter 4), she deplores corrupt elites and exploitative labor contracts that prolong severe poverty in the Global South. But she highlights numerous policy changes that Global North governments can make to support effective states and active citizenries in the Global South. Moreover, again like Ashford, she argues that those of us who are citizens of affluent, powerful democratic states are obligated to support such changes in the laws governing international markets and trade.

Picking up on the issue of immigration law that concludes my chapter (chapter 3), Leslie Francis and John Francis examine the obligations Global North states owe to people trafficked from the Global South, and they develop a novel account of why destination nations are obligated to provide services and opportunities to persons trafficked from abroad. In “Trafficking in Human Beings: Partial Compliance Theory, Enforcement Failure, and

Obligations to Victims,” they rely on the distinction between partial compliance theory (theory concerning abridgment of just laws) and non-ideal theory (theory concerning contexts in which injustice is pervasive) to make a case that destination countries have special obligations to protect and aid trafficking victims. In their view, attempting to derive obligations to trafficking victims from the injustice of severe poverty in the Global South makes it impossible to differentiate the obligations owed to trafficked persons from the obligations owed to impoverished people in general. In contrast, deriving such obligations from the failure of destination states to fulfill their obligations under the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons clarifies the distinctive moral connection between these states and persons trafficked into their territory. In addition, using partial compliance theory to justify special obligations to trafficking victims differentiates those obligations from obligations to victims of crimes where enforcement is routine and vigorous. After documenting the extent to which destination states fail to enforce anti-trafficking laws and sketching some of the reasons for this persistent under-enforcement, they conclude that destination states ought to provide victims with an option to seek asylum together with medical services, nourishment, and housing during a recovery period.

Alison Jaggar focuses on the question of the responsibility of Global North institutions for poverty in the Global South but with a focus on gender justice. “‘Are My Hands Clean?’ Responsibility for Global Gender Disparities” lists eight troubling ways in which the World Bank’s 2012 *World Development Report: Gender Equality and Development* finds women and men to be unequal in particular regions or worldwide, and Jaggar asks why these disparities are unjust and whether the World Bank’s proposed solutions are adequate. She urges that we cannot comprehend the injustice of gendered disparities in a single moral vocabulary. Human rights discourse captures some of these wrongs, but others require an account of exploitation. Moreover, to appreciate the urgency of bringing about gender equality, Jaggar appeals to the consequentialist argument that gender equality is conducive to development and prosperity. She then turns to the question of moral responsibility. Here she makes an argument similar to part of Brock’s argument—that is, it is all but impossible for consumers and workers in the Global North to avoid harming poor people in the Global South and benefiting from their continuing poverty. To understand women’s poverty in the Global South and to figure out how to effectively address it, Jaggar proposes analyzing “interlocking transnational cycles of gendered vulnerability” that weaken women’s bargaining positions and expose them to human rights violations and exploitation.

Although Jaggar concurs with many of the recommendations to reduce gender inequality that the World Bank endorses, she considers them flawed because they foist too much responsibility for change onto local and national agents, thus absolving Global North actors. She appeals to work by Thomas Pogge showing how backing dictators in the Global South brings about violations of women's rights, and to work by Richard Miller showing how the International Monetary Fund (IMF) and World Bank's structural adjustment programs intensify exploitation of women. Finally, she argues that those world religions that oppose abortion bear a substantial share of responsibility for the persistence of women's poverty and inequality.

### Part 3: Promoting Development and Ensuring Agency

Is development an unalloyed good? Is there any form of agency that can plausibly claim to be a universal good? Is agency a single, simple good, or is it multidimensional and complex? Are there approaches to development that also augment the agency of extremely poor people? These are the questions taken up in part 3. In different ways, Ann Cudd (chapter 8), Serene Khader (chapter 9), and Amy Allen (chapter 10) argue for the importance of respecting agency in the process of promoting economic development and securing social and economic human rights. Cudd defends harnessing economic forces to create sustainable development. Khader, like Jaggar (chapter 7), is particularly concerned with women's equality and agency. Allen, also like Jaggar (chapter 7), rejects an approach to the right to development that absolves Global North institutions of responsibility and adopts an approach that insists on the universality and indivisibility of human rights.

In "Agency and Intervention: How (Not) to Fight Global Poverty," Ann Cudd sets herself a double challenge: (1) to identify a form of agency that poor people consistently affirm that they value, and that philosophical reflection can affirm as genuinely valuable; and (2) to identify development measures that promote this type of agency and that well-off people have both moral and prudential reasons to support. Normative agency, Cudd claims, is the type of agency that people living in severe poverty say they lack when they complain that they are ashamed of unavoidably violating social norms—that is, their poverty prevents them from playing any role in collectively shaping and maintaining social norms. She argues, moreover, that normative agency is the very core of human agency and thus that non-poor



people have reason to endorse this value along with the poor. To gain normative agency, however, extremely poor people need resources that only better-off people can supply. Yet because poverty can be alleviated without supporting normative agency, Cudd undertakes to identify anti-poverty interventions that non-poor people have prudential reasons to support and that promote the normative agency of poor people. After arguing that contrary to a common assumption, global poverty actually harms those who are not themselves poor, Cudd examines two approaches to development that alleviate poverty while also building normative agency. One model, exemplified by the Grameen Bank's microcredit system, requires external donations to jump-start businesses devised and sustained by poor individuals. The second model, exemplified by Nike's anti-exploitation initiative, brings about convergences between consumer demands in the Global North and workers' rights in the Global South. Here Cudd is proposing a way to put a stop to the subsistence contracts that Ashford decries (chapter 4). The third model, exemplified by the Mexican cement company Cemex, recruits the poor into partnership with profitable businesses to train and employ poor people and to provide products that poor people need—in the case of Cemex, cement floors to replace dirt floors in dwellings. According to Cudd, the third model is best, for it is more likely to promote agency and to bring about lasting and beneficial social change.

Cudd acknowledges that microcredit schemes, such as the Grameen Bank, have drawbacks from the standpoint of gender equity, but Serene Khader makes those drawbacks the centerpiece of her chapter. Data gleaned from some development projects poses a disturbing puzzle: successful anti-poverty programs are not necessarily correlated with increases in women's agency and empowerment. "Empowerment Through Self-Subordination? Microcredit and Women's Agency" undertakes to unravel this puzzle. To see why it is possible for development interventions to have such mixed results, Khader distinguishes two kinds of agency. "Welfare agency" consists of knowing how to obtain needed goods and services and being able to act on one's knowledge. "Feminist agency" consists of the desire and the ability to demand more egalitarian gender relations. Gains in welfare agency may be accompanied by losses or stasis in feminist agency, and feminist agency is a more perspicuous measure of women's empowerment. However, development professionals often conflate the two types of agency and affirm that poverty mitigation goes hand in hand with women's empowerment. Khader identifies two assumptions that contribute to this error—the assumption that agency is an internally undifferentiated good that rises or falls with increases or

decreases in one's available options, and the assumption that greater welfare agency leads to greater self-worth, which leads to agitation for gender equality. Yet these assumptions aren't borne out by experience. Khader presents several reasons why not. For example, meeting social expectations, including conforming to subordinating gender norms, is often instrumental in augmenting a woman's welfare. Moreover, popular microcredit schemes can incentivize women's internalization of sexist norms. Thus, Khader concludes, development professionals who seek women's equality must examine not only potentials for women's material advancement but also opportunity costs linked to gender compliance.

Whereas Khader's chapter examines the problematics of development from the standpoint of gender equity, Amy Allen's chapter, "Paradoxes of Development: Rethinking the Right to Development," examines deep tensions within the theory and practice of development as a goal. According to Allen, the project of development is mired in two paradoxes. The political paradox is that although the explicit aim of development is to improve the lives of poor people in the Global South, disempowerment and impoverishment have in fact resulted from development programs. The normative paradox is that although development aims to realize the seemingly indisputable ideal of human flourishing, this ideal is rooted in theories of human progress that have rationalized colonial and imperialist domination. Yet, as Allen points out, a Senegalese jurist originally advanced the right to development, and the states of the Global South have been vocal in pressing the UN to effectively realize this right. In contrast, the affluent states of the Global North have been least receptive to recognizing this right and prefer to regard development as a charitable gesture. Thus, we seem to have a third paradox. The states that the paradoxes suggest maintain their dominance through development are the very states that have denied the right to development, and the states that the paradoxes suggest development condemns to poverty are the very states that most insistently demand development. Allen concludes by asking whether there is a way to construe the right to development that retains the right's intended critical and emancipatory potential. After rejecting a proposal put forward by Arjun Sengupta on the grounds that it all but absolves affluent states of any responsibility for promoting development, Allen endorses a proposal put forward by Cristina Lafont that requires the global institutions that Global North states control to advance the interests of Global North states only insofar as that can be accomplished without interfering with realizing all human rights worldwide.

## Part 4: Transnational Transactions and Human Rights

“No Easy Solutions” would be an equally apt title for this part. Each of the chapters I’ve grouped here takes up a different type of economically driven transaction and explores the vexing moral quandaries it poses. Whether looking at drug safety and dosage studies undertaken in the Global South (chapter 11), importing willing care workers from countries where poverty is ubiquitous and severe (chapter 12), or trafficking persons into forced labor (chapter 13), no single or readily attainable solution is at hand.

In “Poverty, Voluntariness, and Consent to Participate in Research,” Alan Wertheimer takes up the question of choice in the context of severe poverty, specifically in regard to consenting to participate in pharmaceutical research. He begins by rehearsing the background principles that U.S. scientists take to be authoritative guides for obtaining the consent of prospective subjects of research. These principles affirm that valid consent must be voluntary and must be given in conditions free of coercion and undue influence. The question, then, is whether extreme poverty and little if any access to medical care nullify consent. Much hinges on what constitutes voluntary choice, and Wertheimer explores two possible views of voluntariness—one value-neutral, the other moralized. After presenting two cases in which extremely poor women in different but desperate straits are recruited for pharmaceutical studies and reviewing a wide variety of examples in which consent to a medical procedure is at issue, he proceeds to show that neither view of voluntariness captures all of our intuitions regarding valid consent. The upshot, Wertheimer urges, is that it may be possible for the two extremely poor women to give valid consent involuntarily. The researchers may enroll them in their studies because it is in the women’s interest to participate, although they have not consented voluntarily. Still, Wertheimer cautions that no one should be sanguine about this conclusion, for the factors that prompt the judgment that the consent is involuntary highlight facts about pervasive injustice and non-realization of social and economic human rights that cry out for change. As Khader (chapter 9) maintains, it is possible for a practice to promote welfare agency without promoting empowerment.

Whereas Wertheimer focuses on worrisome opportunities for economic gain that corporations offer to poor people in their homelands, Anca Gheaus focuses on transnational migration from the Global South in search of employment and economic betterment in the Global North. Unlike in chapters 6 and 13, which are concerned with trafficking, “Children’s Rights, Parental Agency, and the Case for Non-coercive Responses to Care Drain” examines

willing transnational migration for work from two perspectives. Both the children left behind by migrant parents and the migrant parents themselves have human rights that cannot be fully reconciled in the present global order of gross economic inequality. Gheaus adverts to the U.N. Convention on the Rights of the Child to defend the children's right to continuity of care as well as their right to adequate nutrition, housing, and education. Fulfilling both of these rights for their children puts many parents in the Global South in a moral bind, for meeting their children's material needs entails depriving them of continuity of parental care during periods of migration for work abroad. Gheaus documents the importance of continuity of care and the harm discontinuous care can cause. Yet she juxtaposes these concerns with parents' rights to economic security and mobility and points out that many parents who migrate to foreign countries to work are exercising these rights and also striving to provide for their children. On balance, she concludes that justice requires labor-exporting states to take responsibility for mitigating the negative effects of discontinuous care arrangements for the children of migrants. She argues for state-funded counseling services that "help children understand their parents' absence and cope with their feelings of depression, betrayal, guilt, and sheer loss," and she maintains that taxes on the remittances that migrant parent/workers send home could pay for these programs.

John Christman's chapter takes up a more sinister type of migrant labor. "Human Rights and Global Wrongs: The Role of Human Rights Discourse in Responses to Trafficking" asks how the twin injustices of human trafficking and forced labor should be framed in order to catalyze morally appropriate responses. Acknowledging the greater rhetorical force of claims based on civil and political (as opposed to social and economic) human rights in many of the prime destination states, Christman notes that trafficking in persons is a clear violation of the right not to be enslaved. However, he doubts that this way of articulating what is wrong with trafficking is the most salutary approach, and he goes on to analyze the pitfalls of the human rights apparatus. Some critics question the universality of the interests that undergird human rights. But as Christman sees it, the more worrisome problem is that human rights discourse classifies people as victims or perpetrators and triggers criminal prosecution. Unfortunately, the criminal justice system is not primarily concerned with repairing the damage inflicted on crime victims and not at all concerned with rectifying the conditions that make poor people in the Global South easy prey for traffickers. For this reason, Christman urges that human trafficking must also be viewed as a systemic problem of global inequality and exploitation. Only by adding this lens to the human rights

perspective, Christman argues, can the moral wrong of trafficking in persons be fully understood and adequately addressed. In this connection, it is worth noting the interplay between Christman's view and that of Leslie Francis and John Francis (chapter 6). Whereas Francis and Francis underscore the problems that treating trafficking principally as a problem of non-ideal political theory generates for justifying appropriate compensation for trafficking victims, Christman maintains that non-ideal political theory is indispensable to protecting people from the trafficking industry in the first place.

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PART ONE

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# Thinking Through the Meanings of Poverty





## 1

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# Surviving Poverty

*Claudia Card*

## Prologue

As I read what other philosophers have written on poverty, I increasingly appreciate the many ways that other people's poverty has impacted my life. Real-life stories help me to anchor my philosophical reflections. And so throughout this essay I weave into my theoretical discussion relevant stories regarding long-deceased members of my family and others from my childhood. Names are changed only for people who are not members of my family and may be still living.

My father never stopped talking about the Great Depression and never learned that it was possible to plan for a future. His children had to come to terms with having internalized that point of view. The voices of his mother and mine were among those unheard voices that Susan Moller Okin writes of in her essay on gender and poverty (Okin 2003). Widowed without savings in 1922, my grandma Card and her five children (my father, the youngest) were suddenly without an income, except for the boys' newspaper routes and then roomers and boarders from the local teachers' college. A half century later my mother, also without savings, died at age fifty-six, three years after a divorce that left her with two teenaged sons still at home, lung cancer, and no health insurance. My father died eight months later, destitute after having been fired for a drinking problem that only got worse.

Between the trials of my grandmother and my parents, I grew up in a Wisconsin village where almost everyone would have been judged poor by urban standards. Outdoor toilets were common, as were wood stoves. Some villagers lived in abject poverty. My family did not. And so I did not regard us as poor.

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It was a different era. From necessity, Mother canned and baked, although a stroke had disabled her at age thirty-three (preventing her from getting health insurance decades later after the divorce). The oldest of four children, I wore hand-me-downs from prior generations. My outerwear and underwear came from Grandpa Falconer's dry goods store until he died when I was nine. We had facilities: central heating and indoor plumbing (eventually hot water), 30 amps of electricity, a private phone line (not party line), and use of a company car, a Chevy coupe. That was more than most of my schoolmates had; some had none of these things. Others thought we were rich because we did not take in boarders or roomers. But the upstairs in our house, where I slept, was unheated; in winter you could see your breath up there. To economize, my parents had papered over the downstairs ceiling vents that would have permitted heat to rise. Edna Ferber gives a wonderfully detailed account of what living conditions were like in the Midwest in her 1924 novel *So Big*. Except for there being more automobiles and fewer horses, those conditions had not changed much in my village by the 1940s. The village had no water and sewer utility and no curb and gutter until the 1950s. Dial telephones arrived in 1962.

I read my great-uncle's Horatio Alger books and started worrying when I was seven about how I would ever pay taxes and avoid the poorhouse. What I know of poverty is more local than global. Much of what I know is not from books but as an intimate onlooker, a child in and out of other people's houses (and outhouses). I identify with those who experience poverty firsthand, not so much with policymakers or administrators. In my town, administrators were to be feared, avoided, and lied to. Of course, that was then. Yet now the U.S. middle class is shrinking and the direction of its disappearance is downward. Some of what I learned then may be relevant.

Philosophically, my topic is *surviving* poverty. I am working on a larger project about the meaning and ethics of surviving atrocities, both long-term mass atrocities that tend to be collectively perpetrated and more specific atrocities within families, often caused by a single perpetrator, sometimes abetted by bystanders who pretend ignorance. The poverty that can rightly be counted an atrocity falls somewhere between these extremes. It is suffered by masses and is often long-term. Yet it may not come naturally to mind when one thinks of mass atrocities. The reasons why are not immediately obvious. Perhaps it is because poverty results from so many events and so many wrongs that it is less clear, even when poverty is an injustice, who is responsible. Poverty is not always visible to, and the experience of it often not appreciated by, those who do not live it. To people raised on Scriptures that tell us that the poor we will always have with us, poverty is not even particularly shocking.

Still, much poverty is an atrocity, and surviving it presents many of the issues presented by surviving other atrocities.

My plan for the rest of this essay is as follows. I situate the topic of poverty further in my ongoing work on evils and then situate survival of poverty in the current portion of that work that is about surviving atrocities. Then I reflect on what poverty is, what kinds of poverty there are, and what kinds of survival challenges they present. Finally, I make suggestions about two areas where a serious implementation of human rights in the United States could mitigate, from the points of view of survivors, what is currently aggravated subsistence poverty. The mitigations I have in mind are, broadly, enabling hope and upgrading injustices to a point at which they are no longer evils. Injustices, I suspect, will always be with us. I am more optimistic about evils, as I have faith that people who are relatively fortunate are usually much less willing to tolerate evils when they can empathize with those who suffer their harms. Current information technology holds the potential to foster such empathy by disseminating detailed relevant information rapidly, widely, and graphically to those who have the power to respond.

What John Rawls called our “starting points” in life deserve special attention because of their influence on the rest of our lives. The first area needing protection is health: a reasonable chance for a healthy start, followed by basic maintenance, protection, and care. The second area concerns crime: protection not only against being victimized but, more important, against becoming a criminal, having one’s survival activities criminalized, or being born to parents who became criminals to survive. Many rights are needed for these protections. Criminalization issues may be less obvious than health issues. So I say a bit more about them at the end. I do not try to specify which human rights would enable these upgrades, an especially complex matter in the case of criminalization. My more modest aim is to direct attention to these goals to keep in mind in thinking about human rights and to make vivid how such protections could substantially *mitigate* poverty by supporting hope between now and a future when aggravated subsistence poverty might be more the exception than the rule.

### *Evils, Injustices, and Atrocities*

First, it is helpful to have at our disposal some ethical distinctions regarding evils, injustices, and atrocities. Atrocities are my paradigm evils (Card 2002; 2010). I define evils (plural) as reasonably foreseeable intolerable harms produced (maintained, aggravated, supported, and so on) by inexcusable wrongs. So understood, “evils” is a higher order ethical concept with two

basic elements linked by reasonably foreseeable causality. The elements are intolerable harm and inexcusable wrongs, neither reducible to the other. I do not define “wrongs,” but my definition of “evils” is compatible with many non-utilitarian ethical theories. Failure to alleviate the effects of a natural catastrophe can transform it into an evil. This account of evils enables us to distinguish evils from lesser wrongs, which either have some excuse or are less harmful. When human rights violations are evils, they do reasonably foreseeable intolerable harm, without excuse.

Not every evil is an atrocity. Atrocities are extreme in their cruelty, inhumanity, or degradation, and often in their scale. Poverty that results from inexcusable wrongs becomes an atrocity when it results in mass starvation, fosters lethal epidemics, or drives victims to major complicity in the perpetration of other evils for survival’s sake. The poverty created in Nazi death camps and during the Biafran war were mass atrocities. But an atrocity does not have to be massive. The 1998 dragging murder of James Byrd in Jasper, Texas, was an atrocity.

I understand the “intolerable” of “intolerable harm” normatively—not what you cannot in fact tolerate but what it is outrageous to have to tolerate. Those who live in abject poverty tolerate the intolerable daily. What is normatively intolerable is not entirely subjective. Intolerable harm is, first of all, a significant deprivation of basics ordinarily required for a life or a death to be decent, either to function decently as a human being or to exit (die) decently. Basics for decent functioning ordinarily include access to nontoxic air, water, and food; sleep; the ability to move one’s limbs; the ability to make choices concerning the shape and direction of one’s life and to act on some of them; freedom from severe and unremitting pain and from deep shame or humiliation; affective bonds with others; a secure sense of one’s human worth; and last, but not least, the ability to hope. Decent functioning is not entirely relative to individual preference, although it is ultimately relative to context and to levels of social knowledge and available technology.

There are two ways that wrongs can be inexcusable: one metaphysical and one moral. A metaphysical excuse exists when the wrong is a product of diminished agency (say, cognitive or physical impairment). A moral excuse exists when there are significant supporting moral reasons for a wrongful deed, although they are not (of course) weighty enough to justify the deed on the whole (what is justified needs no excuse). For a social practice, a supporting moral reason is one that could plausibly be given in defense of it; the reason need not be one that somebody actually had. A morally inexcusable social practice is simply one that is indefensible in moral terms. Lack of excuse for the practice does not imply culpability in individuals. But lack of excuse for an individual deed implies culpability. To excuse an individual

deed, a supporting moral reason must be one the agent actually had. Reasons that carry moral weight for some deeds or in some contexts, however, may carry none in others. Evils lack both metaphysical and moral excuses.

Not all poverty is an evil, even when it results from injustice; there may be some excuse, or the harm may not be intolerable. Poverty has many dimensions: containability, duration, reparability, and, most important, qualitative severity of its harms. Severity of harm varies with the timing of poverty's onset in relation to victims' ages and prior experience, such as education and health. When poverty is linked with human rights, the focus tends to be on severe, enduring, aggravated subsistence poverty, conditions people are often born to.

The Horatio Alger American dream of poor white children in the United States is a dream of overcoming poverty as Abraham Lincoln did, poverty full of evils and challenges although not ordinarily rising to the level of atrocity. Alger may have meant his stories to foster hope. But hope needs more basis than the capacity to dream.

If you, Reader, spent your childhood in poverty, did you survive it? Is the question absurd? Does it matter how long you live? How well you live now? What you are like now? Survival is ambiguous, as is "how well you live now." I turn next to those ambiguities.

## Survival

Like poverty and injustice, survival has degrees. That may not be obvious because, unless you are Mark Twain, either you are dead or you are not.<sup>1</sup> But if you are not, you have some vitality, and there are degrees of that. The idea of a "true survivor" suggests more than minimal vitality. It can also suggest certain character traits and capabilities. "Surviving," "survival," and "survivor" are multiply ambiguous concepts, and their meanings can be in tension or conflict with one another.

A first ambiguity is whether "surviving" designates activities or whether it designates simply what remains, what is preserved or endures. As activity, surviving refers to what people do to save themselves or keep going. They are surviving when what they are *doing* to maintain their lives is working, at least, so far. Thus, we speak of survival skills and survival training. For short, think of survival activities as "skilled survival." A true survivor in this sense can figure out what to do, is good at doing it, has certain qualities (ingenuity, courage), and does not give up but perseveres through adversity. The mountain climber who survives by cutting off an arm or a foot that got inextricably caught between boulders is an example (recall the film *127 Hours* [Boyle 2010]).

Characteristics of a skilled survivor come in degrees. A true survivor has those qualities to a high degree and can put them to work effectively.

But in another sense, “survival” refers to what remains, is preserved, endures, is not destroyed or defeated by something that might have been expected to destroy or defeat it. For short, think of this as “remainder survival.” What remains need not have been preserved *by the survivor*. For true survival in this sense, it is sufficient to come through with physical and mental health in basically decent shape, or basically recoverable, and with a decent conscience. Still, unless you are Nietzsche, what remains may be a diminished version of what had been.<sup>2</sup>

There is overlap between skilled and remainder survival. Coming through with a decent conscience brings in both what you did to survive and what you managed to preserve of your integrity. But there can also be conflict between skilled and remainder survival. A skilled survivor may fail to preserve good character, or may suffer memory loss, or may engage in self-deception. The answer to whether someone survived may be “yes and no.” Hold in mind that ambiguity between skilled and remainder survival because it enables us to consider in more nuanced ways the ethics of survival and what survival requires. It lets us transform the question whether you survived your childhood poverty into questions about what you did to get through it and what remains of your humanity, character, health, and so forth.

Protection of health and protection against criminalization are important to both skilled and remainder survival. Health is especially important to skilled survival. Avoiding criminalization is especially important to what remains.

A second ambiguity of “survival” pertains to whether the danger is left behind or is ongoing. In the first case, survivors outlive the danger, leave it in the past, move on. These are “success stories.” Alger tells success stories. Abraham Lincoln is a paradigm, emerging from a log cabin to become president of the United States. He did not survive being shot, but he had survived poverty. Success also has degrees. The mountain climber who cut off a foot was not a total success. But he outlived mortal danger. Other partial successes include war veterans and domestic abuse survivors who escape from violent environments only to suffer lifelong post-traumatic stress. In this category also are many survivors of the Great Depression, like my father, who retain and pass on to their children habits that are dysfunctional or silly under more favorable conditions. He outlived the Depression but never left it totally behind.

Some success stories are of true survivors in the remainder sense. The difference in meaning between a success story and remainder survival is that in

the success story, the danger is over, whereas well-preserved survivors can still be immersed in what they are surviving and may never outlive it. The contrast to a success story is survivors who do what I call “treading water” in ongoing danger. Hope, in this kind of case, can make the difference between eventual success and failure. This survivor is like the swimmer who pumps her legs up and down in deep water, as though she were climbing stairs, barely keeping her head above water (pays just enough on the mortgage to stave off foreclosure). Partial successes, like my father during the period of my childhood, are doing better than treading water. To continue the metaphor, in a partial success story, you are out of the water but still wet and shivering or worse for a long time. In contrast, when you are treading water, you are not yet out of danger, and perhaps you never will be, especially if you lose hope. Many who live in poverty are treading water.

These ambiguities intersect. A true survivor in the skilled sense, like a true survivor in the remainder sense, may or may not yet be out of the water.

Because survival is often a result, in part, of one’s ingenuity, skills, and perseverance, being a survivor can sound like cause for pride. Hence, many victims prefer to regard themselves as survivors, not victims. And yet it is a myth, perhaps a misunderstanding, that victims are passive. The term *victim* conveys a target or recipient of harm, not a response. Skilled survival is about responding. But many victims are anything but passive. Skilled non-survivors were often at critical moments unlucky or betrayed.

Of course, you can also survive by sheer luck, a point on which Holocaust survivors are adamant. Survivors are not necessarily those you would have predicted or those who deserve it. Even the skilled may survive only by luck. Further, many survival choices are ethically problematic or would be in a more favorable context. And so those whose survival is not just luck but partly owing to what they did are not always proud of it—for example, survivors of poverty who commit crimes to meet basic needs, like Victor Hugo’s Jean Valjean (Hugo 1997).

There are many subjects of survival. My focus is individuals and families. But cultures, communities, even planets, survive—or do not. Any might succumb to severe poverty.

What it means to survive poverty and the ethics of surviving it depend not only on what “survival” means but also on the sort of poverty, together with its context and history. A toxic natural environment (proximity to toxic waste dump or chemical plant) can aggravate poverty that might not otherwise have been intolerable. Those who suffer a terrible reversal of fortune may have had a healthier start and better education (like my mother and grandmother)

than many who were born to poverty. Surviving poverty caused by political oppression can require more drastic measures than surviving poverty that resulted from neglect. With such different experiences of poverty, it is a wonder that the concept of poverty is applied to all of them. Or is there really one concept? I consider next some ways of thinking about what poverty is.

## Kinds of Poverty

There are many ways to sort the kinds of poverty. Two of the philosophically most interesting are the welfare approach and the capabilities approach. In the end, I think we need both, although either concept can be artificially inflated and extended to include the other. The welfare approach emphasizes a depressed level of well-being resulting from lack of secure access to external material resources. As an expedient, many researchers and agencies use income as an indicator of well-being, although everyone knows it is not a reliable indicator. The welfare approach faces the challenge of defining a decent level of well-being.

The capabilities approach, taking its cue from the concept of oppression, emphasizes diminished human capabilities, such as literacy and intimacy, especially insofar as such reduced capabilities result from lack of social opportunities. These are harder to measure than income. The capabilities approach faces challenges of identifying basic capabilities, identifying the sorts of development necessary for, or adequate to, decent functioning, and identifying ways that such development depends on such non-material but still external resources as social opportunities.

On the welfare approach, it seems natural at first to distinguish (merely) relative poverty from true poverty. True poverty is commonly understood as being at or below subsistence; this is what Aristotle, had he written about it (which to my knowledge he did not), would probably have called “poverty without qualification.” In contrast, relative poverty is being on the low end of a conspicuous gross disparity in well-being between groups that live together or interact regularly. In my village, my family was not relatively poor. But some villagers were barely subsisting; they were both truly and relatively poor. When great inequalities are compatible with high levels of welfare all around, being on the low end may seem at first a less serious matter. But depending on prevailing norms and values, it can produce what Hong Kong scholar Jiwei Ci calls status poverty (Ci 2013, 125). Coupled with subsistence poverty, status poverty can profoundly impact self-respect and morale, giving rise to deep shame regarding living conditions that might otherwise have been tolerable.



Even status poverty *without* subsistence poverty deserves to be taken seriously for its impact on morale and its potential to produce shame. I think, for example, of the (“merely”) relative poverty of my 1978 student at Dartmouth, Jake, who came on scholarship from the inner city in New Jersey, where he had experienced subsistence poverty. A skilled survivor of the inner city, his capabilities outran what might have been expected, given his material and other external resources. Hence, the scholarship. But he lost something more important than the resources he gained in being transported to Dartmouth. He went from being Somebody to being (at any rate, feeling) less than Nobody. To my astonishment and chagrin, I learned that at Dartmouth scholarship students are stigmatized (as are state university students; I had been proud to be both). Jake now had severe respect issues in both environments. He said in my office he could never return to the streets, because, for one thing, his face was “too pretty” (“not sufficiently scarred”). He described himself as *homeless*, a metaphor but nonetheless serious for that. His coping strategies were to anesthetize himself with alcohol (he self-identified as an alcoholic) and become the class comedian (usually at my expense) on days he made it to class. He was not even treading water. I often wonder whether he survived, in any sense.

The shame (in Jake’s case, also, the disorientation) of extreme status poverty, even of those living well above subsistence, can be unmanageable. It would be misleading to say, without qualification, that Jake was living in poverty at Dartmouth. But it would also be misleading to say he had escaped from poverty, despite the material upgrade. He was not preserving the capabilities that had earned him a place at Dartmouth, and he was jeopardizing his health.

Mere subsistence, in contrast, need not be experienced as intolerable, certainly not as shameful, but may be experienced as Spartan or Thoreauvian. Some who take a religious vow of poverty foreswear accumulation of worldly goods to become dependent for daily needs on the kindness or obligations of others. They own next to nothing. But if they can reliably count on others’ kindness or obligations, they have secure external resources. Like the lilies of the field, what they lack is control. Vows of obedience, however, can result in subsistence poverty, depending on the orders to be obeyed. Sor Juana Inés de la Cruz stopped writing and sold her library of four thousand books to avoid censure by the Church (Paz 1988). Her life became not just one of dependency but one of subsistence poverty. It was hard. But hardly a life of shame.

Many who live in subsistence poverty are not ashamed. The assumption that they are can be offensive. My mother and grandmother would rather die

than be pitied. Many do—die, that is, prematurely, from lack of such things as healthcare. But subsistence poverty produces its own varieties of humor, playfulness, inventiveness, and artistry. Arthur Schopenhauer wrote, “human cheerfulness or dejection is obviously not determined by external circumstances, by wealth or position, for we come across at least as many cheerful faces among the poor as among the rich” (Schopenhauer 1969, 1:316). Even if he exaggerates (I am not certain that he does), the point remains. Many in subsistence poverty are more optimistic than circumstances warrant. They feel freer than they are, a sometimes beneficial illusion. The subsistence poor who are proud lack *external* resources but seem to have an abundant supply of *inner* ones. The humanity of Socrates, who was apparently poor in material resources, seems to have been undiminished.

My own view is that an ethically adequate appreciation of poverty requires that the more popular welfare approach to poverty be integrated with a capabilities approach. Capabilities should not, I think, be treated as a kind of welfare. My tendency is to think of agency and abilities, rather than of capabilities. And so I consulted a dictionary on abilities and capabilities only to learn that both can mean “competence.” Being competent is not a matter of how you feel or what happens to you but, rather, of what you can do.

Jiwei Ci (2013) distinguishes agency poverty from both subsistence poverty and status poverty. I can sympathize with the inclination to do that, given the importance of agency to an ethical evaluation of poverty. But, aside from the very elderly and those with Alzheimer’s disease, I find it hard to imagine lives of severely diminished capabilities together with high status and secure access to abundant resources—wealthy heroin addicts or wealthy polio victims in an iron lung, perhaps? But as the term *poverty* is used, it does not refer to all sorts of (even severely) impoverished lives. There is no implication, of course, that it is better to live out one’s days in an iron lung than in poverty.

Diminished agency is commonly both a result and a causal contributor to the lack of secure access to external resources. And so I think it best to regard diminished agency as a consequence and (often as a result) an aggravator and reinforcer of poverty, which makes it an important element in subsistence poverty and status relative poverty, rather than as a distinct kind of poverty that might exist apart from either. This aggravator is very important in explaining why poverty is as intolerable as it so often is.

An intolerably harmful lack of secure access to external resources strains inner resources. Poverty that results from injustice is an evil when its inexcusable deprivations are not survivable without jeopardizing its victims’ humanity or when it makes survivors deeply ashamed of their lives. It becomes

an atrocity when it is not survivable without abandoning morality. In my village, only a minority were ashamed of their poverty. The global poverties with which Thomas Pogge has been concerned are evils; some are atrocities (Pogge 2007; 2008). Treading water in such poverty is not enough to yield a decent life.

But what should count as a decent life? James Nickel (2005, 387–91) and others have noted that “a good or decent life” can be either a life that one *has* or a life that one *leads*. The welfare approach defines poverty simply in terms of external resources needed to *have* a decent life. You *have* a decent life when your *experience* of life is minimally good and you have a minimal level of well-being. You are not starving or suffering prolonged severe pain. Having a good life is measured by what happens to you and how you feel (not what you do), by access to externals on which you are dependent (not inner resources).

But you *lead* a decent life when you *function* decently as a human being, develop your potentialities and exercise them, play a substantial role in shaping your life, are one of its leaders, a hero of your own story. (I say “a hero” to acknowledge that no one makes it without supportive relationships.) Just as someone who leads a good life may not have access to abundant external resources, someone fortunate to *have* an abundantly good life may fall short in leading it. Such a life is impoverished, even if it is not a life of poverty.

But, further, “leading a good life” is ambiguous between “leading a decent life” and “leading one’s life decently (however otherwise impoverished).” “Leading one’s life decently” is a matter of character, scruples, values. Many who are poor lead their lives decently. Their basic moral capability of discerning, among their options, which are right and which are wrong, and then of acting accordingly, is adequately developed. As Kant saw, those who lead their lives decently do not necessarily *have* good lives, not in this world (Kant 1996, 49–76 and 238–47). Morality is within the reach of the ordinary person, on his view, and, from a global perspective, the ordinary person in this world is poor. It is worth noting, however, that the burden of acting morally can fall more heavily on the poor, in view of temptations and pressures others are fortunate to escape. I return in the final section to the issue of poverty and moral character.

It is also true (what Kant may not have seen so clearly) that those who *lead* their lives *decently* often do not lead very *decent lives* in the following sense: they cannot *shape* their own lives very much because they have so few socially created or natural opportunities. Lacking basic education, for example, one may fail to develop the capability of intelligent long-range planning (a lack that reinforces subsistence poverty). Lacking opportunities and social encouragement,

one may fail to develop creative and artistic capabilities to make life interesting and capabilities to engage in satisfying work. By “interesting” and “satisfying,” I mean interesting and satisfying to oneself. This issue is distinct from that of status. The point is that in many ways, those who lack such capabilities are far from autonomous, even if they guide themselves by a moral law that they accept voluntarily. Leading a decent life implies functioning decently, for which good character is insufficient.

And so I favor an integrated understanding of the poverty that raises human rights issues: a matter of serious deprivations of welfare that tend both to result from and result in diminished capabilities (including being capable of holding your head up in the society in which you must live) and thereby to aggravate and reinforce the hardships of resource and status deprivation. Like my hybrid view of evils, this integrated view of severe poverty preserves an ambiguity that Simone de Beauvoir finds in being human. Being human is, on one hand, being an agent, a chooser, a valuer, and on the other hand, being vulnerable to outside impacts and dependent on externals. She cites Pascal’s “thinking reed” as capturing both (Beauvoir 1948, 7–11). The agency aspect is our Stoic side, in the broadest sense. Ancient Stoics took the extreme view that agency is ultimately all that matters. Vulnerability is our Epicurean side. Ancient Epicureans took an opposed but equally extreme view that, ultimately, all that matters is protection against our vulnerabilities, against suffering. I find most plausible the ethical theories that take both agency and vulnerability seriously and do not try to reduce the importance of either to that of the other. Still, I am with Kant in regarding agency as the more important aspect for humanity. All forms of life are vulnerable, but only some of us can act. When poverty is an evil, it is in large part, perhaps primarily, because of its impact on agency.

Our capabilities often seem to be heavily a function of our access to external resources. But they are also typically in part a function of unforced choices among options we did not create and always partly a function of our inner resources: temperament, aptitudes, creativity, imagination. The relationship between external resources and leading a decent life is so far from simple that I am at a loss to define it more precisely. I agree with John Stuart Mill that it is more important to remain a leader of your life, to have his “higher pleasures” (Mill 1961, 331–33), which are pleasures of certain activities, than to have abundant external resources for protection against our vulnerabilities. But Mill stretched the concept of utility to include not only what we have but also what we can do (Mill 1961, 253), in effect, folding the Stoic into the Epicurean.

To show how subsistence poverty can impact capabilities and to illustrate the kinds of survival challenges it poses, I turn next to a more concrete account of what it means to tread water in subsistence poverty in the United States today.

## Treading Water in Long-Term Subsistence Poverty

How do you tread water at or below long-term subsistence poverty? Let me count some ways.

1. You eat irregularly, cheap and filling; maybe you do drugs. When you are very hungry, it's hard to think about the quality of available food or the consequences of eating it. (How hard it can be is illustrated by the extreme case of survivors of Nazi concentration camps who gorged themselves on food at liberation, despite having been warned not to; they died almost at once.)
2. So your health is poor and deteriorating. You lose teeth (in your twenties and thirties), which affects how you eat, speak, and look, and makes you less presentable to (otherwise) potential employers. Away from home and friends, you may look down a lot, say little. Others infer that you are not intelligent. They trust you less than if you could look them confidently in the eye.
3. Speaking of home, you probably lack decent shelter. The roof leaks, windows are cracked, locks are poor (but in your village, as in mine, perhaps no one uses locks anyway). Nothing else works, either. Winter heat is insufficient (maybe you have a fan in summer, if the electric bill is paid). Your building is unclean. You share lodging with rodents and vermin. You have little privacy. You get used to it. If you can scrape money together, or get a tax refund, you buy a TV.
4. Unless you are homeless or live like Thoreau, your needs outrun your resources. You learn to manipulate others and to live with a reputation for being less than reliable. Your credit, if you had any, is ruined (perhaps in your village, as in mine, few live on credit anyway). You develop a thick skin.
5. If homeless, you are seriously exposed and expose others to disease; if urban, you are seriously vulnerable to criminal violence. You may arm yourself for defense. You might then kill or injure someone and have to live disguised or in hiding. Or go to prison. You might choose prison. If urban but not homeless, you move a lot.

6. You become good at dissembling. You hide vulnerabilities so others can't take advantage. You feign vulnerabilities to make excuses.
7. If female, you may disguise your sex. Or hitch yourself to protectors, offering sex in return.
8. You have no reserves for emergencies. So you borrow what you know you can never repay. Or you "borrow" without asking.
9. If you are not homeless, you work hard and long when there is work, even at dangerous jobs (which might include sex work) to pay rent. Stress rises. Health plummets. Likelihoods of illness and accident escalate.
10. If you work hard and long, you have little time for anything else. Your most reliable recreation may be nightly sex (if you can get it), which also helps ward off insomnia.
11. You produce children, who inherit a life of poverty. Or you substitute fighting for sex. Or find sex elsewhere, probably unprotected.

Except for the part about working hard, Socrates may have lived more or less like this. (I don't know if he had weapons other than words.) But Socrates had an important resource in his wife, Xantippe, who raised their sons and no doubt provided other services.

My schoolmates who lived in abject subsistence poverty were not homeless. But some were transients. Many were treading water. The ones who were not transients lived on the fringes. Their houses, in serious disrepair, looked like they had never been painted. Children and adults dressed in layers (not yet fashionable) for warmth and to cover holes. The poorest families lacked indoor plumbing and electricity. (The Amish who live there today voluntarily do without both, of course. But they are a mutually supportive, proud community; land rich, they hire legal talent when needed.) Living without indoor plumbing and electricity means all your hot water for washing and cooking is heated in pots on a stove. That is, when there is someone to chop kindling and bring in wood for the stove and someone to haul water and do the washing and so forth. And in winter (remember, this is Wisconsin), the water freezes. And it's dark a lot. When I was growing up, children of the poor often were assigned these tasks. The adults were busy working for other families. Or were sick. Or both. Children were often sick too. Some were not clean. Some had body lice. An annual ritual at my school was for the county nurse to inspect our heads, necks, and ears. My mother's taking offense at this ritual is a clue to the status attached to the abject subsistence poverty that necessitated the ritual.

Some children made cruel fun of the poorest, called them names, harassed them. Little ones were afraid of flush toilets and refused to use them. (I feared

rickety floors in outhouses and was loath to use them.) For some of the poorest children, reading aloud in class was a torture. They often failed a grade. (I never knew a child to fail who was not poor.) Some failed many times. Their bodies no longer fit the desks. They disappeared at age sixteen. I never saw them again.

There were exceptions. Some children became naughty, aggressive, hostile. A few of these and some of the entertainers became success stories. Henry, the most notorious naughty boy in my school, eventually found his niche in the war in Vietnam. He was decorated for bravery. Ginger received her first dental care when she joined the army after high school. Others, not so lucky, finished at reform school and were indeed reshaped there. Not all were even treading water. Ginger's brother, a shy boy, died at home in his mid-teens of a mysterious illness. Perhaps not all the troubling aspects of these children's lives were due to poverty. It is difficult to distinguish what is and what isn't, as everything has multiple causes.

Conspicuous gross inequality in welfare in the United States aggravates subsistence poverty by compounding it with status poverty. Another aggravator in my village was the socially conservative climate. Abject poverty was a stigma. Effects (such as being unreliable) tended to be perceived as causes, and some of poverty's effects indeed reinforced it. In their essay on the meaning of poverty, Higgins, King, and Shaw (2008) maintain that neither social exclusion nor inequality implies poverty. But involuntary social exclusion is a sign of status poverty, and in the United States conspicuous inequality gives rise to status poverty. Those stigmatized and ostracized endure deprivations that are obstacles to survival: those most in need of the support of social relationships are deprived of them, a resource as important as material goods to enable agency. The late feminist philosopher Sara Ruddick argued that one of the central tasks defining good mothering is socializing the child to be acceptable to a wider community than that of its family of origin (Ruddick 1989). That is a formidable challenge when the whole family is stigmatized.

Other effects of living in aggravated subsistence poverty included child neglect, a common result of parents' need to work outside the home, away from their children, and inability to pay for child care. Okin points out that women's labors in the home are a significant resource for meeting basic needs and that they are not taken into account by standard measures of poverty (Okin 2003, 280–316). When labor traditionally performed by women is done by no one or by no one who is competent, basic needs suffer. My classmate Katy said decades later that she did not realize that her family was poor, although by income standards, they must have been: her father, a laborer, was

often out of work. But her mom was able to make all the family's clothes, from underwear to winter coats, recycling fabric from prior garments and castoffs. They looked fine, fit better than ready-made store-bought clothes, and were comfortable.

Sometimes a parent's need to work outside the home also contributed to child abuse, which a working (or disabled) parent was unable to prevent, even if poverty was not an initiating cause of the abuse. A function Okin does not discuss that women have performed is protecting family members from sexual and other physical abuse by a member of the household. This is especially important when police protection is unreliable or nonexistent and the abuser's income is needed to feed the family. That *so* much has been made of some women's inability or failure to provide such protection is some evidence that women's performing that service, too, is widely taken for granted. In some of my schoolmates' households, there was no mother. Some of those children had no protection against violence. There were rumors of sexual abuse and beatings.

## Mitigating Poverty

To return to the issue introduced at the outset: from the points of view of survivors, what is especially important to eliminate in aggravated subsistence poverty? What would enable hope? What would significantly enhance both skilled and remainder survival? What would make the injustices of much poverty no longer evils? These are questions about mitigating poverty, not about abolishing it. How to abolish poverty is a question for those who have political power or who can at least imagine what it would be like to have such power. But some questions about what would count as a substantial upgrade may be answerable from perspectives of survivors. They are about what to aim for, not how to get there.

The move from an evil to a lesser wrong is a substantial upgrade when it is a move from intolerable to tolerable harm. A wrong ceases to be an evil when the harm it produces is no longer intolerable or there is some excuse for it. I am not interested in excuses for poverty. I am interested in what would make the harms of poverty tolerable, or significantly less intolerable, for those struggling to survive it. What would move survivors toward being able to have and live decent lives in which their survival skills and what remains from exercising them are not sources of shame?

The two families of protections mentioned at the outset seem to me basic. First, a healthy start in life, followed by reliable maintenance, protection



(including environmental protection), and care. Second, reliable protection against violent crime and against becoming a criminal or being criminalized. These two families of protections would enable those living in poverty to be far more able to support themselves and their families by being better able to access and use social resources that already exist. Avoiding criminalization and not being a source of contagious disease would go a significant distance toward mitigating the stigma of currently aggravated subsistence poverty. Avoiding criminalization and being able to maintain decent health would go a long way toward improving the employability of those currently living in aggravated subsistence poverty. These upgrades do not, of course, address underlying causes of poverty. But most who live in poverty today will never live to see the underlying causes adequately addressed. So it is important to think in the meantime about alleviating poverty.

One might have thought that what was needed was simpler and more obvious: food and medicines. This is the approach so often taken by social services. But more important than bare physical survival is a decent quality of life. What those living in abject poverty need is a route to something better that is compatible with developing the survivor's humanity, maintaining self-respect, and enabling hope.

What would especially have enhanced the chances for both skilled and remainder survival in my village? Luck, of course. That may not seem helpful. But it can remind us that ordinary luck is recognized and exploited only when hope is not extinguished. A question worth thinking about is what is necessary to prevent hope from being extinguished. Had it not been for the war in Vietnam, Henry, who became a war hero, would probably have turned his aggressions in the direction of domestic crime. He was tough and terrorized everyone in the school (including teachers; no one could control him). Had the army not accepted women, Ginger might have lost her teeth in her twenties. She was resilient and had a sense of humor. Ginger's and Henry's spirits were not broken; because they had hope, they saw opportunities. While they were young, they took risks and developed skills. Of course, it is an injustice that the poor, and not others, should have to do military service to obtain basics. My point is that they were able to see their chance and exploit it. What sustains such hope? Or perhaps the question should be, what destroys it? Ginger and Henry were, after all, exceptional in that regard.

The story of Katy's mom (who made the family clothes) is suggestive. She refused to be defeated by poverty long before she escaped it (which she did, through her children's successes; she lived into her nineties). She was not just treading water; her hopes moved her forward. She raised three daughters

with not a shadow of stigma; two became nurses, one a high school valedictorian, and one grandchild is today an attorney. In matters of basic health, Katy's family was lucky. Her mom was a good and resourceful cook. The family was also just plain lucky to avoid disabilities from accidents and the chronic illnesses so often produced by environmental causes. Their capabilities found socially acceptable outlets. Not only were their survival activities never criminalized, they were, to my knowledge, never victimized by criminal violence.

In contrast, some who seem to have escaped poverty never quite leave it behind. My father never got over surviving winters in Stevens Point, Wisconsin, in tennis shoes. As an adult, although he lived from paycheck to paycheck, he had closets full of shoes that he scarcely wore. He never had confidence in the security of his resources, let alone hope for a better future. He never had a savings account. He relied on the GI bill to provide for his sons' educations. Like Ginger, my three brothers did military service. And yet, in his most prosperous period, my father drove (and owned) Lincoln Continental automobiles. That bizarre set of priorities evolved from his experience with poverty and insecurity.

When Grandma Card was widowed, the large house she inherited saved her family from destitution by enabling her to take in boarders and roomers. Attending to their needs from before dawn till after dark left her children to be tended only by the family dog, a poodle named Lady, who, according to legend, would retrieve the baby by his diaper when he crawled too close to the road. My father was expelled from high school, permanently (as we learned decades later). Grandma had become an expert liar to cover the sins of her sons, who then followed her example. She lied to herself as well. She was in major denial about her own poverty. At holidays she took food baskets to "the poor." She worked as hard as Katy's mom but was barely treading water. She was unlucky in her health. Her oldest son was nearly blind. Another son's survival activities were criminal. When police came to the door for Mr. Card (Uncle Bobby), Grandma told them with all the indignation she could muster that Mr. Card had died twenty years ago. She outlived her poverty (she lived to eighty-three), thanks to two offspring who made it through teachers college. Still, I would not say, without qualification, that she *survived* her poverty. Her physical health and mental health were destroyed years before she died.

Of course, education is also important to fostering hope. But basic health and a record clean of criminal convictions are important to being able to take advantage of and benefit from educational opportunities. As vulnerabilities

to criminalization and to illness and accident proliferate, they make it difficult even to tread water. Resistance to stress is eroded, and consequently, ill health becomes chronic. Many of the working poor cannot take time off to recover or get treated and so are on a steadily downward trajectory. These things destroy hope.

Health issues include decent lodging and environmental concerns, as well as the basics that labor unions have striven for (decent working conditions, decent hours, a living wage, paid vacations, and so forth). These issues are widely discussed in connection with poverty. So I turn last to the less discussed vulnerabilities to becoming a criminal or becoming criminalized and related vulnerabilities to character deterioration.

Thomas Hill Green observed that the justice of a state's punishment system depends on the chance its citizens have of not becoming criminals (Green 1948). It also depends on the chance its citizens have to develop stable, healthy relationships. A continual need to deceive and to violate other basic moral rules for survival's sake systematically undermines the stability of such relationships even when those needs do not result in a life of crime.

Poverty amid plenty presents continual temptations, even necessities, to lie, cheat, and steal, to violate moral rules that it would be reasonable to live by in a well-ordered society. Some such violations are justified. But the moral costs of even justified violations can be high. Take lying as representative. It is easier to lie to others if you lie to yourself (as Grandma did); you are less liable to feel guilt or betray yourself. If you become a good liar, you can take a certain pride in it. You can become a wonderful entertainer (like Jake). And you may be justified, even morally, in many of your lies. But the price of routine exercise of that skill is a likely instability of your relationships of trust with others, relationships that are powerful enablers of hope.

Schopenhauer, in one of the most perceptive discussions of lying in the history of moral philosophy, observed that for those who cannot defend themselves physically, lies are the weapon of choice (Schopenhauer 1965, 158–62). This, he notes, not the immorality of lying, is why liars were looked down on in the knightly code of honor. Lying signaled weakness. Nietzsche, who as a student had devoured Schopenhauer's works, was inspired by this discussion in developing the contrast between noble and slave modes of valuation (Nietzsche 1989, 25–43). Nobles looked down on the common man as a liar, one whose word is worthless, who lacks "the right to make promises" (Nietzsche 1989, 57–62). The stigma of dishonesty follows many of the poor. In my town, some were explicitly branded "NG" ("No Good") in offices

where their bills remained unpaid and undiminished (such as the doctor's office, where I worked summers as a university student).

Those who justifiably do, in self-defense, what would ordinarily be wrong are apt to fall afoul of the law, like Jean Valjean. Unable to turn to the law for protection, they become outlaws, more vulnerable than they already were to others' crimes. Sex workers are outlaws when prostitution is criminalized. Many outlaws today are undocumented workers, who have little protection because they risk being criminalized if they become known to law enforcement. In Wisconsin, they cannot get auto insurance without a driver's license, which they cannot get without a Social Security card, which they cannot get without citizenship, which they cannot get without a lot of money (depending on where they are from, not even with money). And so to obtain and keep a job, they often drive without a license and without insurance (both required by law), courting disaster.<sup>3</sup>

Ironically, the poor are most likely to *be* arrested for crimes, to be detained prior to trial, to be convicted, and if convicted, to be sentenced to a harsh penalty. And yet, it is the poor who are most exposed to such crimes as murder, rape and other physical assault, robbery, theft, and enslavement.<sup>4</sup> Greater likelihoods of criminal conviction and prison or execution are partly the results of biases and inadequate legal defense. But they are also partly the results of criminalizing, rather than regulating, conduct that is likely to be a survival strategy, criminalizing sex work, for example, or the use of and trafficking in marijuana.

The *Universal Declaration of Human Rights* says, "Everyone . . . has the right to social security" (United Nations n.d., Article 22), "Everyone has the right to work . . . and to protection against unemployment" (United Nations n.d., Article 23), and "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family" (United Nations n.d., Article 25). Article 11 declares a presumption of innocence and rules out ex post facto laws. Article 3 says, "Everyone has the right to . . . security of the person." Nothing in the *Declaration* addresses directly the issue of protection against being criminalized. There is no general human right, nor could there be, to have one's survival activities, considered simply as such, not criminalized. The injustice to Jean Valjean was not that there were laws against theft. But there are some activities that are not rightly criminalized. It would be a huge upgrade in conditions of poverty if criminal activities were no longer so many people's best hope for survival. But that will require the implementation of many kinds of human rights.

## Notes

1. Thanks to conversation with Ivan Soll on the meaning of “survival.”
2. Nietzsche famously wrote, in *Twilight of the Idols*: “Out of life’s school of war: what does not destroy me makes me stronger” (Nietzsche 1976, 467). That proclamation is best read as a personal commitment, not as an empirical generalization, and in any case, not as a comment on surviving poverty. Nietzsche, who lived frugally, suffered migraine and other severe bodily pain.
3. I won’t say how I know all this, but it’s not from books.
4. On the greater likelihood of arrest and so forth of the poor, see Reiman and Leighton 2010.

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# Poverty Knowledge, Coercion, and Social Rights

A DISCOURSE ETHICAL CONTRIBUTION  
TO SOCIAL EPISTEMOLOGY

*David Ingram*

## Introduction

In today's America the persistence of crushing poverty in the midst of staggering affluence no longer incites the righteous jeremiads it once did. Resigned acceptance of this paradox is fueled by a sense that poverty lies beyond the moral and technical scope of government remediation. The failure of experts to reach agreement on the causes of poverty merely exacerbates our despair. Are the causes internal to the poor—reflecting their more or less voluntary choices? Or do they emanate from structures beyond their control (but perhaps amenable to government remediation)? If both of these explanations are true (as I believe they are), poverty experts will need to shift their focus to a hitherto under-theorized concept: coercion.

I defend this claim by appealing to distinct areas of philosophical inquiry: social epistemology and moral theory. Poverty knowledge is directly related to both of these inquiries. The aim of poverty knowledge is clearly moral: to reduce suffering and to empower the weak. While the former aim is grounded in utilitarian thinking, the latter aim is grounded in the social contractarian insight that poverty is unjustly coercive, imposing excessive limits on the opportunities and choices of the poor that render them vulnerable to domination by others. Equally obvious is the social nature of poverty knowledge. All knowledge depends on the reliable testimony of others. Poverty knowledge not only ostensibly offers us the most reliable, *scientific* beliefs about the causes and effects of poverty, thereby determining how we morally judge the

poor and their poverty, but it reciprocally bases its understanding of poverty on what the poor themselves have to say about it.

What unites both social epistemology and moral theory—at least the social contract variants I will be examining here—is concern about the limits and possibilities of rational choice. As poverty knowledge came of age in the 1950s and 1960s, it absorbed the language of rational choice prevalent in economics, especially the Keynesian economics whose moral underpinnings can be found in Rawlsian social contract theory. Echoing a different economic theory supported by a different, more libertarian, brand of social contract theory, poverty expertise in the 1980s continued to use an abstract model of rational choice. I submit that, in both early and later epochs of poverty expertise, reliance on rational choice reasoning prevented poverty experts from appreciating the coercive impact of poverty on the poor. Social epistemology explains this failure by demonstrating the poverty of rational choice thinking and its mistaken reliance on inflated common-sense expectations about the capacity of individuals to calculate their long-term interests, free from the distortions of social bias. Social epistemology not only exhibits the dangers of not relying on expert testimony but it also exhibits the dangers of relying on an unreliable source of expert testimony that has removed itself from its human subject matter.

In order for poverty experts to become more reliable educators about poverty's coercive impact on the poor, they must return to their discipline's social epistemological roots. Only a more descriptive and explanatory sociology can narrate a comprehensive story about how the lived experience of poverty relates to the larger social system. The social contractarian model best suited to underwriting this kind of poverty knowledge, I submit, is the discourse theoretic model that has been championed by Jürgen Habermas. When applied as a pedagogical method of dialogue and not as a social contractarian model of rational normative consent, discourse theory highlights the unique epistemological advantages of empathetic understanding that are so essential to dispelling stereotypes about the poor. Dispelling these stereotypes is the first step toward respecting the poor as free agents who are nonetheless forced to make suboptimal choices.

My defense of these claims proceeds as follows: part 1 argues that poverty expertise rightly deserves the opprobrium critics have heaped on it. The charge—leveled by progressives and conservatives alike—that such expertise is ideological (unscientific) is true to the extent that poverty knowledge has all-too-easily accommodated the political aims of the agency that has funded it: the federal government. The shift from the war on poverty to the war on the poor—and the resulting shift from blaming poverty on economic structures to blaming it on the culture of poverty—would not have been possible



without an increased emphasis on data gathering aimed at measuring poverty rather than describing it. Part 2 assesses the consequences of turning away from qualitative research to statistical analysis: the coercive nature of poverty becomes invisible beneath the surface of aggregate individual choices. The failure to grasp how voluntary choices, ostensibly based on rational, self-interested calculations, can be coerced by social structures—and thereby lead to sub-optimizing behavior—invites the conclusion that the poor have only themselves to blame for their misery. Part 3 suggests that this pathologization of the poor directly controverts the major aim of poverty research: to empower the poor as free and equal parties to the social contract. I argue that the different varieties of social contract theory that have justified poverty expertise over the last forty years—the welfarist (distributivist) model pioneered by Rawls and the market-based (libertarian) model defended by Robert Nozick—embrace the same rational choice models favored by poverty experts and so conspire with the latter in neglecting important dimensions of poverty-related coercion. While the welfarist model conceals the coercive nature of bureaucratically administered entitlement programs and top-down urban renewal policies, the market-based model conceals the coercive nature of economic class structures. The discourse-theoretic alternative proposed by Habermas endorses a populist, democratic response to the overly abstract rational choice assumptions embedded in these other models.

Despite this advance over its counterparts, the chief advantage of discourse theory for poverty knowledge, I submit, resides less in its proposed procedure of rational collective choice than in its heuristic as a dialogical method of social learning. I demonstrate this claim in part 4, where I turn to the social epistemological insights of Allen Buchanan. Social epistemology offers a much-needed corrective to theories of knowledge that rely on the reasoning capacities of isolated individuals. By stressing the connection between moral response and social belief, on one hand, and the dependence of social belief on epistemic authorities, on the other, social epistemologists suggest ways in which we can learn to distinguish reliable from unreliable authorities and become aware of our own error-prone cognitive proclivities. Their insights need to be supplemented by moral epistemologists who stress the affective dimension of knowledge, above all, the role that empathy plays in understanding the plight of others. Drawing from victim narratives, Diana Meyers shows that switching between first-person experiences of one's own and third-person (imaginative) reconstructions of others' experiences is essential to appreciating the gravity of human rights violations and the seriousness of human rights claims. It goes without saying that such empathy is just as

essential to understanding the plight of the poor. Meyers mainly has in mind empathetic understanding that has been facilitated by third-person observation and literary encounter, but the importance of visceral and corporeal representation suggests that face-to-face dialogue may sometimes be a more effective way to facilitate empathetic understanding.

## 1. Poverty Knowledge Wars

In her path-breaking work, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth Century U.S. History* (2001), Alice O'Connor traces the failure of public policy aimed at eradicating poverty to ideologies about the poor that still find wide acceptance among academic elites. As she notes, these ideologies have a venerable pedigree, dating back to the Progressive Era's preoccupation with working-class vices such as alcoholism and sexual promiscuity, then re-emerging with a vengeance sixty years later when Daniel Moynihan published his controversial report, "The Negro Family" (1965) in which he asserted that the single-parent, female-headed household structure of the urban African American family had become "the principal source of most of the aberrant, inadequate, or anti-social behavior that did not establish, but now serves to perpetuate the cycle of poverty and deprivation" (Moynihan 1965, 31; Steinberg 2011, 2). Attacked for his insensitivity to the institutional racism and economic underdevelopment that underlay this family structure as well as for his neglect of its functional adaptability within an extended kinship community of pooled resources and child rearing, Moynihan's diagnosis was largely dismissed by poverty experts, only to be resurrected twenty years later by conservative social scientist Charles Murray in his highly influential anti-Great Society diatribe *Losing Ground* (1984), in which he claimed that preferences for unemployment, illegitimacy, and welfare dependency were rational in light of excessive entitlements.<sup>1</sup> Reappropriating Gunnar Myrdal's 1940s depiction of the poor as an "underclass," even progressive social scientists such as William Julius Wilson, who was keenly aware of the impact of institutional racism and structural underdevelopment on perpetuating disadvantage, sought to shift partial blame onto the urban poor by once again invoking Oscar Lewis's postwar reference to a "culture of poverty" (Lewis 1959; Myrdal 1944; Wilson 1987). As of this writing, examining poverty through the lens of culture continues to find great appeal among social scientists, as evidenced by the 2010 publication of a widely heralded study, *Reconsidering Culture and Poverty*. Most surprising of all, despite the termination of government-funded welfare in 1996 and its replacement by

workfare—and despite the statistical reduction of those receiving food stamps (SNAP benefits) and other government assistance prior to the economic recession of 2008 and its subsequent reversal owing to causes that were generally regarded as structural—government leaders across the political spectrum still trade on old stereotypes about the poor and their behavioral pathologies to justify their neglect of them.

Similar stereotypes inform the social science that has guided international development programs since the 1960s.<sup>2</sup> Guided by Talcott Parson's "structural functional" analysis of modernization, with its binary (traditional versus modern) scheme of "cultural pattern variables" (goal orientations), important policy centers—such as the Harvard Department of Social Relations (headed by Parsons), the Social Science Research Council's Committee on Comparative Politics, and the MIT Center for International Relations—advanced linear models of economic and political development that adopted Western (largely American) models of technology transfer, capital investment, and top-down democratic elitism.<sup>3</sup> Once the danger of allowing "backward" countries to elect their own popular leaders became apparent, foreign policy experts who had initially pinned their hopes on the depoliticization of the masses through increased consumption (the American way of diffusing class warfare) quickly switched to supporting tutelary dictatorships. The failure of those developmental experiments culminated in the neoconservative and neoliberal strategies of the 1990s: forced imposition of "democracy" through military intervention and forced liberalization of markets through threat of trade and lending sanctions. Despite paradigm shifts in global poverty knowledge (most notably from Keynesian to neoliberal economic models), the basic methodology has remained the same: extrapolate a single model of development from Western (largely American) experience and impose it on "culturally backward" nations in the name of liberation (McCarthy 2009, 200–220).

Progressives dismiss these democratically disempowering ideologies about cultural backwardness, pathology, and helplessness as symptomatic of a wider neglect of poverty-producing causes that have nothing to do with the culture of the poor. Clearly the cumulative effects of past discrimination and institutional racism working in tandem with neoliberal economic policies have contributed to the persistence of poverty in the United States and elsewhere around the globe. So the question arises: how did poverty knowledge come to focus exclusively on reforming the poor rather than society?

Taking the United States as her example, O'Connor shows how the professionalization of government-funded poverty knowledge came to rely increasingly on quantitative measurements. In keeping with the dominant scientism

that insinuated itself in sociology as early as the 1930s, such measurements were touted as the sine qua non of objective knowledge. In truth, the reduction of poverty to measurable factors such as household income presupposed a kind of methodological individualism that was anything but value-free. By refusing to study poverty in terms of more holistic categories of class, race, and gender—the categories Progressive Era sociologists living within urban communities used in developing descriptions based on members' first-person accounts of their living conditions—the independence from partisan politics the professional school of poverty knowledge hoped to gain turned out to be a deceptive illusion. Quantitative rigor was achieved by abstracting from the broader field of political economy pertaining to unemployment, low wages, labor exploitation, and political disenfranchisement. As the focus of poverty knowledge increasingly centered on the family, the causes of poverty came to rest on individual behavior.

Although poverty knowledge had always been championed by progressive liberals, its statistical formulations were inherently susceptible to multiple interpretations. The cultural explanations of poverty that progressive exponents of poverty knowledge provided from the early decades of the twentieth century up through the Great Society reform were generally linked to deeper structural explanations centered on economy and society; even in their most superficial form, when centered solely on measurements of educational underachievement, these cultural explanations were offered as justifications for government reforms that were aimed at improving school funding, nutrition, health, and welfare rather than the behavior of the poor. In the hands of conservatives, such statistics provided the fodder for an all-out attack on these very same reforms. By the 1980s, the welfare reform that replaced the war on poverty eventually became the catchword for weaning the undeserving poor from their pathological dependence on a bloated bureaucracy that was feeding upon the earnings of the middle class.

Ironically, it was another kind of dependence—of poverty knowledge academics on government funding—that contributed to the redirection of poverty knowledge away from poverty reduction to behavior modification. These academics tied their knowledge to the shifting fortunes of the welfare state. As the welfare state became increasingly destitute as a result of adopting neoliberal fiscal and monetary policy, its minions sought to reduce welfare rolls rather than eliminate poverty. Poverty knowledge was now called upon to explain and legitimate this new strategy. Statistics were used to underscore the failure of chronically underfunded anti-poverty programs so as to eliminate them entirely; the punitive correction of individual behavior through

mandatory workfare combined with entitlement caps wholeheartedly endorsed the conservative ideology of individual responsibility.

Even if the academy's statistical findings paint a more accurate picture of the complexity and variability of poverty—the value of which should not be underestimated—its methodological individualism and, above all, its animus toward structural holism create a narrative vacuum in which families and individuals end up playing the decisive roles. Hence the all-consuming obsession with individual behavior, followed by pathological culture and government codependency, as the leading cause of poverty.

What moral should we draw from this story? For conservatives who do not subscribe to neo-racist variants of cultural determinism, there remains but the simple fact of individuals making bad choices. Liberals who wish to counter this explanation can no longer appeal to social structure as causally determinative without denying the possibility of community empowerment and self-determination. Once it is conceded that the causes of poverty are multiple and embedded in opposed but equally compelling background narratives about “normal” social functioning, poverty experts must still confront the apparent contradiction that the persons they seek to empower rationally and autonomously choose courses of action that may be sub-optimizing precisely because they are coerced into doing so by circumstances beyond their control.

To summarize: if poverty knowledge is to address this kind of coercion, it will have to do a better job of communicating with and understanding the poor, something its academic practitioners have hitherto failed to do. O'Connor, for example, points out that academic policy wonks, like political elites generally, tend to come from the upper echelons of society and identify strongly with the policy imperatives that governments impose on them. Not only do they share common biases about class and race, but they typically have had little contact with the poor. The vast social distance separating them from the poor contributes to a lack of understanding as well as to a lack of empathy. The poor are both misunderstood and pathologized. But the lesson we should draw from this, O'Connor reminds us, is not that poverty knowledge must be set on the proper path of a purely quantitative science liberated from partisan ideological attachments. On the contrary, given that poverty knowledge of any kind is partial in its framing of reality, the most we can hope for is a research practicum that qualifies its individualizing and disaggregating methods relative to more holistic contexts that can only emerge in the course of conducting community-based field work of the sort pioneered by Jane Addams and the Chicago settlement movement. This will require returning

social science to its progressive origins, when investigators inserted themselves into the lives and struggles of their subjects and advocated for their empowerment.

## 2. Poverty and Coercion

Liberals and conservatives agree that, along with reducing neediness, social stigma, and loss of self-esteem, empowerment is the most important value to be furthered by anti-poverty policy. Poverty disempowers the poor by limiting their freedom to pursue desired goals and by exposing them to threatening situations (poor schools, unsafe neighborhoods, and insecure access to vital services). Consigning the poor to political irrelevance and inferior legal capacity, it also renders them vulnerable to domination by others.

Leaving aside disempowerment caused by lack of resources and opportunities, most of us would agree that disempowerment caused by threatening legal action certainly involves an element of coercion. I submit that severe environmental threats, analogous to the threats posed by a hostile workplace environment, do so as well.

We typically speak of coercion when one person is constrained to choose a less desirable course of action by the threat of another person who has power to inflict a significant harm on her. Poverty is coercive in the sense that it makes the poor susceptible to this kind of constraint. Indeed, it may well be that whenever domination (or any social relationship marked by a large disparity in power) obtains, there obtains as well the threat of coercion. Marx maintained, for instance, that the relatively weak bargaining position of an employee in comparison to that of her employer is necessarily coercive, because the employer's threat to fire the employee constitutes a greater threat than the employee's refusal to work. Given that some unemployment is mandated by the requirements of a stable market economy and that unemployment is generally much less desirable than employment, the employer's threat is coercive. However, in another sense we would say that the employer is not coercing the employee insofar as the employee is free to refuse the offer and the offer is otherwise legal (entails no violation of rights).

Marx himself denied that employers coerce their employees in this legal sense, however much they exploit them. Yet he always maintained that capitalists as a class had historically dispossessed the working class, *forcing* the latter into their state of relative powerlessness. However, if we adopt a more charitable (perhaps naive) view of capitalists, holding that they do not act

intentionally (as a class) to dispossess their workers, we might still blame capitalism—the economic environment in which they act—for constraining them to do so.

Before discussing the possibility of designating an environment rather than a discrete act as coercive, I will simply note that the poor are vulnerable to domination (and therewith coercion) by persons besides their employers, including government agents, utility providers, and landlords who have the legal right to deny them needed services unless they conform their behavior to legally sanctioned threats. While none of us is free from having to pay our bills and conform to government regulations, only the poor generally experience such demands as threats to their very livelihood.

Let me now turn to a different kind of coercion that does not involve a relationship of domination. I noted above that an environment, such as capitalism, may be described as coercing a class of persons into positions of relative powerlessness whereby they then become vulnerable to domination (coercive threats) by others. Persons participating in any system of contractual exchange have threats at their disposal aimed at constraining other parties and perhaps they must tacitly rely on such threats simply in order to compete in the system. The threats in question can be coercive, and the system that compels the making of such threats can also be coercive. But coercion in both of these senses is legally innocent. It may be morally innocent as well, if (to use a parallel argument made by defenders of paternalistic coercion) the coercion in question serves to advance the long-term rational interests of the coerced.

If the preceding arguments hold true, imagining poverty as embedded in a coercive (hostile and threatening) environment that is *morally* non-innocent will pose no great challenge. I would now like to extend this argument further by suggesting that an impoverished environment (a state of poverty) might also be *legally* non-innocent. The legal context for discussing coercion might strike some as infertile ground for elaborating the wrongfulness of poverty. As legally defined, wrongful coercion involves cases where person A illegally threatens another person B with harm (typically entailing the violation of B's rights) unless B does something she doesn't want to do. Do these threats exhaust the meaning of wrongful coercion?

Meyers points out that civil law classifies hostile workplace environments as illegally coercive insofar as they leave women and minorities with no choice but to suffer unbearable hostility or resign (Meyers 2013). The cumulative impact of words and actions that, taken singly, do not rise to the level of hostility, or that might not even have been maliciously intended, nonetheless may create a hostile workplace environment. Here the assignment of individual

liability for causing the hostile environment is largely irrelevant. What matters is that an employer knowingly permits the environment to persist.

Meyers argues that this analogy can be extended to discussions about poverty. The disparate impact of poverty on poor women may leave them with no viable option but to starve or deliver themselves over to the tender mercies of labor and sex traffickers. The coercive impact of poverty is largely ignored in the 2000 UN Protocol's definition of illegal trafficking as involving "threat or use of force or other forms of coercion." This definition overlooks the fact that some of these women "freely" and "rationally" choose this escape from poverty. Repatriating them or returning them to their original situation as currently permitted by law does not address the coercive nature of the environment within which their choice was exercised. By contrast, recent cases of amnesty law involving trafficked women draw explicit analogies between political and economic refugees, thereby suggesting parallels between political (agent-centered) and economic (environment-centered) threats (Haynes 2006).

Again, it might be objected that, even if poverty does coerce women to consent to their own illegal bondage, such consent does not rise to the level of a legal violation, since there are many cases of coerced consent that are (and perhaps ought to be) legal. Alan Wertheimer notes that consent decrees offered by government prosecutors to companies that have violated anti-discrimination or anti-regulatory statutes are both coerced (since the companies have no real option but to consent) and valid (Wertheimer 2013). By parity of reason he concludes that the right of poor women living in developing countries to consent to undergo risky drug trials that offer only cash payments but no other medical benefits are likewise legally innocent. This consent may be coerced by the absence of viable options, but it is nonetheless valid insofar as it does not lead to the direct violation of rights.

Does the validity of coerced consent in these cases refute Meyer's argument? Nothing about what persons can validly consent to out of desperation speaks for or against the illegality of the circumstances that "force" them to consent. From Meyer's perspective, women who are forced into trafficking by poverty may well have a right to choose this option, just as women fleeing from political oppression may have a right to choose this option. That does not render the political (or economic) oppression any less illegally coercive.

To summarize: extreme poverty might rise to the status of a human rights violation depending on its statistical frequency, disparate impact on women and minorities, and its severity. Its status in this regard can be framed in terms of an illegal restriction of freedom that forces people to choose between



a narrow range of very undesirable alternatives, each of which renders them vulnerable to domination and places their lives at grave risk.

### 3. Social Contract Theory and Poverty Knowledge

Why do poverty experts think that empowering the poor by reducing domination and coercion is so important? One answer is that they subscribe to the social contractarian idea of society as a cooperative venture among citizens who regard themselves as free and equals. Although Hobbesian variants of this idea allow that the decision to cooperate may be constrained by strategic threats (and hence be coerced), other variants (descended from Locke and Kant) deny this. They insist that consent be conceived as the outcome of a fully (ideally) rational and voluntary decision that respects the equal moral dignity of all parties to the contract. On this reading, social institutions and structures that impose unequal benefits and burdens on persons are to be considered *prima facie* unjust unless those who are negatively impacted (e.g., the poor) could rationally consent to them as advancing their interests better than any other feasible alternative.

In keeping with this reading of the social contract, it becomes apparent that Rawlsian and Nozickean varieties of social contract theory provided background justifications for the two opposing paradigms of poverty knowledge that gained wide acceptance during the 1960s war on poverty and the 1980s war on welfare dependency. Both, I submit, reflect the limitations of these paradigms in conceptualizing rational consent and, by extension, institutional coercion and domination. In short, while Nozick's libertarian view of consent remains blind to the poverty-inducing constraints generated by "free" market exchanges, Rawls's welfarist view remains insensitive to coercive interventions aimed at reducing these constraints. A variety of social contract thinking that assiduously avoids these limitations is Habermas's discourse theory. By proposing rational discourse as a touchstone for consent, it points beyond a theory for legitimating social arrangements toward a model of critical pedagogy. Such a dialogical model, I will argue, provides a better normative foundation for underwriting poverty knowledge as a collaborative form of mutual enlightenment and communal empowerment.

Let me begin by briefly sketching what I take to be some conceptual parallels between Rawlsian and Nozickean varieties of contractarian thinking, on one side, and poverty knowledge, on the other. Despite its consideration of structural economic inequality, the economic poverty knowledge that emerged during the heroic age of Lyndon Johnson's Great Society program

advocated for egalitarian income redistribution in a manner that was largely insensitive to socio-historical contexts of race, gender, and class in the same way that its Rawlsian counterpart was. While reacting to forms of racial and class oppression, it did so without the consent or participation of its targeted beneficiaries. Yet for all of its bluster about disempowering the working poor through welfare dependency, the libertarian paradigm of poverty knowledge that all but replaced its welfarist counterpart by the mid-1990s had nothing to say about disempowering the poor through structurally induced poverty. Blaming poverty on the perverse incentives of the welfare state and on the pathological culture of the poor, this paradigm recommended harsh “workfare” requirements, benefit cutoffs, and regimes of supervision that were arguably more coercive in their punitive orientation than earlier forms of “welfare paternalism.”

The failure of Rawls and Nozick to fully appreciate the threat to the social contract posed by welfare- and market-dependency partly stems from their use of the very same rational choice models for conceptualizing voluntary consent that informed poverty knowledge. In both instances the subjects for whom choices were modeled were considered in abstraction from their social contexts, and, more important, from their experience and understanding of these contexts. The methodological individualism endorsed by these models, in turn, led Nozick and Rawls to underestimate, respectively, the coercive nature of poverty and welfare paternalism. Ultimately, it led poverty knowledge experts inspired by these models of government- and market-based empowerment to propose policies that exacerbated rather than mitigated poverty.

Rawls's *A Theory of Justice* (1971) achieved popularity among social theorists and policymakers in the wake of the war on poverty in part because it incorporated rational choice methods that were just then coming into vogue. Ignorant of their social position and averse to taking major risks under conditions of uncertainty, Rawls's hypothetical contractors are rationally compelled to choose a scheme of justice that institutionalizes equal civil and political rights and permits social inequalities only when they benefit the worst off. Declining to trade basic equal liberties for greater shares of income, these rational choosers nonetheless reject a libertarian scheme that maximizes property rights and economic freedoms at the expense of equal social opportunity and equal democratic citizenship.

Rawls's theory of justice reflected the optimistic view of many progressives that economic growth would solve the paradox of poverty so long as sufficient increases in overall wealth trickled down to the poor and educational opportunity generated widespread vocational skills that would find a growing

market. His later writings on political liberalism (Rawls 1993), penned during and after the Reagan administration's assault on the welfare state, reflect the views of a somewhat less optimistic generation of poverty experts who were beginning to question the feasibility and correctness of aggressive programs of income redistribution and urban redevelopment. Rawls accordingly re-elaborated his contractarian model in ways that underscored its incompatibility with social welfare dependency while at the same time reaffirming its emphasis on dispersing wealth and eliminating poverty. In contrast to the egalitarian requirements of the difference principle that informs his preferred account of justice as fairness—an account that favors a property-owning democracy in which wealth is widely dispersed (Rawls 2001, 135–40)—Rawls endorses a social safety net as necessary and sufficient for a minimally just democracy.

Rawls's retreat from the strong egalitarianism of his "comprehensive" theory of justice may reflect more than a shift toward a more philosophically neutral liberalism when we recall the critique leveled against it by Nozick (1974). Appealing to libertarian sentiments, Nozick held that implementing Rawls's proposed income transfers would violate the reasonable expectations of many, if not most, of his targeted readership. Specifically, these transfers would ostensibly entail a fixed pattern of distributive outcomes that would be experienced by those whose incomes were taxed as an unjustified act of government coercion, a violation of commonly shared notions of just desert. Taking his cue from Locke, Nozick accordingly recommended an entitlement account of justice.

Although this account would eventually inspire a new generation of conservative poverty experts, its full political impact was far more ambivalent. The theory may have legitimated economic outcomes that were neither egalitarian nor necessarily beneficial to the worst off, but it did so pursuant to the Lockean proviso, which upheld subsistence rights (a principle unknown to Rawls until his later work) and required that the history of property acquisition and transfer leading up to present-day accumulations accord with norms of procedural justice. Leaving aside its neglect of the structural coercion underlying facially just market systems, the chief virtue of Nozick's desert-based model of natural property rights—at least from the standpoint of progressive poverty experts—is its condemnation of current distributions of wealth originating in slavery, colonialism, legal discrimination, and other unjust procedures of appropriation and exchange.

Despite acknowledging the injustice of coercive acquisition, Nozick dismisses much that is wrongfully coercive about poverty by departing from

a theoretically impoverished understanding of freedom that exaggerates the capacity of individuals to rationally control their destinies on their own, without support from government-supported safety nets, pensions, education, and health services. He fails to appreciate how free, rational choices are subject to forms of domination and coercion, and he fails to appreciate how they can diminish or restrict the very freedom of those who make them. Multiplied across a population, the aggregate effect of such choices can be globally irrational, creating unintended and in some cases unforeseen economic and environmental obstacles to the free pursuit of otherwise rational aims. Hence we see the communitarian rationale for legally compelling people to care for their environment, health, and future economic security. If we assume that people would choose such collective remedies for individual shortsightedness given sufficient knowledge and rational consideration of how their own freedom and happiness are at stake, then “forcing them to be free” through more farsighted government policies may be less “coercive” and paternalistic than libertarians like Nozick think.

In contrast to Nozick, Rawls has a more robust appreciation of how government acts to protect against collective risks to freedom. But he underestimates how these acts disempower the very people they are supposed to empower by subjecting them to bureaucratic regulation. For single mothers who compose a substantial portion of welfare recipients, regulation means living under constant surveillance to ensure that conditions for receiving assistance are not violated (Fraser and Gordon 1994). Coercion, in the form of legal threats to terminate benefits, becomes more palpable in the physical eviction of tenants from public housing in the name of urban renewal, or the closing of under-enrolled and underperforming schools in the name of efficiency. The top-down manner in which these policies are implemented (often without consulting those adversely affected by them and almost never with their consent) makes a mockery of the empowerment aims that inform Rawls’s ideal of equal citizenship.

Habermas’s discourse theory of law and democracy develops a contractarian account of legitimation that expressly takes into account the limitations of its Rawlsian and Nozickean counterparts (Habermas 1996, 393–414). His penetrating analysis of the legitimation crisis besetting the welfare state examines the contradiction between two compelling imperatives: the administrative regulation of a crisis-prone market economy and the democratic demand to ensure accountability in the name of universal justice (Habermas 1975). The empowerment of technical social engineers devoted to the singular cause of stable economic growth coupled with the depoliticization of apathetic

masses absorbed in their everyday private lives comes at the expense of a robust public debate over the justice of government income redistribution. At the same time, social policies that compensate for severe inequalities—specifically anti-poverty programs that aim to empower the poor—necessarily rely on coercive legal classifications and eligibility requirements that effectively *disempower* the poor. Poor urban communities are thus literally “colonized” (taken over) by government-appointed social workers, housing authorities, planning agencies, school boards, and other outside “poverty police” (Habermas 1987, 356–73).

Although it is closer in spirit to the social democracy advocated by Rawls than to the market democracy advocated by Nozick, Habermas’s discourse theory advocates a radical democratization of all areas of public life as a hedge against forms of coercion and domination emanating from both government and marketplace. It acts on the principle that legitimate government must be fully transparent and fully accountable to the people, which means that it must consult the people directly, by submitting its poverty programs to fully inclusive and unrestricted public scrutiny. Public consent to principles of distributive justice and their applications cannot be presumed on the basis of hypothetical models of rational choice. It can only be determined by democratic procedures that adequately approximate the ideal of rational dialogue wherein all affected parties have equal opportunities to voice their concerns, question social arrangements, and withhold their consent, free from the “constraints of action,” especially constraints of legal and economic power, of neediness and fear, that emanate from the administrative and economic systems.

Although Habermas’s discourse theory of law and democracy resembles Rawls’s contractarian theory of political liberalism in its reliance on a form of Kantian constructivism to (re)construct a system of basic human rights,<sup>4</sup> it resembles communitarian theories of democracy that radically empower the public as the final authority for negotiating the meaning of such rights and all other terms underwriting the social contract.<sup>5</sup> Whereas Rawls takes for granted the rationality (reasonableness) of a social contract in which the vast majority of comprehensive belief systems agree on *relatively static* substantive principles of justice *for different reasons*, Habermas does not. Contrary to mainstream contractarian and communitarian thinking, rational consent, he insists, cannot be presumed as given. Rational consent can only emerge out of a rational dialogue that is oriented toward agreement on the deeper moral reasons underwriting shared belief in the justice of these principles. Otherwise suspicion remains that these principles are accepted not because they are impartial (just) but because they are empty platitudes that anyone can affirm

for whatever reason. That, in turn, would generate as many interpretations of basic rights as there are comprehensive belief systems. Discourse theory, by contrast, asserts that a norm is valid only if all persons affected by it agree that its general observance would advance each and every person's interests to the extent that these interests have been critically examined *and* transformed in light of approximately inclusive, free, and equal dialogue. Discourse theory insists that persons consent to norms for the right reasons, and that the rightness (justice and impartiality) of reasons be tested in real dialogue in which persons check their biases through mutual questioning rather than through the less reliable method of individual-centered, context-bracketing, rational choice (Habermas 1998, 57–90).<sup>6</sup>

Does discourse theory withstand the criticism it levels against rational choice contractarianism? Perhaps not. After all, inclusive rational dialogue, as Habermas understands it, is inherently counterfactual, designating a regulative ideal that can only be approximated in certain institutional settings. Rational consensus is doubly counterfactual, since there is no guarantee that equally competent participants in rational dialogue will converge in their thinking, given their factual social positioning and radically divergent belief systems. Insofar as discourse theory presumes a rational consensus on basic rights and democratic procedures, it too relies on a context-independent, hypothetical choice. When substantive interpretations of these principles are at stake, Rawlsian “overlapping consensus” and “fair compromise” may well be the best justification available for social contract theory, after all.

Whatever its *theoretical* merits might be for modeling a dialogical conception of rational choice and contractarian consent, *practically speaking* discourse theory does not add much to our understanding of the legitimating reasons underwriting liberal democracy beyond what Rawls's theory of political liberalism has to say about it. These limits to discourse theory persist so long as we conceive it as a theory about the pragmatic social conditions underlying rational suasion. But argumentative discourse, Habermas reminds us, is but a derivative and secondary form of reaching agreement. More basic is the process of achieving mutual understanding between speakers in which agreement on normative claims is not always essential.

Because Habermas's interest in reaching mutual understanding through dialogue predated his interest in rational argumentation (discourse in the technical sense of the term), I propose that we return to the origins of Habermasian discourse theory in his early writings on social epistemology and critical social science. There Habermas defended a descriptive, interpretative social science oriented by a knowledge-constitutive interest in mutual enlightenment and

empowerment, a collaborative sociology with practical intent, in which (to paraphrase Marx) the experts would be educated by those whom they would seek to educate and empower (Habermas 1971; 1988). Although space limitations do not permit me to enter into the details of these social epistemological reflections, we can at least sketch the core idea animating them: empathetic understanding as a condition for emancipation and empowerment.

#### 4. Social Epistemology and Empathetic Discourse

If discourse theory provides the most compelling (because most democratic) social contract justification for empowering the poor, it also provides the most compelling *social epistemology* for conceiving the kind of poverty knowledge best suited for that purpose: a scientific critique of domination and coercion informed by popular criticism of its own epistemic and normative authority.

Advocates of social epistemology view their discipline as a corrective to standard accounts of epistemology that exaggerate the capacity of isolated individuals to acquire authoritative beliefs on their own. Training in critical thinking (logic) and exposure to alternative points of view alone are not sufficient to counteract deeply irrational psychological propensities to make false inferences and exaggerate experiences that confirm core prejudices. They further argue that dependence on *reliable* epistemic authorities is essential to rational moral judgment. Allen Buchanan, for instance, points out that the Holocaust was not caused by subverting moral impulses but by clouding moral judgment with racist propaganda that had the imprimatur of government-backed medical science.

One response to epistemic failures of this sort is to reject all expertise as pseudo-science. Indeed, conservatives who reject a highly confirmed pillar of evolutionary biology will have even more reason to reject the findings and explanations of social science, which even experts in the field contest. Rejecting expertise, however, returns us to the epistemic shortcomings of common sense, which cognitive psychology shows is at best unreliable and at worst biased and prejudiced. To recall my earlier complaint: it is all too convenient to explain poverty as a simple manifestation of individual moral depravity shaped perhaps by the pathological culture of an entire (typically non-white) underclass than it is to explain it as the product of many factors, individual and social, chosen and imposed.

If it is rational to rely on expertise in making moral judgments about the poor and their plight, then one must confront the two problems Buchanan locates at the heart of social epistemology. The novice/expert problem revolves

around a paradox of accountability: laypersons should not defer to experts simply because of their status as licensed authorities; indeed, they should hold them accountable by demanding that they justify their expertise with reasons that resonate with their own common sense.

This accountability requirement is especially apropos in the case of social science, which calls for a balancing or blending of novice and expert viewpoints. For this reason I have suggested that poverty experts incorporate face-to-face conversations into their field work so that their research consists of conducting certain kinds of interviews—soliciting first-person narratives, for example—in addition to handing out questionnaires for purposes of data gathering and number crunching. Habermas's youthful reconstruction of sociological interpretation and understanding (*verstehen*) as a kind of rational dialogue wherein the rationales of social agents are framed by more encompassing autobiographical and sociological narratives supports this kind of poverty knowledge. If poverty knowledge inevitably proffers theoretical explanations of its statistical findings, then this theoretical expertise must in some sense learn from (be informed by) the practical experience of the people whose situation it is trying to understand. At the same time, poverty experts can enlighten their research subjects by providing more comprehensive explanations for their experiences. By dispelling the erroneous prejudices of narrow common sense, they can help empower the poor to politically act on their own behalf.

The second problem Buchanan locates at the heart of social epistemology is the determination of which among several competing or conflicting experts is the most reliable. Again, this problem especially pervades social science. As with the first problem, there is no easy solution to this problem. Referring to global climate change skeptics, Buchanan observes that refusal to defer to scientific authority is the reverse side of deferring to the authority of conservative defenders of the "liberal corruption theory," which impugns all government-funded science as inherently biased toward "big government." Education in social epistemology can counteract this deference to anti-science authorities (many of whom are talk-show hosts) by pointing out the psychological propensities that motivate people to seek confirmation of their own core beliefs and identities. Such education can also enlighten people about how their own experiences can be (in the words of Buchanan) "systematically distorted by the very social practices which those same beliefs are invoked to justify" (Buchanan n.d.). Thus, the reigning common sense in traditional patriarchal society teaches that women are naturally inferior to men intellectually, based solely on its selective observation of social practices that deny women education.



I shall return to the problem of systematically distorted understanding below. One feature of social epistemology on which Buchanan is silent is the *affective* (or as I shall henceforth dub it, *empathetic*) dimension of social epistemology. Certainly, Buchanan is correct to highlight the cognitive distortions wrought by our *sympathetic* identifications with people who are like us or who think and believe as we do. However, as Meyers points out, we do not need to share experiences suffered by others or feel sorry for them in order to empathize with them. Unlike sympathy, empathy designates a distinctly cognitive way of imagining what it might be like to be the other. Empathy is vital to what Meyers calls “moral epistemology” in that it enables us to perceive the universal humanity of others through imagining persistent features of their situation of adversity as these are described in narratives that recount significant portions of their lives. Empathy links the cognitive and affective aspects of moral judgment by presuming a degree of care for the other (thus distinguishing empathetic understanding from strategic understanding or “sizing up”). Additionally, empathy can have the effect of extending our sympathy (Meyers forthcoming).

Meyers observes that empathy requires communication, which need not be dialogical or even personal (reading accounts of others experiences as narrated by journalists may suffice to produce empathetic understanding). However, although empathy typically involves (as Meyers remarks) “an empirically informed, imaginative representation of the other from a third-person perspective,” it is neither self-projection (imagining the other as yourself) nor self-effacement (imagining yourself as the other) but a complicated communication between two imagined perspectives (the first-person perspectives of oneself and the other as imagined from a third-person perspective). Empathy therefore highlights differences between empathizer and empathized as well as commonalities. Finally, although Meyers remains neutral regarding the importance of face-to-face dialogue in furthering empathetic understanding—the “embodiment” (gender, race, etc.) of the other may either advance or hinder empathetic understanding—she does note that the human face is “an empathetically compelling element of universal humanity” (Meyers n.d.).

In sum, even if orally transmitted testimony of personal trauma is not obviously preferable to written testimony, there remains an implicit dialogical component to all empathetic understanding. I will now argue that discourse theory provides the best theoretical underpinning of such understanding as a tool of social and moral pedagogy.

As noted above, I believe that discourse theory’s main contribution, especially for redirecting poverty knowledge toward a qualitative study of social

coercion, lies in the domain of pedagogy, where it models a procedure for achieving mutual understanding and self-transformation. From the very beginning, Habermas saw discourse as a political analogue to the clinical conversation between analyst and analysand, but without the latter's asymmetrical, theoretically mediated interaction. In both instances, dialogue was regarded as combining enlightenment and emancipation. Resistance from questioning others would sensitize us to the cognitive distortions wrought by our attachments, identifications, and social standings. Such knowledge would be a necessary condition for freeing us from the coercive entanglements of unconscious bias and ideology. But just as psychoanalytic self-reflection required an emotional transference between the analyst and the analysand, so too discourse required an empathetic bond with the other. Reconciling Kohlberg and Gilligan, Habermas observed that affirming my equal right to speak and to participate in a just community of communicative cooperation would be misunderstood by me if I did not fully appreciate the solidarity, or social interdependence, linking myself to my fellow consociates. Such an awareness of the inextricable entanglement of my freedom and happiness with theirs, he observed, would in turn require empathy.

By "empathy" Habermas means a cognitive act of "reciprocal perspective taking" that is "methodologically" compelled by the very structure of discourse. It is not, he insists, an emotional identification that "affectively" induces "concessions" toward those with whom one empathizes. As a moral agent, one is committed to resolving differences by listening and responding to others' reasons, including their personal narratives. In the words of Hannah Arendt (here echoing Kant on political judgment), one must "enlarge one's mind" to acknowledge and, whenever reasonable, incorporate the way others understand social reality as appropriately modified by critical insight (Habermas 2011, 289). Habermas explicates this duty in terms of a controversial philosophical understanding of social cooperation, self-constitution, and autonomy. According to him, social cooperation cannot be conceived *primarily* as a strategic coordination among self-interested persons who *exclusively* steer their behavior through negative or positive incentives. Rather, the primary coordinating mechanism is "communicative action," or spoken interaction in which persons commit themselves to obligations based on making certain kinds of unavoidable claims whose validity is presumed to be rationally justifiable to others. The competence required to claim (implicitly or explicitly) that one's invitation to cooperate is guided by reliable knowledge of reality (true beliefs) and appropriate norms (right evaluations) builds upon a long process of socialization. In order to communicate, persons must acquire mastery of first-

second-, and third-person speaker roles and, along with that, an ability to identify with different social perspectives, including, as George Herbert Mead noted, the moral point of view of the “generalized other” or “we standpoint.” Each of us is forced to “decenter” ourselves from our initial egocentrism as we learn to play multiple roles, identify with multiple perspectives, and expand our horizon of self-understanding to include the universal standpoint of humanity as well as the particular standpoints of concrete others.

The subject’s capacity for achieving selfhood and autonomy also emerges during this process. Individuation—experiencing myself as a distinctive “I”—presupposes socialization involving the internalization and creative mastery of socially recognized roles and values. Even before the acquisition of language, emotional bonding between parent and child sets the stage for the first acts of empathetically identifying with others, of experiencing affirmation from others as well as resistance and rejection from them. These affective attachments and struggles, so well documented in object-relations theory, generate feelings of guilt and anxiety that extend beyond our immediate kith and kin. Those “out-groups” who resist or threaten our particular idealizations of security and happiness are perceived as threats to our very identity as well, and so call forth additional feelings of guilt, resentment, and anxiety. We objectify them as if they were “outside” the bounds of empathetic identification and we demonize them by blaming them for our problems, projecting onto them our own insecurities and feelings of inferiority. This is part of the hidden psychology underlying our resentment toward the poor, especially those who are also marked as culturally and racially different.

Since Hegel, philosophers have argued that combating the dehumanization of others depends on satisfactorily resolving this “struggle for recognition.” Recognition—or positive affirmation of one’s individual identity and social status by one’s consociates—plays a decisive role in shaping our agency, from our earliest object relations with parents to our attainment of equal citizenship secured by basic rights and finally to our feeling appreciated for the economic contributions we make to society and for the diverse skill sets and cultural backgrounds that we bring to its enrichment. The confidence to act in the world with self-assurance and to experience full ownership of one’s actions depends on our actions being confirmed and recognized by others. Being at home in the world and being reconciled to one’s place in the social life of one’s community is itself enabling, and belies the impoverished account of freedom and agency touted by libertarians. But getting to this place is a struggle that can only be won through the achievement of empathetic relations of recognition.<sup>7</sup>

Genuine discussion of social coercion, let alone of rights and duties, therefore presupposes a prior understanding of what it's like to be the person standing across from me. Any exercise of mutual interrogation that probes this deeply will meet with deep psychological resistance, for which another kind of dialogical pedagogy, perhaps therapeutic in nature, may be required. To reiterate my earlier point, we flee in the face of painful truths that challenge our place in the world, force us to question who we are, and beckon us to radically transform ourselves. The *affective* biases underlying our conservative acceptance of the status quo are as powerful as our *cognitive* biases, with each reinforcing the other. These methodological and psychological considerations provide ample warrant for expanding the scope of poverty knowledge to include a critical assessment of poverty as a coercive force in the lives of the poor.

In sum, the fruits of poverty knowledge should also extend to the public. Greater mutual understanding across the social divides that threaten our solidarity must be promoted at all levels. Political, economic, and educational reform plays an indispensable role in facilitating this process. A legitimate fear of government coercion could be allayed if legislators were required to heed the policy recommendations of demographically representative citizen advisory boards. The benefits of advisory boards and other experiments in deliberative polling are too numerous to mention; but the greatest benefit would consist in a fruitful exchange of perspectives and expertise in which all participants—experts as well as ordinary citizens—are forced to question their own biases.

The pedagogical benefit of citizen advisory boards recalls, once again, the importance of redirecting poverty policy and poverty knowledge toward empathetic understanding of the poor as they grapple with their own disempowerment. The production of poverty knowledge unconstrained by narrow social and governmental agendas must incorporate a dialogue among a wide range of persons representing different experiential and epistemic backgrounds, each having equal opportunities to make informed arguments free from the isolating confines of ivory towers and segregated neighborhoods and free as well from the pathological sentiments and cognitive pressures that unconsciously coerce us into identifying with people who look like ourselves while distrusting those who don't. Discourse ethics, I contend, provides the best theoretical and practical framework for conceptualizing this pedagogy of the oppressed, thereby mitigating the blind stereotyping and scapegoating of the poor that currently informs public policy.

## Notes

1. Having argued that the economic divide between whites and blacks was a result of inherited intelligence (Murray and Herrnstein 1994), Murray today attributes this gap to a differential assimilation of cultural values revolving around hard work, educational achievement, and stable marriage (Murray 2011).
2. Although patriarchy and corruption are local cultural factors that contribute to poverty (Rawls 1999, 105–20), they are complemented by global economic factors such as unfair trade agreements, draconian loan conditions, oscillations in financial and commodity markets, misconceived notions of foreign aid and development, and the very structure of capitalism itself (Pogge 2008).
3. Parsons (Parsons and Shils 1951) held that persons in rationalized social systems orient their behavior around delayed gratification, universal norms, individual achievement, and specialized roles. He stressed the poverty-mitigating function of the nuclear family as a specialized subsystem headed by stay-at-home mothers whose sole function was socialization of children into responsible, hard-working adults with stable, gendered identities (Parsons 1955).
4. Following Rawls, Habermas generally defends social rights (including a right to subsistence) as secondary means for securing the “fair value of political liberty.” Habermas’s most recent discussion of human rights (Habermas 2010; Ingram 2010, ch. 7), however, points in the direction of a tighter theoretical complementarity of first-, second-, and third-generation human rights grounded in the integral dignity of the human being.
5. Discourse theory differs from its Rawlsian counterpart in narrowing the gap between ideal and **real** theory insofar as interlocutors are not asked to choose principles for an ideal society that would later be readjusted for society as it exists. Thus, the hostility to affirmative action and other race and gender-sensitive policies that some commentators have thought to be present in Rawls’s principles of justice for a color- and gender-blind ideal society does not appear in Habermas’s discourse theory, which takes interlocutors and their diverse social standpoints as the point of departure for normative reflection.
6. To be sure, Rawls also asserts that full legitimation of norms requires *public* (discursive) justification. However, he adds that only public reasons that are *neutral* with respect to conflicting comprehensive doctrines be admissible as a matter of civility. This method of avoiding controversial claims in order to achieve unanimous consent does not provide a robust critical dialogue establishing whether public reasons exist.
7. J. D. Trout observes that empathy cannot be willed through “thought experiments,” such as Rawls’s method of impartial reasoning under a veil of ignorance, because they invite the empathizer to imaginatively project her own biases onto the imagined other. “Internal” strategies involving mental discipline cannot succeed without the aid of “external” strategies involving environmental cues, such as face-to-face communication (Trout 2009, 115–17, 124–26).

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# Rethinking Coercion for a World of Poverty and Transnational Migration

*Diana Tietjens Meyers*

LINKING THE TERMS *poverty*, *migration*, and *coercion* as my title does might first and foremost bring to mind the coercive apprehension and deportation policies that the affluent states of the Global North use to secure their borders against undocumented, poor migrants. However, I propose to reverse the focus and ask whether poverty should ever be viewed as a coercive force that ought to be taken into account in formulating and implementing immigration policy in the Global North. I'll argue that severe poverty in the context of a national economy with a Large Deficit of Decent Work (LDDW economy, for short) is coercive.<sup>1</sup> Such widespread, seemingly irremediable, and extreme poverty at home in conjunction with the allure of economic opportunities elsewhere impels many people stuck in LDDW economies to attempt migration despite the hazards of crossing borders without papers.

There are many geopolitical and electoral reasons for the inhospitable way that affluent states typically treat undocumented transnational migrants. However, I attend to a misunderstanding of the moral and motivational significance of severe poverty in an LDDW economy, a misunderstanding that reinforces inhumane immigration practices. Enshrined in a brand of liberal ideology suffused with the imperatives of the Protestant ethic is the assumption

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that poverty is a question of personal responsibility—if you are needy, it's up to you to take the initiative, find paid work, and provide for yourself and your dependents. What this view overlooks of course is the possibility that global economic forces are ensuring that your own country's economy is faltering so badly that it cannot employ, never mind adequately remunerate, all those who are capable of working. Ironically, when workers despair of finding employment in their homelands and take this credo's advice to bootstrap their way into earning a living, they are penalized for crossing international borders in search of economic betterment.<sup>2</sup> Their very self-reliance and gumption are viewed through a xenophobic lens and recast as criminality.

My aim in this chapter is to develop an alternative understanding of severe poverty in an LDDW economy—one that is situated in human rights and that undermines the polarized distinction between economic migrants (often smeared as illegal aliens) and refugees (acknowledged as victims deserving a safe haven). I begin by characterizing severe poverty and canvassing studies of the relations between poverty and migration (section 1). The empirical considerations I present establish a preliminary rationale for giving serious consideration to the claim that being subjected to severe poverty in the context of an LDDW economy is coercive. In what follows, I'll sometimes abbreviate the claim I want to defend by referring to severe poverty as a coercive force. But what I am proposing is that being trapped in the treacherous predicament that is severe poverty in an LDDW economy functions coercively in virtue of forcing victims to choose between (1) staying in place with every expectation that the harms attendant upon deprivation will worsen over time, and (2) undocumented transnational migration despite its attendant risks in the hope of gaining a secure livelihood and greater well-being.

I acknowledge, however, that a salient model of coercion—call it the one-on-one, brute force model—excludes poverty, even in this dire form. In line with this model, international human rights law originally presumed that a unitary agent—the state or an agent of the state—must deliberately act so as to terrorize selected citizens or inflict grievous harm on them in order for a human right to be violated. Although allegiance to this conception of coercion as a one-on-one threat of force poses a formidable obstacle to arguing that being trapped in severe poverty in an LDDW economy is coercive, this conception of coercion is not unassailable. Indeed, it has come under sustained attack. The worldwide movement advocating women's rights as human rights has struggled with some success to overcome the presumption that the state must be implicated in using force or threats of force against a right-holder if a human rights violation is to occur. Insofar as this presumption

remains regnant, states are relieved of the obligation to treat domestic violence as a human rights issue (Ackerly and Okin 1999). With respect to poverty, the implications of the one-on-one, brute force model of coercion may be even more sinister, for if no single institution or individual compels at least 1.4 billion people to live in poverty, it seems that no one is responsible for realizing social and economic human rights.<sup>3</sup> The non-state, dispersed nature of global capitalism seems to shield everyone from allegations of wrongdoing despite widespread immiseration. Moreover, States Parties to the 1976 International Covenant on Economic, Social, and Cultural Rights are obliged to do nothing more than make a good faith effort to gradually implement these rights.

My purpose in this chapter is not to address the vexed question of who is responsible for realizing social and economic rights and by what means.<sup>4</sup> Nor is my purpose to advocate for particular policies regarding the treatment of undocumented migrants to the Global North. Rather, it is to analyze the moral implications with respect to transnational migration of the fact that social and economic human rights are not realized in migrants' countries of origin and that globalization together with its colonial antecedents condemns so many people to severe, lifelong poverty. In this connection, I explore two models of coercion that depart from the one-on-one, brute force model—one that undergirds international conventions regarding refugees and another that undergirds the hostile environment doctrine that U.S. courts have developed with respect to discriminatory employment practices. I conclude that severe poverty in an LDDW economy is sufficiently like these types of coercion to also count as coercive (section 2).

While the refugee model retains the one-on-one, brute force model's insistence on a unitary agent, I emphasize that it acknowledges that threats to people's livelihoods can be persecutory and can justify crossing national borders without legal sanction. Although the threats to people's livelihoods that arise in conjunction with tyranny or with war or warlike conditions are much more dramatic and telegenic than those that arise and arise more frequently in LDDW economies, the consequences for human livelihoods are the same. For this reason, I argue, it is morally perspicuous to classify people fleeing severe poverty in an LDDW economy as economic refugees although the tenability of this classification as a matter of international law would require further argument.

The hostile environment model of coercion reaffirms that threats to individuals' livelihoods can be coercive, but it allows for a more diffuse understanding of a coercive agent. This reconceptualization of coercive agency retains a vestige of the one-on-one model inasmuch as liability for permitting a

hostile environment to thrive is assigned to a bounded institution—that is, an employer. Still, what I find promising in hostile environment law is its recognition that uncoordinated actions on the part of a number of individuals can gel into a coercive situation that deprives another employee of her rights and may force her to flee her job. Similarly, although many agents acting independently and not necessarily with the intent to inflict harm cause severe poverty in LDDW economies, this type of poverty is coercive. Moreover, I argue, it is wrongfully coercive.

The refugee model and the hostile environment model provide a springboard for theorizing the coerciveness of subsisting in severe poverty in an LDDW economy. I conclude by briefly reflecting on the possible implications of this kind of coercion for immigration policy in the Global North (section 3). It is beyond the scope of this project to advise states about how to reform their immigration policies in light of the coerciveness of severe poverty in LDDW economies and given that avenues of relief other than undocumented migration are closed. However, it seems clear that at the very least Global North states owe the victims of severe poverty in LDDW economies who pursue secure livelihoods through undocumented migration a reassessment of the draconian deportation policies that are now common.

## 1. Motivating the Linkage Between Poverty and Coercion

As my object in this paper is not to figure out how to identify and reduce poverty, debates about how best to define and operationalize the concept of poverty can be set aside.<sup>5</sup> For purposes of explicating the relations between poverty and coercion, the meanings of poverty in human lives are of paramount importance. I assume that poor people know who they are, and I rely on what they say about how they suffer. In this spirit, I first quote one individual's depiction of the phenomenology of poverty. After that, I present a synopsis of testimony taken from people living in poverty around the world. Building on these data, I develop some preliminary reasons to classify poverty in an LDDW economy as a species of coercion.

Mehta Bai, an Indian widow whose options are governed by practices of female confinement to the household describes her experience of poverty as follows:

I may die, but still I cannot go out. If there's something in the house, we eat. Otherwise, we go to sleep.... My mind does not settle, I'm always

upset. All day and night, for the last two years, I am always upset. I will just die. (quoted in Chen 1995, 37, 49).

Were it not for Mehta Bai's young widowhood, norms of female seclusion in her region of India, and her in-laws' refusal to fulfill their obligation to provide for her and her children, she might be able to find paid work in India that would enable her to support her family. Although the poverty and malnutrition that afflict Mehta Bai and her children do not stem directly from an LDDW economy, I quote her here because her testimony provides a succinct description of one person's experience of inescapable poverty and the terrible psychic toll of chronic hunger.

Of course food insecurity is only one consequence of endemic poverty. Susan Moller Okin's compilation of findings from two reports commissioned by the World Bank gives a more comprehensive account of the human meanings of poverty:

What do the poor lack, on their own account? ... [W]hen asked what they understand by poverty, some respondents point to themselves, their physical state and clothing, and their dwelling, saying, "This is poverty." They usually first describe their poverty as their inability to meet their basic physical needs. They are frequently hungry or fearful of imminent hunger—suffering most of all from seeing their children go hungry. They often lack safe drinking water or water to keep their garden plots alive. They have no shelter, or they have inadequate or unsafe housing, with leaking roofs and walls. Often they do not have clothing decent enough to appear in public without shame (which is particularly acute in the young). In spite of their dire material needs, they rarely speak of their lack of income per se. ... [T]he poor tend far more often to speak of lacking the assets or resources with which they could meet their own basic needs. These resources might be access to land or credit with which they could be productive; alternatively, many speak of yearning for a secure job that would pay them enough to live on. ... Many voice their lack of capacity to meet their needs in terms of being always at risk or vulnerable—to weather, especially drought, to shifting prices, to violence, to a crisis such as illness or accident. In countries experiencing civil war, peace and security are even higher priorities than secure food or shelter. Some tell of crippling debt, even debt that essentially "binds" them to exploitative employers. Some, especially women, speak of the constant exhaustion of overwork;

to be able to “sleep until you are no longer tired” was the ambition of some. What the people say they lack, overwhelmingly, are assets and resources that could enable them to cope, by working, to make a reliable living for themselves.

(2003, 306)

More than six decades after the *Universal Declaration of Human Rights* proclaimed that everyone “has a right to social security and is entitled to realization, through national and international cooperation... of the economic, social and cultural rights indispensable for his [*sic*] dignity and the free development of his [*sic*] personality” together with the right to work and the right to “just and favorable remuneration,” these rights remain unfulfilled for vast numbers of human beings.<sup>6</sup>

Severe poverty is not the only reason why people migrate from LDDW economies. Few would migrate were it not for demand for certain types of labor in destination nations. Many migrate to reunite families. Some migrate for adventure or to build human capital. It is advisable, though, to bear in mind that some extremely poor people migrate out of sheer desperation (Waddington and Sabates-Wheeler 2003, 12). Still, it is often said that the poorest people in LDDW economies seldom emigrate, for they aren’t privy to opportunities abroad, lack funds to pay for transport and other relocation costs, or don’t have skills to take advantage of available opportunities in destination nations. There may be some truth to this claim. However, Rachel Sabates-Wheeler, Ricardo Sabates, and Adriana Castaldo characterize it as a “commonly held, but frequently unsubstantiated, belief” (2005, 33). Moreover, they adduce evidence to the contrary. Their study of migration from Ghana and Egypt to Italy finds that poor and very poor Ghanaians and poor Egyptians are more likely to migrate than non-poor segments of the sample population and that migration is an effective strategy for mitigating or escaping from poverty (2005, 33, 41–42). It is noteworthy, too, that so much social scientific attention has been lavished on migration from the Global South to the Global North that other forms of migration that are actually more common—for example, within one’s home country or from one Global South state to a somewhat better-off Global South state—tend to be overlooked as livelihood improvement strategies (de Haan and Yaqub 2009). Because my ultimate aim is to undermine the rationale for exclusionary immigration and refugee policies in the Global North, I won’t address these lateral types of migration, although a survey and critical analysis of the immigration and refugee policies of fast-growing Global South states would be a valuable undertaking.

By consistently pointing up the role of severe poverty in LDDW economies in motivating migration, qualitative studies of transnational migration in diverse regions reinforce the conclusion that Sabates-Wheeler, Sabates, and Castaldo reach. Leah Briones quotes from interviews with two subjects in her study of Filipina domestic workers in Hong Kong and Paris:

For me, I really didn't want to leave my family behind . . . going overseas is like taking up a job I didn't really want but it was the only way I could help my family, so I really had no choice.

(2010, 70, ellipsis in original)

The only thing that doesn't make [the Philippines] home is that there is no money to live. How can you enjoy life with your family when you have to worry about the most basic things in life, like a safe clean environment in which the children can grow up, access to good food, education and health services? You can't have a home when you have no money.

(2010, 70–71, bracketed material mine)

Briones sums up the economic predicament in the Philippines that impels these women to migrate as “underdevelopment” and “lack of livelihood resources” (2010, 74). Natasha Ahmad seconds this conclusion in her study of Bangladeshis who migrate to India: “Specific reasons might have been different for women and men, but economic compulsions remained a major factor that triggered the undocumented, but voluntary, movement across the border” (2005, 212). An IRIN report on migration from sub-Saharan Africa to Europe tells a similar story (IRIN: Humanitarian News and Analysis 2004). Interviews with would-be immigrants repeatedly yield testimony about their need to escape from poverty in their homelands. Among many poignant details from the report, this postmortem stands out:

In 1998, two young Guinean boys made headlines when they died frozen in the cargo of an Air France flight bound for Paris. Airport officials also discovered a poorly hand-written letter by the boys in which they said they wanted to reach Europe to flee Guinea's poverty and misery. (IRIN: Humanitarian News and Analysis 2004)

Concluding that poverty is the principal “push factor” behind undocumented migration, the report argues that poverty alleviation through education, job

creation, and support for small businesses is key to stemming the flow of desperate, undocumented migration.

In the United States (perhaps elsewhere in the Global North as well), the expression “economic migrant” is used routinely and disdainfully to refer to poor undocumented immigrants from the Global South but not to refer to the young, highly educated Western expats who migrate to the Global South to seek their fortunes nor to professionally credentialed, relatively well-off (brain drain) immigrants from the Global South to the Global North who seek to augment their incomes. No doubt this ubiquitous colloquialism and its negative connotations are symptomatic of derogatory stereotyping of persons with Global South heritages. Still, the research I have discussed suggests that there is empirical backing for the implication that poverty contributes significantly to motivating migration from LDDW economies to more prosperous ones. Severe poverty is certainly not the only factor that determines whether or not an individual will attempt undocumented migration from an LDDW economy to a more affluent society. Yet poverty in the context of an LDDW economy exerts intense pressure on those individuals who are capable of filling jobs in the underground economies of the Global North to take chances—often on behalf of their households or extended families—in pursuit of economic betterment.

Still, it does not follow that poverty coerces them to entrust themselves to their wits, to smugglers, or to traffickers. Many poor people don’t succumb to the “enticement” of demanding (often dangerous) work at low pay abroad. Moreover, Alan Wertheimer raises doubts about whether poverty can ever be coercive. In law, he notes, interpersonal threats and general economic pressures are distinct, and, as he wryly remarks, “Even Marx sees fit to distinguish the ‘direct coercion’ of slavery and feudalism from the ‘dull compulsion of economic relations’” (1987, 264). There would seem, then, to be a strong presumption against the claim that poverty coerces extremely poor people in LDDW economies to attempt migration. Nevertheless, Margaret Walker cautions that whenever little or no overt force is applied to influence a person’s choices and whenever she isn’t heard complaining about the outcome, it is tempting but may well be wrong to infer that coercion is absent (1998, 168). Taking her warning to heart, I next explore some congruencies between poverty and two unexceptionable types of coercion.

## 2. Bringing Poverty into the Orbit of Coercion

In this section, I focus on a pair of legal doctrines that in different ways shed light on the coerciveness of poverty. First, I analyze the humanly imposed dangers that force people to flee their homes and become refugees. International

law recognizes that in real-world persecutory settings, threats to personal safety and freedom are sometimes effected through and are often conjoined with threats to livelihood resources. Since threats to their livelihoods also motivate poor people in LDDW economies to seek economic security abroad, there is a moral and motivational continuum between political refugees and so-called economic migrants. Second, I counter the claim that coercion cannot occur unless a unified agent imposes coercive conditions. In U.S. employment law, the concept of hostile environment discrimination admits the possibility that a number of individuals acting without a common plan or explicit coordination can create a workplace environment that prevents another employee from achieving her best possible job performance or that forces her to quit. If the synergy of independent, not necessarily malicious, behaviors can generate a coercive employment context, it is altogether possible that the synergy of independent market transactions can generate a coercive economic context—that is, an LDDW economy that dooms innumerable citizens to poverty.<sup>7</sup>

#### A. *Loss of Livelihood and Refugee Status*

My initial line of thought is inspired by Natasha Ahmad's dissenting characterization of trafficked sex workers as "economic refugees," as opposed to economic migrants (2005, 226).<sup>8</sup> By assimilating the predicament of poor people in LDDW economies to the predicament of persecuted minorities and political dissidents seeking asylum and people fleeing war-torn nations, Ahmad implies that poverty is coercive. In other words, like persecution and war, poverty in an LDDW economy compels people to flee their homelands. Although on the face of it Ahmad's categorization is incoherent, I argue that it is morally defensible and illuminating.<sup>9</sup>

Why incoherent? Refugees, according to the 1951 U.N. Convention Relating to the Status of Refugees, are fleeing persecution "for reasons of race, religion, nationality, membership of a particular social group, or political opinion"—that is, they are fleeing a credible and wrongful threat of severe harm in their homeland, a threat that targets them because of their positioning in a social hierarchy or their opposition to the state.<sup>10</sup> Although this canonical definition doesn't include people fleeing from combat zones or other strife, both the Organization for African Unity and the Organization of American States incorporate this expanded understanding of refugees into official documents. Moreover, states that do not acknowledge a legally binding category of war refugees nevertheless respond to the humanitarian crises that erupt as



a result of armed conflict and minister to the livelihood needs of migrants seeking protection from the fighting. I would add that in popular parlance and in the media, the scope of the concept of a refugee intersects with Ahmad's conception of an economic refugee. In the summer of 2011, starving Somalis fleeing the most severe drought in sixty years walked for days to reach a "refugee camp" in Kenya (Gettleman 2011). Still, existing precedent in international law for the concept of an economic refugee excludes persons who are fleeing poverty in an LDDW economy. Legally speaking, a distinct species of economic harm—namely, economic persecution—mobilizes refugees.<sup>11</sup>

There is a lively debate in progress over the proper place of social and economic human rights in refugee jurisprudence and thus in the legal definition of persecution. David Martin argues that because asylum is a "scarce resource," it should be reserved for the most desperate applicants and the criteria delimiting economic persecution should not be loosened (1991, 34–37; 2007, 2072). Bucking this traditional view, James Hathaway defends a human rights approach to refugee law that holds that "sustained or systemic denial of core human rights" constitutes persecution (1991, 108). For Hathaway, then, "sustained or systemic denial of the right to earn one's living"—that is, protracted forced unemployment—is a form of persecution (1991, 121). He goes on to urge that the difficulty of determining whether a claimant's inability to obtain work in an LDDW economy is due to job scarcity alone or the combined effect of officially condoned discrimination and job scarcity does not justify dismissing a request for asylum (1991, 123). Concurring with Hathaway and extending his analysis, Michelle Foster invokes social scientific studies of migration to argue that political wrongs against distinct social groups and patterns of economic deprivation are sufficiently intertwined to justify an expansive interpretation of economic persecution (2007). If so, refugee judges ought to presume that severe poverty in an LDDW economy is linked to officially mandated, wrongful exclusion of a distinct social group in evaluating claims of persecution.

The human rights approach to refugee law has gained traction in some jurisdictions—notably, Canada, New Zealand, and to a limited degree the European Union (Jastram 2010, 163). However, two major migration destinations—the United States and Australia—do not embrace this conception of persecution (Jastram 2010, 163). In the United States, the requirement that a person seeking asylum prove that the state or an agent of the state has deliberately imposed her economic deprivation remains in force (Ramos 2011, 509–12; Jastram 2010, 149–51).<sup>12</sup> Under current U.S. law, then, Hitler's earliest moves against German Jewry—dismissing Jewish civil servants, expropriating Jewish

businesses, and forbidding Jews to work in the trades and professions—would justify those who fled in claiming refugee status (Noakes and Pridham 1983, 524, 537, 560–61).<sup>13</sup> But severe poverty in a nation with an LDDW economy definitely would not. A spectrum of more or less controversial cases ranges between the poles of anti-Semitic, survival threatening, economic persecution and severe poverty in an LDDW economy.

I set these legal intricacies aside, though, because my aim is not to defend an enlarged legal conception of an economic refugee, but rather to establish that international law cognizes the possibility that impoverishment can be used to intimidate people and force them into exile. Unsettled as the question of demarcating social groups for purposes of refugee status is, it is undeniable that persecution is effected through coercive policies and practices—threats to life, liberty, or livelihoods, and often all three. If little else is clear in economic refugee law, it is clear that severe impoverishment can count as a coercive force in asserting a claim to refugee status. Tyrannical regimes not only jail, torture, and assassinate their opponents, they also confiscate their property or make sure no one will employ them. Authoritarian rulers jeopardize presumed enemies' livelihoods along with their lives and liberties, and all of these harms are sufficiently grave to force people to flee their homelands.

Now it might seem that Ahmad and I are confusing two separate moral issues: (1) taking property or shutting down opportunities that enabled people to meet their livelihood needs, and (2) neglecting to furnish goods that would enable them to meet their livelihood needs. I believe that this contrast is misconceived because it trades on a positive duty model of social and economic rights, but Thomas Pogge has shown that social and economic rights can be construed in terms of negative duties (2007, 20–25). Nevertheless, I'll make a case that endemic poverty in an LDDW economy is coercive that is independent of Pogge's conception of social and economic human rights. For my present purposes, what matters is not who has what responsibility for realizing whose rights but rather the human meanings of not having access to a dependable livelihood. I have depicted those tragic meanings, both the suffering severe poverty inflicts and the harrowing choices it exacts, in section 1.

The concept of coercion pivots on attacks against vital human interests. Although the plight of refugees is most commonly associated with death threats, torture, and extrajudicial incarceration, I have taken pains to show that the coercive forces that drive refugees to seek protection elsewhere include economic threats. Loss of your livelihood due to the machinations of tyrants is coercive and contributes to refugee status. Taking the point a step

further, if loss of your livelihood due to deliberate expropriation or deprivation of opportunity is coercive, lack of a livelihood due to an LDDW economy sustained by the global economic and geopolitical order may be coercive as well.<sup>14</sup> Neither the victims of wholesale dispossession nor the victims of unrealized social and economic rights are able to meet their livelihood needs. Prey to inadequate nutrition and left with dilapidated or nonexistent housing, conditions that steadily erode health and that contribute to premature mortality, targets of economic persecution as well as extremely poor people in LDDW economies have reason to uproot themselves from their communities in the hope of finding a secure livelihood elsewhere.<sup>15</sup> Morally speaking, there are grounds for believing that both become refugees when they travel abroad seeking a decent livelihood.

### *B. Poverty and Hostile-Environment Sex Discrimination Law*

Whatever the merits of my defense so far of an expanded moral conception of an economic refugee, a residual worry might linger to the effect that pressure exerted by severe poverty in an LDDW economy differs so much from brute force that loss or lack of livelihood doesn't qualify as coercive.<sup>16</sup> Additionally, it may seem that whatever the explanation of severe poverty in LDDW economies may be, the causal agents are too many, too diffuse, and too independent of one another to be identified as the coercive agent.<sup>17</sup> To allay these concerns, I turn to a legally certified model of coercion that departs from the picture of coercion as a unified agent issuing a physical threat.

Hostile-environment sex discrimination law cognizes a conception of coercion that bears directly on individuals' livelihoods as opposed to their immunity to violent attack. As Vicki Schultz observes, a legally appropriate understanding of hostile-environment law requires "recognizing the importance of the realm of paid work in creating women's second-class status" and securing legal recourse for women when they are subjected to on-the-job behaviors that force them to abandon "the most highly rewarded forms of work" (1998, 1755). By tracing the resemblances between the legal conception of a hostile workplace environment and poverty in an LDDW economy, I reinforce my argument that poverty can force people to cross national borders in search of stable livelihoods abroad. It is important to be clear, however, that I am not arguing that sex discrimination in the workplace in itself constitutes grounds for refugee status, even in the moral sense. Rather, I invoke analogies between the species of coercion that justifies a hostile-environment sex discrimination case and living in extreme poverty that is not foreseeably

remediable in your home country in order to argue that such poverty should count as coercive and that coercive poverty justifies economic refugee status.

The U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when . . . such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

("29 C.F.R. § 1604.11: Sexual Harassment,"  
<http://law.justia.com/cfr/title29/29-4.1.4.1.5.0.21.11.html>)

To sustain a claim of hostile-environment sexual harassment, the plaintiff must prove the following points:

1. She is a member of a protected class.
2. She is subjected to unwelcome sexual advances.<sup>18</sup>
3. The harassment is based on sex.
4. The unwelcome behavior was sufficiently severe or pervasive so as to alter the terms and conditions of employment and create an abusive working environment.
5. The employer is liable for the harassing employee's wrongful conduct.

(Chan 1994, 7)

Some of the legal details of a hostile-environment sexual harassment claim pertain specifically to discrimination issues (1 and 3) or to employer liability issues (5) that I'll take up later. Here I spotlight the components of a hostile environment claim that help to show that severe poverty in an LDDW economy functions as a coercive force.

To sharpen the objection to regarding poverty as coercive, I sketch the brute force paradigm that excludes the coerciveness of poverty. A single agent threatens a target with physical harm if she does not comply with a demand. Superior power is used to leave the target with no acceptable choice but to acquiesce. Capitulation is therefore presumed to be justified.

The brute force model of coercion is at odds with the coercion model that underwrites hostile-environment discrimination in several readily apparent ways. Although unwelcome physical touching may contribute to hostile-environment harassment, such physical intrusions are not physically injurious

in the way that wounds from a beating or an attack with a weapon are.<sup>19</sup> Odious as they are, stolen caresses, even grabs at breasts, butts, thighs, or pubic areas, do not result in chronic, acute, or life-threatening physical pain. The harms of hostile-environment harassment may include health consequences arising from incessant stress. But the principal harms are psychological and agential—for example, unremitting feelings of humiliation and anxiety, damage to self-esteem and self-confidence, and diminished or poor job performance. There may also be economic harms. “Tangible job detriments” include not receiving a raise or promotion and/or “constructive discharge”—that is, being forced to quit your job to escape from the abusive work environment. In sum, a hostile workplace environment impedes or prevents its victim(s) from earning a living.

Amplifying on the theme of the nature of the coercively imposed harm, I would add that the brute force model assumes that the anticipated physical pain of noncompliance with a credible threat is so dire that the victim is at the coercer’s mercy. In contrast, sex discrimination law contemplates a continuum of unwelcome sexually tintured behavior ranging from the annoying, through the aggravating, to the coercive. Because unwelcome discriminatory behavior must be severe and pervasive to warrant a claim of hostile environment discrimination, the courts and the EEOC assess both the nature and the frequency of the objectionable behaviors (Chan 1994, 13). Likewise, they take into account the position of the target—is this woman highly vulnerable because of her modest employment credentials and urgent need for the job, or does she have sufficient power and authority to put a stop to the problem? (Chan 1994, 16). A workplace doesn’t legally qualify as hostile unless a reasonable person (in some court decisions, a reasonable woman) would find it so.

Another important difference concerns the coercive agent. The brute force model envisages the agent as a person, an organized group of people, or an institution. Such a singular agent could deliberately perpetrate hostile-environment sex harassment, but the concept of hostile-environment sex harassment allows for the possibility that disparate actors, none of whose individual actions would suffice to create a hostile workplace environment, could nevertheless cumulatively give rise to a hostile workplace environment. Each might independently engage in obnoxious behavior on the job—boorish but insufficiently severe or pervasive to unreasonably interfere with the target’s job performance or to constitute an intimidating, hostile, or offensive work environment. Yet, in the aggregate, this conduct might have the effect, however inadvertently, of undermining the target’s job performance or imposing an abusive workplace environment. In other words, U.S. sex discrimination law

holds that actions, which taken separately are not coercive, can nevertheless add up to a coercive and actionable situation.

The hostile environment model of coercion views a workplace as coercive both because of its adverse effects on a certain employee or class of employees and because the employees presumably need to continue working to make a living.<sup>20</sup> The victimized employees find themselves in a discriminatory double bind (*Meritor Savings Bank v. Vinson et al.* [477 U.S. 57 (1986)]). Either they must submit to abusive workplace conditions and live with the psychological and financial consequences, or they must quit their jobs and forgo the meager, stopgap income that unemployment benefits provide. Recognizing the injustice of this state of affairs, U.S. law mandates that employers provide internal channels of redress, and, failing that, the victim is entitled to pursue a remedy through the EEOC or the courts.

The types of coercively inflicted harms and the conception of coercive agency that hostile-environment sex discrimination law contemplates forge another pathway to the intelligibility of coercive poverty. First, no one welcomes involuntary poverty and the losses of freedom and well-being that go with it any more than a female employee welcomes a “gauntlet of sexual abuse” (*Meritor Savings Bank*). Second, LDDW economies harm their workers psychologically and economically. By impeding or preventing most of them from earning a secure living, they induce psychologically detrimental states of mind, such as desperation and hopelessness. Third, like sexually valenced workplace behavior, the harmfulness of economic disadvantage ranges over a spectrum—from the mild unpleasantness of straitened circumstances to the grave peril of chronically unmet livelihood needs. Moreover, the economic context and the personal resources of individual workers matter. Even in an LDDW economy, many well-connected and/or highly skilled workers are able to adequately provide for themselves and their families, but many more languish in severe poverty despite their employment worthiness. Fourth, poor workers in LDDW economies are obliged to make no-win choices: either obey destination countries’ immigration laws and endure life-long poverty or defy destination countries’ immigration laws and risk trafficking, arrest, and deportation. Fifth, a workplace can become coercively hostile without anyone’s intending to make it so. As well, impersonal global market transactions, none of which is intended to impoverish anyone and none of which, taken in isolation, is sufficient to impoverish anyone, may nonetheless give rise to economic conditions within particular nations that make it impossible for large swaths of their populations to reliably meet their livelihood needs.

What I'm urging is that a state of affairs in which human rights are unfulfilled but that no one has deliberately brought about can be coercive. Consider a hypothetical case. Imagine a frail and elderly couple who live in an urban neighborhood that is besieged by street crime, especially after dark. In the past, the two of them enjoyed attending evening community center gatherings and cultural events. However, they no longer feel safe walking outside at night, and they cannot afford taxis. Their fears are reasonable in light of the crime rate and their heightened vulnerability, and so they do not go out. It seems to me that their right to freedom of movement (UDHR, Article 13) is unfulfilled, for they are forced stay home and miss out on valued activities for which there are no substitutes at other times of day. Yet it's far from clear who is to blame and who should remedy the problem. Perhaps the trouble is that they failed to save enough for retirement. But during their working years, their wages just covered their weekly expenses, and so their sole income now comes from Social Security payments. Perhaps the crime uptick is due to the rise in youth unemployment in the area. But the flow of capital and the job market operate without regard to the sustainability of neighborhoods, and the predatory adolescents are merely trying to get by. Perhaps elected officials and the law enforcement apparatus aren't implementing appropriate compensatory measures. But their hands are tied. The mayor cannot provide escort services for needy community members because voters oppose tax rates sufficient to pay for them. Law enforcement officials are obligated to stop well short of police state tactics to protect public safety.

What I've described is a (realistic) situation in which elderly residents are forced to stay home against their will although no one in particular has threatened to harm them if they do not. Unlike a curfew imposed by a state authority or an occupying force, elderly people in this neighborhood are being coerced by circumstances that are humanly caused yet that no single agent has brought about and that point to no clear assignment of responsibility for fixing. Whereas a curfew fits the brute force model, the dangerous neighborhood fits the hostile environment model.

In line with the poisonously gendered workplace model of coercion and the coercively dangerous neighborhood, my contention is that workers in LDDW economies who are reduced to severe poverty and who have no recourse to social and economic rights are forced to embark on a course of action they would not otherwise choose. Just as the couple in my example might be driven to rent an apartment in a safer neighborhood that they can't really afford in order to regain what their right to freedom of movement entitles them to, people living in severe poverty in an LDDW economy

may be driven to flee their homelands in order to gain what their social and economic rights entitle them to. Naturally, they gravitate to more affluent nations—beacons of employment opportunity and stable livelihoods. Those who pursue this solution belong in the moral category of economic refugees.

*C. But Force Without an Agent Acting Wrongly Is Misfortune not Coercion*

It might be objected that my defense of the coerciveness of severe poverty in an LDDW economy overlooks a key feature of refugee law and hostile environment law. To count as a refugee under the Geneva Convention, you must establish that an agent of the state targeted you for abuse in virtue of your “race, religion, nationality, membership of a particular social group, or political opinion.” To qualify for relief under hostile environment doctrine, you must establish that you were targeted for harassment in virtue of your gender or some other protected category, that you informed management personnel of this abuse, and that management allowed it to continue. Yet poverty in an LDDW economy might seem to come from nowhere and victimize people indiscriminately. If so, it might be urged, moral considerations don’t warrant counting such poverty as coercive.

One reason to reject this line of argument is that there is ample reason to believe that socioeconomic privation isn’t as random as many believe it to be. Poverty statistics suggest that particular groups, notably women and people of color generally, are disproportionately represented among the global poor.<sup>21</sup> Nor is it impossible to identify institutions and practices that perpetuate this state of affairs. As I mentioned earlier, Michelle Foster makes a convincing case that past and continuing national policies that systematically disadvantage members of particular racial, ethnic, or gender groups contribute substantially to causing patterns of severe poverty (2007). Moreover, Thomas Pogge makes a convincing case that the global economic order is structured in ways that maintain the economic dominance of the Global North over the Global South and that obstruct development and poverty alleviation in the Global South (2007; also see Wade 2003; Stiglitz 2006). Since I have limited space and others have already offered powerful arguments that severe poverty in LDDW economies is the product of both grievously unjust state policies and the disparate discriminatory impact of the rules governing global economic transactions, I’ll confine myself to noting that various agents and their discriminatory practices converge to perpetuate social and economic human rights deficits. I would add that macro-analyses of transnational and national



policies are insufficient to fully understand the processes whereby severe poverty is inflicted and maintained. As Brooke Ackerly shows, detailed micro-analyses of the socioeconomic dynamics of local institutional processes interacting with local power hierarchies are needed as well (n.d.).

Still, skeptics might doubt that discriminatory targeting is involved in the perpetuation of severe poverty in LDDW economies. To them I would reply that discrimination compounds the moral wrong of coercion—for instance, it accounts for the extra viciousness of hate crimes. However, discriminatory targeting is not constitutive of wrongful coercion. Career muggers who choose their victims opportunistically and without regard for social group membership nevertheless perpetrate acts of wrongful coercion. If so, the alleged accidents of fortune that condemn people to severe poverty in an LDDW economy do not disqualify such poverty as coercive provided that it is wrong that anyone is living in such harsh conditions. Here again, space precludes adequately defending the claim that the persistence of unrealized social and economic human rights is unjust. But it seems clear that the nonfulfillment of any human right should be regarded as *prima facie* unjust. Moreover, I find many of the arguments for the injustice of severe poverty in LDDW economies in recent treatments of global justice persuasive, and I urge readers to consult them (e.g., Pogge 2008; Brock 2009; Hassoun 2012).

My aim in section 2 has been to show that being subjected to severe poverty in an LDDW economy is coercive. To that end, I have argued that deprivation of livelihood resources is a type of coercion that is recognized in international and U.S. law; that the possibility that multiple non-coordinating agents coalesce to prolong severe poverty in LDDW economies does not bar affirming the coerciveness of such poverty; and that the distribution of severe poverty worldwide is neither fortuitous nor right. Because severe poverty in LDDW economies forces many people into channels of transnational migration in hopes of gaining secure livelihoods, immigration and/or asylum policies in the Global North should be reformed to reflect the unjust nonfulfillment of social and economic rights in the Global South.

### 3. Relaxing Policy Regarding Undocumented Migrants

The coerciveness of severe poverty in an LDDW economy calls for a capacious moral category of economic refugees. Arguing that this category should be legally promulgated is beyond the scope of this paper. Still, I would like to

close with a few thoughts about how the moral category I have defended might shape social policy.

One way to get a purchase on the need to reform immigration policy in the Global North is to point up a glaring moral omission on the part of affluent states—namely, the utter failure of Global North states to fulfill their obligation “to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant” (*International Covenant on Social, Economic, and Cultural Rights*, Art. 2, sec. 1). In forsaking this responsibility, these states contribute to the suffering that drives people living in severe poverty in the Global South to attempt undocumented migration, and because they are the destinations many migrants seek to reach, they are uniquely well positioned to compensate some of those who have endured the worst consequences of their omission (for related discussion, see Wilcox 2007, 285–89; Blake 2005, 230, 236). An obvious way to compensate extremely poor people who land on their shores (and indirectly through remittances, their relations as well) would be to stop deporting undocumented immigrants who are fleeing severe poverty in LDDW economies and to allow them to work.

It is also necessary to bear in mind that choices made in coercive contexts do not have the same significance as ordinary choices. When coercion shapes a person’s choice situation, the moral and legal implications of the action taken are neutralized. Thus, the heirs of Jews who “sold” artworks to Nazi authorities are now able to seek restitution from the artworks’ current owners. The coerciveness of the choice situation the Nazis imposed on Jewish collectors nullifies the transfer of ownership rights pursuant to a free sales agreement. The parallel with respect to undocumented migration is that the normal legal consequence of being caught working in a foreign country without the requisite visa is deportation. But if I am right that being subjected to severe poverty in an LDDW economy sets up a coercive choice situation—one in which undocumented migration may well be the least hazardous option—a more lenient policy seems appropriate. Indeed, it is arguably obligatory for destination states to explore the feasibility of gauging their responses to individual undocumented immigrants to the severity of the poverty and the gravity of the harms correlated with that poverty that the individual is trying to leave behind.

Now it might be objected that it’s too difficult to ascertain who counts as severely poor. But establishing a legal definition of severe poverty presents no greater difficulty than defining other types of coercive threats that rise to the level of persecution. Nor is it any more difficult to document that a claimant

suffered severe poverty in an LDDW economy and incurred grievous harms as a result of that poverty than it is to document other forms of abuse that count as persecutory. These conceptual and evidential problems are difficult, but they don't stop Global North states from honoring their obligations under international refugee law. Neither, in my view, should these problems stop them from rectifying some of the economic wrongs for which they themselves are partially to blame.

## Notes

1. I take this characterization from the UN Millennium Development Goals.
2. However, a minority strand of liberalism—libertarianism—advocates open borders with open markets in labor and services as a solution to poverty.
3. I take this figure from the World Bank's 2005 estimate, which uses the exiguous poverty criterion of living on less than \$1.25 a day ([http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469372&piPK=64165421&menuPK=64166093&entityID=000158349\\_20100121133109](http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469372&piPK=64165421&menuPK=64166093&entityID=000158349_20100121133109), accessed July 8, 2011). Less exiguous criteria of poverty yield an estimate as low as 1.72 billion and as high as 5.15 billion (<http://www.globalissues.org/article/4/poverty-around-the-world#WorldBanksPovertyEstimatesRevised>, accessed July 8, 2011).
4. The human rights I am assuming for the purposes of this paper are those enunciated in the *Universal Declaration of Human Rights* and the *International Covenant on Economic, Social, and Cultural Rights* (UDHR) (<http://www.hrweb.org/legal/undocs.html#ESCR>, accessed July 31, 2011).
5. But for valuable discussion of these topics, see Higgins et.al. (2008), Nickel (2005), and Pogge (2009).
6. Also see the *International Covenant on Economic, Social, and Cultural Rights*—<http://www2.ohchr.org/english/law/cescr.htm>, accessed October 12, 2011. For relevant data on the extent of poverty, see Pogge 2007, 11–13.
7. I think Ann Cudd is on the right track when she extends her conception of institutional coercion to include economic systems (2006, 25–26). However, I'm not sure whether she would agree that the global marketplace in labor and goods counts as an economic system. On the one hand, she denies that the International Monetary Fund and the World Trade Organization are “oppressive neocolonial forces” (2006, 145–46). On the other hand, she classifies sex work and migrant domestic work as forms of “oppression by choice” (2006, 151–52).
8. Activists have been using this concept at least since the 1990s. See, for example, the website of Project Economic Refugee—<http://www.economicrefugee.net/what-does-economic-refugee-mean/>, accessed July 20, 2013.
9. My claim takes Roberto Gargarella's argument that people have a right of resistance in situations of severe deprivation a step further. Gargarella maintains that extremely


- poor people are in a state of legal alienation from their own governments and are therefore entitled to protest their condition using both passive resistance and active resistance (2007). I am arguing that when a government lacks the capacity or refuses to alleviate pervasive severe poverty, fleeing as a refugee is morally justified.
10. “Convention and Protocol Relating to the Status of Refugees.” <http://www.unhcr.org/3b66c2aa10.pdf>, accessed February 24, 2014.
  11. But for an argument that persecution should not be considered a necessary condition for refugee status, see Shacknove 1985.
  12. I note, however, that Michelle Foster documents a trend in refugee law toward not requiring that applicants for asylum prove that agents in their homeland intended to persecute them and likens this trend to standards governing disparate treatment discrimination law (2007, 283, 286).
  13. Although not an example with international implications, it is worth noting that threats to livelihood were also used against civil rights activists during the 1960s in Mississippi. Recollecting his work as a reporter in the South during that period, Calvin Trillin states, “The Citizens Council, which was founded specifically to resist desegregation kept the peace in the sense that it favored economic intimidation over violence—having a potential troublemaker fired, say, or kicking his family off land they’d farmed for generations” (2011, 40).
  14. It might be objected that states do not offer all kinds of refugees identical benefits. Persons who can demonstrate that they are at risk of persecution in their home countries because of their membership in a particular social group or because of their political opinions are granted asylum, which provides for indefinite resettlement with the possibility of eventual citizenship. In contrast, persons fleeing the bombs, bullets, and other hazards of armed conflict are deemed to be candidates for humanitarian aid—stopgap charitable supplies and services and, at best, guest status in the host country. In my view, this is a pragmatic political distinction, not a principled one.
  15. Note that coercion is compatible with refusing to yield to a coercive threat or the imposition of coercive force. The following cases demarcate the polls of a spectrum of responses to poverty. In India, Mehta Bai’s caste prohibits her from leaving her home to work or to return to her parents’ home without sacrificing her sons’ right to inherit the land her husband left her; so she stays (Chen 1995). In contrast, Alma, a young woman from the Baltics with a taste for adventure and plenty of courage, found her way to Scandinavia to sell sexual services (Jakobsen and Skilbrei 2010). In this connection, it is important to bear in mind that not all people react to a mugging in the same way. Most meekly hand over their wallets and are happy to escape without injury; some refuse to submit to the mugger’s demands on principle regardless of the consequences; and others who are trained in self-defense or carry weapons resist by fighting back.
  16. Much of what I argue in this section applies to racial discrimination as well; however, in the interest of space I focus on one type of discriminatory hostile environment.

17. For helpful discussion of poverty in relation to coercive threats and coercive offers, see Fleurbaey 2007. His work differs from mine in being concerned with the ways in which poor people are disadvantaged in market transactions generally, whereas mine is specifically concerned with people who live in severe poverty in LDDW economies and the impact of such poverty on the options available to them.
18. Schultz's work on hostile-environment harassment strengthens the analogy I am constructing because she argues that both sexual and nonsexual forms of harassing behavior should be considered together in evaluating hostile environment claims (1998; 2006). However, in the interest of avoiding legal disputes over the proper interpretation of U.S. hostile-environment law, I won't rely on this element of her position although I agree with it.
19. I leave aside discriminatory sexual behavior that can be prosecuted as rape.
20. In this paper, I set aside the many important questions with respect to poverty and social and economic rights that are raised by people who are incapable of working. Except for children and aged parents, most economic refugees are on the move in the hope of obtaining gainful employment.
21. For relevant discussion and statistics concerning gender, race, and ethnicity, see the 2010 UN report *The World's Women* and the 2010 UN report *Rethinking Poverty*, [http://unstats.un.org/unsd/demographic/products/Worldswomen/WW\\_full%20report\\_BW.pdf](http://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_BW.pdf), accessed May 24, 2011; <http://www.un.org/esa/socdev/rwss/docs/2010/fullreport.pdf>, accessed May 24, 2011.

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PART TWO

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# Ethical Responses to Poverty



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# Responsibility for Violations of the Human Right to Subsistence

*Elizabeth Ashford*

CHRONIC SEVERE POVERTY currently leads to eighteen million deaths each year, and precludes many more millions from a realistic chance of a minimally decent life.

There is widespread agreement that this severe poverty principally results not from natural disasters or geographical factors but from persons' being deprived of adequate economic and political entitlements and opportunities for earning a subsistence income.<sup>1</sup> There is, accordingly, also fairly widespread agreement that there are feasible global and domestic social institutions under which severe poverty (understood as lacking a realistic opportunity to obtain a subsistence income) could be avoided, at small cost to every duty-bearer.

Nevertheless, the claim that the ongoing allowing and infliction of severe poverty constitutes a human rights violation is highly contentious. A principal reason for this is that such a violation diverges from our paradigm conception of a human rights violation, which in turn reflects deep aspects of our phenomenology of agency.<sup>2</sup> A central aspect of this phenomenology of agency is that we experience ourselves as principally responsible for harms for which we can be singled out as individually responsible, and which affect particular individuals whom we directly encounter. Human rights violations are standardly conceived as discrete actions or omissions, perpetrated by a specific agent(s) against a specific victim, which directly cause or allow a severe harm to that victim for which that agent can be singled out as responsible. That agent is identified as the perpetrator of the violation, and the rest are taken to be absolved of responsibility for the violation itself.

Paradigmatic human rights violations are acts of assault, torture, and so on. The agent who commits the assault or torture can be singled out as the perpetrator of the violation. Positive duties are classified as duties of justice only in

very narrowly circumscribed contexts, in which the agent can be singled out as specifically responsible for delivering a specific concrete form of aid to a particular individual. General positive duties tend to be classified as duties of justice only in the context of emergency situations, in which the agent on the scene can be identified as responsible for aiding a specific individual. As James Griffin argues, there is widely acknowledged to be a general duty of justice to administer emergency medical care to illegal immigrants (Griffin 2008, 182). Barring such emergency situations, however, positive duties are held to be duties of justice only if they are special, because it is only then that a particular agent can be identified as specifically responsible for aiding certain particular individuals in virtue of some special relationship that obtains between them.

If we take human rights violations to consist of discrete wrongdoing actions or omissions perpetrated by a specific agent, then much of the human behavior that allows or inflicts ongoing severe poverty will not be classified as **causing** a human rights violation. This applies to the negative duty not to actively deprive persons of their means of subsistence, as well as the positive duty to redress the plight of those suffering severe poverty. The causal chains that lead to particular individuals' coming to be deprived of their means of subsistence involve the interaction of the behavior of a vast number of agents around the globe. If we consider in isolation the discrete actions of the various agents who contribute to this causal chain, it is often the case that none of these individual actions can be identified as depriving a particular individual of his or her means of subsistence.

Turning to the positive duties imposed by the right to subsistence, there is widespread agreement that there is a multiplicity of feasible institutionally specified schemas of duties, compliance with which would prevent the threat to persons' basic interests posed by inadequate or insecure subsistence at small cost to every duty-bearer. However, prior to the achievement of such an institutionalized schema, it is generally not possible to single out a particular agent as specifically responsible for giving a specific concrete form of aid to a specific destitute individual. In addition, the duty to bring about the needed institutional response has not itself been specified and allocated among agents, and so, again, the failure to implement this duty does not consist in specific omissions for which particular agents can be identified as responsible. Thus, neither the ongoing failure to achieve institutional reform nor the failure to aid particular severely poor individuals tend to be seen as human rights violations, given the prevalent assumption that the nonfulfillment of a positive duty constitutes a human rights violation only if it takes the form of a discrete omission perpetrated by a specific agent against a specific victim.

The paradigm conception of human rights is fitted to small-scale social interaction. In that context, the most severe threat to persons' basic interests is posed by specific harmful actions perpetrated by specific agents, or, on rare occasions, by agents' failure to administer emergency aid. Accordingly, human rights are taken to be constraints on the nature of agents' direct interactions with each other. The principal general duties of justice correlative to human rights are taken to be duties not to directly inflict severe harms on others, and not to treat them in a way that is coercive. Correspondingly, paradigmatic human rights violations consist in treatment at the hands of other agents that is severely harmful or coercive. Positive duties are taken to be general duties of justice only in the context of emergencies in which an agent directly encounters a particular individual whose life or other basic interests are at stake.

However, it is morally arbitrary to restrict the concept of a human rights violation in such a way as to rule out *ex ante* the possibility that it could be applicable to contemporary social contexts involving hugely complex large-scale social interaction. The importance of avoiding such a conceptual strait-jacket can be brought out by considering that a widely accepted understanding of the role of human rights is that of protecting the most vulnerable against the most severe and common threats to their basic interests.<sup>3</sup> Among the most vulnerable are those who are liable to make little impact on our moral phenomenology precisely because we do not directly interact with them, but whose lives are deeply affected by global social institutions in which we participate. Increasingly, many of the most severe and prevalent harms result from extremely complex causal chains involving the behavior of a vast number of agents round the globe, including the harm of deprivations of subsistence.

Turning again to general positive duties of justice to protect persons' basic interests, it is morally arbitrary to confine these duties to emergency situations, understood as rare and short-term. Indeed, whereas the threat to basic interests posed by an emergency is rare and random, the threat to basic interests posed by severe poverty is an actual and ongoing threat to a vast number who belong to a particular group, the global poor. These individuals *from the outset* face drastically stunted lives and likely premature death unless they are helped. Again, on the conception of human rights as protections of basic interests against standard threats, this would seem to be a graver human rights violation than the failure to administer emergency medical care to an illegal immigrant.

One way of moving beyond the traditional paradigm conception of a human rights violation, put forward by Thomas Pogge, is to reject altogether the conception of human rights as claims directly against the conduct of individual agents (which he calls "the interactionist" conception of human

rights).<sup>4</sup> Pogge offers what he calls “an institutional” conception of human rights, according to which human rights are claims directly against social institutions and indirectly against the individuals who participate in them. Pogge combines this institutional account of human rights with the claim that they impose only negative duties, and argues that the operation of what he calls “the global institutional order” is responsible for the active infliction of most existing severe poverty. Official agents of this global institutional order are thereby violating a basic negative human right on a vast scale,<sup>5</sup> and individual agents are responsible for collaborating in this violation unless they take steps to reform the global institutional order in which they participate.

This is an immensely important argument. However, two aspects are extremely controversial. The first is Pogge’s conception of the negative duties correlative to the human right to subsistence. The second is his singling out of official agents of “the global institutional order” as having most of the responsibility for the infliction of severe poverty. Accordingly, much of the critical discussion of Pogge’s argument has focused on his claim about the extensiveness of the role played by the global institutional order in the infliction of severe poverty.

Pogge’s argument relies on the strong claim that official agents of global social institutions are responsible for the infliction of most severe poverty because he takes direct responsibility for human rights violations to be confined to official agents. The role he ascribes to individual relatively affluent agents is that of complicity with the violations perpetrated by official agents of global social institutions if they fail to oppose them. He draws a comparison between official agents of the global institution and members of the Nazi party, and compares the role of individual relatively affluent agents to that of citizens in Nazi Germany.<sup>6</sup>

I suggest here an alternative conception of the human right to subsistence that draws on Pogge’s powerful arguments but appeals to an uncontroversial account of the content of the negative duties imposed by the human right to subsistence, and appeals only to the modest empirical claim that certain features of global social institutions play a significant role in violations of these negative duties. I also appeal to a morally minimal criterion for constituting violations of basic human rights. The way in which my account challenges the paradigm conception of human rights violations is by arguing that *direct* responsibility for a human rights violation may be extremely broadly spread—to the point that sharing direct responsibility for a human rights violation may constitute the norm for many people.

My account appeals to what Pogge calls “an interactionist” account of human rights, in the sense that it takes fundamental responsibility for human rights violations to lie directly with individual agents. Unlike on the traditional interactionist account of human rights, I take direct responsibility for this violation to be shared, to very varying degrees, by a vast number of agents. As I argue, agents may participate in a human rights violation not only through their participation in unjust social institutions but also through their conformity with informal but equally pervasive social mores. I aim to show that conformity with the social institutions, practices, and mores under which the maximization of profit and personal gain is taken to be a normal and legitimate goal, even when it involves allowing or contributing to severe poverty and resisting reforms that would avoid this harm at modest economic cost, constitutes a trade-off between the interests of the affluent and the interests of those whose lives are blighted or destroyed by severe poverty that is morally intolerable. I thereby aim to defend the claim that the ongoing allowing and infliction of severe poverty constitutes a human rights violation, much of the responsibility for which is held by individual agents in relatively affluent countries, without appealing to the contentious claim that official agents in institutions such as the IMF can be singled out as responsible for actively inflicting most existing severe poverty.

In section 1 I outline my account of the nature of systemic violations of basic human rights. I begin in section 1A by offering a brief sketch of the distinction between the interactional and institutional accounts of basic human rights. Section 1B offers a morally minimal interactionist account of violations of basic human rights, and section 1C applies this account to systemic human rights violations. In section 2, I argue that the ongoing allowing and infliction of severe poverty constitutes the systemic violation of a basic human right, and that direct responsibility for this violation is shared by individual agents in affluent countries. Section 2A analyzes the duties correlative to the human right to subsistence, nonfulfillment of which constitutes a violation of the human right to subsistence. Section 2B argues that direct responsibility for violating the negative correlative duties is shared by agents in affluent countries in virtue of their participation in global social institutions and more informal social mores. Section 2C argues that the ongoing infliction of severe poverty constitutes the violation of a basic human right. I conclude that individual agents in affluent countries share direct responsibility for violating the negative duties correlative to the human right to subsistence, and thereby share direct responsibility for the systemic violation of a basic human right. Section 2D argues that the ongoing allowing of severe poverty also constitutes a systemic human rights violation, direct responsibility for which is shared by individual

agents in affluent countries. I then go on to offer a further defense of the claim that the ongoing allowing and infliction of severe poverty constitutes a systemic human rights violation (section 3).

## 1. The Nature of Systemic Violations of Basic Human Rights

### A. *A Brief Outline of the Interactional and Institutional Accounts of Human Rights*

At the core of the orthodox conception of human rights is the claim that the duties corresponding to human rights are owed to every person simply by virtue of their moral status as persons. I take basic general human rights to be claims held by every person, simply by virtue of their moral status as persons, not to be treated in ways that are fundamentally incompatible with a minimally adequate recognition of that moral status. Since the corresponding duties are grounded simply on the universal moral status of persons, these duties are not dependent on any contingent factors, such as transactions and social relations. Basic human rights are claims directly against the conduct of individual agents, regardless of whether or not these agents are fellow members of a shared institutional scheme.

It should be emphasized, though, that while the interactionalist account of human rights takes them to be claims directly against the conduct of individual agents, this by no means entails that it takes them to be claims against the conduct of each agent *considered one by one*. There is therefore considerable overlap between the interactional and the institutional account of the duties imposed by human rights, in two respects in particular.

First, a plausible interactionalist account will accept the claim that in the contemporary social context, it is largely via their participation in global and domestic social institutions that agents are implicated in violations of the negative duties imposed by human rights. Unlike the institutional account, however, the interactionalist account denies that responsibility for violations of these negative duties can only be via shared membership of social institutions. One core implication of this is that direct responsibility for violating human rights is not confined to official agents. Any individual act of torture, enslavement, and so on constitutes a human rights violation, whether or not the act is perpetrated by an official agent. Another central implication is that agents may be involved in systemic human rights violations by virtue of their participation in more informal social mores and cultural norms. It is worth



noting that the impact of such social norms may be endemic, profound and pervasive, in much the same way as the impact of social institutions.

A second particularly important role an interactionalist account will assign to social institutions concerns the efficient implementation of the duties imposed by human rights. The adequate discharging of the negative as well as the positive duties imposed by human rights may require institutional coordination; social institutions may play an essential practical role in specifying and allocating a schema of duties, fulfillment of which would avoid the infliction or the allowing of the severe harms. In addition, it may be more efficient for individuals to delegate responsibility for implementing their duties to institutional agents than to fulfill them directly themselves. Thus, while the interactionalist account takes individual agents to be the fundamental duty-bearers, this does not entail that they must be the immediate duty-bearers.

On the interactional account, the role of institutions is the instrumental one of enabling the most effective implementation of the duties agents are already under. If social institutions adequate to this task are not in place, the responsibility for discharging the duties falls back on individual agents. They are under a duty to reform existing institutions or to create new ones, and in the meantime to give emergency aid to victims of the violations as efficiently as is possible in the circumstances (by supporting nongovernmental organizations [NGOs], for example). Thus, on the interactionalist account, human rights may impose on agents duties of justice to create new social institutions. By contrast, since the institutional account of human rights takes the duties of justice they entail to be grounded in existing institutional links between right-holders and duty-bearers, individual agents are under a duty to reform existing social institutions when those institutions are unjust, but they are not under a duty to create new social institutions.<sup>7</sup>

### *B. A Morally Minimal Conception of Violations of Basic Human Rights*

I now offer what I take to be an uncontentious account of the nature of the negative duties correlative to basic human rights, nonfulfillment of which constitutes a basic human rights violation. I later argue that the account can be extended to the nonfulfillment of certain positive duties.

I take violations of basic human rights to constitute treatment that is morally intolerable, in two senses. The first is that it crosses a “sacred” moral threshold,<sup>8</sup> that demarcates rock-bottom moral claims not to be treated in

ways that fundamentally contravene persons' basic moral worth. The second is that it ought not be tolerated; the duties imposed by human rights ought to be coercively enforced.

I take it to be uncontroversial that the inexcusable infliction of extremely severe harms—harms that preclude any realistic chance of a minimally decent life—is morally intolerable. I also take it to be uncontroversial that the infliction of harms that blight or destroy persons' lives is inexcusable if the harms are reasonably foreseeable, could feasibly be avoided at small cost to the duty-bearers, and are not justified by any countervailing moral considerations.<sup>9</sup>

The first aspect of this account of human rights violations concerns the importance of the interests at stake. Human rights violations constitute treatment liable to blight or destroy persons' lives. However, it is not just the importance of the interests at stake that marks out human rights violations. There may be contexts in which the infliction of extremely severe harms may be excused or even justified by countervailing moral considerations. For example, traffic accidents cause deaths and severe permanent injuries, but these harms are reasonably rare and inflicted at random, and those at risk of them are also liable to benefit overall from the activity that causes them. For these kinds of reasons it is appropriate to weigh up the harm inflicted by such activities with the benefits the activities enable or realize. The infliction of these harms is therefore not inexcusable.

While I hope to have offered a minimal and uncontentious account of human rights violations, it should be noted that it is not part of this account that the treatment that constitutes a human rights violation must constitute discrete harmful actions or omissions. On the contrary, if we take human rights violations to constitute treatment that is morally intolerable, by virtue of inexcusably inflicting or tolerating harms that blight or destroy persons' lives, then it is morally arbitrary to assume that the treatment must take the form of a discrete action or omission perpetrated by a specific agent(s), that allows or inflicts a severe harm on a specific victim. We should allow that if the ongoing infliction of severe harms on a vast number of people is endemic to the behavior of a vast number of agents, these harms may also constitute human rights violations, if the harms are reasonably foreseeable, avoidable at small cost to every duty-bearer, and not justified or excused by countervailing moral considerations. I call such violations "systemic."

### *C. Systemic Violations of Basic Human Rights*

Systemic human rights violations largely result from the way in which agents' normal and everyday behavior is structured by their participation in domestic

and global social institutions and their conformity with the standard social mores. Such violations do not consist in discrete actions by particular agents, that take place over a specific bounded period of time (that has reached its terminus), and that unjustifiably cause a severe harm to a specific victim. Rather, they consist in unjustifiably imposed *ongoing* harms endemic to the everyday behavior of a vast number of agents. These violations therefore cannot be seen by looking at the discrete actions of individual agents that take place over a particular discrete period of time. They can only be seen by looking at the ongoing effects that systemically result from certain aspects of the normal behavior of millions of agents.

This conception of human rights violations can be illustrated by considering various adaptations of Derek Parfit's "harmless torturers" scenario.<sup>10</sup> In Parfit's original example, a group of a thousand torturers, each of whom administers agonizing electric shocks to a different prisoner, change to a new system whereby the electric shock they each administer goes into a central pool and is then randomly distributed among the thousand prisoners. Let us suppose that the electric shock each agent administers is now so thinly distributed among the prisoners that it is imperceptible. (Indeed, we can suppose that the new system is adopted by the regime in order to minimize the psychological impact on the torturers for doing their job.) It is now the case that no agent's action, considered in isolation, inflicts a severe harm on anyone. If one of the agents failed to show up to work one day (or left the job altogether), no one would suffer significantly (or indeed noticeably) less.

Given the severity of the harm and the fact that it is reasonably foreseeable and avoidable, and is not justified by countervailing moral considerations, the shock plausibly constitutes a human rights violation.

It should be emphasized, though, that this violation cannot be seen if we focus on the actions of each agent, considered in isolation; the electric shock each agent administers does not significantly contribute to any individual victim's pain.

In order for the violation to be seen, each agent's action must be evaluated in the context of what other agents are doing. It should also be noted that there is no intrinsic limit to the number of agents who may share direct responsibility for a human rights violation of this kind.

In this first variation, each agent can individually completely discharge the negative duty toward the prisoners by giving up the job. We can imagine, however, a further variation, in which all the available jobs are (to varying degrees) implicated in extremely complex causal chains that continually culminate in similarly serious harms to a vast number of victims. Agents do not know the impact on particular victims of the particular activities they

individually engage in, but the harms endemic to their jobs are reasonably foreseeable. It may now be the case that is not feasible for each agent, acting alone, to completely discharge her negative duty of justice toward the victims of the harm. Let us suppose, however, that if the agents were to coordinate with one another, the harms could be avoided at small economic cost to each of the duty-bearers. Let us further suppose that if each agent were to take reasonable steps toward ending the harms, this would be achieved, again at small cost to each of them. Under these circumstances, I contend, the agents are under a shared general duty of justice, owed to all the victims, to end the harms; each agent has individual but partial responsibility to fulfill this shared duty.<sup>11</sup> As with the previous example, then, the harm is both foreseeable and feasibly avoidable, and it is equally severe. It is also inexcusably inflicted; the economic cost to the agents of achieving the abolition of this violation is not appropriately weighed up against this harm. I contend, then, that the ongoing infliction of the pain ought to be classified as a basic human rights violation.

## 2. The Ongoing Allowing and Infliction of Severe Poverty as a Basic Human Rights Violation

### A. *The Duties Correlative to the Human Right to Subsistence*

The negative duty correlative to the human right to subsistence is the duty not to actively deprive persons of their means of subsistence. I also take the human right to subsistence to impose two correlative positive duties. The first is the duty to ensure that persons have adequate opportunities to earn the means of subsistence. The second is the duty to secure the means of subsistence for those who are unable to earn it for themselves (because of factors such as severe disability or natural disasters). If these two positive duties were fulfilled, in conjunction with the negative duty not to actively deprive persons of their means of subsistence, then each person would have an adequate opportunity to obtain a subsistence income. Thus, universal compliance with the primary duties to respect the right to subsistence would result in the eradication of severe poverty, understood as lacking a realistic opportunity to obtain a subsistence income. Additional duties imposed by the right to subsistence are back-up duties, to protect against or remedy the effects of violations of these primary duties.

My account of the negative duty correlative to the human right to subsistence is much less contentious than Pogge's. Pogge takes the negative duty correlative

to the human right to subsistence to be the duty not to coercively impose on persons social institutions under which there are subsistence deficits that could reasonably be avoided under feasible alternative social institutions. This has given rise to the objection that the account of minimal justice in terms of which Pogge defines negative duties in fact appeals to a non-derivative positive duty to ensure that persons have reasonably secure access to the means of subsistence.<sup>12</sup> Another worry is that he elides the distinction between violating a right and protecting people against such violations, so that the negative duty to which he appeals is not plausibly a *correlative* duty, nonfulfillment of which in itself constitutes a violation.<sup>13</sup>

I appeal to a straightforward account of the correlative negative duty, as the duty not to actively deprive persons of the means of subsistence. It is uncontroversial that this is a negative duty, and that violation of this duty constitutes a violation of the human right to subsistence.

It follows from my account that feasibly avoidable severe poverty (understood as lacking an adequate opportunity to earn or obtain a subsistence income) may be attributed to the nonfulfillment of either a positive or a negative correlative duty, even if the severe poverty occurs under a coercively imposed social institution. This contrasts with Pogge's account, according to which all feasibly avoidable deficits of reasonably secure access to a minimally adequate share of the means of subsistence, that obtain under coercively imposed institutional schemes, constitute the violation of the negative duty correlative to the right to subsistence.

However, there is, I contend, compelling reason to accept both that the negative duty not to actively deprive persons of their means of subsistence is being violated on a vast scale, and that a significant degree of responsibility for this deprivation is shared by the operation of certain features of global social institutions and by agents' conformity with social norms prevalent in many sectors in affluent nations (such as the agricultural sector and multinational corporations).

### *B. Responsibility for Violations of the Correlative Negative Duty*

The claim that direct responsibility for these deprivations is shared by agents in affluent countries can be illustrated with two examples. One is the International Resource Privilege, which entitles whoever has effective power in a country, however non-democratic and brutal they are and however they came to power, to sell off the resources of that country.<sup>14</sup> Such leaders frequently deprive their poor and powerless citizens of enough resources to earn a subsistence

income. The arms trade compounds the capacity of non-democratic rulers to drain their country's resources and gain easy means for engaging in internal repression, conflict, and civil wars, while bringing huge revenue to affluent countries. Therefore the citizens of many countries ruled by dictators are liable to be actively harmed both by the loss of resources that their rulers have stolen from them, and by the political repression and the wars these stolen resources fund.

The second example is that of fishing trawlers from affluent countries operating in waters where local fishermen are dependent on the fish stocks for survival. Such trawlers are liable to remove so much fish that the local fishermen are deprived of their livelihood. Of course, this harm involves a hugely complex causal chain, but a salient feature of this example is that the action of the trawler consists in directly actively removing the means of subsistence of the local fishing community. Thus it is a clear-cut case of a foreign trawler perpetrating a violation of the negative duty not to actively deprive persons of their means of subsistence, on an uncontentious account of this duty.

The duty to refrain from actively removing persons' means of subsistence is uncontroversially correlative to the right to subsistence. It is uncontentious that a violation of this duty in itself constitutes a violation of the right to subsistence. (This avoids the worry faced by Pogge's account of the negative duty he takes to be correlative to the right to subsistence, that he broadens the conception of this duty to the point that it is no longer clear that violations of this duty in themselves constitute the violation of a negative human right.)

This example therefore brings out the implausibility of the claim that direct responsibility for violations of the human right to subsistence can be principally confined to agents within the poor countries themselves. Direct responsibility for such violations is shared by those who participate in the operation of certain features of global economic institutions.

Direct responsibility is also shared by individual agents in virtue of their conformity with certain social norms and entrenched social practices, such as those under which the single-minded pursuit of company profit or private gain is considered both normal and appropriate, without considering or taking responsibility for the impact such practices have on the severely poor across the globe. These norms are exemplified by the resistance from the agricultural lobby to removing protectionist trade policies, and by certain business organizations to reform of tax laws that divert revenues from poor countries. These norms are also exemplified by the political culture in affluent countries under which governments feel constrained by the electoral

imperative of maximizing economic growth, and by the tendency of individual consumers to buy the cheapest product.

I am neutral with regard to the extent to which the responsibility for the harms caused by conformity with these social norms is shared by agents in affluent countries and their representatives, and by Third World elites. On the account of systemic human rights violations I am defending, there is no limit to the number of agents who can share direct responsibility for a basic and grievous human rights violation, albeit in the course of everyday activities that, when considered in isolation, do indeed seem innocuous. On this account, then, the claim that individual agents in affluent countries are heavily implicated in the infliction of severe poverty is not dependent on being able to single out the operation of the global institutional order responsible for most existing severe poverty. Whereas Pogge's strategy is to identify official agents of "the global institutional order" as the perpetrators of the violation of the right against enforced severe poverty and starvation, my strategy is to argue that we should move away altogether from the assumption that allocating direct responsibility for a human rights violation requires singling out the perpetrators.

Moreover, as I now contend, the infliction and allowing of severe poverty constitutes the violation of a basic human right.

### *C. The Ongoing Infliction of Severe Poverty as the Violation of a Basic Human Right*

Severe poverty blights or altogether destroys the lives of millions of individuals. Much of it results from violations of the negative duty not to actively deprive persons of a realistic opportunity to earn a subsistence income. Agents in affluent countries share a significant degree of direct responsibility for the infliction of this extremely severe harm in virtue of their participation in the operation of certain features of global social institutions and their conformity with certain social norms. Since this harm is endemic, ongoing, and on a vast scale, it is reasonably foreseeable.

There is widespread agreement that there are feasible reforms of the features of social institutions that lead to the harm of severe poverty, along with a range of other regulations under which this contribution to the harm could be avoided at small cost to every duty-bearer. The proposals that have been put forward concerning the needed reforms could be achieved simply at the cost of moderately reduced profit for affluent businesses and individual agents within relatively affluent nations.

Finally, there are no countervailing moral considerations that justify the infliction of the harm. The moderate economic cost of implementing the reforms does not countervail against the duty not to inflict those harms that blight or destroy persons' lives on a vast scale. The infliction of this harm is therefore inexcusable.

We can draw a sharp contrast here with the infliction of severe harms in traffic accidents that I discussed earlier. From the probabilistic *ex ante* perspective, the risk of suffering serious **injuring** in a traffic accident is remote, and those individuals who are at risk are also likely to benefit overall from the activity leading to the harm. By contrast, severe poverty afflicts members of a particular group who had no chance of being benefited by the activities that lead to the harms. These individuals from the outset face likely premature death and are precluded from any realistic chance of a minimally decent life.

The social institutions, practices, and mores under which the maximization of profit and personal gain is taken to be a normal and legitimate goal, even when it involves contributing to the infliction of severe poverty on people and resisting reforms that would avoid this contribution at modest economic cost, constitutes a trade-off between the interests of the affluent and the interests of the severely poor that is morally intolerable.

#### *D. The Ongoing Allowing of Severe Poverty as a Basic Human Rights Violation*

A deep feature of common-sense moral thinking is that in easy rescue cases, in which some individuals stand to die or suffer some other drastic and irrevocable harm and the agent is in a position to prevent that harm at small cost, the agent is under a strict, general positive duty to do so. The obvious rationale for this duty is that given the severity of the threat to the persons' basic interests and the small cost to the agent of averting that threat, the failure to do so is tantamount to allowing the persons' lives to be thrown away, which is incompatible with minimally adequate recognition of the moral value of the persons' lives. The same general rationale underlies a general duty to avert the threat to persons' basic interests posed by inadequate subsistence. The United Nations Development Program, along with several leading economists such as Jeffrey Sachs and Amartya Sen, estimates that the amount of money needed to eliminate absolute poverty would be a donation of .7 of the GNP of the world's richest nations.<sup>15</sup>

Given the small cost of eliminating severe poverty relative to the overall level of global resources, our shared ongoing failure to have achieved this is



flagrantly incompatible with minimally adequate recognition of the value of the lives that are currently blighted or destroyed by severe poverty, to the point that it amounts to allowing their lives to be thrown away. It also constitutes a trade-off (albeit this time a passive one) between the interests of the affluent and the interests of the severely poor that is morally intolerable.

### 3. Intrapersonal Trade-Offs and Implications for the Perpetrator Model

I now turn to an implication of this ongoing unacceptable interpersonal trade-off that reinforces both the claim that ongoing severe poverty constitutes a systemic basic human rights violation and the claim that the paradigmatic conception of a human rights violation is too narrow.

While many doubt that the ongoing allowing and infliction of severe poverty constitutes a human rights violation, there are forms of harmful treatment closely associated with severe poverty that are widely acknowledged to be human rights violations. An example that has attracted particular attention is that of sweatshop labor. Saladin Meckled-Garcia, for example, argues that while severe poverty is not in itself a human rights violation, the “inhuman working conditions” inflicted by sweatshop labor do constitute a human rights violation (Meckled-Garcia 2013, 122).

A principal reason why sweatshop labor has attracted attention is that it seems to conform to our paradigmatic conception of human rights violations, as the direct infliction of severely harmful or coercive treatment on specific victims (the employees) by a specific agent (the employer). Sweatshop labor is harmful relative to an uncontroversial moral baseline and is widely held to be coercive. Thus, the standard response to sweatshop labor is to see it as demanding an immediate ban.

By contrast, as I have argued, a principal reason why the background severe poverty associated with it tends not to be viewed as a human rights violation is that it does not result from the direct infliction of a severe harm to specific individuals by specific agents, but from the engagement by a vast number of agents in everyday activities that, considered in isolation, do not inflict any significant harm on anyone.

It is not surprising, then, that bans on sweatshop labor tend to be implemented without addressing the background severe poverty itself because this background severe poverty tends not to be seen as a human rights violation.

A further reason why sweatshop labor is widely classified as a human rights violation, while the background severe poverty is not, is that human rights

violations are generally seen as egregious deviations from the status quo, in the literal sense of “egregious” as standing out from the crowd. The normal background status quo is implicitly assumed to be at least minimally morally acceptable. Sweatshop labor constitutes morally shocking “inhuman” treatment, and therefore fits this conception of human rights violations as an egregious deviation from the status quo. By contrast, the ongoing allowing and infliction of severe poverty constitutes the status quo itself, and therefore tends to be seen as simply part of the background against which this violation takes place. Thus, moral outrage tends to be directed at the sweatshop labor, but not at the background ongoing severe poverty that constitutes the status quo; the latter does not tend to be seen as itself constituting a human rights violation that urgently demands abolition and remedy.

As I now argue, this response overlooks the *intrapersonal* trade-offs that drive those suffering severe poverty to accept indecent working conditions. If we consider the nature and implications of these trade-offs we can see that for those who are destitute, the continuation of the status quo is worse than treatment such as sweatshop labor that is classified as harmful relative to an uncontroversial moral baseline. This undermines the implicit assumption that the background ongoing severe poverty is minimally morally acceptable, as I argue in section 3B.

This assumption is further undermined when we consider that an implication of these intrapersonal trade-offs is that enforcing an immediate ban on sweatshop labor without securing an alternative opportunity to earn a subsistence income is systemically severely detrimental to the overall interests and range of options of the right-holder. The rationale behind the standard response to human rights violations, of enforcing an immediate ban, is to protect the right-holder against the threat to their basic interests or autonomy posed by the potential violator. As I argue (in 3C), this rationale depends on the implicit assumption that the background status quo is at least minimally just. But as the detrimental impact on right-holders of the enforcement of an immediate ban on sweatshop labor demonstrates, this assumption is mistaken.

If we take it to be a condition on the adequate implementation of a right that this implementation not be systemically severely detrimental to the right-holder’s overall interests and range of options, it follows that the adequate implementation of the right against child labor requires the implementation of the right to subsistence. As I argue in 3D, this in turn reinforces the claim that the right to subsistence is a basic human right: it is a right enjoyment of which is a condition on the adequate enjoyment of other rights such as the right to decent labor conditions, and thereby constitutes a basic right in a sense that resembles Shue’s account of such rights (Shue 1996).

A further implication of the intrapersonal trade-offs that underlie sweatshop labor is that responsibility for the violation is not plausibly confined to the employer. As I contend (in 3E), direct responsibility for sweatshop labor is shared by the vast number of agents responsible for the background severe poverty.

#### *A. The Intrapersonal Trade-offs that Underlie Sweatshop Labor*

The reason sweatshop labor is closely associated with severe poverty is that the victims agree to it because it constitutes the only available opportunity for obtaining subsistence. For those who are severely poor, inadequate or insecure access to subsistence poses an ongoing threat to their most basic interests. They are therefore desperate for any opportunity to earn a subsistence income, but given the drastic limitations on the economic opportunities open to them, the only available opportunity is liable to involve agreeing to working conditions such as sweatshop labor. Accepting such working conditions is liable to be better than ongoing inadequate subsistence and not being able to feed their children. Thus what underlies workers' agreeing to the treatment is an intrapersonal trade-off faced by the severely poor between their interest in subsistence and the interest in the object of the other right (in this case, freedom from sweatshop labor).

More generally, the interest in obtaining subsistence is so urgent that it is liable to outweigh their interest in the object of any other right; for those suffering severe poverty, even treatment that is harmful relative to an uncontroversial moral baseline is liable to make them better off than they would otherwise expect to be in the normal course of events, in which they continue to lack adequate subsistence. Thus, for the severely poor, the status quo is not minimally acceptable. Rather, the continuation of the status quo is liable to be worse than treatment that is classified as severely harmful relative to an uncontroversial moral baseline.

#### *B. The Systemic Divergence Between the Moral and Empirical Baselines of Harm*

One way of putting this is that for those who are destitute, the moral and empirical baselines of harm systemically diverge. The ongoing threat to their basic interests posed by inadequate subsistence is so severe that treatment that is harmful relative to an uncontroversial moral baseline is liable to benefit them relative to the empirical baseline of how they would otherwise expect to be in the normal course of events.

In addition, while subsistence exchange contracts are commonly held to be coercive, they differ from standard coercion in that they significantly increase (rather than decrease) the right-holders' range of options. They offer an opportunity that would be otherwise unavailable—namely, obtaining a subsistence income and thereby being able to provide basic necessities for their children.

An implication of this is that enforcing a ban on the sweatshop labor without addressing the background severe poverty is systemically severely detrimental to the overall interests and range of options of the right-holder.

### *C. The Moral Inadequacy of Implementing a Ban on Sweatshop Labor Without Addressing the Background Severe Poverty*

The implicit rationale behind enforcing a ban on a human rights violation is to protect the right-holders against the harm or the coercive treatment that would be inflicted on them by the would-be perpetrator. This rationale, however, relies on the implicit assumption that the violation would constitute a deviation from a status quo that is at least minimally morally acceptable, so that the violation would make the right-holders worse off than they morally ought to be *and* than they would otherwise expect to be in the normal course of events. A ban on such a violation thereby protects the victims against this threat to their basic interests posed by the would-be perpetrator.

However, in the case of violations such as sweatshop labor, the moral and empirical baselines of harm systemically diverge. While the treatment makes the victims worse off than they morally ought to be, it also makes them significantly better off relative to the empirical baseline of continuing inadequate subsistence. It is for this reason that enforcing a ban, far from protecting the right-holder against the threat to their basic interests and range of options posed by the perpetrator, is systemically severely detrimental to the right-holder's overall interests and range of options.

Similarly, the rationale behind enforcing a ban on coercion is to protect the right-holders against the threat to their range of options posed by the would-be coercer. However, enforcing a ban on sweatshop labor without ensuring an alternative opportunity to obtain a subsistence income significantly reduces the right-holders' range of options. It may remove the only opportunity available to them to nourish their children, which is one of their most central goals.

### *D. The Right to Subsistence as a Basic Right*

Plausibly, a minimal condition on the adequate implementation of a human right is that the measures taken to implement the right are not systemically

severely detrimental to the right-holders' overall basic interests or range of options. This condition can be seen as following from an essential aspect of the concept of moral rights, as positions of normative advantage for the right-holder. If we accept this condition, then enforcing a ban on sweatshop labor without securing the victims' right to subsistence is not an adequate way of implementing the right. The adequate implementation of the right against sweatshop labor has to include securing an alternative opportunity of earning a subsistence income that does not involve accepting inhuman working conditions. Thus, the right to subsistence is a basic right in the sense that its implementation is essential to the adequate implementation of other human rights, such as the right against sweatshop labor.

### *E. The Implications of the Intrapersonal Trade-offs for the Adequacy of the Perpetrator Model*

As we have seen, a central aspect of the standard response to sweatshop labor is to single out the employers as the perpetrators of the violation, with sole responsibility for the violation itself. Indeed, Meckled-Garcia argues that it is in virtue of our being able to single out a discrete wronging action (the infliction of inhuman working conditions), and an agent responsible for this action (the employer), that it is appropriate for us to classify sweatshop labor as a human rights violation (Meckled-Garcia 2013).

It is worth noting that Iris Marion Young, while offering a powerful analysis of the background "structural injustice" against which sweatshop labor takes place, retains the view that moral responsibility for the violation itself is confined to the employer. She holds that what she calls "political responsibility" for structural injustice is very broadly shared, but that the assignment of moral responsibility for harm "focuses on individual action and its unique relation to a harm" (2011, 96). Moreover, she draws a fundamental distinction between these two kinds of responsibility. She rejects the view that political responsibility for structural injustice should be seen as "an attenuated form of individualized...liability," but argues instead that these two kinds of responsibility are discontinuous, such that "quantitative difference becomes qualitative difference" (2011, 104). She takes political responsibility to be a purely forward-looking kind of responsibility to which the concept of culpability is altogether inapplicable.

As I now contend, reflection on the intrapersonal trade-offs that underlie sweatshop labor suggests that moral responsibility for the sweatshop labor is not plausibly confined to the employer, but shared by those responsible for the background severe poverty. Although it is beyond the scope of this paper to

offer a full defense of this claim, I shall suggest that an evaluation of systemic injustice may lead us away from a binary conception of culpability and even liability itself. Rather than singling out specific perpetrators as liable to moral outrage, we should accept, on the one hand, that when certain unjust institutions are in place, refraining from depriving persons of the objects of their rights may, in Shue's words, "necessitate super-human qualities" (1996, 59). On the other hand, we should accept that culpability for violations such as sweatshop labor may be shared, to very different degrees, by a vast number of agents.

The first point to recognize is that the classification of sweatshop labor as a human rights violation is in fact dependent on the implicit assumption that the intrapersonal trade-off between the interest in subsistence and the interest in freedom from sweatshop labor is avoidable. This can be brought out by considering an example in which it is not possible to prevent persons' having to choose between accepting exhausting working hours in hazardous conditions or facing inadequate subsistence. We can consider an isolated community of subsistence farmers in preindustrial times, all of whom (including the children) have to labor in the fields for extremely long hours in hazardous conditions (because of inadequate protection against the elements, for example) in order to grow enough food to survive. We can further suppose that the farmers are employed by an overseer, but that this overseer is also struggling for survival and genuinely not in a position to offer better conditions. We would not standardly classify these working conditions as morally intolerable and as constituting a human rights violation, on the ground that they simply cannot be avoided. More specifically, there is no feasible alternative to the choice between exhausting and hazardous working hours and starvation, and given that starvation is unsustainable (relative to an objective conception of well-being), it is not a genuine option.

By contrast, we label sweatshop labor as a human rights violation because of the implicit assumption that the choice the right-holders face, between sweatshop labor, on the one hand, and inadequate subsistence, on the other, is avoidable. We assume that it is feasible for the right-holders to have an alternative opportunity to earn a subsistence income that does not involve sweatshop labor, and that this opportunity ought to be made available.

In labeling the employers as the perpetrators of this violation, we assume that the employer can and should offer decent working conditions. However, in some cases the employers are genuinely not in a position to provide better working conditions without going bankrupt. In these cases, the employers are in the same position as the overseers in the example of the preindustrial subsistence farmers.

The morally salient difference between the plight of the sweatshop laborers and that of the isolated community of preindustrial subsistence farmers is that the former is entirely avoidable and gratuitous. However, in the case I am considering, the gratuity of the plight of the sweatshop laborers lies entirely with the background economic circumstances. If we focus solely on the nature of the direct interaction between the employers and the sweatshop laborers, then since the employers are just as constrained as the overseers in the working conditions they are in a position to provide, it is no more plausible to identify them as the perpetrators of a human rights violation than it is to identify the overseers as perpetrators of one. Moreover, this further suggests that in other cases, moral responsibility for sweatshop labor is not confined to the employers, but is shared by those responsible for the background severe poverty.<sup>16</sup>

The background economic conditions themselves that underlie sweatshop labor are indeed utterly gratuitous. Indeed, as I argued in section 2, the ongoing allowing and infliction of severe poverty constitutes a trade-off between the interests of the affluent and the interests of the severely poor that amounts to the discarding of persons' lives.

I contend, then, that the only way of adequately implementing the right against sweatshop labor requires enabling the intrapersonal trade-offs that lead it to be avoided. Moreover, the classification of sweatshop labor as a human rights violation actually depends on the assumption that the intrapersonal trade-off between adequate subsistence and freedom from sweatshop labor can and should be avoided. This intrapersonal trade-off results principally (and in some cases solely) from the gratuitous interpersonal trade-offs involved in the ongoing allowing and infliction of severe poverty. This indicates that moral responsibility for sweatshop labor is shared in large part by those responsible for the background persistence of severe poverty.

We tend to label the employers of sweatshop laborers as the perpetrators of a human rights violation because of the shocking nature of their treatment of the victims; we think of them (often for good reason) as ruthlessly inflicting inhuman working conditions on the victims in order to make as much profit from them as possible. By contrast, the everyday conformity by a vast number with social mores under which consumer and corporate choices are dominated by the goal of maximizing profit or purchasing the cheapest product, without considering the broader impact of these choices, does not tend to be seen as morally shocking.

As I have argued, however, this conformity in fact constitutes the inexcusable infliction of or toleration of harms that blight or altogether destroy a vast

number of lives. I hope to have shown that we should think of it as the systemic violation of a basic human right.

## Notes

1. See, for example, Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon, 1981).
2. This term is from Samuel Scheffler; he defines our phenomenology of agency as “a characteristic way of experiencing ourselves as agents with causal powers” (Scheffler 2001, 39).
3. This conception of human rights is articulated and defended by, for example, Henry Shue (1996, 29–34); and James Nickel (2007, 70–74).
4. Pogge 2002, 57–67.
5. As Pogge argues, “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, 78–79).
6. For example, Pogge 2002, 135; 2005, 78–79.
7. Pogge emphasizes this implication of his account: “my minimal standard of justice does not requires us to create an institutional order with people whose human rights are unfulfilled, even when we can foresee that its creation would lead to the fulfillment of their human rights” (Pogge 2005, 60).
8. As Eva Brems puts it, “The concept of violation does not only appeal to lawyers. Likewise, in ethical and political human rights discourse, the need is felt to determine a borderline. Whoever crosses that line will be labeled a human rights violator. It seems that the legal concept of a human rights violation reflects the essence of our mental image of human rights: they express what is most valuable, most sacred and should not be touched upon” (Brems 2009, 350).
9. I am offering only what a take to be a sufficient condition for constituting a human rights violation, and should emphasize that I do not take this to be by any means a complete account of human rights violations. As Alan Buchanan argues, certain human rights violations are classified as such in virtue of the flagrant denial of persons’ equal moral standing, even if they do not undermine persons’ chances of living a minimally decent life (Buchanan 2010).
10. Parfit 1984, 80–81.
11. I am following Larry May’s account of shared responsibility (May 1992).
12. See, for example, Patten 2005; Cruft 2005; and Tan 2010.
13. Pogge rejects the view that the right to subsistence imposes positive correlative duties, because this would involve “branding as human rights violators people who fail to aid and protect others whose access to the objects of their human rights is insecure” (Pogge 2005, 67). Pogge contrasts this view with his own institutional





understanding of the negative duty correlative to human rights, “according to which a human right to X gives you a moral claim against all others that they not harm you by cooperating, without compensating protection and reform efforts, in imposing upon you an institutional order under which you lack access to X” (Pogge 2005, 67). However, Pogge’s account of the negative duty correlative to the right to subsistence in turn faces the worry that it is too expansive, on the ground that it is not plausible to take all feasibly avoidably subsistence deficits, under a coercively imposed institutional order, to constitute the violation of a negative human right.

14. See Thomas Pogge (2002); Leif Wenar, (2008).
15. See, for example, Jeffrey D. Sachs (2005). Thomas Pogge and Peter Singer have argued that the cost of eradicating severe global poverty would amount to around 1 percent of the annual disposable income of the wealthiest tenth of mankind.
16. It is important to distinguish the harms endemic to subsistence contracts that violate human rights from the harms inflicted on severely poor individuals by agents taking advantage of their extreme vulnerability and motivated by cruelty or callousness. The harms endemic to sweatshop labor are the long working hours, poor wages, and dangerous and unhygienic working conditions. These should be distinguished from the petty cruelty and degrading treatment often meted out by employers taking advantage of the extreme vulnerability of the employees. The latter kind of treatment is clearly highly culpable, and the employers do indeed have sole responsibility for it. By contrast, the harms endemic to sweatshop labor lie at the end of an economic causal chain that begins with individual consumers’ decisions to choose the cheapest available product, which leads in turn to a multinational corporation’s decision to contract out manufacture of the product at the cheapest possible price. This contract is generally passed down a chain of subcontractors. The employers of sweatshop laborers are generally under extremely tight margins, because of intense competition with other manufacturers each seeking to gain the contract from the subcontractor. Thus the background economic conditions play a crucial role in the harms systemic to sweatshop labor. In certain circumstances, the employers are so constrained by these economic conditions that they are genuinely unable to offer better working conditions.

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# Global Poverty, Decent Work, and Remedial Responsibilities

WHAT THE DEVELOPED WORLD OWES TO THE  
DEVELOPING WORLD AND WHY


*Gillian Brock*

Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. . . . Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (Article 23)

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (Article 25)

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. (Article 28)

## 1. Introduction

The condition of those who live in poverty in many developing countries is difficult to comprehend for most citizens who reside in developed world  countries.<sup>1</sup> Though we may be familiar with salient facts, such as that 2 billion people live on \$2 per day ( Institute of Development Studies 2012, 1), many of us cannot vividly imagine just how hard their daily lives can be and what they must endure in order to meet their own and their families' basic needs. We do not typically face decisions that many of them must, some of which might include the following kinds: should I apply to work in one of the sweatshops that reliably pays subsistence wages, even though it will mean fourteen-hour-long

workdays and challenging conditions? Should I leave my home country to seek work in a different one where care work will earn a salary sufficient to help my family live a life comfortable by local standards? Should I let recruiting agents take my ten year old son, allegedly, to a plantation to harvest cocoa beans for the next six months, which they claim will earn enough to feed our family for the next two years? Should I accept work in a mine, thousands of miles from my home, which pays well by local standards, though the risks of short- and long-term occupational injuries are high? Should I sell a kidney, which will help pay for my family's living and educational expenses for the next five years? Should I discourage my daughter from working as a prostitute in a nearby tourist area, given that there are few options for employment that pay subsistence wages in our region?

Typical citizens of developed countries do not standardly face such decisions. Though we might think we face analogous ones in some cases, there are key differences. We typically live in an environment where regulation and protection of core human interests, though by no means perfect, is in a higher state of development. Occupational health and safety standards are more stringent, laws protecting children from nonbeneficial forms of child labor are in place and often well enforced, the sale of body organs by the desperately poor is typically illegal, there are laws prohibiting employers from requiring workers to perform overtime work on a regular basis, there are minimum wage laws, and so forth. There is, importantly, widespread commitment to honoring a core set of human rights and international labor standards. And when violations of these standards are apparent, we have recourse to a wide variety of mechanisms that could see violators held to account. There are formal complaint and grievance procedures both internal and external to organizations. We can talk to the press or political representatives about the situation. We can protest about our predicament in public spaces without fear of repression. We can seek alternative employment in organizations that have better employment track records. And even when we find that there are not enough decent jobs available for the number of workers who would like to fill them, we have a raft of protections and possibilities at our disposal including unemployment payments, access to training opportunities to gain marketable skills, and benefit programs that offer direct or indirect assistance with meeting our basic needs.

Those living in poverty face challenges no matter where they live. But there is a difference between those living in poverty in countries such as the United States, United Kingdom, or New Zealand, and, for comparison, those living in poverty in most countries in sub-Saharan Africa. One key difference

is the way in which the environment provides opportunities for decent lives and meaningful protections for human rights. Those living in poverty in sub-Saharan Africa have heavily reduced prospects in both dimensions.

Some theorists claim that facing choices about opportunities to work in sweatshops, mines, nursing homes, brothels, or plantations is not to be condemned. After all, in a context where there are few other options to sustain themselves, people who secure such jobs usually appreciate the work and view it as desirable. Some believe that trading and transaction opportunities are in fact the path to prosperity. We should increase them so that more can reap the benefits of transactions with richer consumers, for it is these market opportunities that will, in the long run, assist these poor people to escape poverty.

While I believe trade, especially fair trade (that is, where the gains and risks of trade are fairly distributed), can be one important path toward prosperity, the kinds of employment opportunities I outlined in my opening paragraph do not embrace the ideal. Rather, I think in all those cases, were employment offers to be accepted, they would count as exploitative transactions. One central reason why the offers are exploitative is that they involve taking unfair advantage of people, by taking advantage of their bargaining weaknesses (R. Miller 2010). It is because they are in a poor situation that they might find the offer attractive. Take away the background situation such that people are no longer in poverty and it is doubtful that they would find the offers of employment appealing. There are many kinds of exploitative offers that people in developing countries might be inclined to accept because of their bargaining weaknesses. So while the jobs laboring in sweatshops, mines, brothels, or cocoa plantations may be somewhat desirable given the lack of other options, it is the fact that they have so few other options that is a central source of the problem.

When we turn to issues concerning responsibilities with respect to these exploitative transactions we could ask about particular responsibilities of various local agents who seem to be implicated in the exploitative offers: the manager of the sweatshop, the farmer who grows cocoa and needs assistance when harvesting, or the recruitment agents for care or plantation work. But many of these agents find themselves in vulnerable and compromised positions as well, given their circumstances. (If the sweatshop manager does not comply with the production requirements set for him, will he lose his job? If the farmer does not enlist the help of child workers, how will he be able to make a living from his crops, given the price he will be paid for his cocoa beans? And so forth.) Rather than trying to locate responsibility among those

local agents who operate in a context of multidimensional vulnerability and compromised background conditions, I focus on who has responsibilities to remedy the baseline condition, such that vast numbers of people live in extreme poverty with inadequate protection for their basic rights, heavily diminished prospects for decent lives, and high vulnerability to exploitation. For reasons that will become clear, I characterize the baseline condition as one of “systematic injustice in the background conditions.” I describe that baseline condition in those terms for much of the paper, while offering a justification for this description in section 5 (where I can draw on arguments made in previous sections to make my case).

What responsibilities do citizens in developed countries have to remedy the situation of systematic injustice in the background conditions that places so many developing world citizens in vulnerable positions? And, relatedly, what responsibilities do those in developed countries have to promote arrangements in developing countries that allow all to live decent lives, respectful of human rights? This paper explores these issues, making the case for significant responsibilities in these regards. As a particular focus for our analysis, we will consider the responsibilities with respect to the three rights mentioned in the initial quotations: the right to just and favorable conditions of work (Article 23), the right to a decent standard of living (Article 25), and the right to a social and international order that can support such rights (Article 28). The responsibilities we have with respect to these three rights are not straightforward. For instance, developed country agents have responsibilities not to undermine institutions, practices, or other measures necessary for states to be effective or citizens to be empowered. The claims rely on some empirical and normative work, discussed in sections 2, 3, and 4.

An outline of the chapter follows. Because what we ought to do to alleviate poverty must track what will be effective, in section 2 we survey some of the literature on what we know about effectively combating poverty. Once we come to appreciate the perhaps unexpected ways in which assisting with creating the right kind of institutional environment and civic participation matters, we can then approach the question of what we ought to do and who ought to do it. This will then position us, in section 3, for a textured discussion of how citizens in developed countries undermine central ingredients necessary to combat poverty and, in section 4, arguments concerning why citizens of developed countries have responsibilities to address defects with the domestic and international environments that undermine states’ effectiveness and civic engagement. Developed country governments have important responsibilities to reform policies, practices, and institutions that are blocking

the core human rights fulfillment of those in developing countries and, because of various ways in which we are connected to those suffering dire and large-scale under-fulfillment of their human rights (such as benefiting from these arrangements and contributing to their persistence), we have no good reason to object to—indeed we have strong reason to support—our governments and the international institutions they control in making the needed reforms. In section 5 we are in a position to understand why I characterize the baseline situation that concerns me as one of systematic injustice in the background conditions. Section 5 also offers concluding remarks.

## 2. Combating Poverty: What We Know

### A. *The Importance of Effective States and Civic Participation*

As many in the literature observe, poverty is a multidimensional phenomenon and that has important implications for those hoping to assist poor people and communities (Alkire and Santos 2010; Riddell 2012). Direct assistance to meet even a wide range of needs has in few cases led to a permanent end to poverty for the majority of beneficiaries who were the target of the intervention (Riddell 2012, 221). Programs that focus on direct assistance must be supplemented with efforts that target conditions that sustain poverty. Sustained and genuine eradication of poverty requires a range of approaches that have as their focus not just assisting poor people directly but instead target “changing the structures, processes, and development paths that keep people poor and marginalized” (Riddell 2012, 239). We need to understand some of these factors that keep people poor and marginalized. Here we make a start on such understanding.

Interestingly for the purposes of this project, it is widely acknowledged that gainful employment can be a reliable path out of poverty and one of the most reliable guarantees for transforming the situation of those in poverty (ILO 2003). In the developing world, this means that the number of jobs must increase. Growing the number of jobs typically requires growing the economy. Indeed, those countries that have reduced poverty have almost invariably done so through growth.

Managing economic growth is important for beneficial development, because properly managed, growth can not only create decent jobs but also increase income, increase the tax take, and enable states to enhance effectiveness through investments in preconditions necessary for its citizens to flourish, such as building schools, healthcare facilities, and infrastructure. But growth must be managed carefully, as there are several pitfalls that can

accompany it. For instance, growth that leads to increasing inequalities—especially when disproportionate gains accrue for the rich over the poor—can be detrimental as this can result in policies that lead to further inequalities, as the rich and powerful seek to advance their position (Fosu 2010).

Much research confirms that processes that exacerbate intra-societal inequality can undermine the situation of the poor and marginalized, as this enables richer and more powerful citizens to modify the “rules of the game” to further entrench their position (te Lintel 2011; Stewart 2003). There is therefore growing awareness that effective poverty reduction relies on attention to dynamics within societies such as those that sustain or increase inequalities. There has also been a consequent shift in emphasis toward interventions aimed at empowering the poor along with measures that address the key political, institutional, and structural problems that hamper poverty eradication (Green 2008, 221). Addressing problems such as weak governance, institutions, or the rule of law, along with weak local democratic processes, often increases the probability of faster poverty eradication (Collier 2010; Sen 1999; Riddell 2012, 226). In many countries, especially middle-income countries where most of the world’s poor citizens reside (Riddell 2012, 235), assistance that targets the strengthening of civil society and democratic processes is an especially appropriate focus for aid (Riddell 2012, 235).

There is no single formula for promoting development and many approaches have been tried with successful outcomes. Nevertheless, there are some discernible common patterns that can be usefully collected for those looking for guidance on how to promote development. Effective states play a crucial role. Some claim that “active” and engaged citizens are crucial as well (Green 2008; 2012). Empowerment can be highly effective in overcoming deprivation, though whether it is always *necessary* seems unclear, as there are examples of successful cases of development that do not appear to have included much active involvement by citizens. China seems to be an obvious example of this. Having said that, there is still plenty of evidence that the combination of effective states and active citizens does constitute one powerful strategy that has very good prospects for beneficial development. Successful development often does combine a focus on effective states and empowered citizens. Indeed, the combination of active citizens and effective states may be one of the most reliable and powerful ways to pursue beneficial and multifaceted forms of development. So we will explore these two ideas and their interaction next, starting with arguably the most important ingredient: effective states.



No country has been able to prosper in the absence of an effective state that can and does manage the process of development (Green 2008, 12). There are many reasons why states that are effective are indispensable to beneficial development. States, after all, are necessary to underwrite or ensure the availability of key goods including healthcare, education, drinkable water, sanitation, infrastructure, security, the rule of law, and at least a minimum level of social and economic stability, all of which are necessary precursors in building a dynamic economy capable of beneficial growth. Furthermore, states are in a unique position to regulate and develop the economy in beneficial ways. Social movements and the private sector cannot fully replace all the necessary functions of a state.

In addition, the state's effective provision of public goods and services is essential to securing its legitimacy. There are important links between effective states and legitimacy. Effective states need to be, and to be perceived to be, legitimate, as their perceived legitimacy can increase their effectiveness. The reverse also applies: perceived illegitimacy undermines effectiveness. There is a widely held view in the development literature that there is a social contract between the state and its citizens, and that each side has a part to play in maintaining the social contract. By providing core goods and securing basic rights, the state's legitimacy is enhanced and citizens can have reasonable confidence in their state's ability to be effective. When states are unable to discharge their core responsibilities to underwrite core goods and rights, trust in the state is not well placed. This social contract has many implications for the rights and responsibilities of citizens. For instance, the state's responsibilities to provide for public welfare makes the right to tax its citizens to sustain this capacity reasonable. And the state's delivering on these responsibilities makes it reasonable for citizens to comply with tax obligations.

Three important tests of a state's effectiveness and legitimacy are a state's ability to manage an impartial system of justice, a state's ability to raise taxes fairly, and a state's ability to spend revenue wisely (Green 2008, 97). Civic participation can be an important part of ensuring that states are held to account in delivering in these three areas and so active citizenship can be an important part of creating and sustaining effective states.<sup>2,3</sup>

### *B. Poverty Reduction and Decent Work*

So far I have discussed the importance of effective and accountable states and active citizenship in creating the kind of environment frequently conducive to reducing poverty. I have also noted that a decent job is the single factor

most likely to transform the situation of the poor. In this section we examine how effective states and active citizens are needed to secure such opportunities. The links among these are sometimes quite indirect or subtle, so we need to review some facts about work before we can best appreciate them.

There is huge unemployment in the world. At least 600 million productive jobs need to be created over the next decade to produce opportunities consonant with demographics—more than double the number the economy is on course to produce (ILO 2012). Even if this target were reached, this is expected to still leave 900 million workers below the poverty line (ILO 2012). The figures concerning youth unemployment are particularly concerning. In some countries youth unemployment reaches over 40 percent or even 50 percent of the youth population (World Bank 2012). At least half the world's population live in rural areas; indeed, the majority of people living in absolute poverty live in rural areas and are employed in the agricultural sector. Being employed in agriculture can enable people to work their way out of poverty through improving farm output (World Bank 2008; Dorward et al. 2004), for instance through the adoption of technical innovation. However, for many in the poorest farming communities, what they need is better organization to improve their market power (Penrose-Buckley 2007; Arcand 2006).

What can better organization achieve? Quite a lot, evidence suggests. As just some examples, better organization allowed the so-called “rag-pickers” of Nashik in India, who picked through rubbish for scraps to sell, to create additional employment opportunities as they mobilized to take over some of the refuse collection jobs in residential areas. This enabled them to enjoy more job security, income, and safety. Also consider the successful campaign for a national rural employment guarantee in India. Drought and rural distress led to activists submitting a petition to the Indian Supreme Court in 2001 on the “Right to Food,” which resulted in a bill and eventually a law, the National Rural Employment Guarantee Act (MacAuslan 2007; Dey et al. 2006), such that citizens of rural India are now guaranteed employment. Within fifteen days of making a valid application, the government is legally obligated to provide one hundred days of work per year. Much of the work is on public works programs that also serve to reduce vulnerability. Examples include reforestation and building irrigation canals to marginalized, poor villages (MacAuslan 2007; Dey et al. 2006).

There have been immense changes in the nature of work over the last few decades, such as massive growth of the informal economy, the expansion of global supply chains, governments deregulating and flexibilizing labor markets, and the mass entry of women into the workforce. To flourish under these

conditions, poor people need to organize effectively to increase bargaining power and better market access, the private sector needs to be more responsible, and effective and accountable states are needed to assist with all of this. I elaborate on some of these factors next.

The informal sector is characterized by lack of contracts, typically low or unstable wages, few benefits, little access to social protection programs, and lack of cover by labor laws. Those in the informal economy therefore often lack many of the ingredients characteristic of decent work and lives. The informal economy is problematic for development, as it also undermines the social contract between citizen and state diluting the rights, responsibilities, and diffuse forms of reciprocity that undergird arrangements in effective, accountable states with engaged citizenries. For instance, the tax take from the informal economy is significantly reduced so governments may not be able to support all the basic public goods and services that citizens should have. And because they work “under the radar,” citizens may not enjoy protection from the law and good enforcement of their rights. It is hard for the state to be effective under these conditions.

Union membership is declining in proportion to the growth of the informal economy (Gallin 2004). Ninety percent of the world labor force is unorganized (Gallin 2004). Furthermore, two out of every five countries have severe restrictions on the right to freedom of association (ILO 2001). Why is this trend of concern? Because trade unions have been one of the important mechanisms in promoting prosperity and stability enjoyed by developed countries, in helping define the roles and responsibilities of key stakeholders (businesses, workers, and governments) that underlies the prosperity and stability that characterizes developed countries. In developing countries governments are frequently unable to resist pressures from big business such that labor inspectors are poorly funded, rife with corruption, and ineffective. In a deregulated environment, companies that do want to respect international labor standards and basic rights have little incentive to do so, when their competitors are not forced to play by the same rules. Weak states could be assisted in efforts to secure better working conditions through the collective strength of organized labor, which can help rebalance lopsided relations between powerful businesses and weaker governments. Once again, self-organization, when it has been effective, has seen great gains in improvements in working conditions including more training in what is required to implement international labor standards and human rights doctrines in the workplace. It has also led to increased site inspection to ensure there is good compliance with health and safety legislation (Chen 2006).<sup>4</sup>

There is much people in developed countries can do here to assist in strengthening the hand of workers. The Ethical Trading Initiative constitutes an interesting example. It brings together stakeholders along global supply chains to protect rights and labor standards. It does this in a number of ways: by helping workers to help themselves by creating work cultures where workers can negotiate with management on issues that concern them; by brokering solutions where major rights violations by companies have been identified; by building alliances in source countries and internationally to combat problems that affect entire industries; by authorizing independent social audits; by assisting in harnessing the power that can be brought to bear by institutional investors, consumers, and retailers; and so on. There are many other ways in which those in developed countries can assist with the struggle for workers' basic rights, such as "just linkage" programs that offer enhanced access to developed world markets where higher labor and wage standards are implemented, as happened with the U.S./Cambodia Textile agreement.<sup>5</sup>

### 3. Supporting Effective States and Active Citizens— a (Limited) Review of Some Defective Current Arrangements

Let us recap some key points established so far. First, effective states and active citizens are important for beneficial development. Second, efforts to reduce poverty and vulnerability can often be very effective when they strengthen or support the self-organization of poor people. Third, successfully addressing poverty requires attention to domestically driven processes such as those that widen intra-societal inequalities in wealth and power or sustain vulnerability and marginalization. Fourth, poverty eradication cannot be solved entirely by those who live outside particular poor countries.

Poor men and women and their governments are key actors in relieving poverty in poor, developing countries. However, they can be assisted or hampered in these efforts by a variety of actions, institutions, practices, and other factors that are under the control of those in developed countries. Developed world actors can be either part of the problem or part of the solution: they can assist in building effective, accountable states and an active, engaged citizenry or their actions can undermine these goals. Many of our current arrangements are part of the problem. For instance, we undermine states' abilities to be effective by supporting a variety of institutions that govern the global economy including those governing trade, investment, international financial markets, and taxation that can undermine revenue raising capacity

and job opportunities in those countries. We undermine the empowerment of citizens by failing to support an international and domestic environment conducive to accountability, self-organization, and freedom of expression.

I cannot possibly substantiate all these claims adequately here. However, it will be helpful to understand some of these claims in more detail so that I can adequately ground some of our remedial responsibilities. I have chosen to discuss two ways in which we undermine key tests for state effectiveness and legitimacy, namely states' abilities to raise taxes and states' abilities to spend taxes wisely. In section 3.1, we discuss some defects with our taxation and accounting arrangements that undermine states' revenue-raising abilities. In section 3.2 we cover one important way in which we undermine the judicious use of public resources through the defective migration policies we uphold. In both cases, I emphasize how low or reasonable cost modifications to such practices would avoid the damage we cause. Indeed, these modifications can be reasonably required of us, as I show in section 4.

#### A. *Undermining State's Revenue-Raising Abilities*

Constructing efficient, effective, and equitable tax systems can play an enormously valuable role in creating the ingredients for effective states. Tax collection can strengthen the relationship between states and their citizens, empowering citizens to demand accountability from their states and therefore helping states to be more accountable to citizens. Developing countries often face enormous challenges in trying to create effective, efficient and equitable tax systems. In developing economies tax administration is often very weak with the result that much taxation owed fails to be collected. Developing countries also frequently have large informal sectors, so large numbers of workers in the state are not formally employed and it is difficult to track their wages, let alone collect any tax revenue from that income. Furthermore, in competing to attract more foreign direct investment, states feel pressured to create a favorable tax environment, such as by implementing low tax rates and exemptions. Declaring one's state a "tax haven" appears to enable more revenue to flow into the state. However, tax havens create a variety of problems. They support illegal activity including bribery, organized crime, and tax evasion. The World Bank estimates the annual flow of illicit money across borders to be \$1-1.6 trillion (Baker 2005). Tax havens destabilize the international economy (Keeler 2009). But most important, such havens divert revenue from governments and enable massive tax escape. Developing countries are losing an estimated \$385 billion per year because of tax evasion

and avoidance (Cobham 2005). How do tax havens provide an important channel for tax evasion? A common method involves “transfer pricing” whereby economic activity is often falsely declared as occurring in places where taxes are low, rather than accurately recorded where it takes place, when sales and purchases occur within the same company or company group. For example, it is not uncommon for a company to produce goods in one country, “sell” them to a subsidiary in a tax haven at cost price, then “sell” them again at an inflated price to a third subsidiary. The end result is that when the product is finally sold to a consumer, it misleadingly registers as a tax loss. These transactions create significant opportunities to disguise profits and report instead losses that attract no fiscal obligations. About half of all world trade passes through tax haven jurisdictions, as profits are shifted to places where tax can be avoided (Christensen et al. 2005).

There is much scope for international cooperation in managing destructive effects resulting from taxation arrangements. Solutions include developing systems of unitary taxation for multinationals to stop the false shifting of profits to countries with low or no taxes, prescribing fairer transfer pricing formulae that share taxes on profits among all the states involved in corporations’ economic activity, and harmonizing tax rates and policy. There are promising moves in some of these directions. The U.S. Treasury has proposed several international reforms, including the “worldwide formula apportionment” model. This involves assigning the corporate tax base across jurisdictions according to a formula reflecting the global dispersion of firm activity and distributing profits across countries more evenly (Mintz and Weiner 2003).

A further problem of lost revenue arises from natural resource sales. In many cases, the revenue that poor, developing countries could obtain from resource sales would be more than enough to finance effective states and necessary reforms to address poverty, if the revenue were actually received and appropriately disbursed. Currently, many resource sales occur through nontransparent processes where prices and amounts sold are not disclosed, thus providing ample opportunities for private gain and corruption. Citizens could be considerably assisted in keeping their governments accountable for resource sales through adopting measures, such as the Extractive Industries Transparency Initiative (EITI).<sup>6</sup> Approximately 3.5 billion people live in countries rich in resources. Yet all too often many poor citizens do not benefit from the extraction of their natural resources. The EITI promotes transparency of revenue flows at the local level. Companies disclose their tax and royalty payments for resources to governments. Governments

disclose what they receive in payments. The tax and royalty payments are then independently verified and made public in a process overseen by several key stakeholders including representatives from governments, companies, and civil society. This initiative allows for consensus-building development, and helps create trust, stability, coherence, good governance, and confidence in judicious revenue collection and disbursement. The initiative provides mechanisms for relevant information gathering such that citizens and the private sector in those countries can help improve governance. Citizens of countries in the developed world can assist poor citizens in resource-rich, developing countries by making participation in the EITI mandatory when operating in important organizations under their jurisdiction. For instance, they could require that all multinationals that list on developed world stock exchanges comply with transparency practices such as those outlined by the EITI. They could make membership of EITI mandatory for participation in desirable opportunities such as being involved in contracting agreements with government.

### *B. Migration*

A key test of a state's effectiveness is its ability to spend resources judiciously, for instance on goods and services that have favorable impacts for citizens. I have also emphasized the important role public goods and services play in promoting beneficial development and state legitimacy. However, there is an enormous shortage of personnel capable of delivering these goods and services, and this has a huge bearing on states' abilities to be effective. Many people in poor countries are not receiving basic goods and services, such as basic healthcare or education, because there are not enough skilled personnel to deliver them in those countries. According to Oxfam, about 2 million more teachers and 4.25 million more health workers are needed to supply basic health and education for all (Oxfam 2007). Fueling this shortage is the very high rate of emigration among those with the necessary skills, a problem commonly referred to as "brain drain." Though brain drain occurs in most sectors, brain drain among health professionals is particularly widespread and damaging for developing countries. These countries typically have poor healthcare resources anyhow, so the loss of trained healthcare workers is felt even more greatly than it might be in places that are better resourced. In some cases, the departure of healthcare workers from developing countries threatens the viability of the healthcare systems in those countries, especially in sub-Saharan Africa (Pang et al. 2002; Huddart and Picazo 2003).<sup>7</sup>

Skilled workers often have good reasons for wanting to leave poor countries of origin. Inadequate remuneration, bad working conditions, lack of professional development opportunities, lack of security, and lack of funding are important factors in their decision to leave. Developed countries frequently appear to offer better pay, working conditions, or career and training opportunities not available in developing countries. Departure seems to be an entirely rational decision under such circumstances. Skilled workers, like everyone else, should have the right to exit countries in which they no longer wish to live. But there are normative questions about the fair terms of exit and whether migration should be managed to ensure the burden of migration does not fall disproportionately on the world's worst off. What needs to be ensured is that those who benefit from movement across borders do not also impose severe losses on those who suffer disadvantage because of that movement. These losses sometimes include loss of educational and health services, poor health and educational attainment, wasted public funds on expensive tertiary training that does not benefit citizens, fiscal losses, and, more generally, loss of beneficial development opportunities, including loss of institution-building opportunities and assets. There are various ways of ensuring that movements work well for all significant stakeholders. These include ensuring best practice codes on recruitment are followed, which frequently highlight the importance of attention to losses and how to remedy these effectively.<sup>8</sup>

There are a number of codes of practice for the international recruitment of healthcare professionals, such as that drawn up by the Department of Health of the United Kingdom, which is supposed to guide all recruitment into the National Health Service. It prohibits aggressive recruitment from certain countries and suggests recruitment should be "sensitive to local healthcare needs so that international recruitment from any country should not destabilize local health care provisions."<sup>9</sup> Another prominent example is the code adopted by the World Federation of Public Health Associations.<sup>10</sup> This code specifies that healthcare organizations recruiting from abroad should manage the process so that "the sending country receives something in return. Reciprocal strategies of this nature could include sending developed country health workers in an exchange program, remunerating the source government for its investment in a workers' education program, or offering continuing education that a foreign health worker could apply in the home country."<sup>11</sup> Other forms of compensation might include technological, technical, or financial assistance, or the setting up of training programs.



So far, the codes have not been very effective at solving brain drain issues. But governments could do more than they are currently doing to enforce their terms. Indeed, given that governments are the ones that supply visas to the potential recruits, it seems they have an excellent intervention point to do much more. In discussing these codes I have been emphasizing the role of developed world governments in addressing problems associated with human resource shortages. Many other ways of managing brain drain also deserve consideration, including international cooperation to harness the potential of remittances to contribute to beneficial development and other carefully crafted temporary and permanent migration programs that advance the interests of all key stakeholders. The key to all of these policies working well is fairer distribution of burdens and benefits of migration, which can be achieved through enhanced international cooperation.

#### 4. Allocating Remedial Responsibilities

Section 3 canvassed several ways in which our practices create obstacles for those in poverty. Why should citizens of developed countries and their governments take a more active role in trying to assist with decent work, lives, and social and international arrangements that facilitate these? A full answer to this question would require that I give a comprehensive account of our obligations of global justice to one another. This is a project undertaken elsewhere (Brock 2009). Here I marshal some different arguments grounded in our negative duties. Thomas Pogge (2008) has pioneered this style of argument to great effect, showing how we are implicated in harming the poor by upholding an unjust global order. Elizabeth Ashford (2013) has also made important contributions in showing ways in which we are implicated in structural human rights violations. In the arguments I present below, there are important similarities with the work of both these authors, along with important differences.<sup>12</sup>

On many accounts of which are our strongest responsibilities, the most robust ones are so-called negative responsibilities, aimed at the prevention of harm. We all have negative duties to refrain from harming. Can the duty not to harm ground responsibilities with respect to poverty reduction? I believe it can. Consider the following argument.

1. We all have negative duties not to harm, such as would be involved in contributing to injustice or serious deprivation.

2. In perpetuating patterns of behavior or participating in practices that prevent people from securing what they need for a decent life, we deprive people of necessary goods. We harm people in a morally culpable way when reasonable modifications to such practices would not have such results. A modification is reasonable in such cases when it involves low cost for those who may be required to absorb costs, or when it can be reasonable to expect people to take on such costs, given the nature of the sacrifices others must make in the absence of change.
3. People who live in poverty, by definition, do not have all that they need for a decent life and are deprived of key necessities.
4. So in perpetuating patterns of behavior or participating in practices that sustain poverty, we harm those in poverty, and this harm is morally culpable when reasonable modifications that do not result in such deprivations are available and we fail to make them.
5. Systematically addressing poverty requires effective states and is often assisted by active citizenship.
6. Insofar as our patterns of behavior and practices undermine effective states or active citizenship, we harm in morally culpable ways those poor citizens who are deprived of necessary goods when reasonable modifications to our behavior or practices would not result in such deprivations.
7. Furthermore, we have responsibilities to play our part in bringing about and sustaining a social and international order in which core human entitlements are protected and respected.
8. So we have responsibilities to play our part in bringing about and sustaining a social and international order in which core human rights are fulfilled.
9. When we fail to play our part in human rights fulfillment, by failing to bring about the kind of social and international order in which poor people's rights and freedoms can be realized, or by failing to have due regard for particular core rights such as the right to a decent standard of living or work, either directly or indirectly by undermining effective states or active citizens, we contribute to deprivation or injustice (and from [1] above, we have duties not to do so).
10. So we have several good reasons to ensure that our patterns of behavior and our participation in practices do not undermine the effectiveness of states or active citizenship, including not harming in culpable ways those who live in poverty and not undermining human rights' fulfillment. And we have several similarly good reasons to ensure that we play our part in bringing about social and international arrangements that can help people to secure what they need for decent lives.

I begin the analysis by clarifying some issues. Here I focus only on state-level responsibilities (the responsibilities citizens of one state owe to citizens of others) and describe some kinds of responsibilities they have with respect to remedying the base-level problem that is my concern here (the underlying condition of poverty that enables so much exploitation and human rights under-fulfillment). I focus on governments and their responsibilities because governments are de facto the primary agents of justice, in the world we currently inhabit. They are charged with the responsibilities to provide for and protect their citizens. Moreover, governments often act as efficient coordinators and dischargers of the responsibilities we have to one another as moral agents (Goodin 1998). They are in an excellent position to coordinate and deliver on the responsibilities we all have to one another as human beings.

My detailed discussions in previous sections show some of the ways in which we currently facilitate poverty in developing countries and these discussions also illustrate the reasonable cost of transforming arrangements. Some reasonable cost modifications include requiring multinational corporations that list on stock exchanges under our control to comply with measures, such as participating in transparency initiatives like the Extractive Industries Transparency Initiative, or conforming with fair transfer pricing practices. We could also require organizations that operate within our country to comply with codes of practice concerning recruitment of skilled workers from developing countries. Asking for such modifications is reasonable in multiple ways—the modifications set minimal standards for helping us give due consideration to people's fundamental entitlements and they ask little of the beneficiaries, especially when compared with sacrifices that must be borne by those who bear the brunt of these policies (their sacrifices are to their fundamental entitlements).

The new kind of argument that is yet to be made concerns premise 7. What is it to play one's part in bringing about and sustaining an international order in which human rights are fulfilled, in which defects with our policies and institutions are remedied? How should we allocate responsibilities for improving practices, policies, and institutions that make progress toward our goals of securing more human rights fulfillment, especially through strengthening states' capacities to be effective and citizens' capacities to be actively engaged? Shortly I argue that a large share of responsibility falls on citizens in developed countries to make necessary reforms.

There are many kinds of responsibilities that could be in play when we talk about responsibilities with respect to poverty. David Miller draws a useful

distinction between “outcome” and “remedial” responsibilities. Outcome responsibility is “the responsibility we bear for our own actions and decisions” (Miller 2007, 81). By contrast, remedial responsibility is “the responsibility we may have to come to the aid of those who need help” (Miller 2007, 81). Sometimes outcome and remedial responsibilities correspond, as when those who are responsible for poor decisions that result in harmful actions should go to the assistance of those adversely affected. But these do not always correspond well, for instance when the agents who are outcome responsible are no longer around, or are not in a position to help because, for instance, they are too poorly endowed to assist.

Both outcome and remedial responsibility have a role to play and are important in identifying and assigning responsibility. But they take quite different approaches. Outcome responsibility “starts with agents and asks how far they can reasonably be credited and debited with the results of their conduct” whereas “remedial responsibility starts with patients—people who are deprived or suffering—and asks who should shoulder the burden of helping them” (Miller 2007, 108). According to Miller, “An agent is outcome responsible for those consequences of his action that a reasonable person would have foreseen, given the circumstances” (Miller 2007, 96). More important for my purposes here, he also offers us a useful connection theory of remedial responsibility. On this account, an agent, A, should be considered remedially responsible for the condition of a patient, P, when A is linked to P “in one or more of the ways” specified below. There are six ways in which remedial responsibility can be identified:

1. *Moral responsibility*: on this dimension of responsibility, if A is morally responsible for P’s condition, “A must have acted in a way that displays moral fault: he must have deprived P deliberately or recklessly, or he must have failed to provide for P despite having a pre-existing obligation to do so (e.g. he had promised to feed P, but then defaulted on his promise by doing nothing)” (Miller 2007, 100).
2. *Outcome responsibility*: A can be outcome responsible for P’s plight without being morally responsible for it: perhaps P’s situation is a consequence of an action that is completely morally neutral or even laudable. I open a better coffee shop than yours in the same neighborhood with the result that your business fails. I am permitted to act in this way—it is morally neutral, *ceteris paribus*. But I am also outcome responsible for your predicament.
3. *Causal responsibility*: if one clearly causes deprivation, this can be one sufficiently connective ground on which to allocate remedial responsibility.

4. *Benefit*: A might have had no role in a process leading to P's deprivation (for instance, through ways 1-3 discussed above), but might nonetheless have benefited from it. Benefiting from such a process might be sufficient to make A remedially responsible for helping P.
5. *Capacity*: here the focus is on who is capable of assisting. There are actually two issues related to capacity: first, the effectiveness with which one can render aid and, second, the costs to the rectifier of remedying the situation. For instance, the strongest swimmer might be expected to effect the rescue, but only if this is also going to involve low cost to him. According to Miller, if "A is uniquely in this position, then he is remedially responsible for P" (Miller 2007, 103).
6. *Community*: consider the case of a child going missing. If she is from my village, or if there is some other relevant connection to her, I have more responsibility to look for her than others do.

Also relevant to my analysis is that on Miller's view (and as seems quite plausible), we certainly may hold contemporary citizens of democracies remedially responsible for harmful actions performed on their behalf, including actions that have implications for noncitizens.

Drawing on Miller's account, we might then ask: what should we do about the case of assigning remedial responsibility for making changes to the global order such that one plays one's appropriate part in bringing about and sustaining an international order conducive to decent lives protective of human rights?

Let us review the list Miller offers and consider whether citizens in developed countries are linked to the poor in developing countries through any of the six salient ways identified above. As Miller notes, in some cases, benefiting from a process might be sufficient for agents to be held responsible for helping the deprived, even when there are no other salient connections between them. There are some straightforward ways in which the average citizen of a developed country benefits from defective tax and migration policies (not to mention exploitative labor practices and the network of policies and practices that fail to address the base condition of poverty that sustains these). Even if someone is quite scrupulous about not participating directly in defective arrangements, so (for instance) he refrains from engaging in taxation practices that amount to evasion or investing in any companies that do so, he does still benefit from the defective practices. Consider Potter Pete who lives in New Zealand and makes his living from his pottery.<sup>13</sup> He only buys products that are certified as fair trade compliant, made by ethical companies that do not

engage in dubious tax or accounting practices, and so forth. His purchases may suggest he is not benefiting unjustly from others. However, this misses the key ways in which he is still benefiting. Those who buy his pottery are not all as scrupulous as Pete and they have more disposable income *because* they benefit from evasive tax arrangements, sweatshop labor, or other harmful practices. So, for instance, because they pay less tax or make more profits because of investments in companies that evade taxes they have more money to spend, including spending it on Pete's pottery.

Furthermore, Pete lives in a country in which many people and companies have more disposable income to spend because of their participation in such practices (such as investing in businesses guilty of tax evasion that thereby generate more profit). As they spend their money in New Zealand, the government, through its general sales taxes, collects 15 percent of all sales. The government of New Zealand is able to increase its tax take because of citizens' unjust enrichment (Calder 2010), and is thereby also able to provide more public services such as health care, enhanced security, and infrastructure (e.g., more roads, airports, and Internet access), the benefits of which spread to all citizens within the country, including Potter Pete. In this way the benefits of unjust enrichment spread to all citizens, even the morally scrupulous. We can run a similar story about how all citizens, including the morally scrupulous, benefit from defective migration arrangements that do not comply with ethical recruitment or migration guidelines that attend to losses for developing countries. For instance, because of defective migration practices, more healthcare personnel are available in developed countries to serve health needs, which means that the healthcare system is able to serve more healthcare needs and with shorter waiting times than if fewer personnel were available. Similarly, patterns of benefit accompany a number of the other defective practices, such as purchasing cheap consumer goods that are the product of exploitative sweatshop labor. Even when I scrupulously refuse to buy sweatshop labor products, since fellow citizens may not, they have more disposable funds to spend on my products and services. In these ways the beneficial effects seep through the whole economy. In closing this discussion of the ways in which developed world citizens benefit, it may be important to note here that much of the benefit that accrues comes at the expense of entitlements of others: for instance, a large part of the benefit exists because others have not received taxation revenue that is owed to them, or fair prices for their resources or labor, or compensation has not been paid for losses that must be borne. In short, the benefits result from injustice that derives from the victims' property, labor, or other entitlements (Calder 2010).

All developed countries are classified as high-income countries, their citizens have more disposable income than those in developing countries, and their economies compose more than 65 percent of global nominal GDP (World Bank 2012). Now in virtue of such facts, developed world citizens are better positioned than others to effect changes in virtue of disposable resources, leisure time, and other resources necessary to make effective changes and to bear some costs. So both aspects of the capacity condition apply to them; these citizens can assist *effectively* and they can do so at *low cost* to themselves. Patterns of benefit coupled with capacity to make reforms might well be sufficient to make the case as to why developed world citizens have important remedial responsibilities in these kinds of cases. But the case is strengthened further when we consider other criteria.

The criterion of causal responsibility would also often be satisfied. Developed countries are often causally implicated in the practices that readily facilitate deprivation. For instance, consider how the egregious policies of tax evasion (like transfer pricing), originate from, and are sustained by, developed world actors. Professional accountants, tax consultants, auditors, and others involved in designing and implementing such schemes are required to behave according to standards sanctioned and enforced by professional bodies. These bodies are supposed to be regulated by developed world governments. Our developed world governments have been deficient in allowing such practices to exist, and we can be allocated a share of remedial responsibility based on the harmful actions or negligent omissions of oversight that have come about through our governments' failure to regulate appropriately. Similarly, with organizations that employ skilled workers whose recruitment does not follow codes of appropriate conduct, which developed world actors, such as governments, could more vigilantly enforce.

The moral responsibility criterion can also be invoked to strengthen the case. We might develop the moral responsibility argument by drawing attention to the fact that we all have duties to respect people's basic entitlements especially when failure to do so results in serious deprivations, such as to basic needs and fundamental liberties. We might note also, perhaps less controversially, that we have a moral responsibility to honor and keep our agreements signed in good faith. At least some of the international agreements we have signed commit us to caring about fulfilling human rights. We have agreed to perform an important set of actions that respect human rights, and insofar as the policies thwart such rights we are morally culpable. One requirement of justice is that we ought to keep our (just or legitimate) agreements. So as a matter of basic justice we ought to follow through on the commitments we

have already undertaken. Moreover, the agreements we have signed concern people's basic entitlements as human beings. We have strong normative reasons to respect such agreements. Much as we fail in our moral responsibilities when we fail to keep our promises, moral responsibility can be used as a further factor in generating remedial responsibilities. I will not appeal to any of the other criteria Miller discusses, though further analysis of these might yield additional support.

So let us recap. *At least* in virtue of patterns of benefit (especially those patterns of benefit that facilitate deprivation of necessary goods), both ways in which we have strong capacity, and the ways in which we facilitate deprivation on an ongoing basis (the causal or contributory dimension), we have sufficient grounds for assigning remedial responsibility to citizens of affluent, developed states, and particularly their governments, who act as agents on their behalf, to implement relevant changes. Considering our moral responsibilities adds to the plausibility of the case. *Ceteris paribus*, those states that have derived more benefits and have greater capacities to remedy defects may be more obligated to make reforms, especially when their actions have also facilitated more deprivation.

So the view I have been arguing for here might be summarized as this:

*Responsibilities to implement changes:* when an evidence-based case has been made that international policies (practices, institutions, agreements, and so on) facilitate severe deprivation, when reasonable modifications to these practices would not, governments of developed countries have special responsibilities to reform policies that would not contribute to such deprivation, under certain conditions, including when at least three key remedial connection factors apply, such as the factors described as *benefit*, *capacity* (both kinds), *causal responsibility*, and *moral responsibility*, and to address harms that have resulted from these deficient practices.

## 5. Remedial Responsibilities, Systematic Injustice, and Reasonable Costs: Some Concluding Thoughts

In this chapter I have looked at issues of responsibility in a context of vulnerability and injustice in the background conditions, where vast numbers of people live in poverty with poor protections for their basic rights and significantly diminished prospects for decent lives. I focused on who has responsibilities to remedy that underlying condition that gives rise to so many having



to face agency-limiting rather than agency-enhancing decisions. I argued that citizens of developed countries and their governments can defensibly be allocated significant remedial responsibilities for modifying practices, policies, international rules (and so forth) that undermine the conditions necessary for poverty reduction—such as by undermining the ability of states to be effective, citizens to be empowered, or by undermining a social or international order in which people's basic entitlements can be respected—when reasonable modifications to these would not do so.

I have been concerned about what we can and should do about the poor underlying bargaining situation of those who must accept exploitative offers, a situation that arises because of systematic injustice in the background conditions. I have argued that developed country citizens have important remedial responsibilities in relation to that systematic injustice, the grounds and shape of which are often obscure. This chapter makes a contribution to clarifying that shape and those grounds.

Why do I characterize the background situation as one of systematic injustice? Because it involves people having to endure a situation where their basic entitlements are routinely ignored, remain unconsidered or insufficiently considered by those who have responsibilities to respect such basic entitlements. It is a systematic injustice because we, collectively, as citizens of developed, affluent states, and especially our governments acting on our behalf, can reasonably be expected to give due consideration to such basic entitlements in discharging these basic responsibilities and, moreover, we could make feasible changes to the network of practices and rules we uphold—changes that involve only low or reasonable costs—and changes that would allow prospects for decent lives to be in reach for those currently denied them. Recall that the sorts of costs I consider reasonable include reforms that would require multinational corporations that list on our stock exchanges to comply with various measures, such as agreeing to participate in transparency initiatives, to conform with fair transfer pricing practices, or reforms that require organizations to comply with codes of best practice concerning recruitment of skilled workers from developing countries. Asking for such modifications is reasonable because these help us give due consideration to people's fundamental entitlements and they ask little of the beneficiaries, especially when compared with sacrifices that must be borne by those who bear the brunt of these policies.

I also argued that there are significant remedial responsibilities to reform the network of policies that sustain poverty. The combined force of our patterns of benefit from the deprivation (and the ways in which the benefits

exacerbate deprivation), our capacities to assist and to absorb costs, our ongoing contributions to sustaining the harm, and our moral responsibilities not to harm the deprived suggest we can plausibly be assigned a large share of the remedial responsibilities involved in making progress, progress that is sorely needed for those whose poor bargaining situation arises because systematic injustice in the background conditions leads to large-scale poverty, exploitation, and under-fulfillment of human rights. Developed country governments have important responsibilities to reform policies, practices, and institutions that are blocking basic human rights fulfillment of those in developing countries. Because of the significant ways in which we are connected to those suffering under-fulfillment of their human rights, we must support and encourage our governments in making the needed reforms.

## Notes

1. For amazingly helpful reading suggestions and other advice on poverty research, I am extremely grateful to Roger Riddell. I am also very grateful to Elizabeth Ashford for comments on an earlier draft.
2. Duncan Green explains active citizenship as “that combination of rights and obligations that link individuals to the state, including paying taxes, obeying laws, and exercising the full range of political, civil, and social rights. Active citizens use these rights to improve the quality of political or civic life, through involvement in the formal economy or formal politics, or through the sort of collective action that historically has allowed poor and excluded groups to make their voices heard” (Green 2008, 12).
3. There are many important issues that have a major bearing on poverty reduction that I simply cannot do justice to here, for instance the role of women’s empowerment in reducing poverty.
4. See [www.wiego.org](http://www.wiego.org).
5. While there is certainly an important role for microfinance in assisting with job creation, a word of caution about these prospects might be in order. Along with a number of advantages, microfinance comes with several deep problems. For instance, most of the loans that go toward setting up businesses fund the creation of more sellers in the informal sector, which is usually already overcrowded and typically provides low probabilities of long-term success. Furthermore, these micro-enterprises do not tackle fundamental issues that sustain underdevelopment, and could be diverting resources away from such initiatives (Bateman 2011). In addition, micro-saving schemes may be a much better option (Green 2012, 184–85).
6. See <http://eiti.org>.
7. Recruiting healthcare workers to rich countries can have varying effects on source countries, sometimes apparently benefiting them through additional remittances. In

- order to find out why this advantage is misleading, see Brock 2009, chapter 8. For the *vast majority* of developing countries, the net effect is currently extremely negative, as I discuss elsewhere (Brock and Blake forthcoming).
8. Other typically prohibited practices include so-called active recruitment practices such as aggressively targeting the entire workforce of a particular hospital or targeting the entire graduating class of a university.
  9. “Code of Practice for the international recruitment of healthcare professionals” 10, available at [http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCwQFjAB&url=http%3A%2F%2Fapps.who.int%2Fgb%2Febwha%2Fpdf\\_files%2FWHA63%2FA63\\_R16-en.pdf&ei=2K8PU72IJsSmlQWojICYBQ&usg=AFQjCNHaqtzTQjicM39OXqj-xamVKLvFoA&sig2=F5jO7SiMt17zw2-c4QA-c-Q&bvm=bv.61965928,d.dGI](http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCwQFjAB&url=http%3A%2F%2Fapps.who.int%2Fgb%2Febwha%2Fpdf_files%2FWHA63%2FA63_R16-en.pdf&ei=2K8PU72IJsSmlQWojICYBQ&usg=AFQjCNHaqtzTQjicM39OXqj-xamVKLvFoA&sig2=F5jO7SiMt17zw2-c4QA-c-Q&bvm=bv.61965928,d.dGI).
  10. “Ethical Restrictions on International Recruitment of Health Professionals from Low-Income Countries,” available at <http://ebookbrowse.com/ethical-restrictions-on-international-recruitment-of-health-professionals-from-low-income-countries-pdf-d367789954>.
  11. Principle 1, page 2, available at [http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.wfpha.org%2Ftl\\_files%2Fdoc%2Fresolutions%2Fpositionpapers%2Fglobaltrade%2FETHICALRESTRICTIONSINTERNATIONALRECRUITMENT.pdf&ei=NrAPU7P2O8\\_slAX-tYDADQ&usg=AFQjCNGk1to2D191fLCesPYy-aUuwQEksQ&sig2=Ot4Vsb-mqQSAz1Rri7tF2g&bvm=bv.61965928,d.dGI](http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.wfpha.org%2Ftl_files%2Fdoc%2Fresolutions%2Fpositionpapers%2Fglobaltrade%2FETHICALRESTRICTIONSINTERNATIONALRECRUITMENT.pdf&ei=NrAPU7P2O8_slAX-tYDADQ&usg=AFQjCNGk1to2D191fLCesPYy-aUuwQEksQ&sig2=Ot4Vsb-mqQSAz1Rri7tF2g&bvm=bv.61965928,d.dGI).
  12. I might note very briefly that unlike these two authors, I focus a bit more on what it is to play one’s part in sustaining an international order in which core human entitlements are adequately acknowledged (in defending premise 7 below), why allocating *remedial* responsibilities for rectifying *systematic injustice in the background conditions* to developed world citizens is justified, and I also highlight some unusual direct and indirect mechanisms that we need to target in playing our part to protect core human entitlements.
  13. Todd Calder has a very similar kind of example in Calder 2010.

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# Trafficking in Human Beings

PARTIAL COMPLIANCE THEORY, ENFORCEMENT  
FAILURE, AND OBLIGATIONS TO VICTIMS

*Leslie P. Francis and John G. Francis*

TRAFFICKING—THE COERCED exploitation of people—is a major global concern. Primary forms of trafficking include sex trafficking, labor trafficking, trafficking in organs, trafficking in reproduction, and trafficking in child soldiers. This paper explores whether “host” countries—destinations for trafficking—have special obligations to provide trafficked persons with support needed to escape trafficking and to deal with the damage it has caused. This support includes asylum, healthcare, food, and shelter, at least for an initial period of time.

Our argument begins by demonstrating that anti-trafficking laws are seriously under-enforced. Anti-trafficking laws are difficult to enforce for a number of reasons. Host states or their residents may benefit from trafficking (for example, receive cheap labor or a much-needed organ for transplant) and face incentives that make enforcement difficult. Much trafficking activity takes place across borders, so detection or enforcement may be difficult if laws against trafficking are enforced primarily within national borders or if there are failures of needed international cooperation. The jurisdiction of one major international institution prosecuting international crimes, the International Criminal Court, does not extend to trafficking offenses (unless they are crimes of war, genocide, or crimes against humanity) (Rome Statute 1998).

Trafficking thus presents an example of “partial compliance” theory in the classic Rawlsian sense of failure to adhere to just laws. Trafficking is also a problem of non-ideal theory more generally: global poverty generates a ready supply of persons available for trafficking. We contend that the partial compliance aspects of trafficking yield a persuasive argument for special obligations to trafficked persons. It is more difficult to argue, however, that host countries

have special obligations to trafficked persons that they do not have to the world's poor more generally. Unfortunately, we conclude, confusion about whether obligations to trafficked persons rest loosely in non-ideal theory may lie behind some of the reluctance of host countries to provide these people with needed forms of support rather than regarding them as complicit in the criminal acts that brought them within the host country's jurisdiction.

Section 1 provides an overview of the problem of trafficking. Section 2 describes and explains the extent of enforcement failures. Section 3 considers grounds for special obligations to victims of trafficking. Finally, section 4 returns to the problem of enforcement and suggests corrective strategies that emphasize the roles played by beneficiaries of trafficked services as well as by traffickers themselves.

## Introduction

Several facts about trafficking are clear. Trafficking is widespread, international, and lucrative. It involves labor, sex, body parts, gametes, pregnancies, and soldiering, among principal ways in which human bodies can be exploited for economic gain. Trafficked persons may be physically injured, disabled for life, tortured, left to die, or killed. Traffickers are punished infrequently, if at all. Calls for stepped-up enforcement of anti-trafficking laws are more frequent, however. Many societies are deeply conflicted about whether to understand trafficked persons as victims or as themselves complicit in crime—as subjects of coercion or as willing participants in the enterprise of migration in search of better economic futures.

Ethically, what to say about trafficking would seem similarly simple. Coerced exploitation is a serious and widespread violation of human rights that should be condemned unreservedly. Victims receive far less compensation than they ethically should. Efforts to prevent, deter, and punish those who traffic are woefully inadequate—manifest failures of political and legal justice. Why, then, have anti-trafficking efforts generated apparent ethical disagreement? Our view in this paper is that it is inadequate to see trafficking simply as a problem of global injustice or human exploitation; obligations to trafficked persons are best seen in light of the serious failures of domestic or international law enforcement.

The contemporary literature of injustice distinguishes between “partial compliance theory” in the classical Rawlsian sense and what has more loosely been termed *non-ideal* theory (Sreenivasan 2007; Stemplowska 2008; Simmons 2010). The former consists of failures to adhere to recognized

requirements of justice: widespread disobedience, inadequate enforcement, official corruption, and the like. The latter has been linked to the wide variety of ways in which our world today fails to measure up to ideal justice, including the mal-distribution of resources and concomitant global poverty. The claim we develop here is that it matters whether the prevalence of human trafficking is viewed as a serious enforcement failure that fails to protect the vulnerable or whether it is viewed to some extent as a reasonable response to intolerable circumstances. On the partial compliance understanding, we argue, trafficked persons are owed support because of the failures of legal systems to do what they should be doing to enforce the law. Viewing trafficking as just another problem of poverty, however, fails to explain why trafficking's victims are owed more than the world's poor generally are and in addition risks constructing them as problematic violators of immigration laws. We begin with a brief overview of the scope of trafficking, followed by discussion of the significance of under-enforcement of anti-trafficking laws.

## 1. Trafficking

Trafficking in persons<sup>1</sup> is, by definition, coerced exploitation. Thus the definition from the United Nations Convention on Transnational Organized Crime: the "recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (United Nations Office on Drugs and Crime 2004).<sup>2</sup> Under this definition, exploitation is specified to include the use of persons for labor, sex, slavery, pregnancy, or organ removal. There are three elements to this definition: recruitment, coercion, and exploitation.

Despite its prohibition under international criminal law and the domestic laws of the large majority of states, trafficking is widespread. Although actual data are the subject of considerable controversy, the United Nations Office on Drugs and Crime (UNODC) estimates conservatively that at any given time about two and a half million persons are being trafficked (UNODC 2013). Other estimates range as high as 4 million people trafficked annually (International Rescue Committee 2013) and nearly 21 million persons who have been trafficked (International Labour Organization 2012, 13). Nearly 80 percent of these are trafficked for labor. The majority of the remainder are sex workers, primarily women and girls. The highest levels of trafficking are to be



found regionally in Asia and the Pacific (Belser 2005). Estimates are that trafficking is highly lucrative, generating over \$30 billion in profits annually (UNODC 2012). Sex worker trafficking is estimated to account for nearly 40 percent of the profits drawn from trafficking (Belser 2005). Trafficking occurs both intra- and inter-nationally; the United Nations has observed that trafficked persons from 127 countries have been found in 137 host countries (UN News Centre 2008). Migrant smuggling, closely associated with trafficking and often abusive, is even more widespread and has reportedly become increasingly linked with trafficking as border controls have intensified.

Internationally, the UN Convention against Transnational Organized Crime and accompanying protocols were adopted in 2000. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, entered into force in 2003 and now has 147 states parties, including the United States. According to UNODC, 80 percent of states report having domestic laws against trafficking. These laws vary widely in structure and enforcement and do not in all cases meet the requirements of the Protocol (UNODC 2012, 8). The Protocol requires criminalization of trafficking but makes support for victims voluntary, an approach that has drawn criticism (Leevan 2008).

In addition to the United Nations, regional organizations have also established anti-trafficking legal regimes. The Council of Europe Convention on Action against Trafficking in Human Beings was established in 2005 to combat trafficking, guarantee gender equality, protect the human rights of victims, and promote cooperation (Council of Europe 2005). The Convention strikes a balance between the free movement of persons and the need for border controls to detect and prevent trafficking (Askola 2007). Unlike the UN Protocol, the Convention sets substantive standards for assistance to victims, including safety and protection, standards of living sufficient for subsistence, emergency medical treatment, assistance in asserting rights, and access to education for children (Art. 12). Lawful residents are to be provided with any needed medical care or other forms of public assistance. Victims who are not lawful residents are to be given a thirty-day reflection period, without threat of expulsion, to consider how to escape the grasp of traffickers and whether to cooperate in prosecution (Art. 13). Parties to the Convention must criminalize trafficking (Art. 19). To foreshadow recommendations made in a later section of this chapter, we also note that Parties to the Convention are committed to “consider” criminalization of the use of services known to involve persons who are victims of trafficking (Art. 19).

Certain trafficking patterns are well established (Kara 2009). Nepal and India are sources for trafficking within and beyond South Asia. Thailand and Cambodia are sources for Japan and the Middle East. Impoverished areas of Eastern Europe provide a ready supply of victims to all of Europe, especially through EU member states such as Romania or Bulgaria. Cyprus is a destination point for trafficking especially from Russia, Ukraine, and other countries in Eastern Europe (*Rantsev v. Cyprus and Russia* 2010; UN Refugee Agency 2011). North Africa is a transit point for trafficking from West Africa to the EU (UNODC 2011). Trafficking from Latin America to North America is extensive, as is trafficking from South Asia to the Middle East (UNODC 2009). Israel and South Africa have been fulcrums for organ trafficking (Smith, Krasnolutska, and Glovin 2011).

The United States is not immune from trafficking. The latest reported statistics indicate federally supported investigation of approximately twenty-five hundred suspected trafficking incidents between 2008 and 2010. By far the majority (82 percent) of these investigated cases were sex trafficking, divided almost equally between adult and child victims. However, not surprisingly in light of U.S. controversy over immigration, federal agencies were more likely to take the lead in investigating allegations of labor trafficking (Banks and Kyckelhahn 2011).

## 2. Under-Enforcement: Trafficking as Partial Compliance

Despite efforts by the UNODC, the European Union, the United States, and others, trafficking has proved stubbornly intractable to enforcement efforts. We highlight here several critical features of trafficking as an enforcement problem.

*First, the elements of trafficking* are recruitment, coercion, and exploitation (Anti Trafficking Monitoring Group 2010, 20). Thus understood, trafficking is typically a three-party relationship (Zimmerman, Hossain, and Watts 2011). There is the victim: the person coerced into sex, labor, pregnancy, or organ-procurement surgery. There is the recipient: the person enjoying the fruits of exploitation—a sexual experience, cheap labor, a child, or a desperately needed life-saving organ. And there is the recruiter: the person gaining economically—in many cases substantially—from brokering connections between the victim and the recipient.

This three-party structure of trafficking plays an important role in explaining why enforcing anti-trafficking laws is so difficult. Recipients may be easier

to deter, apprehend, and try within jurisdictions with effective law enforcement regimes. But recipients may also be subjects judged to be sympathetic by these states. In some cases of trafficking, especially organ trafficking and reproductive trafficking, recipients may even appear to be victims themselves: people desperate for a child or for life-saving medical treatment. Although trafficked persons may be within the physical jurisdiction of the enforcing state, they may not be its citizens or have any connection with it other than being transported by a trafficker. Indeed, it is not unusual for trafficked persons to be perceived as illegal immigrants by the host state, however unjustifiable this perception may be. Trafficked persons may reasonably fear retaliation if they come forward and may put little trust in a host state with visible ties to recipients. Arguably, recruiters are the primary wrongdoers—and certainly the profiteers—in many trafficking situations. But recruiters are the most likely parties to elude punishment, in part because of the international structure of so many trafficking transactions.

***Second, the interests of domestic jurisdictions: recipients and victims.***

One strategy for reducing the frequency of trafficking is reducing the demand for trafficked services (Lee and Persson 2012). In enforcing anti-trafficking laws, their domestic jurisdictions may be in the best position to take action against recipients. These recipients may be citizens or lawful permanent residents of the domestic jurisdiction, while recruiters function as middlemen outside of the physical territory of the enforcing jurisdiction and victims lie in the shadows. In at least some cases, however—particularly trafficking in organs and reproductive trafficking—the recipient's home state may be reluctant to prosecute citizens seen as desperate (Francis and Francis 2010). In Israel, for example, the lack of a domestic supply of organs has contributed to demand for trafficked organs. The explanation is the belief among some orthodox Jews that organ donation violates Jewish law and a reluctance to recognize brain death. The Israeli government has sought to counter with a law that gives priority for the receipt of organs to those who have agreed to donate or who have family members who have been donors (Ofry 2012).

Even when recipients do not themselves appear as sympathetic victims, as with those seeking sex trafficking services, enforcement may be uneven at best. The U.S. history of domestic law enforcement against trafficking is an example (Sheldon-Sherman 2012). There are even greater discrepancies when U.S. residents travel abroad for trafficked services. The formal U.S. position is strongly condemnatory, imposing up to thirty years' imprisonment against persons who go abroad for underage sex or persons who arrange such activities for economic gain (Child Sexual Abuse Protection Act 2012).<sup>3</sup> But when

U.S. residents go abroad for sex services, popular destination jurisdictions such as Thailand or Cambodia have limited interests in arresting tourists who are contributing (in some sense) to their domestic economies. United States prosecutions are infrequent, although the United States has stepped up enforcement on site in countries such as Cambodia, with some highly publicized arrests (Henshaw 2011). Cooperative efforts have been improved, too; for example, in 2012 the United States and Myanmar announced a joint initiative to combat trafficking in persons (US Department of State 2012b). In 2009, President Barack Obama appointed Luis CdeBaca as special ambassador to combat trafficking and as director of the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (US Department of State 2009). Ambassador CdeBaca has been active in urging cooperative enforcement efforts against trafficking (CdeBaca 2012). The most recent report on trafficking issued by the U.S. State Department emphasizes enforcement and victim support (US Department of State 2012b). Yet as of this writing, websites hosted in the United States continue to advertise sex tourism abroad.<sup>4</sup> Estimates are that Americans represent about a quarter of all sex tourists abroad but prosecutions are a minuscule handful of the actual frequency of the offense (Hall 2011). The United States does restrict passports of those convicted of sex tourism during the period of any sentence; one commentator has proposed that the United States no longer issue passports to persons convicted of sex offenses against children (Hall 2011, 171). Explanations for these enforcement difficulties include the inability to obtain victim testimony or other evidence and uneven enforcement in host countries—but may extend as well to a reluctance to engage in law enforcement activities overseas or to punish U.S. citizens for their activities abroad, however heinous.

Domestically in the United States, actual freeing of sex worker slaves can be characterized as only modestly successful. State and federal agents free about two thousand women each year (a figure that may include other non-sex slaves) but this figure should be assessed against the official estimates that seventeen thousand to eighteen thousand sex slaves are moved into the United States each year (Monasky 2011).<sup>5</sup> Convictions of traffickers and their collaborators such as pimps or brothel owners are few in number, perhaps only two hundred a year according to federal reporting. Although prosecutions against trafficking victims are extremely rare, nonetheless it is troubling to note that under federal law the penalties for knowing recruiters and knowing *victims* are the same (18 U.S.C. § 2423 [2012]).

In addition, enforcement interests of domestic jurisdictions may not fully parallel international interests in preventing trafficking. In the United States,

for example, the most aggressive federal anti-trafficking enforcement activities are directed against labor trafficking of undocumented workers—a far smaller percentage of the trafficking market (11 percent according to federal reports) than sex trafficking (Kara 2009, 40; Banks and Kyckelhahn 2011). Victims in labor trafficking cases were more likely to be adults (over half age twenty-five or older), male, Hispanic (63 percent), and undocumented. It is not difficult to see this enforcement strategy as shaped by overall U.S. politics about illegal immigration.

In an effort to augment U.S. anti-trafficking enforcement, the Obama administration has appointed an Interagency Task Force to Monitor and Combat Trafficking in Persons. In their 2012 progress report, the U.S. Department of Justice (DOJ) reported bringing 41 prosecutions, charging 117 defendants, and securing 65 convictions. Highlighted case reports involved both forced labor and sex trafficking. The report also indicated DOJ victim assistance consisting largely of funding organizations providing services to victims in urban areas such as San Francisco, Chicago, Dallas/Fort Worth, and Las Vegas (Office of Justice Programs 2012). Department of Labor victim assistance reported offering Job Corps training to victims of “severe trafficking” (but no statistics on how many victims were offered or actually received such training). The Department of Labor also reported insisting that victims of labor trafficking receive reimbursement for full wages and providing assistance in calculating wages owed (but again provided no numbers) (US Department of State 2012c). It is fair to say that the predominant strategy reported by federal agencies is education and training. States, too, have stepped up anti-trafficking enforcement; for example, between mid-2010 and mid-2012, California’s regional task forces initiated more than twenty-five hundred investigations, identified nearly thirteen thousand victims of human trafficking, and arrested nearly eighteen hundred individuals (California Department of Justice 2012).

Recent federal and California reports also indicate a change in tone in U.S. policy toward victim protection. These reports construct victims as modern-day slaves, calling for their emancipation on the 150th anniversary of the Emancipation Proclamation (California Department of Justice 2012; US Department of State 2012b). But it remains to be seen whether these efforts will generate momentary enthusiasm or prove sustainable. In the fall of 2012, the Obama administration announced a series of initiatives to combat trafficking at home and abroad (White House 2012). The initiatives largely address commercial activities, encouraging businesses to collaborate against trafficking and insisting on anti-trafficking clauses in government contracts. They also include contests such as the USAID Counter-Trafficking in Persons Campus

Challenge, a technology challenge with a \$5,000 prize. The winner was a student team at Virginia Tech for AboliShop, an app that lets people search their Amazon.com shopping carts to determine a product's rating in the Not For Sale database of information about labor abuses in supply chains (USAID 2013). The initiatives also include a community competition for awards for programs for survivors of trafficking. The awards total \$6 million and are funded by a public private partnership including the federal government, Humanity United, and the Goldman Sachs 10,000 Women for Innovation Awards to Stop Human Trafficking (Partnership for Freedom 2013). These awards are to emphasize sustainable housing and shelter for trafficking survivors, comprehensive care and case management for minors, and law enforcement engagement with survivors (note the neutral term *survivors*). The structure of the grants will include community conversation awards to encourage dialogue and challenge grants for scalable initiatives; winners will be paired with academic researchers for program assessment and development of evidence-based scale-up initiatives.

*Third, ethical and epistemological ambivalence* continue to contribute to enforcement failure. Ethically, some argue that forms of commercialization of human bodies that may appear as trafficking also have more benign manifestations; epistemologically, the concern is that it may be difficult to distinguish the benign from the malign. Debates about trafficking are highly politicized and the ideological nature of the literature contributes to difficulties in understanding evidence about trafficking rates, participants in trafficking (victims, traffickers, and consumers of services), degrees and types of coercion, and relationships between legalized sex work and the presence of illicit trafficking, among other issues. For example, Weitzer (2011) is highly critical of feminists' understanding of the evidence, arguing that trafficking is far less prevalent than claimed and that many supposedly trafficked persons are voluntary participants in the trade.

Several countries that have legalized prostitution, such as the Netherlands and Germany, have engaged in vigorous debates about whether legal prostitution is a voluntarily chosen occupation for some, about whether legalization has bettered the circumstances for prostitutes, and about whether legalization has been coupled with enhanced enforcement of laws against sex trafficking. If "abolitionist" feminists such as Dempsey (2010) are right, the answer is that legalized prostitution masks continued flourishing of trafficking in its shadow.

The Dutch debate illustrates the potential interplay between legalization of prostitution considered to be ethically permissible and prostitution that is exploitive. In the Netherlands, abolition of the ban on brothels in 2000 was

coupled with stiffened penalties for illegal prostitution involving sex workers who are underage, coerced, or without legal residency. Some Dutch contend that lifting the brothel ban helped to reduce the numbers of illegal sex workers. Others disagree. A 2006 report by the Dutch Ministry of Justice concluded that although enforcement has improved, stringency varies at the local level. Licensed brothels perceive that they are subject to more frequent examination than before formal abolition of the ban and that illegal establishments are, ironically, treated less harshly (Daalder 2007). Based on interviews, the report also concludes that an identifiable percent (at least 8 percent) of prostitutes are working involuntarily but that the extent of involuntary prostitution is very difficult to ascertain. Kara (2009, 110) speculates that the rate may be as high as 80 percent, based on reports from an anti-trafficking NGO. Because the involuntary relationship is most likely to occur between the prostitute and the pimp, even licensed brothel owners may be unaware of the extent of coercion. The report concludes that legalization of brothels has not brought improved labor conditions for prostitutes. On the more hopeful side, there have been apparent decreases in the numbers of underage or undocumented workers—although the pattern appears to be that undocumented workers have been replaced by legal sex workers from East European countries where trafficking is rife. Brothels also have increasingly lost licenses if they appear to be connected to other illegal businesses.

The effects of epistemological ambivalence—a word we use deliberately, to signify that official uncertainty may be unjustified—are apparent in the initial British experience in enforcing the Council of Europe Convention against Trafficking. The Convention entered into force in Britain in 2009; a study of the first year's enforcement experience suggested that the exercise of discretion by enforcing officials had resulted in significant risks of discrimination among classes of victims, contrary to the non-discrimination provision of the Convention. The percentage of positive determinations that the person was a victim of trafficking was “startling[ly]” higher for UK nationals than for EU-nationals, and even higher than for non-EU-nationals (Anti Trafficking Monitoring Group 2010, 33). To some enforcement officials, coercive structures such as debt bondage, threats employing modern information technology, and participation in illegal activities (growing cannabis, petty crime) were judged to be “voluntary” in the absence of evidence of outright force (Anti Trafficking Monitoring Group 2010, 33). For example, one British referral worker expressed the view that “Sometimes domestic workers are brought here on false pretences, but they are not illegal. No domestic worker is a trafficked victim, because they are legal. . . . Until they come here they don't run away. They

run away here because they want to live a Western life, it is more attractive, more freedom” (Anti Trafficking Monitoring Group 2010, 35).

In the United States, to take another example, a reasonable belief that the victim was eighteen is a defense to the federal crime of illicit sexual activity with a minor (18 U.S.C. § 2423(g) (2012)). A long-standing criticism of U.S. rape law is the frequency with which prosecutions founder on problematic judgments that the victim was consenting (Ristroph 2011). Commentators critical of prosecutions for sex trafficking argue that many recipients may genuinely believe that they are paying for an evening out with a nice person who has decided freely to become an escort and who is receiving a fair wage. The concern that it is difficult to distinguish among genuineness and disingenuousness in this belief may lead to discretionary enforcement by prosecutors and may encourage some courts to convict irregularly if at all even when prosecutions are brought.

*Fourth, international criminal law is underdeveloped* with respect to cross-border crimes such as trafficking. Although some trafficking occurs within countries, much is cross border. Traffickers may be mobile and escape the jurisdiction of particular enforcing states. The increasing role of the Internet in recruiting persons for trafficking exacerbates this problem (California Department of Justice 2012, 4). In addition, international criminal law may not cover trafficking that occurs in societies plagued by civil war and failures of the rule of law (Warpinski 2013). We have argued elsewhere that a role for international criminal law should be prosecution of crimes that do not readily lend themselves to intra-national enforcement (Francis and Francis 2009). Trafficking is a particularly good example of a crime that, while often escaping intra-national enforcement, also remains under-addressed by inter-national criminal law.

The Rome Statute of the International Criminal Court (ICC) (Rome Statute 1998) defines three crimes as being within the current jurisdiction of the ICC: genocide, crimes against humanity, and war crimes (Art. 5). Only those instances of human trafficking that are committed with the intent to destroy “in whole or in part, a national, ethnical [*sic*], racial or religious group, as such” come within the crime of genocide (Art. 6); some trafficking in the former Yugoslavia possibly qualifies as genocide. Crimes of war might also include some instances of trafficking, such as the conscription of child soldiers under the age of fifteen (Art. 8 (e)(vii)) or the commission of sexual slavery (Art. 8(e)(vi)), but only within the context of armed conflict. The most likely crime within the jurisdiction of the ICC to apply to trafficking is crimes against humanity, which includes “enslavement,” sexual slavery and



enforced prostitution, and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” The difficulty with regarding the majority of instances of trafficking as crimes against humanity, however, is that such acts must also be committed as part of a widespread, well-documented attack against a civilian population (Art. 7) and it is unlikely that many forms of trafficking will be part of such known widespread attacks.

Efforts to amend the Rome Statute to include trafficking—primarily drug trafficking—have failed. Trinidad and Tobago, concerned that anti-trafficking laws are severely under-enforced (*Barbados Gazette* 2010), has raised this possibility before the conference of state parties but to date there has been no interest in expanding ICC jurisdiction. Commentators have noted the irony that drug trafficking receives more international attention—and more stringent enforcement efforts—than trafficking in persons (Kara 2009, 209).

In summary, the three-party structure of trafficking—victim, recipient, and recruiter—creates significant difficulties for enforcing anti-trafficking laws. Victims are regarded sympathetically by their domestic legal regimes. Recipients may be viewed with ambivalence by enforcing jurisdictions. Recruiters work internationally but international criminal law infrequently applies to them. The result is stunning partial compliance at many levels: trafficking continues to flourish without effective deterrence on especially the inter-national but also the intra-national level.

### 3. Establishing Obligations to Victims

Although some trafficking victims are themselves citizens of wealthier nations, the vast majority of victims come from circumstances of severe to desperate poverty. Victims are generated by circumstances that are non-ideal in this sense. They thus present general questions of what is owed victims of desperate poverty, as well as questions of what is owed victims who have been recruited in these circumstances for the benefit of recipients who may be far better off. In this section, we focus on the latter set of arguments, whether special obligations are owed trafficking victims based on non-ideal circumstances benefiting recipients or based on the partial compliance of under-enforcement. Our discussion grants background assumptions that it is in general imperative to reduce and remediate violations of human rights and that those responsible for these violations have compensatory obligations to their victims. Our focus instead is on whether trafficking victims have special claims to remediation that do not extend generally to all victims of such injustice.

In this regard, we note that victim compensation funds and victim assistance play prominent roles in current anti-trafficking strategies. The United Nations has established a global trust fund for victims of trafficking to provide victim services. Although the Fund is at present supported primarily by voluntary contributions from states parties, it envisions a wider charitable base. At present, its ambitions are impressively modest, especially in proportion to the economic gains from trafficking: it has a goal of disbursing \$500,000 per year in total to organizations for work with victims (UNODC 2012, 29–30). In the United States, as described above, funding for victim assistance programs is becoming a centerpiece of anti-trafficking strategy. Longer-term legal support for victims identified within the United States—especially the T visa that gives three years of residency and public benefits for victims of “severe” trafficking—is contingent on cooperation with criminal investigations, a problem for victims who fear retaliation against themselves or their families (Kara 2009, 195).

*Trafficking Victims and Non-Ideal Theory.* Pogge (2008) and others have argued that beneficiaries of global injustice have special obligations to victims. Trafficking may be thought to present a general version of this argument, that the circumstances of poverty giving rise to a ready supply of victims are part of a global commercial regime benefiting nations that have concomitant obligations to these victims. In this regard, commentators have noted the extent to which International Monetary Fund policy, backed by the United States, contributed to the abrupt impoverishment of countries in Eastern Europe from which many trafficking victims originate (Kara 2009, 25–28). Trafficking also presents a more particular version of the argument from benefit that recipients of trafficked services are largely, although by no means only, residents of better-off countries that have concomitant obligations to victims who serve their residents.

On the more general version of this argument from global injustice, it is unclear why special obligations to trafficking victims would be greater than obligations to victims who have not been trafficked but whose circumstances are similarly dire. Consider treatment for HIV: would a sex trafficking victim who has become HIV-positive have a stronger claim to scarce resources than a rural victim who contracted HIV from her husband who had sought work in urban industries and sexual services on the side? Each is arguably a victim of unjust international economic structures, if either one is; arguments for prioritization of trafficking victims would require more.

More particular versions of the argument from global injustice may present a stronger case for prioritizing compensation for trafficking victims. Consider whether countries hosting the recipients benefiting from trafficking

services have obligations to victims providing those services. It may also be relevant whether any of the parties are citizens or lawful permanent residents of the host country, or whether they are located within the borders of the host country. The clearest connections to the host country exist when the recipient, trafficker, and victim are citizens of the host state and are present within its borders.

One method for establishing obligations in this clearest case would be to regard trafficking victims as a special case of obligations to compensate victims of crimes. Assuming there are such obligations (Walgrave 2011)—and there surely are issues about whether crime victims have claims to compensation or to assistance that outstrip obligations to their other unfortunate peers—more would be needed to explain why trafficking victims have special claims to compensation that other crime victims (for example, victims of rape) do not. Crime victim compensation arguments that rely on direct responsibilities of perpetrators to victims would support requiring traffickers or recipients engaged in criminal activities to compensate their victims, as they would require rapists to compensate their victims. One difference would appear to lie in the practical possibility of obtaining resources for compensation from perpetrators: recruiters make profits and recipients of trafficking services may in some cases be better off than the general run of rapists. United States anti-trafficking laws require those convicted of trafficking to pay restitution of the value of the victim's services (18 U.S.C. § 1593(b) (2012)), although often no funds will be available as U.S. law also makes property used or obtained in trafficking subject to seizure (18 U.S.C. § 1594 (2012)).

Other crime victim compensation programs decouple victims' rights from perpetrators' abilities to pay, as when a fund for all victims is created from fines levied on perpetrators, tax revenues, or charitable contributions (Megret 2011). Many domestic legal regimes as well as the ICC have such funds. These funds are often quite limited, however, and the question would be whether trafficking victims have priority claims on them that other crime victims—for example, rape victims—do not. One argument might be that trafficking victims have been treated particularly horribly; but “ordinary” rape victims are also coerced, tortured, shamed, and violated, some even many times, and it seems implausible to link the priority of trafficking victims' claims to compensation fund resources on their duration of captivity. Another argument for priority is that trafficking is a human rights violation in a way that “ordinary” rape or other similar crimes are not. The violation, however, cannot be the exploitation of rape—for that would fail to distinguish the trafficking victim from victims of other serious sexual offenses. Other possible distinguishing factors

lie in the roles of trafficker/recruiter or beneficiary/recipient or in complicity on the part of the host state.

Consider the roles of recruiter or recipient, either of whom violates the law of the home state. If states owe compensation to victims of crimes committed by their citizens or lawful permanent residents, then they would owe compensation in such cases to trafficking victims. However, a parallel argument would support compensation for other crime victims. Instead, a more plausible argument supporting states' responsibilities for trafficking victim compensation would be that the host state in some way plays a role in the ability of traffickers to operate, or recipients to benefit, that it does not in the case of ordinary crimes. One candidate for this role is complicity of the host state in arrangements generating the poverty that incubates trafficking, but as argued above, this argument does not single out trafficking victims from other victims of international injustice.

*Trafficking Victims and Partial Compliance.* A more promising line of argument is that recipient host states are making inadequate efforts to enforce anti-trafficking legislation. As described above, host states may be sympathetic to resident beneficiaries, ambivalent about wrongs such as prostitution that may cover for trafficking, and problematically unsure about judgments of victimization. Coupled with the observation that these states have made international commitments to enforce anti-trafficking laws, this line of argument would defend support for trafficking victims as a special obligation distinct from obligations to other crime victims (except victims where similar types of enforcement failures are apparent). A law and economics argument may provide further support for this reasoning, if the imposition of compensation obligations provides incentives for states to tighten enforcement efforts (Megret 2011, 160). On this view, special obligations to trafficking victims are rooted in the partial compliance of states to anti-trafficking enforcement requirements. To the extent that victims of other crimes are met with similar enforcement failures, they too would have special claims to compensation.

To this point, we have argued that plausible arguments for prioritizing support for trafficking victims can be grounded in the current level of partial compliance with anti-trafficking enforcement. We now turn to two types of objections to this view: the first, that it proves too much (or too little) and the second that it is internally inconsistent because increasing victim support may undermine enforcement efforts and thus prove harmful in the long run to victims overall.

Ours is an argument from enforcement failure to special obligations for victim support. It is thus not limited to trafficking, but would yield similar

conclusions for similar circumstances of enforcement failure: for example, if rape laws are significantly under-enforced, if worker protection laws are ignored, or if policing is inadequate in communities identifiable by poverty, race, or ethnicity. Our response is to welcome this observation, point out that partial compliance theory is underdeveloped with respect to the obligations of generally well-functioning states to victims of what might be characterized as localized failures, and urge further work on questions raised by such arguments for victim support. Conversely, our argument would lose force were anti-trafficking enforcement to become reasonably adequate at inter- and intra-national levels. Were this to happen, on our view obligations to trafficking victims would need to be analyzed either in terms of obligations to crime victims generally or in terms of obligations to victims of global poverty.

#### 4. Victim Support and Enforcement

In this final section, we turn to the concern that our argument is practically inconsistent because increased support for victims may undermine enforcement efforts. We argue that although some aspects of current enforcement policy reflect this concern, understanding how it is misguided can help in developing more effective enforcement strategies.

Some aspects of current enforcement policy seem based on assumptions that victim support may increase rather than decrease the economic incentives that operate in trafficking relationships, such as the profits to be obtained, the demand for trafficked services, or the possible benefits for trafficked persons. One illustration is the limitation of victim support to persons who cooperate in criminal investigations. The U.S. ties T visas and other support to victim cooperation with investigation and prosecution, apparently on the theory that providing support to victims generally removes at least one possibly useful incentive to gain needed information to identify and prosecute traffickers or recipients. This strategy may backfire, however, if it generates mistrust driving victims further underground.

Another objection to victim support is the argument that it creates further incentives for people to enter into the trafficking relationship. This argument constructs trafficked persons as willing economic actors seeking better lives in host countries. The availability of support may lend credence to the stories told by recruiters to potential victims or may make the risks of potential trafficking seem less dire. In this regard, the distinction between transport and exploitation may be important; trafficking victims may participate voluntarily in

smuggling or other transit arrangements that leave them vulnerable to exploitation when they arrive at their destinations. Knowledge of the availability of victim support—for example, of the ongoing availability of healthcare for victims of organ trafficking—may also salve the consciences of some recipients and contribute to state sympathy toward them.

Stepped-up enforcement efforts are surely one key to reducing trafficking and its human costs. As Kara (2009) and others have argued, enforcement efforts that raise the costs of trafficking weaken the hold of recruiters on their victims. They also raise the costs of purchasing trafficked services and thus may reduce demand (Lee and Persson 2012). These enforcement strategies are directed against recruiters and beneficiaries; empirical questions for our argument are whether treating victims as also criminal actors or providing them with support weaken the efficacy of enforcement efforts against recruiters or beneficiaries.

Two aspects of the dismal failure of contemporary anti-trafficking enforcement are the ability of recruiters to function transnationally without incurring prosecution from domestic legal regimes, and the almost complete absence of attention to recipients of trafficked services as subjects of enforcement. The pressing need to address global injustices that incubate trafficking lies in the background of any ultimately successful enforcement strategy; our discussion assumes but does not address this need directly.

For at least the near future, it seems unlikely that international criminal law regimes will be augmented to deal with trafficking. There may be some chance that with support international investigation efforts may increase. Kara (2009, 210) suggests a model for an international investigation force. Other commentators have argued that the United States should take a stronger role in reporting and imposing sanctions on countries that fail to enforce anti-trafficking laws (Hendrix 2010). However, there are steps that domestic legal regimes can take that may significantly impede the ability of traffickers to function. One is that although traffickers themselves may function in the shadow of any domestic jurisdiction, their resources do not. Jurisdictions with well-functioning legal systems such as the United States and the European Union could enhance anti-trafficking investigations and efforts to freeze assets within their borders identified as potentially connected to trafficking. These better-off jurisdictions could also provide increased support for law enforcement efforts in domestic regimes with histories of poorly functioning and corrupt legal systems.

Without direct access to traffickers, domestic legal regimes can also attack the profitability of trafficking. Kara's (2009, ch. 8) economic analysis suggests

the elasticity of demand for sex trafficking services, the form of trafficking with apparently the highest profit margins. Reduced profits decrease the incentive to traffic. Two avenues to reduce profits are both practically promising and ethically desirable for domestic jurisdictions.

One avenue consists in making it more difficult for traffickers to keep victims in bondage. Stepped up investigations would help, especially of businesses such as massage parlors where legitimate activities may mask illegitimate ones. Such enforcement activities are especially important for jurisdictions that defend the legal permissibility of voluntary prostitution, if they are to maintain credibly that it is possible to permit the sale of sex when it is voluntary without also allowing exploited sex to flourish. The report from the Netherlands that enforcement efforts since the lifting of the brothel ban may have focused on easy targets—licensed brothels—rather than more ambiguous businesses such as escort services is a troubling example of what may be the mal-focus of enforcement efforts even where police corruption is limited (Lee and Persson 2012). Even where prostitution is illegal, skewed or incomplete enforcement efforts may make circumstances for prostitutes even worse, if they are driven underground but without adequate protection. This problem is raised by the Swedish controversy over the Skarhed Report (Swedish Government 2010) evaluating the 1998 ban on prostitution in Sweden.

The availability of support for victims is also critical to increasing the costs of bondage. Victim fear and mistrust, as well as misunderstandings and cultural differences, reduce the likelihood of escape from bondage even when victims are not bound physically, maimed, or locked up. To encourage victim trust, services and support must be credible and culturally sage. Enforcement approaches that treat trafficking victims primarily as illegal immigrants—as politically driven U.S. enforcement has been prone to do—may jeopardize trust. Mattar (2011, 1271–73) details how threats of deportation are a common strategy used by traffickers to keep victims in bondage and points out that U.S. courts are divided about the circumstances in which threats of deportation meet the standard for involuntary servitude under the Trafficking Victims Protection Act. A particularly problematic aspect of U.S. law is that it extends support only to victims of “severe” trafficking, leaving many victims in prolonged uncertainty about whether they will be deported as illegal immigrants (Chacon 2006, 3025). What we are suggesting here might be viewed as a public health model for victim support, including hiring public health workers who can be aggressive in understanding the sex trade and other forms of bondage in their jurisdictions.

Accounts of trafficking suggest that the greatest factors intimidating victims are fears for the safety of those they love, beliefs in obligations to repay debt, the likelihood of shame at home, and mistrust of authorities. These function as vicious spirals, with even the slightest suggestion of adverse consequences used by local exploiters to present believable stories to their victims. Even with culturally appropriate public health efforts, it may be especially difficult to break through realistic fears about what might happen to families and friends back home.

Another avenue for reducing the profits of trafficking is enhancing enforcement efforts against recipients of trafficked services. It is here that the moral failings of many domestic jurisdictions are most apparent. In the United States, for example, sex tourism, organ purchase, hiring undocumented workers, and purchased sex are criminal activities. Yet very little enforcement is directed toward those who receive and enjoy the benefits of these services. Indeed, as we have detailed above, in some cases the penalties for recipients and for knowing victims are the same—surely unjustified given the underlying inequalities that spawn victimhood.

Here, we suggest only a few ways to step up enforcement against recipients. There could be changes in the definition of offenses, with enhanced penalties when the offender had reason to believe that the victim had been trafficked. Whether in labor trafficking (where the employer had reason to believe that workers were bond slaves) or sex trafficking (where the purchaser of commercial sex had reason to believe that the sex worker was underage or abused) these may be the cases in which domestic jurisdictions' sympathies for recipients are weakest. There could be novel reporting requirements akin to the tax requirement for reporting gambling winnings or other illegally obtained profits as income. Travelers returning from jurisdictions such as Thailand or Cambodia where child sex tourism is extensive could be required to list on their re-entry forms any expenditure paid for sex abroad, just as they now list purchases over \$10,000. Some will lie on the form—but the presence of U.S. investigators abroad might soon uncover those who could be criminally charged for failing to fill in the form honestly. There could be fines or forfeitures directed to anti-trafficking enforcement or victim support (Leevan 2008).

The scale of noncompliance with anti-trafficking laws or enforcement requirements is vast. In this chapter, we have argued that these failures create an argument for special obligations of support for trafficking victims. We have also suggested enforcement strategies against recruiters and beneficiaries of trafficking that do not require regarding victims as criminally complicit. Victim support may complement rather than undermine these enforcement strategies.



## Notes

1. Some international anti-trafficking efforts refer to “human beings” and others to “persons” (Allain 2012).
2. The United States became a state party to the protocol in 2005, with reservations concerning federalism and the role of the states. Also, the United States does not consider itself bound to submit disputes between states parties under the protocol to arbitration or to referral to the International Court of Justice.
3. Reportedly, forty-four countries have similar laws, although enforcement of them is uneven and in some cases not proactive. Countries such as South Korea, Japan, and Russia do not have such laws (Bramham 2012).
4. Websites such as GF Tours offer “pleasure” tours of countries such as Cambodia or the Philippines. This particular website states unobtrusively that the company will not itself arrange for illegal activities, reminds readers that prostitution is illegal in the United States (except in some counties in Nevada), and expresses support for the legalization of prostitution. It does not mention the federal statute criminalizing underage sex tourism. The website also contains a story about support for impoverished children in an orphanage near a “hot” beach (<http://www.pleasuretours.com/>). Brazil has recently asked that such websites be taken down, with some success (Associated Press 2012).
5. Accurate estimates are difficult to obtain, because of the hidden nature of trafficking. Critics of the officially published statistics argue that actual numbers may be much higher, perhaps up to fifty thousand annually.

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# "Are My Hands Clean?"

## RESPONSIBILITY FOR GLOBAL GENDER DISPARITIES

Alison Jaggard



### 1. Systematic Gendered Inequalities Continue on a Global Scale

The World Bank's *World Development Report: Gender Equality and Development 2012* finds that advances toward gender equality have been made on several fronts. Gender gaps in primary education have closed in almost all countries, and in many countries girls now outnumber boys in secondary schools and young women outnumber young men in universities. Nutrition and life expectancy have improved in general, and for women in particular—though unevenly (2011, xx). Women's labor force participation has risen, progress has been made toward women's formal rights through legal reforms and constitutional guarantees, and fertility rates have declined rapidly in many countries (2011, xi).

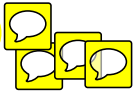
Despite these encouraging trends, the *WDR 2012* finds that women and men are unequal on many dimensions:

1. Women are more likely than men to suffer sexual, physical, and emotional violence. Significant variations in rates of violence exist but in most countries the chances of a woman being abused in her lifetime are between 30 and 60 percent.
2. High levels of maternal mortality exist in sub-Saharan Africa and South Asia. "The likelihood of women dying during childbirth in Sub-Saharan Africa and parts of south Asia is still comparable to that in Northern Europe in the 19th century" (2011, 1).
3. In some places, notably China and India, many more boys than girls are born, contributing to numbers of "missing" women (2011, 13–16).
4. Although some countries have seen progress in women's representation in formal politics, fewer than 20 percent of cabinet positions worldwide are held by women (2011, 20).



5. Women are only somewhere between 10 and 20 percent of world property owners.
6. Gaps continue in earnings between male and female paid workers.
7. Everywhere in the world, unpaid domestic and care work continues to be done primarily by women and girls (2011, 17).
8. In some ways, "boys and young men (are) at a relative disadvantage" (2011, 9). Cultural definitions of masculinity in terms of underperformance in schooling and education may diminish men's future employment and earnings opportunities and boys may also use risk behavior and sexual experience to prove themselves as "real" men (2011, 173). Excess mortality of men also occurs in some countries.

Political philosophers concerned with gender justice ask, why, if at all, are the gender inequalities identified by 2012 WDR morally wrong? Are they unjust? If so, what sorts of injustices do the disparities manifest, who is responsible for fixing the injustices, and what sorts of fixes are likely to work? Plausible diagnoses of the wrongness of the disparities include violations of women's human rights, gendered exploitation, and overall bad consequences for societies at large. In all these cases, it is important to ask why it is that so often women are vulnerable on various dimensions. This paper suggests that, in recommending remedies for the disparities, 2012 WDR places too much emphasis on seeking remedies at the local and national levels and pays insufficient attention to the ways in which gender inequalities in particular locations are not coincidental but instead are linked with transnational arrangements. The imbalance of its analysis places disproportionate responsibility for addressing the responsibilities on local and national actors, while underplaying the responsibilities of such transnational actors as the World Bank itself.



## 2. What Is Wrong with Systematic Gender Inequalities? Some Alternative Moral Diagnoses

### A. *Some Gender Inequalities Are Violations of Women's Human Rights*

The World Bank has received considerable criticism from feminists in the past because its earlier publications relied on instrumental justifications for improving the status of women, emphasizing that gender equality would confer various benefits on society at large. *WDR 2012* has responded to these feminist protests by asserting that "gender equality matters in its own right"

(2011, 47). It states that “the ability to live the life of one’s choosing and to be spared from absolute deprivation is a basic human right and should be equal for everyone, independent of whether one is male or female” (2011, 3).

The language of human rights embodies the idea that all people matter equally. Violating human rights is wrong because it fails to respect the equal and inherent dignity of all persons. Human rights language is well suited for explaining the moral wrongness of some gender inequalities identified in *WDR 2012*. Over the past quarter-century, violence against women, including but not limited to domestic violence, has finally been recognized as a serious human rights issue.<sup>1</sup> In addition to domestic violence, other violations of human rights included among *WDR 2012*’s reported gender disparities are high maternal mortality and, at least in some contexts, the political exclusion of women.

It might be argued that all the gender disparities identified in the *WDR 2012* violate the human right to equality. However, the powerful language of human rights is designed for identifying grave moral wrongs and some might regard it as overkill to describe gaps in earnings between males and females that occur above the level of absolute poverty as human rights violations, despite the fact that gendered economic inequality raises women’s risks of more incontrovertible human rights violations (UN 2013, Point #21). Similarly, it might be argued that the customary allocation of care work to women and girls is not a human rights violation because it reflects the lives that women and girls have chosen. For some of the gender disparities identified in the 2012 *WDR*, an alternative vocabulary is more appropriate.

### *B. Some Gender Disparities Exemplify Gendered Exploitation*

Some gender disparities identified in 2012 *WDR* seem well captured by the idea of a specifically gendered type of exploitation. “Exploitation” has different connotations in different contexts. When it involves making efficient use of nonhuman resources or opportunities, exploitation can be morally neutral or even praiseworthy but the exploitation of human beings is usually taken to be morally wrong. Here, I follow Richard Miller’s (2010) account of what it means to exploit human beings.

For Miller, to exploit a person is to take advantage of his or her bargaining weakness “in a process that shows inadequate regard for the equal moral importance of her interests and her capacity for choice” (2010, 60). Three of Miller’s examples are



1. rescuing someone stranded in the desert if he will agree to be the rescuer’s servant for life;
2. a dentist who triples his normal fee for a procedure when someone from another town walks into his office, driven by excruciating pain;
3. “[a] Victorian husband who relies on sexist discrimination in opportunities for employment and terms of divorce to insure his wife’s self-abnegating deference” (2010, 61).

In all cases, people who are exploited consent to their exploitation even though, as Miller points out, “[i]n another usage... their agreement is not fully voluntary, since it is forced on them by their circumstances” (2010, 64–65). For example, when a person stranded in a desert agrees to enslavement, her will is coerced or overridden.

According to Miller, the wrong of exploitation consists in “derive[ing] benefit from [someone’s] difficulty in advancing her interests in interactions in which both participate, showing inadequate regard for the equal moral importance of her interests and her capacity for choice” (2010, 60). Miller distinguishes two categories of exploitation. “Mere” exploitation consists in taking advantage of someone’s bargaining weakness, “which leads her to enter arrangements involving drudgery or penury that are not fully worthy of human dignity” (2010, 65). Deriving benefits from the bargaining weakness of another “always stands in need of justification, to reconcile it with respect for the weaker person” (2010, 60). However, mere exploitation may be justifiable in certain extenuating circumstances. “[T]here are justifications that reconcile the use of others’ weaknesses with respect for them, so that taking advantage of someone’s weakness does not involve taking advantage of him (2010, 60). In Miller’s view, “mere” exploitation may be morally permissible if both parties do better and neither ends up badly. However, “immoral” exploitation is never permissible because it not only takes advantage of someone’s bargaining weakness, it also takes advantage of a person. Miller contends that special justification is needed for it to be permissible to override the will of another, who is forced by her circumstances to defer. Unjustified exploitation “fails to express an appreciation of the equal worth of others, and, instead, uses them as means, human tools subordinate to one’s purposes” (2010, 60).

If unjustified exploitation consists in taking immoral advantage of individuals whose bargaining options are constrained, gendered exploitation consists in taking advantage of people whose options are limited due to vulnerabilities that result from expectations and constraints arising from specifically gendered norms. The husband who takes advantage of his wife due to

nineteenth-century constraints on Victorian women provides one example of exploitation that is specifically gendered. Much of women's work around the world, which involves what Miller calls "drudgery and penury," seems to fall under the category of exploitation. "Feminized" work is not always done by women but it is considered more socially appropriate for women than for men. It often involves long hours of unpaid labor, with domestic work being a paradigm example, and the nature of the work is often thought menial, such as the basic cleaning and care of bodies. Even when feminized labor is paid, it often involves the provision of personal services that may be regarded as degrading, as in the case of sex work. Today, feminized labor has also come to mean informal work outside the formal economy that is typically low-paid, casual, and lacking labor protections (Standing 1999). Feminized labor is exploitative insofar as it shows inadequate regard for the equal moral importance of the laborers' interests and capacities for choice. Men increasingly perform labor that once was regarded as feminine but *WDR 2012* asserts that men still typically have more money and time than women who are similarly situated.

### C. Many Gender Disparities Are Bad for the Society at Large

The World Bank's recognition of gender equality's intrinsic value is very welcome but the consequentialist analysis remains important and powerful. *WDR 2012* says that gender equality is "smart economics" (2011, 47), because it is likely to enhance productivity, encourage more representative decision making, and improve outcomes for the next generation (xx). It asserts:

First, removing barriers that prevent women from having the same access as men to education, economic opportunities, and productive inputs can generate broad productivity gains....Second, improving women's absolute and relative status feeds many other development outcomes, including those for their children. Third, leveling the playing field—where women and men have equal chances to become socially active, make decisions and shape policies—is likely to lead over time to more representative, and more inclusive, institutions and policy choices and thus to a better development path.

(2011, 3)

Few feminists would disagree that gender equality benefits everyone in the long run. Different moral diagnoses may be complementary rather than competing.

### 3. Individuals' Responsibility for Gendered Rights Violations and Exploitation

It is common to think of rights violations and exploitation as bad deeds performed by particular agents. However, violations of human rights do not consist exclusively or even necessarily in directly abusive actions performed by individuals. Thomas Pogge has offered an institutional analysis according to which the most important human rights deficits consist less in particular actions by private individuals than in disrespect from officials and even more in institutional failure to guarantee people secure access to the objects of their human rights (Pogge 2008, ch. 3). States are the entities primarily responsible for guaranteeing the human rights of their citizens. On this view, we do not respect others' right not to be enslaved simply by refraining from owning slaves; instead, we must also work against the institution of slavery, at least if we live in slave-owning societies.

In illustrating exploitation, Miller sketches small-scale interpersonal interactions and it is easy to think of many similar examples of exploitation that are specifically gendered, including bosses engaging in sexual harassment and sexual pimping. However, not all exploitation occurs face-to-face. A 1985 song by Sweet Honey in the Rock describes the long labor chain that produces cheap clothes in the United States.<sup>2</sup>

*I wear garments touched by hands from all over the world  
35% cotton, 65% polyester, the journey begins in Central America  
In the cotton fields of El Salvador.  
In a province soaked in blood,  
Pesticide-sprayed workers toil in a broiling sun  
Pulling cotton for two dollars a day.*

The song traces the transportation of the raw cotton to South Carolina to be spun at Burlington mills and then to be spun together with "polyester filament courtesy of the New Jersey petro-chemical mills of Dupont." From there, it goes to Haiti where

*Far from the Port-au-Prince palace  
Third world women toil doing piece work to Sears specifications  
For three dollars a day my sisters make my blouse.  
It leaves the third world for the last time  
Coming back into the sea to be sealed in plastic for me*

*This third world sister  
And I go to the Sears department store where I buy my blouse  
On sale for 20% discount.*

The haunting question that concludes the song is “Are my hands clean?”

I have quoted this song at length partly because it is eloquent and beautiful but also because it illustrates how difficult it is for ordinary individuals in affluent countries to avoid participating in exploiting and even violating the human rights of people we will never know. Rights violations and gendered exploitation may be invisible to us when they occur far away. Moreover, even if we can guess at their existence and respond by trying to practice individual consumption ethics, seeking out local or supposedly “fair trade” goods, many people feel they can’t afford these. Regardless of whatever solidarity she may feel with what used to be called “third world” workers (today more usually referred to as workers in the Global South), the “third world sister” of Sweet Honey’s song also buys the cheap Sears blouse.

In order to address gendered rights violations and exploitation at a systemic level, we need to ask why women are so often in situations of bargaining weakness that render them vulnerable. How have those situations been created and which agents bear most culpability for creating them?<sup>3</sup>

#### 4. Some Inadequate Accounts of Systematic Gender Vulnerability

Why is it so difficult to secure women’s human rights? Why are women so often in systematically weaker bargaining positions that enable exploitation? Because these wrongs often look similar across the world, it is tempting to seek universalistic explanations for them.

One persistent suggestion is that women are often in weak bargaining positions because of sex differences that are biologically determined and unalterable. Many Western philosophers have argued that women suffer from various inherent disabilities and new versions of this claim continually recur, frequently in evolutionary guise. One recent version is that evolution has shaped men to be warriors, so that it is natural and inevitable that men are more violent than women, perpetrating about 90 percent of the world’s homicides and starting all of the wars (McDonald, Navarrete, and van Vugt 2012). Jesse Prinz has recently challenged this particular version of women’s evolutionary disadvantage, presenting an alternative theory that argues that the advent of intensive agriculture and herding gave men an

advantage over women because of men’s greater upper body strength. Women’s economic dependence “allows men to mistreat women, to philander, and to take over labor markets and political institutions” (Prinz 2012). Whether or not Prinz’s particular account is correct, his “historical” approach illustrates the general philosophical point that it is the context that determines the value of particular abilities to those who possess them. Abilities are advantageous or disadvantageous only in particular contexts, which is why disability theorists often talk about people with impairments as disabled by their social environment. For political philosophers concerned with gender justice, it is important to ask how institutional contexts contribute to setting some people at a systematic disadvantage because of their specific sexes, genders, or sexualities. We should also ask how these institutional contexts were shaped and how they might be redesigned to be more gender just by eliminating such disadvantages.

A second popular hypothesis for explaining systematic gender disparity, especially in less developed countries, is that supposedly backward cultures accord lower status to women. This has some initial plausibility because gender disparities indeed tend to be wider in poorer countries (though there are some striking exceptions) but this hypothesis too disregards the history of the real world, in which the status of women in indigenous cultures was often undermined by European colonialization. One example is the impact of British colonialism on the Maasai in Kenya, where several British colonial policies significantly reshaped Maasai gender relations (Tobin and Jaggard 2013). First, the British treated only male elders as political leaders, thereby strengthening the authority and power of this group over all women and junior men. Second, because the British needed to create a cash economy in order to produce tax revenue, they transformed a previously female-based barter economy into a cash economy that became male-dominated as Maasai men were integrated into it as buyers and sellers of livestock. Meanwhile, Maasai women were dispossessed from their previously shared cattle rights and now had to struggle to access cash indirectly through gifts from men or the sale of cattle by their sons or husbands. Third, the British implemented a new system of taxation, which designated male elders as “tax payers” and “heads of household” and required them to pay a “plural wives” tax for supposedly dependent women living on their homestead. Taken together, these policies undermined the economic and political status of Maasai women as a group, making them worse off than they were prior to colonization. This example is far from unique in the long and far-reaching history of European colonialism, and it illustrates that local gender disparities often are not

indigenous but instead result from sometimes brutal interactions between local cultures and external forces.

A third inadequate analysis of gender disparities is to suggest that they result primarily from bad decisions made by poor women out of ignorance or false consciousness. The strong emphasis on ignorance, false consciousness, or adaptive preferences by some Western philosophers is typically condescending and even victim blaming. It rationalizes Westerners taking up the missionary role of “educating” or “raising the consciousness” of women in developing countries and directs philosophers’ attention away from proper focus of gender justice. Although ethics does assess individual choices, the primary task for political philosophers is to consider the social institutions that make various menus of options socially available and assign costs and benefits to various decisions. Looking at available institutional options can show how women’s “choices” to be exploited are rational in some contexts, because they represent the best bargains that those involved are able to strike. One example is the decision to engage in sex work; this decision is made by enormous numbers of women worldwide, as well as some men, though it is given little attention in *WDR 2012*.<sup>4</sup> The popular language of “trafficking,” which conjures up passive victims, is quite misleading in many cases. Many sex workers choose their occupation autonomously within the social context of gender-unjust institutions that make only bad options available to them.

Systematic gender disadvantage never depends on singular causes, such as biology, culture, or individual choice; instead, it results from the ways in which these and other factors interact in various contexts. In order to explain why women are vulnerable to human rights violations and gendered exploitation in any context, it is necessary to investigate the history and complex interplay of multiple factors in that particular context.

## 5. Transnational Cycles of Gendered Vulnerability

In earlier work, I have proposed the existence of interlocking transnational cycles of gendered vulnerability that place women in systematically weak bargaining situations, enabling gendered rights violations and exploitation (Jaggar 2009a). This work built on well-known arguments by Susan Moller Okin (1989) and Iris Marion Young (2009).

Susan Moller Okin developed the idea of a gendered cycle of vulnerability by marriage. She argued that the institution of gender-structured marriage, in which husbands are the main providers and women are unpaid caretakers, rendered women in societies such as the twentieth-century United States

vulnerable to poverty and abuse. Okin explained that the expectation that girls would marry and be supported by their husbands meant that they were often unprepared to support themselves, and their poor job qualifications made them economically dependent on their husbands. This in turn made it difficult for them to leave unsatisfactory marriages and forced them to tolerate inequality and even domestic violence. Thus Okin argued that “a cycle of power relations and decisions pervades both family and workplace, each reinforcing the inequalities between the sexes that already exist within the other” (Okin 1989, 4).

Iris Marion Young drew on Okin’s explanatory model to analyze the situation of women in some less-developed countries of Asia, Africa, Latin America, and the Middle East (Young 2009). She asserts that the family division of labor, which assigns women primary responsibility for looking after the household, children, and other family members who need care, generates a vulnerability that is specifically gendered. In less developed as well as more developed societies, women’s primary responsibility for domestic care work makes them dependent on husbands for material support and this, in turn, renders them vulnerable to domination and abuse. When wives seek paid employment, they often wish to combine this with carrying out their family responsibilities and this makes them vulnerable to exploitation. Thus Young argues that “the gender division of labor in the family that operates as a strong and enforced norm among many newly urbanized women produces and reproduces a vulnerability to domination and exploitation in wage employment” (Young 2009, 230). She notes that women raising children alone are especially vulnerable to poverty because it is difficult for one adult both to care for children and household and to earn enough to provide a decent standard of living. Moreover, single mothers are often socially stigmatized, which makes their lives even more difficult. Like Okin, Young observes that the cycle is reproduced in the socialization of both girls and boys, perpetuating women’s specifically gendered vulnerabilities in less developed societies.

The logic of Okin’s and Young’s argument is similar but their accounts differ in emphasis. Okin identifies gender-structured marriage as the linchpin of gender inequality (1989, 171) whereas Young gives more prominence to factors external to marriage that help explain why women often choose marriage, despite inequitable divisions of family labor. Because of gendered wage disparities, the stigmatization of single parenthood, and a lack of social supports for parents, women who marry are frequently better off than women who do not. My work extends Okin’s and Young’s in two directions. First, it gives further emphasis to gender-structured institutions additional

to marriage, which often push women toward marrying despite the vulnerabilities associated with being married. Second, it postulates that today some gendered cycles of vulnerability operate not only on national scales but also extend across transnational spaces. One example of such a cycle is the “international maid trade.”

In the global domestic work industry, millions of women cross borders and oceans to seek employment in wealthy countries as maids and nannies in private homes. As a group, migrant domestic workers are extremely vulnerable, especially those without work visas and those who live in their employers’ homes. Employers often take advantage of their vulnerability to force them to work long hours, to withhold pay, to subject them to violence and sexual abuse, and sometimes to hold them in conditions close to slavery (Anderson 2000, esp. ch. 8; Zarembka 2002). Why do so many women make choices that place them in these abusive and exploitative situations? Their decisions cannot be explained by looking only at biology, local norms, or adaptive preferences. Instead, these decisions are often rational responses to gendered institutional constraints.

My earlier work identified some of the wide range of gendered institutional factors that produce both the demand for and the supply of foreign maids. On the supply side, the lack of well-paying jobs in poor countries means that many men and women seek employment abroad. On the demand side, factors that create the demand for maids in wealthy countries include the gendered division of family labor, which throws the weight of domestic arrangements on women. *WDR 2012* confirms that men worldwide continue to resist assuming domestic responsibilities (2011, 218). Other factors are the decline of real wages in wealthy countries, so that women as well as men often need to work for pay outside the home to support the family, and inadequate public provision for children and elders in some wealthy countries. Together, these factors mean that private arrangements have to be made for the care of children and people who cannot care for themselves. However, care work is conceptualized as a specifically feminized type of labor for which male workers are usually unacceptable, so the demand exists mainly for female domestic servants or “maids.”

The factors listed so far are national in scope but transnational factors are also involved. One of these is global wealth inequality, which motivates hundreds of millions of persons to migrate internationally. Today, one out of every thirty-three persons in the world is a migrant and an increasing proportion comprises economic migrants rather than political refugees (International Organization for Migration 2013). These numbers reflect not only the



decisions of individuals, they also reflect official policies in many less developed countries such as the Philippines, which rely increasingly on remittances from citizens working abroad. Labor migration, however, is not ungendered; instead, it reflects transnationally continuous ideas about the gender division of labor. The International Organization for Migration says:

Despite the fact that women increasingly migrate autonomously as the main income providers for the family, the labour markets in receiving countries remain sex-segregated. Thus, only certain sectors are open to the employment of women, including migrant women, including the so-called “traditional” female occupations such as domestic work, entertainment, nursing, care-giving, etc.

(International Organization for Migration 2013)

The Philippine women encouraged by government policy to migrate to the United States, the Middle East, and Japan often do so as “maids,” which have been said to be the Philippines’ most important export product (Lutz 2002, 92). Thus, we can see how systematic gender vulnerabilities are produced by interactions among national and transnational factors. They are further complicated by factors such as ethnicity, religion, and class, which often multiply the disadvantages of particularly situated groups of women and open the way for gendered rights violations and exploitation.

The idea of transnational cycles of gendered vulnerability helps us to understand why gender disparities often resemble each other across the world without resorting to explanations that are either falsely universalist or victim-blaming. The idea provides a conceptual framework that makes gendered norms and structures central to understanding disparities without “disappearing” sexed bodies. Instead, it places sexed bodies in social contexts and so offers a way of conceptualizing them that is not reductionist or deterministic. This approach also avoids reducing gender disparities to exclusively local explanations, while still not “disappearing” the local. Finally, the idea of transnational cycles of gendered vulnerability does not “disappear” individual consciousness or choice but it shows how women’s and men’s choices are shaped and limited by gendered social structures.

I do not offer the philosophical idea of transnational cycles of gendered vulnerability as a substantive causal analysis of particular disparities but rather as an explanatory schema or methodological approach. To explain any specific disparity in a particular situation, the schema would have to be filled in by empirically informed descriptions of ways in which specific national and

transnational structures interact to constrain women's (and sometimes men's) opportunities for action on the basis of gendered norms and expectations. Using such a methodological approach would have made the recommendations of *WDR 2012* more plausible.

## 6. Assessing **WDR2012's** Recommended Remedies for Gendered Disparities

In order to address the gendered disparities that it identifies, *WDR 2012* recommends that governments in developing countries undertake a wide range of reforms. Here I will mention just a few of those recommendations.

1. In order to address violence against women, *WDR 2012* advocates laws that define different types of violence against women, prescribe mandates and duties for enforcement and investigation... and signal government's commitment to ending such violence. In addition, education and awareness programs should be instituted to shift norms and behaviors, and victims of violence should receive timely and effective assistance (2011, 31–32).
2. Maternal mortality should be addressed by establishing better institutions to deliver medical care and services to expectant mothers. Improved infrastructure and education would also help (2011, 25–26). Women should have increased ability to voice their preferences regarding number and spacing of children and increasing the quality of family planning services (2011, 31–32).
3. Skewed sex ratios at birth should be addressed by laws against the abuse of sex selection technologies (2011, 23). In addition, governments should work to enhance household perception of the value of daughters and even provide financial incentives to parents to have daughters (2011, 24). Improvements in water, sanitation, and waste disposal will especially benefit young girls due to the reduction in infectious diseases (2011, 24).
4. Women's political representation should be increased through quotas and different types of affirmative action (2011, 30–31).
5. Female farmers and entrepreneurs should be assisted by strengthening women's ability to own and inherit assets and to control resources, including land. Women should be helped to gain access to credit and agricultural extension services and provided with more responsive marketing outlets (2011, 27–28).
6. Discrimination in labor markets should be addressed. Labor markets should be desegregated and women should be helped to gain qualifications

- and otherwise enabled to enter it. This will require training, placing, and allowing other support to enable women to enter or re-enter the workforce; establishing mandatory affirmative action; supporting the creation of women’s networks; and removing discriminatory treatment in labor laws and regulations. Part-time work should be facilitated (2011, 28–30).
7. Governments should consider a variety of policies for “releasing women’s time” from unpaid work. These include subsidizing or publicly providing child care, whose absence pushes mothers from formal into informal employment, and investing in infrastructure, such as water and electrification. “Investments in transportation can increase women’s access to economic opportunities by reducing travel time and increasing mobility” (2011, 223).
  8. Destructive norms of masculinity as well as femininity should be challenged.

Most of the reforms proposed in *WDR 2012* are indispensable to promoting gender equality. These reforms are welcomed by Shahra Razavi, research coordinator at the United Nations Research Institute for Social Development (UNRISD), but Razavi also expresses concern that the proposals focus too much on reforms at the micro-level while ignoring the ways in which macroeconomic policies contribute to gendered inequalities. For instance, with respect to agricultural reform, Razavi says that the WDR’s recommendations ignore the “challenges that confront smallholders and agricultural labourers in many contexts: volatile commodity markets, rising food prices (bearing in mind that most smallholders are net food-buyers) and environmental hazards” (2011, 10). Most smallholders are women in the developing world. Similarly, Razavi observes that *WDR 2012* fails to note that cheap imports displace local manufacturing employment in textiles and garments, reducing employment opportunities for women workers.

The recommendations of *WDR 2012* strongly emphasize integrating women into the formal economies of their countries. However, these recommendations ignore the fact that less developed countries frequently cannot provide sufficient opportunities for new women workers in the formal sector. A major reason for this is the structural unemployment that characterizes the world economy. Unemployment is endemic in the developing world and increasingly in middle-income countries, which cannot provide paid employment for many of their unskilled and college-educated youth. Since the 1980s, for example, a generation called “the freeters” has emerged in Japan; it consists of young(ish) college-educated people who

are unable to find permanent jobs or move out of their parents' homes. After the financial collapse of 2008, massive unemployment spread through many countries in Western Europe and, to a lesser extent, the United States. In Spain, Greece, Italy, Portugal, and Ireland, millions of young people remain unemployed and riots occur regularly; in May 2013, they erupted in Sweden. In Europe, unemployed youth are titled the "lost generation" (Malik 2012). Informal employment, which lacks social protection, has increased worldwide and the distinction between formal and informal employment is ever more blurred, so that informal work is becoming the new normal (Benería 2003, 96, 110).<sup>5</sup> The would-be workers confronting this dire situation have been named the "precariat." They are said to constitute a new class who are able to access only intermittent and casual labor and enjoy no predictability or security, which affects their psychological as well as material welfare.<sup>6</sup>

In this larger economic context, *WDR 2012's* recommendations for addressing gender disparities seem clearly insufficient. As Razavi puts it, they are "out of sync with the nature and scale of the problem at hand: structural unemployment and underemployment, extensive casualization and informalization of paid work, and persisting gender-based wage gaps in the context of rising income inequalities and a worsening functional income distribution" (2011, 9). Functional income distribution refers to the relative share of income going to wages compared with the share that goes to profits. And Razawi reports that, over the past thirty years, the relative share of wages has declined while the share going to profits has increased. In my terms, many of the gender disparities identified in *WDR 2012* result not simply from unjust institutions at the national level but also from cycles of gendered vulnerability that revolve in transnational spaces. In order to assign moral responsibility for these vulnerabilities, it is necessary to identify various stages in the cycles and the actors who have most responsibility for these.

## 7. Who Bears Responsibility for Global Gender Disparities?

In this section, I sketch how using the idea of transnational cycles of gendered vulnerability can help in assigning moral responsibility for addressing global gender disparities. I do not intend to present the detailed analyses that would be necessary for assigning responsibility in particular cases but rather to illustrate how the explanatory schema could work.

### A. *The Responsibility of “the Global Order”*

As we have seen, *WDR 2012* assigns most of responsibility for addressing gender disparities to the governments of developing countries (2011, 22). This emphasis on states’ responsibilities has considerable merit. Much gendered vulnerability stems from national laws and customs. Serena Parekh argues that states are primarily responsible for changing not only laws but also the norms and background customs that reinforce women’s social inferiority (Parekh 2011). The emphasis on national governments by *WDR 2012* also appears compatible with Pogge’s argument that demands for human rights are addressed in first instance to those who occupy positions of authority.

Pogge argues, however, that the power of governments is limited by certain features of the global political-economic order. This is particularly true of governments in less developed countries. One of the features that Pogge identifies is the International Resource Privilege, which consists in international acceptance of the convention that a country’s de facto rulers control its resources (Pogge 2008). This convention allows rulers who control resources to maintain authoritarian governance by heavily arming themselves and by buying off potential political opposition. A second feature is the International Borrowing Privilege, which is willingness by the international community to allow de facto rulers to take on huge debts on behalf of their countries. Pogge argues that these two international conventions have three important negative effects on corruption and poverty in poor countries. They increase incentives toward coup attempts and civil war, because those who rule de facto are recognized internationally as ruling de jure. They put a country’s full credit at the disposal of actual rulers, even illegitimate and authoritarian governments, which then are able to borrow cheap money to maintain themselves in power even against widespread popular opposition. Finally, if the dictator is overthrown, fledgling democratic governments are severely constrained by the huge debts of their former oppressors.

Political instability and civil strife cause dangers and hardships for all citizens but they bear especially harshly on women and children. War and civil disorder may offer some opportunities at least to some men, though they are typically opportunities that come with high risks and costs. Women are invariably losers, however, because gendered practices of violence place them in special danger from sexual and other assault when public security collapses. The Democratic Republic of Congo offers a paradigm case. Despite or likely because of its rich mineral and agricultural resources, this large country has suffered almost unremitting war, dictatorship, and corruption since its

independence from brutal colonial rule. The consequences for Congolese women have been disastrous. Their status is among the lowest in the world and sexual violence is commonplace in non-conflict as well as conflict areas (Adetunji 2011). Not only women but also men, children, and infants are frequently raped, often publicly and often accompanied by torture. Rape is used strategically to humiliate, to terminate pregnancies, to control natural resources, to increase food insecurity, to keep civilians quiet, to avoid violence from superiors, to express frustration or anger, and to retaliate against men of different communities. In one study, more than 60 percent of men and women interviewed said the extreme brutalities of war in the DRC had caused them to lose their capacity to love or care for others (Wolf 2012).

Who is morally responsible for these atrocities? Obviously, the direct perpetrators bear grave responsibility and so do the autocratic, brutal, and corrupt officials and governments of such countries. Joseph Mobutu, former ruler of the DRC, is alleged to have told his soldiers that they did not need a salary because they had guns. However, Pogge argues that even corrupt and undemocratic leaders of poor countries are behaving “rationally” within “circumstances not of their choosing.” In his view, most responsibility is borne by the leaders and citizens of the affluent, mostly Western, countries that control the global order (2008, 22). He contends that corrupt governments rule only because “we” legitimate them. “We” installed many of the most oppressive rulers, bribed them, and sold weapons to them. We have also allowed them to sell their country’s natural resources and borrow money in the country’s name. Citizens of affluent Western countries bear moral responsibility for a global economic system that is unjust and in which human rights are systematically and predictably violated. We have an obligation to work for a more just global order that ensures secure access to the objects of their human rights for all global citizens. Until we do this, we are accomplices in “a monumental crime against humanity” (2008, 25). If Pogge’s argument is correct, we are also complicit in massive violations of women’s human rights.

### *B. The Responsibility of “the American Empire”*

Pogge contends that the global order contributes to the persistence of poverty by increasing international interdependence and so exacerbating the vulnerability of weaker national economies to exogenous shocks. More specifically, he argues that trade rules and international agreements unfairly favor the rich because poor countries have little bargaining power in negotiating rules with wealthy countries. Richard Miller also argues that trade and investment

frameworks required by globalization place undue burdens on poor countries and prevent them from selecting their own development strategies (2010, 80). He contends that these frameworks are unfair because they have been shaped by threats of exclusion, discrimination, and bullying (2010, 70).

Miller especially identifies structural adjustment programs, now renamed programs for poverty reduction and growth, as a means of "indirect financial rule" (2010, 134). He asserts that structural adjustment has been the most far-flung coordinated project of large-scale policy transformation in human history. It has changed the contract from a state commitment to manage development to a state commitment to give the lead to private enterprise (2010, 139). Miller does not mention the now widely recognized fact that this prioritization often imposes gender-specific burdens on women. Structural adjustment conditions usually involve reductions in government-funded services for social welfare, such as food subsidies, education, and healthcare, and these tend to affect women's economic status more adversely than men's, because women's socially assigned responsibility for family care makes them more reliant on such programs. Reductions in social services often force women to create survival strategies for their families by absorbing these reductions with their own unpaid labor, strategies that in the past have resulted in higher school dropout rates for girls. In recent years, as we have seen, school attendance for girls has improved, but Razavi expresses concern that current and previous economic crises and post-crisis fiscal retrenchments may have resulted in women and girls being forced to increase the amount of time devoted to the unpaid reproduction of their households (Pearson and Sweetman 2011). Taking on more unpaid labor obviously makes it harder for women to attain jobs in the formal economy, regardless of the recommendations of *WDR 2012*.

In the sphere of agriculture, the expansion of export agriculture and the relaxation of trade rules have allowed wealthy countries to dump heavily subsidized agricultural products on poor countries. Women have been disproportionately affected by the decline in small-scale and subsistence agriculture resulting from these developments because they still compose most of the world's small farmers. Many women have been driven off the land and now often struggle to survive in the informal economy, which is characterized by low wages or incomes, uncertain employment, and poor working conditions. Women without land in the countryside are often forced to work as seasonal, casual, and temporary laborers at lower wages than their male counterparts.

Whereas Pogge places moral responsibility for global poverty on the citizens of affluent countries that he usually does not name, Miller emphasizes

the specific responsibility of what he calls the American empire. He argues that people's lives across the world are significantly affected by domineering influence based in the United States. He contends that U.S. power in each dimension of domination is much greater worldwide than that of any other country, that international institutions and practices are largely molded by U.S. interests, and that the United States shapes the terms of life and overall course of development in many developing countries (2010, 133). Even decision-making at nominally multilateral organizations such as the IMF and the World Bank is routinely dominated by U.S. policymaking elites (2010, 134–35). The American empire is able to dominate partly because of its monetary prerogatives including the role of the dollar in the international system of finance and payments. In addition, people fear the vast economic and military power of the United States (2010, 121–28). Overall, the United States has disproportionate influence in setting the terms within which other actors operate and Miller asserts that the imperial role of the United States makes American patriotism a moral burden (2010, 7). The burden is even heavier if it also includes responsibility for producing the gender vulnerabilities that enable systematic gender exploitation.

### *C. The Responsibility of Some World Religions?*

Access to abortion is often taken as a proxy for the status of women. It is a crucial factor in women's control of their fertility, which in turn is indispensable for equality in all other areas of life. Many would argue that outlawing abortion violates the rights to life, liberty, and security of the person asserted in the Universal Declaration of Human Rights and incorporated into international conventions and many regional conventions (Jaggar 2009b). Abortion access is especially crucial for reducing maternal mortality.

Maternal mortality results from many factors, including poor healthcare services in less developed countries and limited access to the services that do exist. *WDR 2012* is certainly right to call for better institutions to deliver medical care and services to pregnant women and for greater access to contraception. However, *WDR 2012* nowhere mentions abortion, even though complications from unsafe abortion account for an estimated 13 percent of maternal deaths worldwide, mostly in the developing world (Editorial 2009). A 2012 report by scientists from the WHO in Geneva and the Guttmacher Institute in New York shows that in recent years the number of unsafe abortions has risen, ending what appeared to be a steady decline in abortion rates in the 1990s (Sedgh et al. 2012). Worldwide, half of all abortions



(49 percent up from 44 percent in 1995) are unsafe. Almost all abortions in Africa (97 percent) and Latin America (95 percent) are unsafe and 40 percent of those in Asia. Outlawing abortion has not deterred women from seeking abortion. In countries where abortion is legal, researchers found that it is safe, whereas abortion is dangerous in countries where it is illegal. In addition to the deaths directly attributable to unsafe abortions, criminalizing abortion means that countless unwanted births occur, which also result in high rates of death and injury especially among poor and very young women. Even though unsafe abortions are very dangerous, abortion is much safer than childbirth everywhere in the world; even in the United States, a woman who carries a pregnancy to term is ten times more likely to die than a woman who has an abortion (Dixon-Mueller and Dagg 2002, 47–48). Official statistics cannot reveal the number of deaths and injuries resulting from unwanted births that occur due to lack of abortion access because there exists no systematic data on which births were wanted and which were not. However, it seems safe to assume that the numbers must be substantial because, in situations where abortion is outlawed, it is unlikely that all those wishing to terminate their pregnancies are able to do so. Making safe abortion easily available is an indispensable tool for reducing maternal mortality.

Given *WDR 2012*'s interest in reform at the national level, one might expect that its recommendations for gender equality would emphasize the provision of safe abortion. Abortion laws vary widely worldwide and are generally thought to be a matter of state responsibility. Early-stage abortion is simple and cost effective and even the poorest governments could make it available easily and cheaply without any change in the larger global order. It is hard not to speculate that the striking omission of abortion from *2012 WDR* may have been influenced by powerful political and religious forces that derive most of their funding from sources external to less developed countries. Catholic and some Protestant Christian denominations, as well as some versions of Islam, frequently oppose the reform of laws governing sexual and reproductive health. From 1984 through 2009 (with an intermission during the Clinton administration) the global gag rule prevented U.S. aid from flowing to HIV/AIDS clinics, birth-control providers, and other organizations that even mentioned abortion to women with unplanned pregnancies. In 2012, Richard Horton, editor of *The Lancet* and chair of a working group on information and accountability of a commission on women's and children's health, reported being requested by American representatives to remove the word *abortion* from their final report (Bosely 2012). In this context, one wonders about the striking omission of any recommendations regarding abortion

access in *WDR 2012*. Much more investigation is required to learn how far abortion laws in various countries reflect the views of their citizenry, especially the women of those countries, and how much of the responsibility for them rests with external forces funding religious fundamentalism.

## 8. Conclusion

*WDR 2012* is a valuable document for feminist activists and philosophers. It highlights the moral as well as economic significance of gender, it documents serious gender disparities across the world, and it provides many excellent recommendations for addressing these disparities. Most of its recommendations, however, are directed to governments in developing countries. *WDR 2012* provides a long and ambitious list of policy priorities for national action but a relatively short and undemanding list of recommendations for action by the “international community,” whose main assigned responsibility is the provision of well-directed funding. *WDR 2012* states:

Domestic action is central to reducing inequalities. Global action—by governments, people and organizations in developed and developing countries, and by international institutions—cannot substitute for equitable and efficient domestic policies.

(2011, 36)

Although it asserts that primary responsibility for achieving gender equality belongs to national governments, *WDR 2012* says that “Globalization can help.”

In today’s globalized world, forces such as trade openness and the spread of cheaper information and communication technologies have the potential to reduce gender disparities by connecting women to markets and economic opportunities, reshaping attitudes and norms among women and men about gender relations, and encouraging countries to promote gender equality.

(2011, xxi)

Economic globalization is portrayed as providing a friendly context for the success of gender equality policies promoted mainly at the national level.

In the real world, however, the global context for gender equality is quite mixed: in some respects indeed it is friendly but in others it undermines the effectiveness of national policies for gender equality. In principle, it is hard to

fault *WDR 2012*'s desire for each country to take responsibility for its own development goals and strategies; in practice, however, it seems disingenuous for *WDR 2012* not to acknowledge that the sovereignty of most less developed countries is radically limited by their being economically integrated into a global system over which they have little control. Global gender equality requires more than reform of national laws and customs because many disparities are parts of transnational cycles of gendered vulnerability that are incorporated into global political-economic arrangements. *WDR 2012* does not acknowledge the ways in which gender disparities are shaped by macroeconomic institutions and policies directed by a few large players, among which the World Bank is one of the most influential. For almost seventy years, the World Bank, led always by a U.S. citizen, has played a leading role in shaping the global economy. Therefore, the bank must bear considerable moral responsibility for the predictable gender disparities resulting from many of its policies, to which feasible alternatives were and are available. Recommendations for institutional reform to end these disparities should address not only situations in particular countries but also transnational arrangements.

Political philosophers concerned about gender justice on a global scale need tools of critical analysis that reveal the gendered dimensions of transnational as well as national institutions and policies. The idea of transnational cycles of gendered vulnerability offers one methodological tool for investigating the complex causes of global gender disparities and making a fair and balanced assessment of the responsibility for addressing them.

## Notes

1. The fifty-seventh session of the U.N. Commission on the Status of Women, held in March 2013, condemned violence against women and girls in the strongest possible terms and produced a set of agreed conclusions for “The elimination and prevention of all forms of violence against women and girls” (UN Commission on the Status of Women 2013).
2. Sweet Honey in the Rock is an all-woman, African American a cappella singing group. See Reagon 1985.
3. In this article, I do not utilize the conception of political responsibility developed by Iris Marion Young (2007). Instead, I use “responsibility” in the more familiar sense of culpability, according to which agents are culpable when they participate in wrongful activities or arrangements, when they could and should know that these activities and arrangements are wrong, and when they have a feasible alternative to participation.

4. Sex work is one of the largest global industries. Going far beyond local prostitution, it includes large-scale migration for work in the sex and entertainment industries, sex tourism, a multibillion dollar pornography industry, and arguably “mail order brides.”
5. It is estimated that well over half of the urban jobs in Africa and Asia are informal, and a quarter of those in Latin America and the Caribbean. The share is higher for new jobs, with as many as 83 percent of new jobs in Latin America and 93 percent in Africa being informal (Charmes 1998 cited in Elson 2002, 94).
6. Guy Standing (2011) argues that this class of people could produce new instabilities in society. They are increasingly frustrated and dangerous because they have no voice, and hence they are vulnerable to the ideologies of extreme political parties.

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PART THREE

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# Promoting Development and Ensuring Agency





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# Agency and Intervention

HOW (NOT) TO FIGHT GLOBAL POVERTY

*Ann E. Cudd*

## 1. Introduction

Although it is evident that global poverty is horrific, in order to figure out how to fight global poverty, we need to clarify why global poverty is such a bad thing. We need to do this for at least two reasons that I will explore in this paper. First, we need to know why poverty is harmful to the poor in order to figure out how best to avoid those harms and how to benefit the poor in ways that matter most. In saying this I do not mean to imply that the only way for the poor to be benefited is to have others help them; indeed, I think that eradicating poverty takes many global efforts, many of which must be poor-initiated and poor-centered while other efforts will be mutually advantageous for all involved. Eradicating global poverty is a big project, and to enlist the enthusiasm of a critical mass of change agents, we need to have the sense that the strategies we choose are well targeted. Second, we need to know how global poverty affects the wealthy (or the non-poor) in order to know how to convince them to put forth positive efforts to eradicate poverty. Is it through moral argument alone? That is, are the wealthy only affected by their sympathy or guilt, their moral emotions directed to the poor?<sup>1</sup> Or are there also instrumental harms to the rich such that it can be shown to be in their enlightened self-interest to help others climb out of poverty?

Poverty deprives poor persons of many aspects of a good life: it deprives them of choices among ways of life and living, it deprives them of many

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I am grateful for helpful discussion of this paper at a session with the Philosophy Department at the University of Kansas, and for helpful comments I received from Cristian Dimitriu. This paper was presented at the conference on Poverty, Coercion, and Human Rights at Loyola University in Chicago, Illinois, April 12–13, 2012. I thank the audience for helpful feedback, and, particularly, Diana Meyers, the conference organizer.

aspects of material and emotional well-being, and it deprives them of the capabilities to function in ways that are meaningful to human beings. Each of these ways of describing the badness of poverty has its good points, but each is also subject to one or another objection, leading to a dilemma. The dilemma arises when we ask who is to decide on how these are to be defined and what are to be taken as the goods to be secured and the bads to be avoided.

Take the lack of choice as a problem. Extremely poor persons might say, "Just let me have two decent meals a day, a roof over my head, a reliable source of water, a latrine I can use, and primary school for my son; then I am satisfied." Such a person desires some definite outcomes, but not necessarily more choices. One might even suggest that the longing for choices is culturally constructed or even elitist. However, the choice theorist might respond that the poor person's sights are set too low by the conditions under which he or she lives; if this person had more choices, he or she would come to appreciate that freedom. Thus we have a dilemma for the choice theorist who wishes to fight poverty: either lack of choice is not bad because the poor do not conceive it as such, or the lack of choice is bad, but a longing for more choices must be imposed on the poor. In either case the choice theorist has difficulty determining how to proceed.

Now consider material or emotional well-being. In defining well-being we are likely to set standards that are not shared universally, such as demanding equality for women and girls. In response to such an objection, we might then be forced to lower standards to such a point that we think that this is not well-being at all, such as by allowing child labor not to count as a serious deprivation. Setting well-being standards seems to lead either to outcomes the poor do not want or to outcomes that the well-being theorist cannot endorse. The well-being theorist might respond that the poor will come to appreciate their greater well-being once it is supplied to them, even if they do not see it now as in their interest. However, many goods that constitute reasonable accounts of well-being turn out not to be wanted at all by some persons, and even less wanted when forced upon them. Take childhood vaccinations, for example. Even the capabilities approach suffers from this problem, since the way that capabilities are framed either sets a standard that some poor would not wish to meet, or else it allows too much to be mere aspirational capability and does not require an adequate level of functioning because the poor's standards are set by their circumscribed experiences. In short, describing the deprivations of poverty as a set of standards to achieve raises a familiar dilemma: either the standard of living that poverty alleviation must aim for is not recognizable by the poor as something that they want, or it is set too low because it is circumscribed by a stunted vision of what is possible.<sup>2</sup>

Debates about how the poor are robbed of autonomy by poverty have proceeded similarly. Conceptions of individual autonomy have given way to relational autonomy because of the concern that autonomy is too individualistic and not applicable to most people's lives, especially women's, disabled persons, or persons living in tightly bound communities. Two different types of relational autonomy are on offer, but each seems to instantiate one or the other horn of a dilemma. Substantive autonomy has been charged with elitism (Christman 2004; Westlund 2009, 27); procedural autonomy has been charged with allowing slavish desires and lives to count as autonomous (Oshana 2006, ch. 3).

In order to design strategies to alleviate poverty that appeal to the poor and lead to good outcomes, we will need to find a way to avoid the two horns of the dilemma. I propose to forge a path between the horns by focusing on how poverty deprives persons of the ability to exercise agency in order to describe something that no poor person could fail to want, and something that all can see must be preserved or developed in any person. Agency, in the sense of normative agency that I shall propose, as the target for poverty alleviation provides a moral and a pragmatic argument for the poor to engage in strategies that seek to develop and enhance agency, and a moral argument for the non-poor to engage in poverty alleviation strategies as well.

This moral argument is rather weak, however, and does not give the non-poor a specific duty or a reliable incentive to help the poor. I do not deny that there may be other moral arguments that do generate such duties (Pogge 2008; Brock 2009; Hassoun 2012), but I will not pursue arguments from strict duties to the poor here. Instead I shall demonstrate that there are prudential arguments for the non-poor to engage in poverty alleviation strategies that also build normative agency for the poor. In addition to harming the poor, poverty also instrumentally harms the non-poor. I shall argue that it does so in three ways. First, it deprives the non-poor of opportunities for mutually beneficial interaction, or makes those opportunities that do exist less beneficial than they might be. Second it causes unrest that affects everyone. Third, poverty has particularly bad effects for women, which affect the oppression of women everywhere. These facts make it plausible to enlist the aid of the non-poor in poverty alleviation for their own good. It will be objected that the benefits to the non-poor of keeping the poor from having equal economic power will outweigh those from alleviating poverty. Perhaps there are short-run advantages to keeping the poor in poverty. I will argue that this objection can be successfully countered, although it raises an important skeptical concern.

Some ways of fighting poverty are inadequate because they do not have the right aims, and so do not appeal to the poor in such a way that they

transform societies, nor the right way of enlisting the aid of the rich. But there are strategies that are currently being pursued that can succeed because they have the right aims for the poor and the right incentives for the non-poor, and these should be augmented. In this paper I will argue that engaging in free and fair trade with the poor, including through joint business ventures, is the best way to fight global poverty because it is the best way to build agency.

The paper proceeds as follows. In the next section I argue that global poverty is bad because it compromises the agency of the poor in a way that all can see is wrong and harmful. In section 3 I argue that interventions to aid the poor must engage their agency toward social transformation. I give examples of types of interventions that are contrary to or not helpful for building capacity for agency. Other types of intervention are more helpful, especially those that build profitable industry that serves local needs. In section 4 I argue that the non-poor have good, instrumental reasons to help the poor achieve normative agency in certain ways. In section 5 I argue that by engaging transnational corporations to partner with local workers and consumers, it is possible to build a spirit of mutual advantage and create longer term, mutually profitable interactions that engage the poor as agents of change.

## 2. How Does Poverty Harm the Poor?

In this paper I am primarily concerned with the extreme poverty that is common in the developing world or the Global South, and that is uncommon or nonexistent in the developed world or the Global North. To be clear on what this level of poverty is, we can look at what life is like for the various levels of poverty that the World Bank and the United Nations recognize.

Extreme poverty according to the UN is living on less than \$1.25 per day when corrected for purchasing power parity (PPP). Income in monetary terms does little to convey what this level of poverty means, however. The extremely poor person lacks enough food for sustained survival (only one meager meal per day), has no assets that can be traded or utilized to obtain food, and is entirely dependent on others for her and her children's continued existence. Extreme poverty means not having a home or even shelter that is considered acceptable in one's community. It means having no access to healthcare, and no ability to obtain education for oneself or one's children. In addition to the lack of food and assets, the poor describe the powerlessness that stems from dependency on others, and the helplessness to protect themselves from exploitation and abuse because of their dependence (Narayan

et al. 2000, 217). There are more than a billion people living in poverty this extreme, according to the UN count.<sup>3</sup>

At a slightly less extreme level of poverty (\$2 per day corrected for PPP), persons living in severe to moderate poverty can expect usually to be able to procure enough to eat two meals per day and have the most basic type of shelter considered adequate in their community. But their lives are marked by constant, dangerous, or degrading work that does not allow them to invest in their own or their children's education in hopes of a better future. They lack the healthcare necessary for vitality for themselves and their children. If they are women they are likely to be victims of violent abuse from their husbands.<sup>4</sup> They suffer shame and humiliation when among people who are better off in their communities. They have little voice and less power in the collective governance of their communities. There are approximately three billion people living at either extreme or severe levels of poverty (Werhane et al. 2009, 7).

At extreme and severe levels of poverty, people struggle to meet even their most basic needs and wants, and all their energy, which is much diminished by malnutrition and lack of medical care, is diverted to that effort. Hence they cannot pursue education or invest in other forms of human capital to make their lives go differently. If they have enough energy to envision a better life at all, they cannot hope to pursue a means to bring it about. Thus, they lack the basic moral power that Rawls recognized: to form, revise, and pursue a conception of the good. Furthermore, they are unable to have a sense of dignity and "walk without shame."<sup>5</sup> The extremely poor are often excluded from or unable to participate in community life and unable to uphold the social norms of their communities.<sup>6</sup>

Now that we have a description of different levels of global poverty, we can explore why it is bad. Earlier I suggested that setting a standard for achievement of choice, well-being, or capability in order to say what is wrong with poverty poses a dilemma. Either the poor will not agree with the standard, or the standard will not meet reasonable criteria for achievement of a good life.<sup>7</sup>

I do not intend to dwell on either these standards-based ways of showing what is wrong with global poverty or on the view that poverty robs the poor of autonomy. Rather, I will argue that there is a kind of basic harm that the lack of these things, whatever they are, brings with them. Amartya Sen recognizes that persons have two aspects that need to be considered in constructing policies or theory: an agency aspect and a well-being aspect. The well-being aspect consists, roughly speaking, of the things that make a life objectively go well for a person. It is what the standards-based approaches are trying to capture, and that is important. But as we have seen, it is difficult to come to agreement on just what is required for another person's life to go well. Extreme or severe

poverty not only robs the person of well-being but it also robs the poor of the sense of agency that is morally and pragmatically the most basic attribute of moral persons. Agency is what sets us apart from robots or other nonhuman sentient creatures, and makes any sense of autonomy possible. By looking at agency, rather than choices, well-being, or capabilities, I argue that we can find a common aim that avoids the dilemma and can guide poverty alleviation strategies.<sup>8</sup>

What do I mean by agency? Michael Bratman's account of agency emphasizes three core elements that characterize human agency: reflecting on an end, constructing and following a plan to achieve the end, and seeing our plans as temporal extensions of our purposiveness. This makes us different from and morally more significant than nonhuman creatures that are also purposive but do not display agency because they do not display these three core features. As Bratman writes, "We are purposive agents; but we—adult humans in a broadly modern world—are more than that. We are reflective about our motivation. We form prior plans and policies that organize our activity over time. And we see ourselves as agents who persist over time and who begin, develop, and then complete temporally extended activities and projects" (Bratman 2000, 35). This account of agency requires higher levels of capabilities than are available to some human beings, as Bratman (unintentionally) suggests with his qualification that this applies to "adult humans in a broadly modern world." On this account of agency, it is necessary not only to have intact and relatively unimpaired mental and some physical capacities, some basic material needs must also be met. First, one has to have the opportunity to consider various possible courses of action, not just be forced to react to the availability of immediate sustenance. Second, one has to have the opportunity to consider oneself as extended over time, and not as precariously living from moment to moment. But extreme or severe poverty consists in not having several options for sustenance, and in a life of continuous insecurity, which would prevent seeing oneself as planning and executing projects over time. In such conditions persons are not able to plan or choose but rather merely react to immediate circumstance. Thus the extremely and severely poor are likely not to have agency on this account.

This standard for agency can be criticized in this context as too individualistic, as well as setting too high a standard of individual planning and reflection. A person in a traditional community may have motivations that are communally set and unquestioned, but intuitively attuned to social feedback by one's community. She acts on the basis of behavioral guides that are constructed over time, following the feedback of approval or disapproval, sometimes through subtle signals and sometimes through overt praise or con-

demnation she feels from her fellows. She likewise guides her fellows through her gestures of approval and disapproval of their action, which she generates when she judges that some community value, norm, or collective desire has been upheld or violated. Such a person would seem to have a kind of agency that is quite different from the purposiveness of nonhuman animals, involving purposiveness, to be sure, but not the reflective planning or projection of one's individual self through time. While Bratman's standard may appeal to us as philosophers and captains of our own destiny, it sets too individualistic a standard as an aim for global poverty reduction or as an account of what is wrong with severe poverty.

A less stringent account of agency, endorsed by Sen, defines an agent as "someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well" (Sen 1999, 18). This standard for agency requires less in the way of reflection and planning, but still requires that the agent have *her own* values and objectives.<sup>9</sup> Agency on this view also involves three discrete elements: formulating an end, acting on or pursuing that end, and evaluating the achievements of the action in light of the agent's values and objectives. The extremely poor may only be able to formulate their ends and means in the most rudimentary ways because they lack options, strength, and knowledge to do so. Furthermore, their values and objectives are severely constrained by their experiences, since they have little time or energy to consider what they value. On this account of agency we would have to say that the extremely or severely poor display a rudimentary form of human agency. But by excluding consideration of external criteria for values and objectives,<sup>10</sup> this account of agency is still too individualistic to settle on as a universal criterion for agency.

Let us look again at how the poor articulate what is bad about their situation. In the landmark study titled *Voices of the Poor*, in which very poor<sup>11</sup> persons throughout the world were asked to describe their own circumstances, Deepa Narayan summarizes their descriptions of poverty as follows:

Poverty is the lack of multiple resources leading to physical deprivation. [P]oor people's definitions reveal important psychological aspects of poverty. Poor people are acutely aware of their lack of voice, power, and independence, which subject them to exploitation. Their poverty also leaves them vulnerable to rudeness, humiliation, and inhumane treatment by both private and public agents of the state from whom they seek help. Poor people also speak about the pain brought about by

their unavoidable violation of social norms and their inability to maintain cultural identity through participating in traditions, festivals, and rituals. Their inability to fully participate in community life leads to a breakdown of social relations.

(Narayan et al. 2000, 26)

There are three kinds of complaints by the poor about their poverty. First they complain about the *basic lack* of food or shelter or medicine itself, as well as the lack of other assets and infrastructure. Second, they complain about the *dependency* on others to procure, whether by trading or earning, the right to food security, shelter, and medical care for themselves and others. Third, they complain about the *social stigma*, lack of dignity, and shame that come with this inability. In characterizing agency as requiring the ability to conceive of ends and means to achieve them, the first two kinds of deprivation reveal how agency in this sense is compromised by severe poverty, namely by being unable to formulate ends beyond immediate need and being unable to employ the means to achieve ends. The third complaint is a different but equally important way in which poverty stunts or even removes their agency, however. Because of their poverty, they “unavoidabl[y]” violate the norms of their community and as a result suffer shame and humiliation. They are judged by norms of their community without being able to choose to act in accordance with them.<sup>12</sup> Furthermore, in being unable to have a voice in that community, they also play no role in the collective shaping or maintaining of social norms. This reveals, I think, an important aspect of human agency neglected by the two accounts we have considered,<sup>13</sup> namely the ability to be part of the creation and maintenance of social norms, and to hold oneself and others to account for those norms. Extreme poverty, we could say, prevents one from being a *normal* member of a human community.

In this alternative picture of agency, which I will call “normative agency,” to be an agent is to act responsively in a normative framework. Normative agency can subsume Bratman’s more individualistic picture of agency as one type of agency, while also accommodating a type of agency that fits individuals within collectivist or traditional ways of life. Formulating one’s conception of the good is one kind of response to a normative framework. Thus, the standard picture of agency, as involving reflection on an end and planning one’s actions in light of it, which I call “autonomy-agency,” is one type of normative agency. Another way to act responsively in a normative framework is to act within normative constraints that one has internalized, but that one may not be consciously attending to, let alone reflecting on. I call this sense of



agency “identity-agency,” because it is behavior guided by communal norms that ascribe a social identity to a person. On this theory of normative agency, what makes behavior count as an expression of human agency is the fact that it is norm governed, though the norms need not be intentionally acted upon. The basic core of agency is to act within a web of social norms that one takes oneself to be responding to and maintaining. The person from a traditional culture, whose behavior is guided by the norms of that culture and who participates in the maintenance of those norms, is a normative agent on this view even if she or he does not consciously reflect on her or his plans, intentions, or individual selves.

We can still see this as a unique and special feature of our human nature. Where Bratman writes, “our reflectiveness, our planfulness, and our conception of our agency as temporally extended are also, taken together, prime candidates for inclusion in that which is special about human agency” (Bratman 2000, 61), we can say of normative agency, “our ability to guide our actions by social norms and to contribute to their maintenance through holding ourselves and others to account for them are also, taken together, prime candidates for inclusion in that which is special about human agency.” This is not to say that autonomous agency is not desirable—it clearly is—but that there is an even deeper and more basic core to human agency. To be autonomous requires an ability to question and reflect on a normative framework, but one must therefore first be able to be guided by norms.

The “voices of the poor” reveal that poverty<sup>14</sup> compromises a sense of agency that they see as valuable to them. Because that sense of agency is the core of agency of which autonomy-agency is a further development, it has universal value as well. Thus, extreme poverty can be universally agreed upon as bad insofar as it compromises agency, and in this way it avoids the standard-setting dilemma. Because extreme poverty compromises agency, it also compromises the ability of the poor to bring about change without external resources from the non-poor. Yet how these external resources are offered matters greatly to whether they actually assist the poor in building normative agency.

### 3. How Not to Intervene

The extremely poor need greater capabilities and opportunities, and are unlikely to achieve these without external intervention;<sup>15</sup> else they would not remain in poverty for extended periods. But there are many different ways that the non-poor can intervene, and many different kinds of non-poor agents who can intervene. In section 2 I argued that the extremely poor lack normative

agency, and that building such agency is important for them to change their lives and escape poverty, but they cannot do it alone. The problem is that no one outside their communities can build their agency for them. Normative agency requires that they create and maintain their own social norms; having others' norms thrust on them is antithetical to that project. The trick for interveners is to enable, to intervene indirectly, so that the poor who are marginalized in their own communities adopt their own norms that are sustainable for them. In this section I will argue that interventions that empower and build agency are "neither beneficent gifts nor impositions" (Alkire 2002, 149, citing Ellerman 2006) since both compromise rather than build agency.

David Ellerman, a former World Bank economist, argues that World Bank development projects have largely failed in the past because they have been motivated by the wrong theory of agency or motivation. He distinguishes internal motivation, which comes from intrinsically valuing the end that the action seeks, from external motivation, which comes from merely instrumentally valuing the end (Ellerman 2006, ch. 2). External motivations are incentives or penalties—carrots and sticks—that are offered by an external will to the agent to change his or her behavior. Internal motivations arise from the agent's own desires for the behavioral change. Ellerman argues that externally motivated behavior is either coercive (if it seeks to avoid a penalty) or likely to be rent-seeking (if it seeks a reward). In either case it is unlikely to be a permanent behavior change; as soon as the external motivations—the carrots or sticks—are removed, the old behaviors will resume.

Development assistance has typically taken the form either of gifts, such as disaster relief aid, or of aid that is subject to stringent conditions imposed by the Bank. Gift or disaster relief-type aid has no strings attached, but is typically given to satisfy the desires of the giver, which might not match the priorities of the poor.<sup>16</sup> The result has been that the beneficiaries attempt to look needy in the right ways so that the aid continues to flow. Thus, the beneficiary lacks incentive from such assistance to become independent and not in need of aid. To avoid this sort of learned helplessness response on the part of poor nations, the Bank resorted to placing conditions on its aid. The Bank and the International Monetary Fund (IMF) for continuing aid or loans, for example, have demanded structural adjustment policies. Ellerman argues that because these policies come about as coercive impositions on poor nations rather than as a result of internal deliberation and commitment, they create resistance, and the poor seek to work around the changes in whatever ways possible, thwarting whatever good effects the changes might have had if they had been internally generated and embraced by the population.<sup>17</sup>

In addition to these volitional problems with the development assistance that has been practiced by the Bank, there are parallel cognitive problems with gift aid and with aid that imposes conditions. Neither type of assistance allows the client nations to discover for themselves what type of society or economy they want or would be likely to work for their nations. The nations are not able to develop their own methods of discovery and knowledge production. Hence when they face a new problem, they are not able to figure out how to solve it.

Ellerman summarizes these lessons in the form of three “do’s,” the first two of which follow from the cognitive problems he identifies, and two “don’ts” that follow from the volitional ones (Ellerman 2006, ch. 5):

1. Do: Start from present institutions.

Transformative change in a society has to evolve organically from what already exists, and not from some imagined clean slate. People understand the institutions they already have and how they got there, and changes that begin from what exists will be changes that they can see reasons for.

2. Do: See the world from the client’s eyes.

If the intervention is to make sense to the client, it has to be conceptualized in the client’s terms, values, and worldview.

3. Don’t: Try to *impose* social transformation.

This is just the point that imposed conditions do not work to create lasting changes.

4. Don’t: Try to induce transformation through gifts.

This is just the point that gifts create helplessness and more need rather than independence.

5. Do: Respect the autonomy of doers (i.e., the poor clients).

Ellerman argues that only autonomous changes, that come from the authentic desires, knowledge, and understanding of the client, will be transformative.

It follows from Ellerman’s arguments that charitable aid that pursues projects designed by outsiders is not typically very helpful.<sup>18</sup> Food aid is a good

example of this claim. Although it is tempting for a sympathetic agency or Non-governmental Organization (NGO) to provide food aid when people are starving or suffering serious malnutrition, doing so robs the poor of opportunity to build capacity for agency. Perhaps even worse, food aid is likely to thwart the ability of local farmers to sell their goods, and hence it may create more severely poor persons than there were before the food aid. The point can be generalized to other types of in-kind assistance; giving assistance of any type other than simply money will crowd out local ways to provide that in-kind good or service, creating even greater need for outside aid. It will also lower demand for other goods that are substitutes for the provided good. This replaces local desires with the desires of the donor. If any charitable aid is to be given, it should be monetary aid (or emergency medical aid, such as that provided by *Médecins sans Frontières*), since that will not distort desires. But such aid will, as Ellerman has argued, have volitional effects that lead to learned helplessness, and the cognitive effect that indigent problem solving is not being developed.

If gifts and aid tied to conditions do not work, then what kind of development assistance will work? Ellerman distinguishes two types of aid approaches: direct and indirect. The direct approaches are the ones just named, gifts and conditionalized aid; they are direct because they aim at an end that the development agency articulates and presumes will be shared by the client. The indirect approach attempts to find the motivations that the clients already have and begin from there to find ways to build capacity for change. “The indirect approach to helping is not to supply motivation to the doers but to find and to start with existing own motivation of the doers and to supply help on that basis” (Ellerman 2006, 11). How can this be operationalized? One suggestion he makes is to have donors provide an “envelope” of funds to a group of needy nations, who devise their own projects and then decide together which projects to fund at what levels. This forces the needy nations, the “doers” in Ellerman’s terms, to develop their own ideas about what they need and how to achieve it, and avoids the problems with coercive imposition of conditions on aid.<sup>19</sup> But in order to avoid the problems of gift aid, Ellerman proposes that the doers should be investing more of their own funds than the amount of aid given, so that the doers are not simply generating projects that please the helpers.

Ellerman’s arguments about how not to conduct development assistance seem sound to me, and are consistent with my theory of normative agency as the core value that is to be served. But his positive suggestions are somewhat less convincing. There are two problems with them. First, it is not clear that

there is a way to conduct development assistance without either making a gift or imposing conditions on aid. The suggested method of providing an envelope of funds is, after all, a form of gift. It is therefore likely to create the need to appear needy on the part of the poor. If it is responded that the other nations who help to decide on the allocation of funds prevent them from being gamed in the way that gifts can be, then the other doers are posing conditions. Ellerman seems to agree; in his conclusion he suggests that development assistance should be reduced drastically and be done more regionally than globally, so that the conditions set on aid are at least being set by persons much closer to the doers and so, presumably, with similar values and world-views. Second, it is not clear what incentives there are to helpers to provide aid for which there are no conditions that the helpers approve of and the doers can show that they meet. This problem is particularly acute when the internal values of the doers are in conflict with those of the helpers. For example, if the doers uphold traditional gender inequalities in the use of funds, then that will be difficult to justify to those providing the funds (e.g., taxpayers in Western democracies). In order to motivate more of the non-poor to work with the poor to alleviate poverty, the non-poor have to be convinced that there is a moral reason or an instrumental reason for them to act. As we shall see, there are forms of intervention in global poverty that both give the non-poor reasons to act and help the poor to develop normative agency.

#### 4. Instrumental Harms of Poverty to the Non-poor

Although poverty obviously harms the poor more than the non-poor, there are several ways in which global poverty harms the non-poor and provides them with incentives to eradicate it. The main way in which global poverty harms the non-poor is that it deprives them of opportunities for interaction for mutual advantage. Another important way that global poverty harms the non-poor is that poverty creates unrest and resentment against the wealthy and globally dominant societies. Among the globally poor, women are even worse off and suffer from high rates of domestic violence and traditional social norms that keep them in subjection. This harms women everywhere by maintaining images of women as powerless victims (Cudd 1990). Each of these ways in which the non-poor are harmed gives them reasons to fight poverty and its causes. But it will be objected that there are benefits to the non-poor in retaining their unequal advantage over the poor. I shall argue that this benefit is minimal at best and is vastly outweighed by the advantages of eradicating poverty.

The existence of a mass of humanity who merely survives without the requirements for normative agency is a great harm to everyone, including the non-poor who are not directly affected by poverty. I will make this argument in the simple, instrumental terms of economic growth, though I believe that sympathy leads most of us to feel psychological pain at the sight of masses of poor men, women, and children. The economic argument is this: every healthy adult human, given the technology of industrial society and basic education, is capable of producing more material goods than are necessary to sustain himself and his children. Let us call this the surplus value assumption. With opportunities to freely and fairly trade,<sup>20</sup> persons can raise their level of material well-being by trading their surplus with others for goods they prefer. Let us call this the free and fair trade assumption. Severely impoverished persons, by definition, are not capable of producing enough material goods for themselves and their families. This is because they lack the basic education and access to industrial technology (or other productive technology) that makes surplus value possible. Therefore, if severely impoverished persons were healthy and provided with the technology of industrial society and basic education, they would produce more than necessary for their survival by the surplus value assumption. And given the free and fair trade assumption, the previously severely impoverished persons would trade with others that have surplus for goods that both persons prefer. Since some of the traders are bound to be the non-poor, they stand to gain from the alleviation of poverty of the poor. Hence there are instrumental gains to be realized by the non-poor from the alleviation of severe poverty.

Notice that this argument does rely on a particular assumption about how severe poverty is to be eradicated, namely through the work of the poor, given access to technology and education and the ability to freely and fairly trade. How this access comes about is important for achieving the aim of building normative agency for the poor, as I shall argue in the next section. Generally, however, I assume that just as among the non-poor the investment in industrial technology and education leads to the creation of surplus value, so it would among the poor.<sup>21</sup> And the assumption of free and fair trade has implications for the conditions under which global commerce should be conducted, as I shall argue.

Although the causes of war and social unrest are many and complicated, there is a clear correlation between extreme poverty and regional wars and terrorism, as well as between economic inequality and social unrest (Brainard, Chollet, and LaFleur 2007). The perceived need to intervene militarily in foreign nations to prevent terrorism and restore peace costs the United States

immensely in terms of treasure, soldier mortality and its effects on families and communities, as well as political distractions from more productive projects.

Gender inequality also is correlated with extreme poverty and affects women everywhere. The UN Development Program offers several ways to create indices for measuring poverty, development, and gender equality and empowerment. The two that are most useful for understanding my claim are the human development index (HDI), which “measures the average achievements in a country in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living,” and the gender inequality index (GII), which “reflects women’s disadvantage in three dimensions—reproductive health, empowerment and the labour market—for as many countries as data of reasonable quality allow. The index shows the loss in human development due to inequality between female and male achievements in these dimensions.”<sup>22</sup> According to these indices, gender inequality and human development are roughly correlated. The only country that ranks low on GII (135) and relatively high on HDI (56) is Saudi Arabia, while the two best countries in the lowest ranking group on HDI (142 through 173) are Myanmar with a GII ranking of only 96 and Rwanda at 82; all the rest are worse than 100. There are no doubt many complicated causal factors, but the correlation between gender inequality and poverty reflects the fact that poverty prevents persons from exercising the autonomous agency that is necessary for bringing about changes in traditional social norms. Of course, no country scores a perfect 0 for equality between men and women; Sweden is tops at 0.49.

Impoverished women are also at higher risk of gender-based violence. In Darfur, where Fur women have had to flee conflict situations and gather in refugee camps, they suffer from rape in astonishing numbers.<sup>23</sup> But violence against women is not limited to women in impoverished conditions due to conflict situations. Amnesty International’s report on violence against women explains that while women at all income levels can be subjected to domestic violence, poor women are especially vulnerable and suffer in greater numbers because of the multiple ways that they lack power in their communities and homes (Amnesty International 2004, 40). Again, traditional social norms often permit or normalize the violence against women, which is seen as the proper way for men to maintain dominance in their families. Studies of microcredit programs to empower impoverished women cite reducing violence against women as a prime reason for engaging in supporting these efforts (Kabeer 2000; Ahmed 2008).

The fact that perfect gender equality exists nowhere has implications for the effect of serious inequality for women anywhere. These inequalities reinforce

the social construction of gender as a group, and in particular, an oppressed group. As such, women are seen as victims, and are treated as members of a group that is victimized sexually, economically, and politically. This victim status that women suffer from affects their opportunity set even in wealthy nations, and this costs women directly, but it also costs men because women are not as fully productive as they would be without bearing this burden. Of course it is hard to say how much harm this does, and surely there are some who benefit from the victimization of women. But it cannot be denied that overall productivity suffers in a wide variety of dimensions—material, epistemological, and political.

From a purely welfare maximizing perspective, one may object that there are at least short-run advantages to the non-poor for keeping the poor in poverty. First, there may be gains from employing the poor as low-cost labor. I have two responses to this. One is that economic theory suggests (and some empirical evidence confirms) these are in the short run only, since the cost of labor tends to rise as an economy moves from rural subsistence to more urban industrial work. China is a good example of this, as labor costs have been rising at double-digit rates.<sup>24</sup> Furthermore, there are winners and losers in non-poor countries from low labor costs in other countries. While consumers and employers tend to win, laborers who suffer unemployment as a result tend to lose, if only in the short run. My second response to this is that eradicating extreme poverty can only be a positive for the non-poor, since the extremely poor are not even fit to be workers in the global economy. The extremely poor do not produce anything of value for the non-poor, so eradicating extreme poverty cannot be any loss for the non-poor. The poorest countries of Africa, for example, do not export much to rich countries.

One may object that the non-poor benefit from unfair terms of trade that they can sustain through their better bargaining power from their wealth. Evidence for this claim is that wealthy nations do indeed force unfavorable terms of trade on poorer nations, such as by subsidizing agriculture or imposing import duties on textiles. Although nothing is gained through trade by keeping the extremely poor in poverty, in very poor nations there are still some wealthier trading partners from whom those in wealthy nations can gain through unfair terms of trade. Unfair terms of trade, especially agricultural subsidies by wealthy countries, are significant obstacles to eradicating global poverty. There are mainly political reasons for maintaining these subsidies, namely powerful agricultural and other commercial interests in wealthy countries that influence local and national elections. But again there are winners and losers from these subsidies, and economic theory suggests that they cause



overall welfare losses for those countries that erect barriers to trade or subsidize their industries. While temporary subsidies in developing countries for industries that these countries are trying to grow to be globally competitive have proven to be effective (Greene 2008), long-term protection of an industry or sector cannot be conducive to overall welfare in a country. Wealthy nations need the political will to lower the barriers to trade for their own collective good. Wealthy nations are benefited by relations with roughly equal trading partners much more than by their relations with unequal ones. Trade volume, which is a proxy for collective instrumental benefits, for wealthy countries with other wealthy countries is much higher than that with poor countries.<sup>25</sup>

Finally, one might argue that men gain from gender inequalities, and that they would therefore gain from the gender inequality in their society that is generated by the greater gender inequality in impoverished ones. I am not sure that I should dignify this potential objection with a response, but I will offer two reasons for discounting it. First, note that losses to women indirectly transmit losses to men, since men and women live together in families. As children, boys will suffer from the inequalities their mothers suffer, and as husbands and fathers, they suffer from their womenfolk's inequality in the greater society, if not from that within the family. More in line with my main theme in this section, I maintain that men are benefited by having equal partners to interact with than they are by having partners who are unable to fulfill their material, emotional, or psychological potential because of sexism.<sup>26</sup>

The arguments I have made in this section focus on instrumental benefits to the non-poor from the eradication of extreme poverty, which come about as a result of interactions that are mutually advantageous. The non-poor are not benefited by the extremely poor who cannot trade with them, work for or with them, maintain security within their nations, or allow their women to become more equal partners in their societies. The conclusion I draw from arguments in this section is that the non-poor can instrumentally benefit from fighting poverty if it creates opportunities for mutual advantage, reduces armed conflict, and improves gender equality.

## 5. Poverty Alleviation Strategies that Build Agency

I argued in section 2 that the normative agency of the poor is at stake, and this provides a moral reason, but only a weak, imperfect duty for the non-poor to act. In section 4 I argued that the non-poor could instrumentally benefit from fighting poverty if it creates opportunities for mutual advantage, reduces armed conflict, and improves gender equality. In this section I will argue that

successful strategies for alleviating poverty can take two forms. Some are generated by the poor themselves, as argued by Ellerman, funded in part by benevolent donors acting on the imperfect duty to aid. Another source of empowerment, however, is from projects that are mutually advantageous and generated by market forces that exploit the productive capacities and meet demands that already exist in poor communities.

One of the most important poverty alleviation strategies is the development of microcredit organizations that lend to poor women. There are different models, but the most famous of these is the Grameen Bank, founded by Muhammad Yunus (2007, esp. ch. 3). The Grameen Bank is now self-funded, even profitable, and makes small loans to very poor women who have no credit history or assets to use as collateral. The women work together in small cooperative units to ensure that each repays her loans, and each member vows to try to adhere to “16 Decisions,” which serve as an explicit set of transformative, aspirational social norms and were developed internally by the poor themselves (Yunus 2007, 59).<sup>27</sup> The loan repayment rates are extremely high by conventional standards, and the bank has become financially successful, even declaring dividends from its profits. Women use the loans to start very small enterprises, such as building bamboo stools or making food to sell on the street, or to improve their dwellings or pay for emergency expenses. The bank began a different kind of loan program for beggars, who would be classified as extremely poor, aimed at raising their income and helping them to transition to selling rather than begging, thus allowing them greater dignity in their communities.

The Grameen experiment has been replicated in other places where there are poor persons. Although there are critics who suggest that Yunus oversells the degree to which women are empowered by the bank (Ackerly 1995; Goetz and Gupta 1996), it has been successful as one part of a solution to global poverty. Grameen adheres to Ellerman’s do’s and don’ts by beginning with the worldview of the poor and their local institutions, by not offering gifts and by respecting the autonomy of the poor. The 16 Decisions could be seen as impositions, but they are local norms, not conditions for the loans; the only condition to continue receiving loans is that the money is paid back on time. The 16 Decisions instead provide an explicit normative framework that the poor can use to guide and build normative agency.

In a study of microcredit projects in Bangladesh, Naila Kabeer made two important observations for my purposes about ways in which the poor loanees were empowered by their participation.<sup>28</sup> First she notes, “Greater social inclusion was another impact which was highlighted in the testimonies of

poorer loanees, male as well as female” (Kabeer 2000, 72). Because of the loans and their ensuing opportunities, these poor persons were able to participate without shame in their local communities. But she also notes that as the women became somewhat less poor, they sometimes made use of their new freedom to adhere more strongly to gendered norms of seclusion. “The paradox is that in many cases, [more opportunity] leads women to opt for some form of *purdah* if they can afford to, both to signal their social standing within the community and to differentiate themselves from those women who do not have this choice” (Kabeer 2000, 71). In overcoming extreme poverty and choosing *purdah*, these women are expressing their normative agency, although in a way that is less likely to develop into full autonomous agency. Microcredit lending is an important self-helping strategy for the poor to alleviate their own poverty. As a self-help strategy it need not appeal to outside institutions, yet it still can be seen as a valuable way to build specific identity-agency. However, while microcredit can assist some people to escape severe poverty, it does not seem to facilitate larger social transformations.

The arguments presented in this paper suggest that the non-poor can best assist the poor by engaging with them in mutually advantageous interactions that are chosen by both the poor and the non-poor. Such interactions must allow the poor to develop their normative agency and provide the instrumental benefits for the non-poor discussed in section 4. Commerce that meets the consumption and employment desires of the poor and the non-poor fits this bill in two ways. Transnational firms employ poor workers for local or First World consumption, which can provide income for individuals and for their nations. Transnational firms or local firms also develop products for consumption by the poor themselves. Both of these efforts require local knowledge and run serious moral risks (Werhane et al. 2009, ch. 6), but because they are chosen, not imposed, interactions, they stand the best chance at empowering the poor to build agency and help themselves.

When transnational firms employ local workers, they raise the local wages and enable social transformations, particularly of gender roles. Such employment is a way out of severe poverty. However, transnational employment runs the risk of unjust exploitative, coercive conditions, and they may also fail to help develop higher order labor skills that enable economic transformation. Nike is an example of a firm that has contracted with sweatshops in developing countries, and because of widespread criticism has engaged in many reforms with success in some places and less success in others (Locke and Romis 2007; Locke, Qin, and Brause 2006). Under pressure for sweatshop conditions in the factories they contracted with in the 1990s, Nike drew up a

code of conduct for the factories it contracts with, requiring decent wages and hours (by local standards), safer working conditions, and management practices. Nike now employs compliance auditors around the world to regularly audit and inspect. However, this system is not perfect, and some abuses escape notice (Bloomberg Businessweek 2006). The origin of the abuses is often local; because of the great inequality in wealth between the wealthy West and the poor developing country, it is so profitable to run a factory that contracts with a transnational firm like Nike. But that profitability depends on keeping wages as low and productivity as high as possible, which leads to managers trying to lower the wages and increase the speed of work as much as possible. Some now argue that a better way to improve the productivity and conditions at factories is to encourage more cooperative, worker-centered management that allows input from workers about the production process (Locke and Romis 2007). This is happening in some places with good results for both workers and management, and if it were to spread more broadly through transnational firms, it would be a strong argument for the effectiveness of a more enlightened global capitalism to eradicate severe poverty (Cudd and Holmstrom 2011).

The last and potentially most transformative and empowering poverty alleviation strategy is the development of commercial enterprise by the poor themselves, in partnership with profitable local or transnational firms. This happens when the firms develop with the poor a business plan to meet the consumption needs of the poor and to decide with them how to solve the existing local problems that have posed obstacles in the past. So, for example, Cemex is a cement company in Mexico that recognized a need among the very poor for cement floors in their dwellings. Of course the poor had dirt floors because they could not afford permanent manufactured ones. So Cemex developed a loan plan in discussion with the potential consumers and offered free training, to cooperate with each other to collectively finance and build their floors (Werhane et al. 2009, ch. 5). This is a successful and profitable venture, which simply required business innovations that aimed at helping the poor leverage their resources, and created mutual advantage for producers and consumers.

There are four reasons that I believe commercial partnerships with the poor are the most transformative and empowering poverty alleviation strategies. First, such partnerships have to fill real, felt needs of the poor if they are to be profitable at all. Filling needs that the poor see themselves as having is the whole point. This avoids the cognitive and volitional problems with development aid strategies that I discussed in section 3. Although I agree

with Ellerman that there is some room for development assistance to do some good in developing agency for the poor, mutual advantage through commerce avoids the whole framework of doers/helpers and that dichotomy is erased or changed when people are in business together.

Second, by engaging in dialogue with the poor about their needs, the poor receive recognition for their community knowledge and social norms. This builds their identity-agency. Third, by engaging the poor in reflection and dialogue about what they want and how best to achieve it, their capacity for autonomous agency is also augmented. Finally, established firms, particularly transnational corporations, have the resources and scale to make significant changes more quickly than microcredit loans and their resulting commerce.

There are obstacles to the development of commercial partnerships in poor countries. Corruption is a major problem that makes starting a business slow and less profitable in developing countries. Financing is another problem, of course, since the poor lack the resources and banks are unlikely to loan to them. But many believe that businesses need to find new markets among the poor if they are to remain profitable in the long term, and hence they should be willing to invest their own funds in these opportunities. Perhaps the biggest problem, though, is one of imagination and innovation. How can commerce feasibly solve problems of the poor? There is no recipe for doing so, but ideas and solutions are likely to come from those who are struggling with and understand the problems in terms that their fellows also understand. If they are presented with opportunities to partner with someone who will also profit by finding a solution, their need for goods and for building normative agency can be jointly satisfied.

## 6. Conclusion

I have argued that normative agency is the basic core of agency and a universal value that is also subjectively valued by the poor. Normative agency is compromised by extreme and severe poverty, particularly for those poor on the margins of their communities, who are judged by social norms that they cannot choose to adhere to. This lack of dignity and inability to be normal members of a community are among the primary ways poverty harms poor persons. Hence building the capacity for normative agency is a fundamental goal of poverty alleviation that avoids any standard setting dilemma.

I have also argued that poverty prevents opportunities for mutual advantage for poor and non-poor alike. The poor lack the technology, skills, education,

and opportunities necessary to provide a decent standard of living for themselves in their own terms, but also to produce a surplus for trade with non-poor others so that both may be benefited. Development aid, whether gifts or conditionalized loans and grants, and charitable aid over the past half century have done little to transform poor nations or build agency among the poor. Indeed, many argue that such aid has only harmed the poor. Instead, the non-poor should reduce barriers to trade from poor nations, and should develop commercial ventures that not only employ the poor but also meet their consumption demands.

Finally, I argued that engaging in commerce that is free, fair, and looks to long-run mutual advantage is the best strategy for fighting poverty, both because it has the right aims and because it is a viable strategy from the perspective of the rich. From the perspective of the poor, these are also the best strategies because they build agency, respect, and local capacity for autonomy.

## Notes

1. This argument has been made, beginning with the very influential paper by Singer 1972. Unfortunately, as influential as it has been with philosophers, it has not been effective in bringing about change.
2. A similar dilemma is the dilemma of empowerment, which is that empowerment assistance must either take the agent's ends as they are even if they are for what may be disempowering, or it is paternalistic, a stance that is itself disempowering (Drydyk 2008, 240). Another version of the dilemma is discussed as it arises in informed consent in medicine in Alkire (2002). Yet another version in the context of development assistance is discussed by Ellerman (2006, 103).
3. "Eradicate Extreme Hunger and Poverty: Where Do We Stand?" [http://www.undp.org/content/undp/en/home/mdgoverview/mdg\\_goals/mdg1](http://www.undp.org/content/undp/en/home/mdgoverview/mdg_goals/mdg1). Accessed March 1, 2014. The UN estimates the number of persons living on \$1.25 per day PPP, but the description is derived from the study in note 1 above. For my purposes, it is not important to come up with an exact number, but merely to say that it is very large.
4. Although domestic violence happens at all income levels, it is especially common in conditions of severe poverty (Ahmed 2008, 130; Kabeer 2000).
5. Amartya Sen frequently quotes Adam Smith on this point (Sen 1984, 332).
6. This is a problem when some of the poor are much poorer than others in their community; it is a problem of both poverty and inequality. So when the extremely poor live among the severely poor, the extremely poor persons are often marginalized and excluded. I thank Teresa Bruno-Nino for raising this point.
7. Sabina Alkire's attempt (2002) to elaborate the capability theory as a standard for poverty reduction efforts, excellent though it is for including the perspective of the

poor, gets hung up by the second horn of the dilemma as it allows too much of the false consciousness and adaptive preferences of the poor to determine the direction of development aid to appeal to many reasonable donors. See her endorsement of the Apffel-Margalin condemnation of the smallpox inoculation in India. Cf. Nussbaum 1997, 134–35.

8. Jiwei Ci (2012) pursues a similar strategy by distinguishing among three “stakes” or dimensions of the harms of poverty: subsistence, status, and agency. Like this paper, he argues that losing agency can be the most destructive aspect of poverty, but his analysis of agency is quite different from the one offered here.
9. Similarly, Ci’s account of agency locates its essence in the individual subject: “subjectivity achieved through power” (Ci 2012, 133).
10. I interpret “her own values and objectives” as meaning the individuals’ values and objectives. But it could be that these are community values, and in that case Sen’s theory of agency would turn out to be very like the one I offer here.
11. The level of poverty varies among the different studies in different parts of the world, so I use the term *very poor*. Some of the people studied are no doubt above the level of severe poverty. See the discussion of methodology in Narayan et al. 2000.
12. This happens to the poor when they are extremely poor, and so there are no orderly communal norms, or someone stands out as poorer than others in their community. As normal members of a very poor community, this problem may not arise.
13. I should note that it was in thinking through Sen’s account of motivation by commitment rather than self-interest that I first considered this alternative account of agency. See Cudd [forthcoming](#).
14. I will use the term *poverty* to mean “extreme and severe poverty” unless otherwise noted.
15. Werhane et al. (2009, 57) criticizes this argument, which they call the “poverty trap” assumption, which they claim Jeffrey Sachs and Peter Singer mistakenly make. But their book is about why a certain kind of intervention is needed, which shows, I think, that they do agree that there is some warrant to the claim after all.
16. Worse, the poor may not even have priorities, since they have not had the opportunity to consider, plan, or develop them.
17. It is not clear that the structural adjustments demanded by these institutions during the period that the “Washington Consensus” prevailed would have worked anyway (Cohen and Easterly 2009, 2).
18. Of course there are some charitable interventions that save lives and retreat quickly enough not to cause dependency. The danger of crowding out indigenous efforts is always there, and, since it is a counterfactual, is less easy to measure, but may well cause more poverty and death in the long run.
19. Easterly (2006, 376–80) discusses some similar ideas to fund ideas that the poor develop themselves, such as GlobalGiving.com, which matches projects with individual donors, and development vouchers, which allow the poor to buy development projects. See Hassoun (2012, ch. 4) for an opposing view, however.

20. By free and fair trade I mean that there exists a secure system of property rights that does not interfere with trade terms except to internalize externalities in production and consumption, reduce asymmetries of information between buyers and sellers, and prevent invidious discrimination on account of ascribed social group status. This is an ideal of capitalism that I flesh out in detail in Cudd and Holmstrom 2011.
21. I thank Cristian Dimitriu for useful discussion of this point.
22. “Composite Indices—HDI and Beyond.” Accessed March 24, 2012. <http://hdr.undp.org/en/statistics/understanding/indices/>.
23. Médecins sans Frontières (2005, 3) issues this “alarming report”: “In West Darfur alone, between October 2004 and 15 February 2005, MSF health clinics treated 297 rape victims. 99 percent of the victims have been women. The ages of the victims vary between 12 and 45 years old with an average age of 27. 22 percent of the victims came within three days following the rape. More than half of the rapes were reported within 30 days.”
24. *The Economist* (March 10–16, 2012, 23–24) has proclaimed, “The end of cheap China is at hand,” citing such steeply rising labor costs in Guangdong and coastal hubs.
25. According to the *Economic Report of the President, 2012*, U.S. volume of imports from and exports to Africa were \$113.6 billion and comparable numbers with Germany \$131.4 billion and with Japan \$184.4 billion. Volume with India is \$49 billion. “Economic Report of the President,” Table B-5: “Contributions to Percent Change in Real Gross Domestic Product, 1963–2011.” Accessed March 24, 2012. [www.gpo.gov/fdsys/browse/collection.action?collectionCode=ERP](http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=ERP) 2012 report. These numbers and others available in the table make clear that wealthy nations have by far more trade with the United States than poor ones, especially when comparing nations of roughly equal populations. As Thomas Pogge has pointed out to me, trade volume is a proxy only for collective benefits, not for mutual advantage. It is possible that raising volume could redistribute benefits in a way that disadvantages some.
26. This is a point made by Mill 1988/1869.
27. The rules include both prudential norms, such as to grow crops year round and to use latrines, but also transformative gender norms, such as avoiding the “curse of dowry,” and sending girl (as well as boy) children to school.
28. Kabeer (2000) focuses on a different loan program in her study, the SEDP, which is a subsidized loan program offering somewhat larger loans specifically for entrepreneurial activities to somewhat less poor women. However, Kabeer also discusses the Grameen project.

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## Empowerment Through Self-Subordination?

MICROCREDIT AND WOMEN'S AGENCY

*Serene J. Khader*

POVERTY CAN UNDERMINE people's agency. The poor often face restricted options and develop limited senses of what they can be and do. According to Deepa Narayan's famous *Voices of the Poor* study, the poor themselves characterize their condition as involving acute powerlessness (D. Narayan 2000, 38–40). It thus seems logical that successful anti-poverty interventions should enhance agency. The idea of a tight correlation between reduced poverty and increased agency has been so widespread that, until quite recently, the development community used traditional poverty indicators as proxy measures of agency (Alkire 2007, 10–11).

Data from the last fifteen years on how anti-poverty interventions affect women suggest a more complicated relationship between poverty reduction and agency (Alkire 2007, 10–11). Anti-poverty interventions often yield mixed results for women's agency and empowerment. For example, some studies suggest that income interventions do little to change women's actual involvement in remunerated economic activity (Goetz and Sen Gupta 1996). Some also show that income interventions leave intact women's sense of inferior entitlement to household resources and/or decision-making authority (Sen 1990; Osmani 1998; Cheston and Kuhn 2002, 19). Data also suggest that increasing women's access to paid work can decrease their political participation (Batiwala and Dhanraj 2007, 24), that increasing women's access to education can accompany increased support for female genital cutting (Agot 2007, 290),<sup>1</sup> and so on. A line of reasoning roughly like this seems to underlie the puzzlement over these data: women's empowerment is the increase in women's agency and reducing poverty increases agency, so reducing women's poverty should empower women.



A popular explanation of why anti-poverty interventions sometimes seem fail to empower women is that empowerment is a process (Kabeer 1999; 2001; Agot 2007; Nagar and Raju 2003). According to this explanation, the issue is not that anti-poverty interventions have *failed*; it is that they have not gone far enough to utterly transform gender relations. This explanation is applied to situations where anti-poverty interventions seem to leave women's gender status untouched as well as those where they seem to exacerbate gender inequality. For example, Susy Cheston and Lisa Kuhn (2002) remark that microcredit interventions in Ghana have not changed prevailing views about whether women are capable of leading men. However, Cheston and Kuhn express optimism that women's participation in mixed-gender banks will, over time, increase the acceptability of women's leadership in the wider social world (2002, 38). Naila Kabeer goes farther and argues that what appear to be worsening gender relations may actually be part of empowering processes. According to her, the upsurge in domestic violence that accompanies microcredit expresses men's resistance to their impending loss of power (2001, 65–66). According to such narratives, anti-poverty interventions can constitute steps in the right direction even when they fail to directly challenge gender hierarchy.

In this chapter, I call for skepticism of the idea that anti-poverty interventions contribute to women's empowerment by enhancing their agency. My claim is not categorical; I believe anti-poverty interventions *can* empower women. I want to ask how readily we should apply "steps in the right direction" explanations to cases where anti-poverty interventions fail to bring about feminist change. I will argue that right direction explanations fail to take the following fact seriously: that increases in women's agency can result from decreases in the egalitarianism of gender relations. This possibility is generated by what I call the "self-subordination social recognition paradox" or "SSRP." The paradox is that women can often gain welfare by complying with and internalizing oppressive norms. Access to many goods depends on social recognition, and, under patriarchy, women often have to subordinate themselves to achieve social recognition. The popular understanding of agency ignores this paradox by failing to distinguish what I call "welfare agency" (the ability to enhance one's welfare) from feminist agency (the ability to identify and change sexist norms). On the popular definition of agency, agency is a single good whose increase tracks increases in a person's sense of herself as equal. The possibility of women **gaining agency** by increasing their investment in sexist norms is of more than theoretical interest, as I will show in a discussion of microcredit interventions in South Asia. Microcredit,

by materially rewarding female seclusion and the view of women as collateral, may offer women new reasons to act according to, and endorse, patriarchal expectations.

When I say that anti-poverty interventions can strengthen incentives for women to internalize and comply with sexist norms, I do not simply mean that they “reinforce” or fail to change them. I will revisit claims that anti-poverty interventions can be criticized for “reinforcing” or failing to change gender subordination in my conclusion. My claim about how anti-poverty interventions affect women’s agency is stronger in one sense and weaker in another. It is weaker in this sense: I am agnostic about whether to call anti-poverty interventions that leave gender inequality intact “failures.” But my claim is stronger in this sense: it suggests that failing to empower women can have worse consequences than simply leaving inegalitarian gender relations intact. Interventions may strengthen patriarchal structures by giving women new incentives to comply with their dictates and see them as just. Poverty sometimes gives women reason to question the dictates of patriarchy. Antipoverty interventions can decrease the force of those reasons by increasing the rewards for patriarchally prescribed behavior.

The chapter unfolds as follows. I argue in the first section that “right direction” explanations rely on an understanding of women’s empowerment that is counterintuitive, inconsistent with common usage, and that excludes the possibility of women increasing their agency by increasing their acceptance of oppressive norms. Specifically, the operative notion of women’s empowerment conflates empowerment with individual women’s ability to enhance their welfare. In the second section, I argue that access to benefits often depends on social recognition, and patriarchy creates sexist conditions of social recognition. The upshot is that women often gain social and material benefits from complying with patriarchal norms—and, where social and material rewards for complying with patriarchal norms align, women also gain senses of coherence and self-esteem from **internalizing** them. It follows that increases in women’s welfare agency often provide women new incentives to accept patriarchy. In the third section, I examine Kabeer’s influential argument that microcredit empowers women. I argue that she offers a sanguine interpretation of the mixed data on women and microcredit because she inadvertently conflates feminist and welfare agency. Kabeer says microcredit increases perceptions of women’s value, but I believe we must acknowledge the fact that women are valued for their increased ability to meet patriarchal expectations. In the conclusion, I ask what general lessons about assessing anti-poverty interventions we might draw.

## 1. Defining Women's Empowerment

The claim that anti-poverty interventions drive women's empowerment by enhancing their agency trades on a distorting conflation. This conflation is of enhancements in individual women's welfare agency with women's empowerment. An intuitive understanding of the idea of women's empowerment, as well as common usage of the term, suggests that the concepts are non-identical.

Development theorists tend to agree that empowerment involves the use of conscientizing processes to increase a person's ability to pursue her welfare (Nagar and Raju 2003; Malhotra, Shuler, and Boender 2002; Kabeer 1999).<sup>2</sup> Though many philosophers allow that a person can agentially decide not to value her welfare, development theorists tend to attribute cases where people do not value their welfare to agency deficits.<sup>3</sup> Call knowledge that one's welfare is of value, coupled with the ability to pursue it, "welfare agency." It may seem that women's empowerment occurs when each woman in a group experiences enhanced welfare agency. This idea is conceptually fraught, for reasons I will explain in a moment.

First, let us observe that—at least intuitively—women's empowerment requires women's increased desire and ability to agitate for greater gender equality. When women are empowered, they act—and/or believe it is worth acting—in ways that challenge women's subordination. To say this is not to deny that women's empowerment comes in degrees; one may, for instance, start by questioning women's subordination in the political arena but not in the home—or one may have only an inchoate sense that women's subordination is wrong. My point is that interventions that do nothing to affect the *subordination* of women, or women's *awareness* of their own subordination, do not empower women. Nor do interventions that increase women's subordination.

Though the term *women's empowerment* is not used consistently in development discourse, both mainstream and radical development actors use it in a way that suggest opposition to gender hierarchy. Even the language of the third Millennium Development Goal treats the goals of empowering women and eliminating gender inequality as linked (United Nations 2013). Most empowerment theorists explicitly describe it as involving action and/or conscientization toward decreased sexist oppression (Nagar and Raju 2003; Mayoux 2001; Swain 2007; Sen 1993 (cited in Malhotra, Shuler, and Boender 2002; Holvoet 2005)).<sup>4</sup> Call the type of agency that challenges sexist norms—the type needed for women's empowerment—"feminist agency."

The logical points that distinguish feminist and welfare agency are dual. First, an agent's welfare agency can be enhanced without her feminist agency being enhanced. I may have more food in my stomach than I used to, for instance, and still give my husband the best food—all the while believing this is the right thing to do. Second, an agent's welfare agency may be enhanced through decreases in her feminist agency. Consider the case of women in South Asia who comply with sexist food distribution norms to keep male relatives happy—and do so in contexts where their access to virtually all goods depends on male guardianship.<sup>5</sup> Assume that these women are not in a position to alter the “patriarchally risky”<sup>6</sup> features of their society and thus decide to stop wasting their time questioning their validity. These women reduce their feminist consciousness and gender-role violating actions to increase their welfare agency. Their access to food, income, and security depend on their fulfilling subordinate gender roles. If these two points are correct, the logical relationship between feminist and welfare agency is this: they are non-identical but may overlap. The same action may increase both feminist and welfare agency—as in, say, the choice to leave an abusive husband in a context where this does not expose a woman to further violence or cause economic or social death.

The claim that it is sometimes not in women's welfare interests to increase their feminist agency may seem paradoxical. It may seem to entail the view that sexist norms do not harm women. Here we need to remember that a norm is sexist primarily in virtue of its harming women as a group (Frye 1983; Cudd 2006). To say that women can gain welfare agency from complying with sexist norms is not to say that they gain it from the existence of those norms. It is to say instead that, if the conditions under which the norms obtain are fixed (which it is sometimes reasonable for women to assume), individual women gain more welfare agency from complying than they would from resisting. It is true that individual women usually experience negative effects from complying with oppressive norms. But we need to remember—and a longer discussion of this fact will be the topic of the next section—that patriarchal societies often make behavior with inherently negative welfare effects a prerequisite for accessing other goods that are also constitutive of welfare. Following Uma Narayan (2002), I term this phenomenon *harm-benefit bundling*. Take the case of a woman who feeds superior food to her husband and suffers poor nutrition as a result. If insisting on an equal claim to food will result in the loss of male guardianship—and thus potential loss of income, shelter, and safety—compromising her nutrition is probably a welfare-maximizing move. Of course, the real problem here is the structural

constraint on women's options. But this does not change the fact that, if changing the structure is out of a woman's power, she can advance her welfare by doing what patriarchy prescribes.<sup>7</sup>

If an action may enhance a woman's welfare agency while undermining her feminist agency, successful anti-poverty interventions may not always be as innocent as they seem. We should be skeptical of the idea that successful anti-poverty interventions are always—or even usually—(a) steps toward women's empowerment or (b) neutral with respect to it. That women can gain welfare agency by trading away feminist agency means that enhanced welfare agency can come at the expense of women's empowerment. We need to ask why recent empowerment theorists insist that successful anti-poverty interventions are either steps in the right direction or, at worst, unrelated to women's status.


The answer seems to lie in the mechanisms by which empowerment is supposed to occur. Anti-poverty interventions are supposed to work on people's self-concepts. According to many empowerment theorists, anti-poverty interventions empower women by expanding their senses of what they are capable of. The pre-empowered person characteristically holds two attitudes—one toward herself and the other toward the world. The attitude toward herself involves low self-worth stemming from general self-devaluation.

AQ:1 The attitude toward the world is one of uncritical acceptance of the power status quo—a sense that gender inequality is just a part of the natural order of things.<sup>8</sup> Anti-poverty interventions empower women, because a newfound sense of worth and/or impulse to question causes or manifests skepticism of patriarchal values. Arguments to this effect abound in the microcredit literature. Kabeer argues that microcredit increases women's experience of being valued by others, and this causes women to perceive themselves as capable of bargaining with their husbands (1998; 2001). Cheston and Kuhn (2002, 29–30) argue that microcredit helps women gain greater senses of self-efficacy—even when this is simply increased efficacy at fulfilling traditional roles. They assert that increased self-efficacy often translates into a desire to challenge oppressive structures. Linda Mayoux argues that women entrepreneurs have increased confidence and skills and that the visibility of AQ:2 such women can increase women's overall status (2007, 39). Even skeptics seem to share the view that anti-poverty interventions would empower women if they successfully changed women's beliefs about what they are capable of. These theorists tend to argue—not that microcredit has negative impacts on women's self-concepts—but rather that microcredit fails to empower women when it does not work on their self-concepts. Simeen Mahmud



argues that microcredit does not expand women's sense of what they are capable of because it tracks them into poorly compensated tasks that they were already doing anyway (2003, 602–3).

I believe this widely held view—that anti-poverty interventions that enhance women's senses of self will increase their desire to change patriarchy—draws on two faulty assumptions about agency. The first is what I call the “cumulative assumption.” This assumption is that agency is an internally undifferentiated good whose quantity necessarily increases when new options appear. When I speak of agency as internally undifferentiated, I do not mean that an agent's set cannot comprise distinct options. The cumulative assumption, to the extent that it offers a theory of how new options affect existent ones, treats options as distinct from one another.

Instead, the idea that agency is internally undifferentiated has two important implications. First, new options do not affect agency primarily by changing its quality; they change only the amount of agency present. Second, increases in agency should, in principle, impel a process that leads to improvements across an agent's life. An inability to agitate for welfare in some domain of life reflects insufficient agency rather than a lack of something distinct. Theorists who expect self-worth to eventually permeate all domains of a woman's life seem beholden to the idea that *more* agency will become *feminist* agency. Logically, the problem with the cumulative assumption is that it sees options as self-sufficient and thus lacks a concept of opportunity cost. It denies that new options and beliefs about the self may eviscerate, or decrease the appeal of, others. As I have mentioned, patriarchy rewards women for complying with it. Part of what this means is that new options for welfare can remove incentives to resist patriarchy. I will make this point more fully in the section on microcredit, but here is one example. In a context that valorizes female seclusion, giving women opportunities to access income without leaving the home decreases the appeal of challenging norms that demand  women's seclusion.

The operative notion of agency in development discourse, in addition to suggesting that agency is internally undifferentiated, suggests that it requires specific motivational content. Increases in agency move a person toward the view that she has equal value. I call this assumption “the substantive assumption,” because it sees agency as culminating in a person's adoption of certain substantive moral beliefs. The idea seems to be that, the more effective a person's welfare agency becomes, the more she will adjust her self-concept toward equality. One way this might work is by expanding women's senses of what they are capable of. When women discover they can engage in activities that

patriarchy tells them they are unfit for, they begin to question patriarchy. Consider Cheston and Kuhn's claim (2002, 29–30) that women who are effective at meeting their welfare needs will develop increased self-esteem. This, in turn, is supposed to cause dissatisfaction with sexist limitations on their lives. Consider also Kabeer's argument that women who bring income into households start believing they have a right to ask for what they need within them (2001, 71). The problem with the substantive assumption, when applied broadly, is that it denies that women can gain self-esteem and self-efficacy by believing in the appropriateness of their subordination and fulfilling subordinate roles well. For instance, a woman who provides superior food to her male relatives without complaint is likely to be regarded a good wife with a particular talent for self-discipline. Thinking I am getting better at feminine self-denial is unlikely to lead me to believe that women and men are equal.

## 2. The Self-Subordination Social Recognition Paradox

The understanding of agency described above excludes the possibility that women's incentives to accept patriarchy can increase with their welfare agency. Correlations between increased welfare agency and increased collusion with patriarchy are likely to be common in patriarchal societies for reasons I will describe in this section. The subordination-social recognition paradox occurs because of a structural feature of patriarchal societies. The SSRP is as follows: people's access to social status, their ideas about what they should become, and their access to material benefits often depend on how well they meet social expectations. In patriarchal societies, women often need to meet *sexist* social expectations to increase their welfare. For instance, women in the contemporary United States are often penalized professionally for failing to conform to patriarchal beauty standards. This means that they can increase their access to income and social recognition (both objective goods) by wearing makeup and heels, being thin, and so forth.

In the development context, the SSRP means interventions may simultaneously increase women's access to welfare and their incentives to accept patriarchal norms. Interventions may do so by increasing the material or social rewards of patriarchally prescribed behavior. Interventions may also strengthen the links between psychological goods, such as self-coherence and self-respect, and acceptance of patriarchal beliefs. Since the attainment of these psychological goods often enhances both objective welfare and subjective happiness, this means that antipoverty interventions may go farther than incentivizing *compliance* with sexist norms. They may incentivize their

*internalization*. Both complying with and internalizing oppressive norms can increase women's welfare agency.

Women's incentives to internalize patriarchal norms are strongest when the social and material rewards for acting on the basis of them align. Social benefits include things like status, affiliation, approval, and love. In patriarchal societies, sexist norms dictate the behavior required of "good women." Women who comply with such norms, especially those who do so particularly well, receive status and praise (or at least protection from certain forms of criticism). The rewards of being a "good woman" often extend beyond the glow of others' approbation. How a person is perceived by others often affects her ability to meet her material needs. As we have discussed, in poor societies with high levels of patriarchal risk, women's ability to access food, shelter, and safety depends heavily on their marriageability and ability to keep male family members happy (Agarwal 1997). This means that social benefits are often gateways to material ones. A woman who is seen as a "good woman" will be well positioned to meet her material needs.

But it is one thing to claim that women can benefit from *behaving* as "good women" and another to claim that they can benefit from *endorsing* the ideology surrounding that behavior. Women stand to benefit from internalizing oppressive norms under conditions where they benefit both socially and materially from complying with them. Under such conditions, internalizing oppressive norms facilitates development of a coherent self-concept. It is theoretically possible for a person to comply with sexist norms for purely instrumental reasons. So, for instance, a woman may give better food to her husband only to keep him happy, while simultaneously rejecting the view that this is what good woman should do. But a lifetime of "going through the motions" could also be a lifetime of suffering, compromised self-efficacy, and difficulty identifying one's true commitments. Some of the reasons that we can expect difficulty from a life of doing one thing and believing another stem from general psychological mechanisms over which we exert little control. We persuade ourselves that we are personally responsible for positive outcomes of our behavior more than negative ones, we attempt to protect reasons for optimism about our futures, we attempt to avoid cognitive dissonance, and so forth (Cummins and Nistico 2002). Further, and more important to my overall argument, psychological coherence enhances a person's welfare agency capacities. A woman who can support her self-efficacy by internalizing sexist views about herself has self-interested reasons to do so.

As Rawls observes in his explanation of the value of the primary good of (the social basis of) self-respect, it is difficult to pursue any plan of life without

believing oneself or one's projects are of value. It is also difficult to pursue any plan of life one thinks it is impossible to effectively pursue (1978, 441).<sup>9</sup> For Rawls, a person's sense that her self and projects are of value supplies motivation for pursuing those projects. Rawls also claims that self-respect has a social basis. He thereby emphasizes how difficult it is for us to remain motivated to pursue our projects absent social affirmation of their (and our) value. An agent who repeatedly hears that her projects are worthless may begin to believe it. In patriarchal societies, women learn that projects that would promote their equality lack value. The woman who refuses to provide superior nutrition to her husband, for example, is likely to be criticized, gossiped about, and worse. She may grow to believe that she is defective (because she fails to meet standards of good womanhood)—or that her project of criticizing sexist norms is morally suspect (because the people around her treat her moral perspective as alien). Under such circumstances, a woman can preserve self-worth and motivation by internalizing sexist norms and making her projects consistent with them.

In addition to providing motivation to pursue her projects, endorsing oppressive norms can be an agent's easiest path to maintaining a coherent self-concept. As Diana Meyers argues, "A reflective commitment to a set of values" can serve to "protect us from others' scorn" (1989, 212). If we believe our own evaluations to carry special weight or our projects to be objectively valuable, we are not required to refashion our self-concepts every time others judge us. Though Meyers's point applies most readily to cases where an agent's values clash with the dominant ones, it also points to the way scorn from others may threaten an agent's sense of identity—the sense that she is a stable entity who cares about certain things. Acting against her deeply held beliefs to avoid penalty, as the agent who complies with oppressive norms without internalizing them does, may cause her to question whether she is really committed to what she says she is committed to. Such uncertainty may cause her to act in inconsistent ways that undermine her ability to achieve ends—welfare-promoting or otherwise.<sup>10</sup>

An agent's sense of self-efficacy also depends partly on her ability to act successfully in accordance with her principles, and internalizing oppressive norms may also be a way of aligning one's principles and abilities. Compliance with oppressive norms often demands behavior with painful effects. The life of the woman who has to conform to oppressive norms often involves repeatedly subjecting herself to suffering. The woman who believes the suffering is unjustified but inevitable is also reminded daily that the world is unfair and unchangeable. Adjusting one's beliefs about what is justified is a way of protecting oneself against the pain and self-efficacy losses likely to come with repeated failure.<sup>11</sup>

My goal in the last few paragraphs has been to reveal an implication of the SSRP that may not be initially apparent—that, under patriarchal conditions, a woman can increase her welfare agency by internalizing oppressive norms. Part of my argument that microcredit is less empowering than it initially seems will be that it furnishes new reasons to believe in the moral acceptability of patriarchal norms. My point has emphatically not been to show that internalizing oppressive norms is praiseworthy—or even that it will usually yield welfare increases. The number of women who will benefit from internalizing oppressive norms is limited. One reason is simple interpersonal variation. It is clear that a woman who would not feel herself without a feminist identity stands to gain less by internalizing sexist norms than one who has mixed feelings about gender oppression. A second reason is that the force of the incentives to internalize sexist norms varies. This type of variation is a function of differences in social structures rather than individuals. The incentives to internalize patriarchal norms are likely to be particularly weak when the rewards for complying are intermittent, difficult to access, or not uniform. For instance, a woman may improve her shot at marrying into a higher social class by being unusually attractive and dutiful. However, if this outcome is unlikely for a given woman (say, she is not conventionally beautiful)—and she knows this on some level—she has reason to protect her self-esteem by continuing to believe that beauty and duty are not true measures of a person's worth.

Similarly, and more important for my argument about anti-poverty interventions, incentives to internalize patriarchal norms are weaker when long- and short-term rewards, or social and material rewards for complying with oppressive norms, diverge. Internalizing sexist norms is a particularly promising path to agentic coherence when an agent is rewarded consistently and uniformly for conformity. Internalization will then produce consistency between the agent's beliefs about what is acceptable and the external reinforcement she receives. External reinforcement is most uniform when social and material rewards accrue to the same patriarchally prescribed behaviors. Consider the case of a woman who gives superior food to her husband and who is not terribly poor (and thus does not fall below some nutritional threshold). She is held up as an example for women in her community and succeeds in attaining economic security by capturing her husband's favor. Suppose also there is no other way for her to gain an equal level of income, security, or social recognition. This woman, if she believes sexist food norms are unjustified, will be subject to cognitive dissonance, a lack of self-efficacy, and a sense of moral failure. She can do away with these threats to her agency and sources of suffering by internalizing sexist norms. (To say this is not to deny that there

is an inherent harm in the sense of oneself as unequal; it is only to say that the harm is outweighed by the other benefits.)

However, the rewards of internalization would differ if the material and social rewards of complying with sexist food distribution norms diverged. Suppose urbanization and globalization have changed men's earning power such that women can no longer count on men to provide for them effectively (as Mead Cain, Syeda Rokeya Khanam, and Shamsun Nahar [1978] argue they actually have in much of South Asia). Suppose also that it is still widely believed that women should prioritize their husbands' nutrition. It is far less clear that a woman living under these conditions stands to benefit from internalizing patriarchal norms. Part of the reason is that this may lead her to engage in welfare-undermining behavior—to depend on her husband when there are better ways of securing food and shelter (goods it *might* be worth risking social ostracism to attain).<sup>12</sup> Another reason internalizing patriarchal norms promises to be less beneficial is that it requires suppressing impulses toward basic survival.

It may seem that, by treating women's beliefs about patriarchy as partly responsive to incentives, I assume that our normative attitudes are constantly shifting or within our cognitive control. To respond to the concern about cognitive control, we can note that changes to our beliefs about ourselves may, but need not, occur consciously. The more troubling concern is about the relative stability most people's self-concepts have achieved by adulthood. It may seem that people form self-concepts early in life, and they are not so mercurial as to change with social tides. I agree that people rarely cast off their self-concepts in adulthood. However, an agent can alter her self-concept in response to social conditions without completely rejecting her previous views. Though adults typically have more robust and coherent self-concepts than children, the struggle for self-integration is lifelong—and, for most of us, never fully achieved. Adult women may become more or less attached to certain norms without radically altering their self-concepts. Moreover, if a woman's self-concept has always been internally ambivalent despite containing some allegiance to patriarchal values, identifying with previously unendorsed patriarchal norms can increase her self-coherence.

### 3. Does Microcredit Empower Women?

I have elaborated the SSRP as follows: women can gain welfare agency from complying with and internalizing sexist norms, and the incentives to internalize sexist norms are highest when women are both socially and materially

rewarded for complying with them. I now turn to discussing reasons for worry that microcredit interventions align the social and material rewards of accepting sexist norms. Microcredit is supposed to increase the perception of women's value (by themselves and others), but, as the SSRP reminds, women can gain increased value by getting better at meeting, and believing in, patriarchal social expectations.

In the most comprehensive look at the data on women and microcredit in South Asia to date, Kabeer attempts to reconcile contradictory conclusions about its empowerment potential (1998, 2001). According to her "right direction" explanation, the data that are usually adduced to show that microcredit fails to empower women either rely on the wrong indicators or can be reinterpreted as evidence of women's empowerment. I believe that Kabeer's inadvertent commitment to the cumulative and substantive assumptions about agency causes her to mis-assess the cases in her data set that involve women's increasing self-subordination. The mechanisms through which Kabeer sees women's empowerment as occurring always involve enhanced ability to meet oppressive social expectations. Kabeer underestimates the implications of this for future gender relations. First, however, we should get clear about what Kabeer's findings are and which feminist critiques of microcredit she challenges.

The popular media have, nearly univocally, celebrated microcredit (Poster and Salime 2002; U. Narayan 2005; Batliwala and Dhanraj 2007). However, a swirling controversy has developed within feminist development studies. One set of feminist criticisms is about the role microcredit plays in perpetuating global inequalities. For instance, Winifred Poster and Zakia Salime (2002) argue that microcredit creates the impression that it is a lack of credit—rather than an unjust global economic order—that causes poverty in the Global South. Uma Narayan (2005) argues that microcredit programs serve an ideological function by masking the devastating effects of the International Financial Institutions on the poor. I am sympathetic to these critiques of the structural discursive effects of microcredit, but they are out of the scope of Kabeer's analysis—and mine.

Kabeer is interested in feminist critiques that assert that microcredit fails to empower women. The studies that purport to show this employ diverse indicators of empowerment—all of which, however, are associated with the normative goal I called "feminist agency" in the first section. Some studies suggest a positive correlation between a woman's loan recipient status and the level of domestic violence to which she is exposed (Shuler, Hashemi, and Badal 1998; Aktaruzzaman and Guha-Khasnobis 2012). Anne-Marie Goetz

and Rina Sen Gupta (1996) find that a large percentage of recipient women in Bangladesh transferred loans to their husbands, and that many had no idea what had happened to their loans. Kabeer (1998) herself finds that some women loan recipients are not involved in economically productive activity at all. Nathalie Holvoet (2005, 86) and Aminur Rahman (2001) observe that women are frequently “forced” by their husbands to take out loans. Montgomery, Bhattacharya, and Hulme (1986) note that, in most cases, microcredit does not change the gender division of labor within households.

Kabeer argues that the data above are consistent with the view that microcredit empowers women. Her argument has two parts. First, she argues that these data demonstrate only that microcredit has failed to completely transform the patriarchal conditions of women’s lives. Her reasoning is that the critical studies rely on end-state, rather than processual, indicators (Kabeer 2001, 66). Empowerment is a spectrum, and determining whether women are becoming empowered is a matter of asking whether they are moving in the right direction on the spectrum—not asking whether they have arrived. Indicators like domestic violence and women’s control over loans could be evidence that women are more empowered than they were before—even if they have not “arrived.” (Domestic violence could be a move in the right direction because it signals threats to men’s power [Kabeer 2001, 65–6]). Second, Kabeer argues that women loanees see themselves as empowered, and that this should urge us to look for indicators of empowerment that can do justice to their experiences (1998, 18). The women Kabeer interviewed expressed a particular set of reasons for valuing microcredit. Other community and family members perceived women as having greater worth, and women valued themselves more. Kabeer argues that this is expressed in women’s increased bargaining power within households. Using household bargaining ability as an empowerment indicator allows Kabeer to directly challenge the indicators used by microcredit critics. Where the critics focus on things like female “control,” of loans, accounting processes, and so on, Kabeer argues that focusing on control requires us to ignore incremental growth in women’s involvement in decision-making.

Kabeer’s idea that microcredit increases women’s sense of self-worth and the value others attach to them is striking. It suggests an unusual mechanism of empowerment—and one that triggers worries related to the SSRP. This is why: a person’s sense of her own value and her value in the eyes of others are likely a function of her ability to fulfill her prescribed role. If the person’s assigned role is subordinate, increases in her value will probably track increases in her success at complying with and internalizing oppressive norms. To put it



starkly, saying that an oppressed person has become empowered through gaining social value could just be another way of saying that a person is (or is perceived as) getting better at accepting her subordination. Of course, this is true only if prescribed roles do not become less hierarchical as a result of anti-poverty interventions. It seems true that a large number of the women in Kabeer's sample have experienced changed gender expectations with regard to household bargaining power and enterprise management. These are largely women from the economically better off social strata.

For some women in Kabeer's study, however, there is no reason to suppose that microcredit has weakened patriarchal social expectations. There is reason to suspect that the higher value placed on women comes from their increased ability either to meet long-standing sexist expectations or to meet new versions of such expectations that seem to have been generated by microcredit. I begin with examples of the second type of case—women becoming successful at meeting new oppressive expectations. An astonishing fact about many women in Kabeer's sample (2001, 73) and those in some other studies (Holvoet 2005), is that their value in the eyes of others seems to have increased without their participation in any element of loan use. In other words, some women turn loans over to male family members and do not participate at all in deciding what is done with loans. Yet some of these same women say that their husbands value them more, that they are more socially accepted, and so forth. Though it is a minority of women who report total male control of loans, it is also unclear why many of the women who *do* participate in loan use are valued more. Specifically, it is not clear that the increased valuation has to do with more egalitarian conceptions of what women can and should do. A number of women appear to experience increased value for reasons that have nothing to do with, or are tenuously related to, being perceived as more competent entrepreneurs, managers, or decision-makers.

What explains the new value placed on women—if not a newfound respect for women's capabilities? Two alternative explanations suggest themselves—one more pernicious than the other, but neither terribly sound evidence for concluding that microcredit is empowering. The less pernicious mechanism seems to be the reduction of scarcity within households. According to the women in Kabeer's study, men's inability to meet their households' basic needs produce interfamilial tension that often culminates in violence (2001, 70; 1998, 39, 49–51). The potentially more pernicious mechanism involves the valuing of women because they are means of access to loans. One interviewee offers the following analysis of the effect of loans in her community, "Now husbands think, if we beat up our wives, they won't

give us loans, we won't survive" (Kabeer 1998, 51). Though this woman also asserts that her own husband places a higher value on her because she works now, Kabeer's own analysis of this woman's testimony includes the idea that men value women because of the fear that loans will dry up. There is evidence that has emerged since Kabeer's study that men view women as something like collateral since the advent of microcredit (Hoffman and Marius-Gnanou 2007, 9). In the researchers' words, "In places where loans are perceived as being more easily obtained by women, men use women to gain access to loans." Fauzia Erfan Ahmed, who conducted a recent study of men in Grameen bank loanee households, found that many men whose wives take out loans continue to view the loans as their (men's) own property (2008a, 554).

Kabeer seems convinced that these new attributions of value to women are steps in the right direction. Part of the reason seems to be an implicit commitment to the substantive assumption about agency. That Kabeer thinks that increased value by others is empowering, and not simply welfare-enhancing, suggests that she believes increasing women's perceptions of their own value means challenging women's acceptance of patriarchy. But there are important reasons to doubt that this is true about the cases at hand. Neither the case of the loan reducing scarcity nor the case of women as collateral suggests an increase in women's value because of any new beliefs about what women are capable of. Assuming that gender inequality is supported largely by views about differences in men's and women's capacities, there is little logical reason the changed perceptions of women should militate against it. Indeed, conditions of reduced scarcity may remove reasons to question women's exclusion from formal sector work (and I will return to this point in a moment).

There is also reason to worry that the perception of women as collateral arises from new incentives to invest in sexist gender ideology. The idea of women as sources of external capital is nothing new in South Asian societies with histories of dowry. Hoffman and Marius-Gnanou make this connection to dowry explicitly. "Loans may represent a form of dowry. If their wives do not manage to obtain such a loan, this may constitute a source of tension and violence within the household. This is equally the case where the husband who has appropriated the loan for himself no longer has the means to recover the capital" (2007, 9). In other words, microcredit interventions may reward men for manipulating women and reward women for learning to negotiate within this manipulation. Even if microcredit produces short-term welfare gains for women, it simultaneously gives men reasons to accept an existing

sexist view—namely of women as points of access to property. Women also have new reasons to accept this view of themselves; the best way to keep their husbands happy is to help them secure loans. They gain agency to access income and perhaps freedom from violence, but since this agency comes from obsequious behavior, it is potentially welfare agency gained through self-subordination.

This worry that microcredit can strengthen patriarchal views of women as property is exacerbated by certain perceptions of microcredit on the part of rural South Asian populations. Research in Bangladesh describes some men as feeling that microcredit is externally imposed by NGOs and a government that wants to corrupt women (Ahmed 2008a, 554). One man in Ahmed's study, which documents a variety of different male responses to microcredit, says, "We know that the Grameen bank is against Islam. Women go there to show their legs. But we are forced to allow them to stay on as loanees because we are poor. As soon as we are financially stable I will ask my wife to quit the bank" (Ahmed 2008a, 552). Such men's goal under these circumstances is to use the NGOs to access income while minimizing women's corruption. This subsection of men experiences financial dependency on their wives as humiliating—a point that offers further reason to worry about resurgences of gender conservatism. Ahmed even relates the story of a woman who tearfully withdraws from the Grameen bank after ten years because her husband declares that they have finally earned enough money to stop compromising her honor in this way (2008b). If there is something new that women are capable of after microcredit, it is bringing in money, but this capacity is seen as contingently linked to the goals of the government and NGOs—rather than revelatory of previously ignored facts about women's nature.

Of course, none of these points conclusively demonstrates that Kabeer is wrong about microcredit moving these women toward empowerment. But it is surprising that she sees men's continued power as evidence of *partially changed* patriarchy rather than *resurgent* patriarchy. Her failure to raise these questions seems symptomatic of a more general difficulty. Kabeer, at least in her interpretations of data, struggles to account for the possibility that interventions might increase women's incentives to invest in patriarchy. In theoretical discussions of empowerment, Kabeer frequently notes that patriarchal structures create incentives for women and that we cannot determine in advance whether agency increases will produce the desired empowerment effects (Kabeer 1999, 442). But, when interpreting her data, Kabeer seems not to consider the possibility that new incentives to accept patriarchy may arise. We might explain this oversight—and her certainty that the moves in

question are moves toward empowerment—with reference to something like the cumulative assumption. Increases in women's welfare, rather than sometimes having gender-related opportunity costs, always add to women's overall agency. Kabeer's optimism seems to stem from an inadvertent commitment to the cumulative assumption about agency—understanding new options as agency-enhancing, rather than potentially agency-decreasing in some areas, or as potentially changing the background conditions under which welfare agency can be exercised.

We see Kabeer's implicit commitment to the cumulative assumption more clearly when we consider the theoretical contortions required to make sense of another set of cases. These are cases where women's increased value comes from increased ability to meet long-standing patriarchal expectations. Some of the poorest women in Kabeer's sample decided to abandon jobs as fieldworkers or domestic servants. These women valued loans because they allowed them to work from their homes. To understand why they prefer home-based labor, it is important to remember that their society ties women's honor to seclusion. One woman says, "Isn't it better to work in your own house than to work in someone else's to fill your stomach? You stay at home, you raise some ducks and hens for yourself and you make some profit. Isn't it bad when people say 'She goes to work in some people's houses?'" (Kabeer 1998, 66). In their previous employment, these women faced social penalties for violating purdah constraints. They felt their choice was between working in occupations that would cause them to be seen in public by other community members and thus losing honor and status—or preserving their honor by starving at home. There were non-honor-related reasons for women to prefer seclusion, most notably the physical difficulty of work in the fields and the desire not to be someone else's servant. However, the women themselves consistently cite the desire to gain honor as a major motivation for their workforce withdrawal. Women with the lowest economic status, Kabeer notes, chose home-based labor after microcredit largely to avoid shame.

Drawing on my earlier ideas about the subordination-social-recognition paradox, we can understand microcredit as having affected the poorest women's incentives in two ways. First, it has increased the rewards for engaging in seclusion. Second, by realigning the social and material rewards of complying with patriarchal norms, microcredit has incentivized internalizing the belief that purdah is morally acceptable. Before microcredit, the only way to avoid or mitigate severe material deprivation was to violate purdah norms. This offered self-interested reasons to question the validity of those norms. That there is greater incentive to violate purdah through one's actions when one is

extremely poor is borne out by research demonstrating that well-to-do women tend to adhere to purdah most strictly (Holvoet 2005, 85–86). One of Kabeer's informants says that, when she used to engage in agricultural labor with her husband, "if people try to make me feel ashamed of my work, I do not feel ashamed... I will work myself, I will feed myself, I will carry whatever load I have to" (Kabeer 1998, 67). Describing her life after microcredit, she states that there is no dishonor in work. But she also justifies her exit from the fields, thus, "My value has gone up from before, I feel ashamed, and people say, 'she has improved so much, how can she still go do this work'" (Kabeer 2001, 70)? This particular woman's narrative strongly suggests that it is not only her conformity with purdah that is changing; her beliefs about its appropriateness are as well. Kabeer seems to want to describe this fact only in terms of a failure to alter existing gender relations. She writes of how "purdah continues to constrain" and is "resilient" (Kabeer 2001, 69). But she seems reluctant to take seriously the possibility that microcredit could have increased the power of purdah or women's acceptance of it.

Kabeer recognizes that these women who withdraw from work outside the home pose the most serious challenge to her positive view about microcredit. Her attempt to deal with the challenge is, I believe, unsatisfactory because of the theoretical contortions it requires. She argues that increased purdah is a step toward women's empowerment because the women in question value the changes microcredit has allowed (Kabeer 2001, 70). The women viewed their previous state as humiliating; they are now less humiliated. Without denying that these women's lives are better without having to experience degradation and ostracism, we can note that Kabeer's claim that the purdah is empowering because the women want it is question-begging. It is question-begging in two ways. First, as I have argued in my work on adaptive preferences, it is unclear why the judgments of a person who does not see oppressive norms as harmful should be treated as definitive about how to evaluate the retrenchment of those norms (see Khader 2011; 2012; 2013). If empowerment requires increases in feminist agency, those who lack feminist consciousness may not be the most reliable indicators of its presence or absence.

Second, if I am correct that feminist agency and welfare agency are separate—and that welfare agency can come at the cost of feminist agency—all these women are saying when they say that microcredit has improved their lives that they have more welfare agency. Increased welfare agency is not the same thing as increased feminist agency, and saying otherwise denies the SSRP. Kabeer demonstrates awareness that women have to adhere to restrictive gender norms to increase welfare. She writes that the poorest women opt

for purdah to increase their social standing (Kabeer 2001, 71). She calls this paradoxical, but to simply call it paradoxical is to under-theorize the implications of women's increased participation in purdah. Rather than simply saying that women value increased participation in female seclusion, we need to acknowledge that microcredit gives them new welfare-based reasons to engage in and accept it—and we need to ask serious questions about what the long-term gender effects of this will be.

It may be argued that I am holding Kabeer to a standard of empowerment that she herself does not hold.<sup>13</sup> Kabeer explicitly defines empowerment as an increase in the conscious ability to make strategic life choices (1999; 2001, 81). On Kabeer's stated view, the women's choice to enter purdah is empowering because the women gain a choice they previously lacked. Where they previously felt compelled to violate purdah because of economic necessity, they now get to decide whether to accept it (2001, 81). However, this comment is at odds with her other repeated assertions about empowerment—especially the assertion that having real choices means learning to challenge doxa (1999, 441). Doxa are views that reinforce social inequality by making it appear to be part of the natural order of things. It is not clear how empowerment can simultaneously require challenging doxa and be achieved when a woman endorses patriarchal norms more thoroughly than she used to.<sup>14</sup> More important, however, our question is whether microcredit is empowering—not whether it is empowering on Kabeer's definition. If women's empowerment were reducible to the expansion of welfare agency or giving women whatever they happen to value, Kabeer's claim that increased purdah is empowering could be logically valid. But it would be based on a notion of women's empowerment that is highly counterintuitive and that does not seem to be motivating the bulk of feminist literature on the topic. As I argued in the first section, most writing on women's empowerment suggests that empowerment requires a move away from oppressive gender relations.

#### 4. Conclusion

We need a theoretical understanding of women's empowerment that acknowledges that women's welfare can increase without resulting in empowerment. This is because of the conditions described in the self-subordination social recognition paradox. Patriarchal societies structure women's options so that they can benefit from complying with and internalizing patriarchal norms. One important upshot of this for development ethics is that enhancing women's ability to achieve welfare can strengthen patriarchal structures.

Giving women opportunities to enhance their welfare by getting better at fulfilling and accepting subordinate roles may consolidate patriarchy and women's relationship to it. There are practical reasons we should think seriously about the long-term gender-related opportunity costs that may ensue from just making individual women's lives better—as is shown by the examples of microcredit producing the view of women as collateral and causing increased acceptance of *purdah*.

What does the fact that women can gain welfare agency by compromising their feminist agency imply about evaluating development interventions? Let us begin with what it does not imply. It certainly does not imply that inspiring feminist consciousness in women is always more important than increasing their welfare. We should be wary of sacrificing women's basic welfare at the altar of equality—of saying that the lives of the poor women who preferred *purdah* to social ostracism and back-breaking agricultural labor were better before. Nor does it imply that anti-poverty interventions that do not decrease sexism are failures. Development practice involves complicated on-the-ground judgments, and incremental changes, and there may be no imaginable intervention in a given case that would reliably decrease incentives to support patriarchy.

Though this is not the place to offer a theory of how to measure empowerment, my analysis here asks us to be attentive to two important possibilities. First, as a variety of feminist empowerment theorists have argued, increases in women's welfare, self-esteem, and so forth do not imply a decrease in the power of patriarchal forces. Second, interventions that do not focus on changing gender roles may do more than simply leave gendered power structures intact. There are opportunity costs to interventions that may give women new reasons to accept patriarchy. Rather than assuming that women's empowerment always increases when they have more opportunities, we need to see that interventions restructure opportunities and incentives. They change the long-term landscape within which women seek empowerment—and this means we cannot be sanguine about which direction women's empowerment is moving just because women are better off. The woman who is forced by her husband to withdraw from the Grameen bank after ten years is arguably better off economically—but returns to a gender landscape in which many men in her community feel they need to defend their masculinity in the face of humiliation. The woman who enters *purdah* now because she *can* participate in creating a gender landscape where poor women are less critical of seclusion.

Rather than assuming women who can do more—or who have greater self-esteem—will change gender relations, we need to ask about gender-related

opportunity costs and imagine strategies for mitigating them. For instance, Ahmed recommends that the Grameen bank should enlist particularly progressive husbands to train others who fear threats to their wives' honor or their own power (Ahmed 2008b). Holvoet recommends that adding groups that are long-term and focused on consciousness-raising to microcredit packages. She postulates that it will increase the likelihood that women will translate their new household bargaining power into a critique of patriarchy (2005, 97). The SSRP suggests that anti-poverty interventions focused on women, because they enhance women's welfare under oppressive conditions, risk consolidating women's relationship to patriarchy. To evaluate whether anti-poverty interventions are steps in the right direction, we need long-term vigilance—not just about whether women's lives are improving but also about how the gender landscape in which women exert agency is changing.

## Notes

1. The female genital cutting case may not, strictly speaking, involve an anti-poverty intervention failing to empower women. According to Agot, girls and families opted for cutting because of a lack of economic opportunities. Interventions gave them education but not employment, so marriageability became the best means to income.
2. In her influential definition of empowerment, Kabeer (1999; 2001) distinguishes choices from *strategic* life choices. I believe Kabeer sees strategic life choices as those that would significantly enhance a person's ability to access welfare.
3. A prominent example is Kabeer's (199) assertion that women's apparent contentment with injustice is likely caused by an inability to call patriarchal norms into question.
4. In an influential study, Anju Malhotra, Sidney Shuler, and Carol Boender argue that diverse theorists of women's empowerment share a conception of empowerment as the expansion of the ability to make choices important to achieving welfare (2002, 5–6). It may therefore seem that the operative conception of women's empowerment focuses on welfare agency rather than feminist agency. However, virtually all of the theorists cited by Malhotra, Shuler, and Boender define empowerment as involving challenges to existing power structures—and they often explicitly mention challenging gendered ones. Perhaps Malhotra, Shuler, and Boender omit the focus on gender because they believe choices about gender are one subset of strategic life choices. I explain why that view is untenable in the next paragraph of the paper's text. Further, the feminist development theorists who are puzzled by the mixed results of anti-poverty interventions seem committed to the idea that women's empowerment requires the enhancement of feminist agency. Their evidence that the results of anti-poverty





- interventions are problematic is usually the existence of unchanged or worsened gender relations. They fault anti-poverty interventions for failing to change women's belief that they deserve a lesser share of household goods, for failing to change the gender division of labor, for increasing men's violence against women, etc.
5. Bina Agarwal (1997) argues that women's compliance with sexist food distribution norms under such circumstances is self-interested.
  6. Cain et al. (1979) argues that women's compliance with sexist food distribution norms under such circumstances is self-interested.
  7. Cain et al. (1979) argues that women's compliance with sexist food distribution norms under such circumstances is self-interested.
  8. I have made this argument more fully elsewhere (see Khader 2014), but collective action problems make the range of cases where women can reasonably believe that changing their behavior is not going to change sexist norms quite large.
  9. Development discourses frequently characterize the pre-empowered person as uncritically accepting of the power status quo. Kabeer argues that those who are not yet empowered treat widely held beliefs as though they are beyond question (1999, 440–41). The UK bilateral development organization describes the pre-empowered as seeing themselves as passive objects of the choices of others (Appleyard 2002, 13). Rowlands argues that women's empowerment involves increases in the perception of the self as "able and entitled to make decisions" (2008, 14). Oxaal and Baden argue that empowerment requires developing the ability to critically assess one's own situation in order to transform society (2008, 6).
  10. Rawls specifically discusses self-respect rather than self-esteem. However, those who argue that the two concepts are distinct tend to argue that, since Rawls focuses on the view that one's self and one's projects are worthy—rather than whether one has successfully lived up to one's principles—he means something closer to self-esteem.
  11. Boxill (1976) argues that, under oppressive conditions, it can be difficult for people to maintain clarity about their own motives over time. Benson (1999) argues that oppressive socialization can cause women to experience some of their desires as alien and thus experience difficulty knowing which motives they identify with.
  12. Amartya Sen argues that learning to ignore the injustice of the world can be a way of preserving subjective well-being (2002, 634).
  13. Studies show that the poor themselves tend to rank social ostracism as one of the worst parts of their plight (Narayan 2000; Kabeer 2001). This fact should give us (theorists) pause before assuming that the risks associated with social ostracism are minor or automatically less morally urgent than losses of health, shelter, and so forth. One reason social inclusion may be of high value is that affiliation and social recognition ensure stable access to other goods. This view of the value of affiliation and social recognition is consistent with the sociological theory of my subordination social recognition paradox; according to it, relations with others are the gateways to a variety of goods constitutive of welfare.
  14. On at least one occasion Kabeer (1998, 12–13) seems to doubt whether empowerment requires increases in feminist agency.

14. Kabeer may be able to consistently assert that empowerment is defined as the mere having of choices and that it requires the challenging of doxa. Doing so would require asserting that a person who scrutinizes patriarchy and believes in patriarchy more intensely after the scrutiny has experienced an increase in empowerment. But there are a number of occasions where Kabeer claims that a choice is somehow not real if it reinforces women's subordination (see 1999, 441, for instance). Further, Kabeer argues that choices whereby women reinforce their subordination are more likely to reveal welfare trade-offs restrictive societies impose on them than women's true beliefs (1999; 1998, 28).

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## Author Queries

- AQ1: There is no work by Oxaal and Baden from 2008 listed in the references. Please check.
- AQ2: Please add this work to the references.
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# Paradoxes of Development

RETHINKING THE RIGHT TO DEVELOPMENT

*Amy Allen*

THE YEAR 2011 marked the twenty-fifth anniversary of the United Nations' declaration of the Right to Development (RTD) as a basic human right. Originally declared in 1986 over the single negative vote of the United States, and subsequently reaffirmed in various UN policy statements and covenants, but with serious qualifications, caveats, and abstentions by the United States and its allies,<sup>1</sup> the RTD guarantees that "every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized" (United Nations 1986, Article 1.1). Promising to reorient debates about human rights from an East-West to a North-South axis, to redress economic imbalances between the wealthy industrialized countries of the Global North and the poor and recently decolonized countries of the Global South, and to bring together the efforts of practitioners in the human rights and international economic development communities, the RTD has been seen by many commentators as a powerful tool for combatting global poverty and realizing global justice (Alston 2005; Alston and Robinson 2005; Andreassen and Marks 2010; Baxi 2007; Marks 2004; Sengupta 2004).

And yet ever since it first emerged against the backdrop of a call for a New International Economic Order in the 1970s, the RTD has proved theoretically and politically controversial and, as a result, difficult to implement (Marks 2004; Alston 2005, 798). Some of this controversy is rooted in a basic skepticism about both the practice and theory of international development (Baxi 2007; Perry 1996). On the practice side, some economists have argued that international development practice, especially since the advent of neoliberalism in the early 1980s, has utterly failed to alleviate global poverty, and in fact may have made the global poor worse off than they otherwise might have

been (Chang 2008; Easterly 2006; Moyo 2009; Stiglitz 2002); on the theory side, the concept of development has been criticized by anthropologists, geographers, and postcolonial theorists for its implicit assumption of the unity and superiority of Western-style modernity, epitomized by the combination of capitalism and representative democracy (Escobar 1995; Ferguson 1990; Mitchell 2000; Wainwright 2008). These two strands of critique point to two paradoxes of development that I explore in more detail in the first section of this essay. The first, political, paradox emerges because the international development practice that ostensibly aims to improve the lives of poor people has instead impoverished and disempowered them; the second, normative, paradox emerges because the concept of development, which purports to improve the lives and enhance the capacities for flourishing of the global poor, entails assumptions about the superiority of European modernity that have served to rationalize and justify colonialism and imperialism, both of which have contributed greatly to the immiseration of the global poor. Hence, some critics maintain that international development theory and practice is best understood as an extension of colonialism, a new way of taking up the white man's burden (Easterly 2006, 22–26; Stiglitz 2002, 23–52).

These controversies over the practice and theory of development have raised questions about the feasibility and desirability of development as a goal, at least as development is typically understood.<sup>2</sup> But these are not the only concerns that have been raised about the RTD. Debates over the RTD in international law, policy, and human rights circles turn on the status of the social and economic rights that are guaranteed by the RTD and on the question of who is legally obligated to protect and/or realize those rights. The long-standing resistance on the part of the United States either to recognize social and economic rights as fundamental human rights or to admit any legal obligation to provide development assistance to other countries has greatly complicated the history of the RTD, in ways that I discuss in the second section of this essay. This history reveals some of the critical and emancipatory potential of the RTD, its potential to challenge the current balance of power in the global economic and political order. Further muddying the waters in discussions about the RTD is the vagueness within the UN declaration itself about who are the corresponding duty-bearers for this right. Whose obligation is it to protect and ensure that the RTD of individuals and peoples is protected and realized? The governments within which those individuals or peoples live? A plurality of states acting collectively through international or supranational institutions? The global community? Or all of the above? And

which interpretation of the duty-bearers of the RTD will best enhance its critical and emancipatory force?

As these preliminary considerations suggest, the RTD has a complex and ambivalent genealogy. It has roots in a notion of development that has up until now played the largely ideological role of reinforcing the current economic and political world order, an order that favors the wealthy countries of the Global North, particularly the United States. And yet, as I shall argue below, it also has the potential to do critical and emancipatory work on behalf of the poor, marginalized, and oppressed of the world. In what follows, my main objective is to analyze the ambivalent nature of the RTD, *both* its entanglement with existing relations of global domination and oppression *and* its potential for inspiring and enabling emancipatory social and political transformation. In so doing, my aim is to remain attentive to the politics *of* the RTD while also making sense of its role in what Upendra Baxi calls a politics *for* human rights (Baxi 2006, xiv–xv). In the final section of this essay, I will also sketch out an account of the duty-bearers for the RTD that can facilitate this critical and emancipatory potential. In order to realize its critical potential, the RTD must be understood as generating corresponding obligations not just on the part of states but also on the part of international financial institutions, transnational corporations, and members of the global community.

## 1. Paradoxes of Development

Although the notion of development is obviously central to the RTD, the ongoing debates about this concept tend to receive scant attention in the literature on the RTD.<sup>3</sup> Over at least the last twenty years, international development theory and practice have been subjected to withering critique by economists (Chang 2008; Easterly 2006; Moyo 2009), anthropologists (Escobar 1995; Ferguson 1990), geographers (Wainwright 2008), and political scientists (Duffield 2007; Edkins 2000). On the basis of these critiques, a number of scholars have begun to articulate what they call post-development theory (Escobar 1995; Rahnama 1997; Sachs 1992; Saunders 2002; for criticisms of post-development theory, see Wainwright 2008 and McCarthy 2009). Curiously, however, these challenges to the theory and practice of development have for the most part gone unacknowledged and undiscussed in the literature on the RTD.

The critique of development uncovers two paradoxes inherent in the practice and the theory of development. The first, focusing on the practice of development, highlights the ways in which development ostensibly aims to



improve the lives of poor people and countries—by increasing their income and wealth, but also by enhancing their health, access to education, and other aspects of human flourishing—but has as a matter of fact served only to disempower and impoverish them further. Call this the political paradox of development. The modern development agenda was launched by the United States in the wake of World War II and implemented by technocrats starting in the 1950s. Although a variety of bilateral agencies and nongovernmental organizations engage in development work of various kinds, the primary actors of international development practice are the two powerful multilateral international financial institutions that were created at the Bretton Woods Conference in 1944, the International Monetary Fund (IMF) and the World Bank. These institutions were originally tasked with stabilizing the global financial system and with postwar reconstruction, but later came to assume the lead role in international development and foreign aid.

Critics have argued for some time that development has been an empirical failure. As Arturo Escobar wrote in the mid-1990s, reflecting on the first forty years of international development practice: “the discourse and strategy of development produced its opposite: massive underdevelopment and impoverishment, untold exploitation and oppression” (Escobar 1995, 4). More recent work by prominent economists, such as Joseph Stiglitz (2002), William Easterly (2006), and Ha-Joon Chang (2008) suggests similar conclusions. Easterly, for example, laments what he calls “the other tragedy of the world’s poor,” namely,

the tragedy in which the West spent \$2.3 trillion on foreign aid over the last five decades and still had not managed to get twelve-cent medicines to children to prevent half of all malaria deaths. The West spent \$2.3 trillion and still had not managed to get four-dollar bed nets to poor families. The West spent \$2.3 trillion and still had not managed to get three dollars to each new mother to prevent five million child deaths. . . . It’s a tragedy that so much well-meaning compassion did not bring these results for needy people.

(Easterly 2006, 4)

In different ways, each of these economists lays the blame for the failure at the feet of neoliberal economic policy, which pushed fiscal austerity, privatization, and market liberalization—the so-called Washington Consensus—on poor countries starting in the early 1980s. The main vehicle for this was the IMF, which made loans to countries in financial crisis conditional upon macroeconomic structural adjustment: austerity, privatization, and market liberalization.

However, as Stiglitz notes, “The results of the policies enforced by the Washington Consensus have not been encouraging: for most countries embracing its tenets development has been slow, and where growth has occurred, the benefits have not been shared equally” (Stiglitz 2002, 86). The outcomes have been the worst in Latin America and Africa, where neoliberal policies were implemented more thoroughly (Chang 2008, 27–28), and where many countries were former European colonies.<sup>4</sup>

A second, and related, problem concerns the top-down approach to development favored by the IMF and the World Bank, recent talk about participatory development and local ownership of development plans notwithstanding. Easterly is critical of the general assumption that development can be planned in a top-down manner, especially by Western experts who are often not very familiar with the society whose economy they aim to develop. “The West cannot transform the Rest. It is a fantasy to think that the West can change complex societies with very different histories and cultures into some image of itself” (Easterly 2006, 28; for a related critique, see Edkins 2000, 54). Easterly argues that this top-down approach persists despite all of the talk in recent years about increasing participation and local ownership of development policies: “Far from promoting ‘participation,’ planning patronizes and diminishes the poor, who have little voice to say what they want and need. Unfortunately, decades of participation rhetoric have not changed the balance of power in foreign aid” (2006, 197; see also Chang 2008, 35–37). Even the introduction of Poverty Reduction Strategy Papers (PRSPs), which were designed by the World Bank to increase participation in and ownership of development programs in heavily indebted poor countries, and thereby to empower the poor, have, according to Easterly and other analysts, failed to achieve these goals (Easterly 2006, 195–97; Stewart and Wang 2005). Indeed, other critics have argued that development discourse has proved quite adept at co-opting the language of empowerment and participatory development and turning such notions to neoliberal ends (Cornwall and Nyamu-Musembi 2004). In Easterly’s view, in order to be successful, development should be bottom up, homegrown, and market-based, with plenty of opportunities for feedback and accountability to the poor. Although there may be some role for Western assistance to play to help meet the most desperate needs of the poor until homegrown development takes hold, for the most part Easterly thinks that “the West” should give up on the utopian but also hubristic and patronizing idea that they can transform “the Rest.”

Why has international development practice persisted in pursuing policies that don’t seem to work? The answer, according to these economists, is

that the governance structure of the major international financial institutions—even the World Bank, whose goal is to eradicate poverty—biases them toward the interests of rich countries (Chang 2008, 35). Hence, Stiglitz argues that the IMF, which sets the agenda for much international development practice, serves the interests of the global financial community rather than the interests of the global poor (Stiglitz 2002, 207). The IMF is staffed and run largely by people with deep ties to the finance industry, and the finance ministers and central bank governors of poor countries that work with the IMF and World Bank to implement development plans are typically local elites (Stiglitz 2002, 18–19). Hence, international financial institutions are neither representative of nor accountable to the interests of the poor people they are supposed to serve, and the poor are effectively rendered voiceless in international development practice.

In fact, the practical, political failures of international development practice have been so repeated and striking that some critics have suggested that perhaps failure was precisely the point. This idea was central to neo-Marxist dependency theory, which emerged as a critical response to modernization theory in the mid-twentieth century, but it has been revived more recently in a neo-Foucaultian vein. The argument turns on an analogy with Foucault's genealogical critique of the prison in his book *Discipline and Punish* (1977; for discussion of the analogy, see Duffield 2007, 12). There, Foucault argues that the prison has been a failure at its stated aims—eliminating crime and reforming criminals—since its very beginning as an institution. Nevertheless, it continues to flourish, suggesting that its real aim is neither to eliminate crime nor to reform criminals but rather to produce delinquents and the techniques of normalization that aim to control them. Similarly, Foucaultian critics of development practices claim that although development may be a failure on its own terms, it does succeed in producing certain effects. As James Ferguson argues in his well-known analysis of development practice in Lesotho, development has failed to eliminate poverty but it has succeeded in expanding and consolidating state power. “In this perspective,” he writes, “the ‘development’ apparatus is not a machine for eliminating poverty that is incidentally involved with the state bureaucracy. Rather, it is a machine for reinforcing and expanding the exercise of bureaucratic state power, which incidentally takes ‘poverty’ as its point of entry and justification” (Ferguson 1994, 180). On a more global scale, Mark Duffield argues that development's aim is not to close the economic gap between rich and poor countries but rather to promote security for rich countries by creating new forms of biopolitical governmentality that can manage the destabilizing effects of poverty. “Since

decolonization, the security of the West has been increasingly predicated on establishing an effective developmental trusteeship over the surplus population of the developing world” (Duffield 2007, 24).

Because of this disconnect between the stated and true aims of development, recognitions of the failures of development simply lead to calls for more development. As Easterly puts the point: “failed intrusions of the West provide the motivation for the West to become even more intrusive. Aid failed in the sixties and seventies because government was bad, and the West used that to justify structural adjustment to induce governments to change in the eighties and nineties. Structural adjustment failed to change governments in the eighties and nineties, so now some in the West entertain replacing national government altogether with ‘trusteeship’ or ‘shared sovereignty’ for the most extreme failures” (Easterly 2006, 272). Hence, development attains an aura of inevitability. Even though it has been widely criticized for being ineffective at eliminating poverty, development retains its “presumed ineluctability” and “unquestioned desirability” so much so that even critics of development have been “obliged to couch their critique in terms of the need for development, through such concepts as ‘another development,’ ‘participatory development,’ ‘socialist development’ and the like” (Escobar 1995, vii, 5).

As one critic sums up the situation, in light of the “empirical record of the effects of development upon precisely those populations on whose behalf the entire ‘development apparatus’ is supposed to have been called into being,” we might wonder whether “development is anything that any community should want to have happen to it, let alone something to be asserted as an internationally guaranteed legal right” (Perry 1996, 230).

Of course, advocates of international development and of the RTD might well respond to this critique, first, by questioning the empirical claims about the failures of development practice (see, for example, Reddy and Minoiu 2010), and, second, by saying that even if these claims are established, such failures in the past are not sufficient to establish that development is a bad idea. Here’s where the second, normative-theoretical, paradox of development becomes salient. This more ambitious critique points out that although the idea of development itself posits a normative ideal of human flourishing where flourishing consists of the ever-advancing development of human capacities or the realization of human freedom, this idea is also rooted in theories of modernization, historical progress, social evolution, and the civilizing mission of the West that have served to rationalize and justify (neo)colonialism and (neo)imperialism. Thomas McCarthy refers to this as the “dilemma of development” (see also

Duffield 2007, 7). On McCarthy's view, the idea of development is connected to ideas of historical progress that enable us to appreciate the normative resources of the Enlightenment tradition that forms "our" historical inheritance and to have reasonable hope for a better future, and yet these ideas have also been used to underwrite Eurocentrism and white supremacy. As McCarthy sees it, the idea of development, "like enlightenment ideas more generally, . . . is inherently ambivalent in character, both indispensable and dangerous" (McCarthy 2009, 18). Even though the theory of development is marked by "ever-present tendencies toward paternalism, benevolent despotism, and worse" (187, 189), McCarthy thinks that we can't simply dismiss the idea of development, as we need it to make sense of what is of value in the normative legacy of modernity, including such things as human rights, democratic institutions, and a certain discursive understanding of practical reason.

Development theory is not only rooted in a theory of historical progress that has its roots in Kantian and post-Kantian philosophies of universal history; as Richard Warren Perry has argued, development theory takes this traditional enlightenment triumphalist story of historical progress and displaces it onto geographical space. It distinguishes "between backward, traditional, undeveloped regions, countries, or even hemispheres, and their advanced, modern, developed counterparts" (Perry 1996, 235–36; for a related discussion, see Mitchell 2000). Hence it is committed to seeing people in the so-called developing world as what Dipesh Chakrabarty calls "human embodiments of the principle of anachronism" (Chakrabarty 2008, 238). Moreover, it constructs the category of "underdevelopment" as a problem to be remedied through the benign, technical, and managerial interventions of the "developed" world, who, in cooperation with elites in "underdeveloped" world will paternalistically help those parts of the world to develop, to progress, to modernize (Perry 1996, 238; see also Edkins 2000, 43–102).

As this last point brings out, the two paradoxes of development—the political and the normative-theoretical—are intertwined. This is so because the theory and practice of development have been so deeply intertwined. Theories of sociocultural development, evolution, Enlightenment, progress, and modernization have inspired and justified the sorts of top-down, technocratic practices of development in which development "experts" treat recipients as passive objects of aid and assistance. Both of these paradoxes arise because of the ways in which the theory and practice of international development are entangled with and used to rationalize and justify relations of exploitation, colonialism, imperialism, and global injustice.

## 2. Development as a Human Right

These powerful critiques of the practice and theory of international development, which highlight the connections between development on the one hand and colonialism and imperialism on the other hand, notwithstanding, it is worth noting that the RTD emerged from and has been supported by countries, including former colonies, in the Global South, and has been resisted by wealthy countries from the Global North, including former imperial and neo-imperial powers. Hence the genealogy of the RTD is considerably more complicated than the critique of the theory and practice of development as colonialism by another name would imply. The RTD was first put forward by Kéba M'Baye, Senegalese jurist and former president of the UN Commission on Human Rights, in 1972, and later formulated by the International Commission of Jurists and adopted by the UN General Assembly in 1986. As Isabella Bunn points out in her review of the status of the RTD for international economic law, the RTD emerged against the backdrop of and was shaped by the call for the establishment of a New International Economic Order that would redress the inequalities and injustices of the global economic system in the wake of decolonization (Bunn 2000, 1430–32). Hence, the RTD was part of an attempt to reorient the debate about human rights from an East-West, cold war framework to a North-South one and, as Bunn points out, the “reform of the ‘unjust international economic order’ toward one based on obligations for human welfare and social justice” has been a central part of the debate on the RTD since its inception (Bunn 2000, 1428). The initial vision was to offer a holistic conception of human rights that combined individual and collective rights to self-determination and that bridged the gap between first-generation, or civil and political rights, on the one hand, and second-generation, or social and economic rights, on the other.<sup>5</sup> Hence, as formulated in the UN Declaration, the right to development understands development as “a comprehensive economic, social, cultural and political process,” identifies both individual persons and peoples as rights-holders, and underscores the “indivisible and interdependent” nature of all human rights (United Nations 1986, Annex, Article 1 and 9).

For both of these reasons—its attempt to redress injustices and inequalities in the global economic order to the benefit of the newly decolonized states in the Global South and its attempt to bridge the gap between first- and second-generation rights—the RTD has been controversial from the very beginning. As I mentioned earlier, the declaration was passed in 1986 over the lone negative vote of the United States,<sup>6</sup> and, although the RTD has been

included in documents that have subsequently been affirmed by consensus (United Nations 1993), its legitimacy is still regularly challenged by the United States and sometimes by other Western donor countries, who refuse to recognize the RTD as a legally binding feature of international law.<sup>7</sup> Hence the current status of the RTD is that of “soft law”; that is, it is a right that is generally accepted by the world community but not legally binding (Kirchmeier 2006, 11).<sup>8</sup> This implication is captured in the U.S. government’s official statement (from 2003) to the UN Commission on Human Rights:

In our estimation the right to development is not a “fundamental,” “basic,” or “essential” human right. The realization of economic, social and cultural rights is progressive and aspirational. We do not view them as entitlements that require correlated legal duties and obligations. States therefore have no obligation to provide guarantees for implementation of any purported “right to development.”

(quoted in Marks 2004, 147)

Despite resistance from the United States and some of its European allies, the United Nations pressed forward with the RTD; in 1998, it formed an open-ended working group, reporting to the United Nations’ Commission on Human Rights, tasked with monitoring the progress made in its promotion and implementation.

The genealogy of the RTD intersects in complex ways with the two paradoxes of development discussed above. There is something paradoxical about claiming an RTD on behalf of poor people in the “developing” world, for this seems to run the risk of further entrenching the view of the West’s inherent superiority that has served to rationalize and justify colonialism and neocolonialism, not to mention providing another opening for neoliberalism to do its dirty work through loan conditionalities and structural adjustment programs. The worry here is that to assert a right to development is, as Perry puts it, to “engage in an ideologically misguided, even delusional, form of international law argumentation, one which is all too likely to leave the claimant on the wrong side of the development paradigm—as the object rather than the subject of development—and therefore farther rather than nearer to goals such as effective self-determination or materially improved conditions of existence” (Perry 1996, 241). It is worth noting that this worry echoes a critique of the RTD that was raised very early on, shortly after the right was first proposed, by an African human rights activist, Issa Shivji, who wrote: “underlying the right to development is a conception that sees development/

democracy as a gift/charity from above rather than the result of struggles from below” (quoted in Perry 1996, 228).

And yet it is significant that it is the poor countries from the Global South who have pressed the United Nations to recognize and fully implement the right to development, as an outgrowth of their call for a New International Economic Order, while the wealthy, industrialized, donor countries from the Global North, led by the United States, have resisted it. Hence critics of development have to be careful lest their critique should unwittingly end up reinforcing the very hegemony of the West that they aim to expose. This doesn't make the critique wrong, but it does make it politically dangerous. At the very least, it would be ironic if a critique that seeks to expose the entanglements of developmental thinking and practice with power relations would be blind to its own entanglements with power.

Still, we have to be careful here because we can't assume that those who are pressing for an RTD in the global arena are really representing the true interests of their citizens. Indeed, the RTD as initially formulated was subjected to this criticism. Even though it was formulated by an African jurist and on the basis of his understanding of the African context, other African human rights advocates were critical of the RTD as being “touted by African elites” and serving as “a cover for denial of those basic civil and political liberties which will allow the dispossessed masses to act in their own interests” (quoted in Perry 1996, 228). Again, we have to be cautious, but it is worth noting that among the states that have complained the loudest about the lack of consensus for and implementation of the RTD are countries with such poor records of respecting civil and political rights as Egypt, Iran, Cuba, Myanmar, China, and Sudan (see United Nations 2010 and Marks 2004, 141).

The RTD thus has a complex relationship with power at both the national and international levels. The concept of development itself is an ambivalent one: it has associations of a hierarchical, even paternalistic, relationship between developer and developpee, one that fits all too neatly with rationalizations of colonialism and imperialism, and yet it also connotes a development of human capabilities that has been strongly linked to empowerment and freedom (Sen 1999). The practice of development has been criticized for being a continuation of colonial domination by another name, yet the RTD was introduced by recently decolonized countries as a means for achieving a new international economic order that would empower the Global South vis-à-vis the Global North. While the United States and other wealthy industrialized countries have worked through international financial institutions such as the IMF and the World Bank to define the contemporary development agenda,



they have insisted that development be on their terms, and that it be construed as an act of largesse rather than the fulfillment of an obligation conferred by a fundamental human right. And while countries in the Global South have pushed for the RTD as a way of restructuring global economic and power relations, this push has sometimes come from authoritarian leaders who have oppressed their own peoples and failed to respect their civil and political rights.

In light of these paradoxes of development and the complex and ambivalent genealogy of the RTD, what can we say about the RTD understood as a fundamental human right? Can the RTD be redeemed or reconstructed despite the paradoxes of development and despite the ways in which the right itself has been implicated in complicated geopolitics? Can the discourse of development be reappropriated by those who have been subjected to it and turned to more critical/emancipatory ends by means of the RTD? Can it be made the basis of what Upendra Baxi calls an “insurrectionary praxis” of human rights activism (Baxi 2006, 19–20)? How might the critical and emancipatory potential of the RTD best be realized? In the next section, I consider the relationship between the critical and emancipatory potential of the RTD and the duty-bearers that are picked out by this right.

### 3. Interpreting the RTD: State-Centric, Internationalist and Pluralist Conceptions of the Duty-Bearers

The case for the RTD has been made powerfully by Arjun Sengupta, an Indian economist and development expert who served as the Independent Expert to the Open Ended Working Group on the RTD from 1999 to 2004. As Sengupta has argued, the appeal of using human rights discourse to criticize global poverty lies in the fact that if the link between human rights and poverty is accepted, and poverty is seen as a violation of human rights, then this would “raise the cause of poverty eradication to a status equivalent to that of protecting the foundational norms of a society, which human rights are recognized to provide” (Sengupta 2004, 325). And yet Sengupta understands poverty in a broad sense, to encompass not only income poverty but also capabilities poverty.<sup>9</sup> Accordingly, Sengupta also understands development as being broader than economic growth; for him, development also entails the realization of fundamental human freedoms and rights through a participatory, equitable, and transparent process (Sengupta 2002). However, Sengupta also acknowledges that claiming that development is a human right leaves many complicated questions unanswered, including, but not limited to, the

following: what are the specific rights the denial of which we call poverty, in this broad sense? what are the duties that correlate to those rights? and who are the duty-bearers? In his formulation and defense of the RTD, Sengupta attempts to address these problems.

As an aside, I would like to note that Sengupta thinks that we can formulate the RTD without “entering into the polemics of the historical origin of poverty or injustices of the current global system” (Sengupta 2004, 335). It isn’t clear to me that this can be done, for reasons that will become clear below. If poverty is defined as the lack of “secure access to sufficient quantities of basic necessities, such as food, water, clothing, shelter and minimum medical care” (or the lack of an income sufficient to procure these basic necessities) (335), then severe poverty undermines human dignity, agency, and autonomy, and thus undermines/violates basic human rights. But, Sengupta adds, mere access to these basic goods is not, by itself, sufficient to fulfill human rights, for it also matters *how* such access is afforded; namely, it must be afforded “in a manner consistent with human rights standards of equity, non-discrimination, participation, accountability, and transparency, together with availability” (336). A slave-owning society might provide its slaves with basic necessities such as food, water, clothing, shelter, and so on, but those slaves would not be thought to have their human rights protected, and not just because they lack civil and political rights but also because of the *way* in which their economic and social rights are being met. On this view, then, the RTD calls not merely for an economic program aimed at providing basic necessities to the poor but also for a social and political program aimed at empowering the poor, expanding their freedom, and enhancing their well-being (338).

The primary duty-bearers of the RTD, on Sengupta’s view, are states: “the state or government of the country to which the poor belongs would have the responsibility of formulating and implementing a development policy, because it has the power and authority to frame laws and regulations and adopt policies that affect all individuals in its jurisdiction” (340). It is worth noting that this understanding coheres with the text of the articles of the UN Declaration, which mostly refer to states as duty-bearers, but that it doesn’t correspond to the more radical intent that is captured in the preamble to the declaration: “under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and economic order in which the rights and freedoms set forth in that Declaration can be fully realized” (United Nations 1986). Sengupta recognizes that other states, international institutions, and members of the international community may also be seen as duty-bearers for the RTD, but given the “horizontal interstate system” and the need to respect state sovereignty, “if

there is a violation of a human right of an individual or group of individuals (such as the poor), the international community can intervene to remove that violation mostly through the intermediation of the states” (342) in a manner analogous to the ways in which humanitarian interventions have been justified. Moreover, he argues that it is very “difficult to hold the international community responsible for a violation of human rights in a given country” if we understand that violation in terms of a harm that the international community has caused rather than “as a non-performance of a positive action that could prevent poverty” (342). The reason is that even if international trade and debt agreements favor the developed countries, the developing countries have agreed to them. “Only when it has been established that the developing countries were helpless and had little option but to acquiesce to the dictates of the richer nations,” Sengupta writes, “can the latter be held directly responsible for the unequal and often unjust rules that affect adversely the overall development of a developing country” (343). Moreover, since governments of developing countries may not in fact be representing the interests of their people as a whole, but instead may be beholden to special, powerful groups, and since they may not be politically accountable to their own citizens, it is unreasonable “to consider that the international community is responsible for continuing poverty without considering the role played by the intermediary nation-states where the poor live” (343).

Hence, Sengupta concludes, we should not think of the RTD as a “vertical” right that the poor have directly against the international community, or against international financial institutions such as the World Bank or the IMF, nor should we think of the international community as having a corresponding perfect duty to protect or fulfill the RTD of the poor in the developing world. Rather, we should think of the relationship between the international community and the poor people in developing countries as a “diagonal” relationship that runs through the governments of those countries; and we should view the relationship between developed and developing states in terms of what Sengupta calls a development compact, according to which the international community has an obligation to cooperate with the governments of developing countries to fulfill the RTD but where this obligation kicks in only if states have first done their part to secure the RTD for their citizens.

Sengupta’s state-centric interpretation of the duty-bearers for the RTD, according to which the primary obligation for protecting and promoting the RTD of particular individuals or groups of individuals rests on the state of which those individuals are members, however, blunts the potential critical and emancipatory force of this right. On this understanding, the international

community—which comprises other states, international institutions, and even individuals or groups of individuals in other states—does have some responsibility for promoting the RTD, but this responsibility is secondary to that of the state in question and indirect, that is, those obligations are mediated through the states themselves. Moreover, Sengupta adds a further condition to the state-centric conception of the RTD, according to which the obligations of the international community only arise once the state has fulfilled its duty to protect the RTD of its citizens, and those obligations are understood in the fairly weak sense of an obligation to cooperate with other states and international institutions to facilitate development. This measure is intended to deal with the problem of corruption in developing states. If the government of a developing state doesn't use development funds appropriately or fails to respect the civil and political rights of its own citizens (perhaps even justifying its violation of civil and political rights by claiming that doing so is necessary for meeting certain economic development goals), then, on this state-centric understanding, the international community is not obligated to act to protect the RTD of those citizens.

In order to see why this interpretation of the duty-bearers of the RTD blunts the critical and emancipatory potential of this right, consider an alternative interpretation. This second understanding, which is favored by many states in the developing world, places a much stronger emphasis on the obligations of the international community to work toward “a social and international order in which the rights and freedoms set forth in [the Universal Declaration on Human Rights] can be fully realized,” to quote the language of the Declaration on the Right to Development (United Nations 1986, Annex, paragraph 3). On this more internationalist interpretation of the RTD, all members of the international community—including other states, international financial organizations, and individuals in other states—have a direct obligation to help to fulfill the right to development. In practical terms, this would mean, for example, that the RTD would obligate the governments of wealthy industrialized countries to work to promote development of poor countries (and of the poor in developed countries as well), through some form of development assistance, foreign aid, cooperation with other states and international institutions, and so forth. It would also obligate international financial organizations such as the IMF, the World Bank, and the World Trade Organization to structure their trade, tariff, and debt policies in ways that are more fair and equitable to the developing world, and it would further obligate the wealthy countries that effectively control those international financial institutions to accept less advantageous trade, tariff, and

financial terms for themselves, and to bear the economic (not to mention political) consequences. Finally, it would even obligate individuals to promote the development of individuals and groups of individuals in other countries, and even in their own countries, whether they are citizens of developed or developing states. This obligation could be fulfilled through redistributive tax policies, through contributions of money or time to nongovernmental, development focused organizations, or through lobbying their governments to renegotiate trade agreements or loan terms.

The problem with the state-centric interpretation of the RTD is that it seems to let the wealthy, donor countries and the international financial institutions that they control off the hook, obligating them to cooperate in a development compact with developing states but only through the intermediary of those states (that is, indirectly), and then only if those states have met certain conditions. Moreover, the fact that the international community's obligation only arises if the state has first done its part to secure the development of its own citizens may prevent the international community from cooperating with corrupt governments in the developing world, but it also abandons the citizens of those states who arguably need their help the most. Hence, the state-centric interpretation of the RTD seems only to further entrench the international power relations that, for example, Thomas Pogge has cited as the main historical and ongoing structural causes of global poverty (Pogge 2007a; 2007b; and 2008).

The alternative, internationalist account of the duty-bearers of the RTD places a much stronger obligation on states in the developed world and on the international financial institutions that uphold their power within the current global economic system. And yet there is a problem with this internationalist account as well, for no one wants to let the leaders of developing countries (or of developed countries, for that matter, since the RTD could conceivably be invoked by poor individuals or groups within those countries as well) off the hook for how they treat their own people. So it would be a mistake to interpret the right solely in terms of the internationalist conception. If the RTD is to be turned to genuinely critical and emancipatory uses it cannot be interpreted in such a way that the global system of power relations—which works through international financial institutions such as the IMF and the World Bank systematically to advantage wealthy industrialized countries and to disadvantage poor countries—is untouched. This would lead simply to the recapitulation of the failures and ideological misuses of development theory and practice. And yet it also should not be interpreted in such a way as to absolve states of their own obligations to protect and promote the RTD of their own people.

As a way out of this apparent dilemma, I would like to take up a recent suggestion made by Cristina Lafont for how to move beyond the state-centric conception of human rights without sacrificing our ability to hold states accountable for their treatment of their own citizens. Lafont offers what she calls a pluralist conception of human rights obligations that is guided by this basic thought: “members of global institutions have, as representative of states, the special responsibility of advancing the interests and rights of their own citizens as strongly as possible, so long as they *respect the limits imposed by the general obligation they have as agents of global institutions to make sure that their collective decisions do not negatively impact the possibility of protecting human rights worldwide*” (Lafont 2010, 206). The state-centric view of human rights assumes that the representatives of states have a special responsibility to advance the interests and rights of their own citizens; on this view, this responsibility cannot be fulfilled if states also are taken to have the responsibility of advancing the interests and rights of citizens of other countries. Inclusive accountability, on this view, is thought to be incompatible with domestic accountability.

By contrast, Lafont’s pluralistic conception views states to have distinct sets of domestic and global obligations that can, in fact, be fulfilled simultaneously. Lafont offers an analogy to the plural obligations incurred at the national level by representatives of certain regions in a federal political structure. For example, the Vermont congressional delegation has an obligation to the citizens of Vermont not only to protect and respect their basic human rights and to promote the interests of Vermont in the national arena but also to make sure that their promotion of those interests does not come at the cost of violating the human rights of citizens of, say, New Hampshire. Analogously, Lafont argues, the United States has an obligation to protect the rights and advance the interests of its own citizens in its interactions with other states and with international institutions, but not when the advancement of those interests “involves obvious (and foreseeable) violations of the basic human rights of others” (207).

When applied to the RTD, Lafont’s pluralistic understanding of human rights obligations results in a more vertical understanding of the relationship between individual states and members of the international community than the diagonal conception proposed by Sengupta. On this understanding, individual states—whether developing or developed—have an obligation to fulfill the RTD of their own citizens. This means that governments that fail to protect the civil, political, economic, and social rights of their citizens—whether because of corruption or for some other reason—are

not off the hook. But governments also have an obligation to ensure that their efforts to protect the rights and interests of their own citizens do not undermine or violate the RTD of citizens of other states. In practical terms, this would entail an obligation to restructure existing international financial and political institutions and renegotiate existing debt and trade agreements to make them fairer and more equitable to the developing world. Lafont's pluralistic interpretation of human rights norms makes room for the kind of inclusive accountability that holds states in the developing world responsible for the ways in which they have benefited and continue to benefit from the oppression and exploitation of the developing world. In that way, this kind of pluralistic interpretation of the duty-bearers of the RTD is much better suited to realizing the critical and emancipatory potential of this right than is state-centric interpretation favored by Sengupta.

## Conclusion

And yet even in seeking to recover the critical potential of the RTD, we should remain mindful of the paradoxes of development and of the complex and ambivalent genealogy of the RTD. While claiming the RTD as a human right might be part of a broader call for reparative justice that would highlight the normative obligations that Europe, the United States, and the international financial institutions that they largely control have to repair the injuries of imperialism, cold war modernization, and neoliberal globalization, it also cannot help being bound up with the ideological misuses of the concept and practice of development itself. Interpreting the right to development in the way that I have suggested may help mitigate some of these worries, since the interpretation that I have suggested generates a much stronger normative challenge to the current global economic and political order than the state-centric interpretation does, but it won't eliminate them. At the very least, this interpretation of the RTD provides a more radical challenge to the power relations that have framed, until now, the discourse and practice of development, and in that sense it might have the potential to be of use in a politics *for* human rights, rather than remaining caught within the paradoxes of the politics *of* human rights.

## Notes

1. For a helpful discussion of the political challenges to a full acceptance of the right to development, particularly in the context of US foreign policy, see Marks 2004.

2. For this reason, Baxi calls for a distinction between “developmentalism” and “development” (Baxi 2007, 116–19) and highlights non-Western sources for thinking about development (97–103).
3. Exceptions include Baxi 2007 and Perry 1996, both of which I discuss below.
4. Easterly notes that all ten of the countries with the worst per capita growth rates from 1980–2002 (Nigeria, Niger, Togo, Zambia, Madagascar, Côte d’Ivoire, Haiti, Liberia, Democratic Republic of Congo, and Sierra Leone) are former European colonies, while five of the most spectacular economic success stories (South Korea, China, Japan, Taiwan, and Thailand) were never completely colonized by the West (Easterly 2006, 283–85, 346–47).
5. For this reason, the RTD is referred to as a third-generation human right. See Marks 2004 and Kirchmeier 2006.
6. There were 146 votes in favor of the declaration and 8 abstentions (Denmark, Finland, Federal Republic of Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom) (Bunn 2000, 1434n35).
7. See, for example, the Report of the Working Group on the Right to Development on its eleventh session, in which the European Union, the United Kingdom, Canada, and the United States all refuse to support the idea that the right to development should be construed as a legally binding facet of international law (United Nations 2010).
8. Bunn suggests that “the prevailing view is that the right to development is, at the very least, on the threshold of acceptance as a principle of positive international law” (Bunn 2000, 1436).
9. Hence, on Sengupta’s interpretation, the RTD dovetails with Sen’s capability theory. For discussion, see Sen 2010 and 2002.

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PART FOUR

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# Transnational Transactions and Human Rights



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# Poverty, Voluntariness, and Consent to Participate in Research

*Alan Wertheimer*

## Introduction

The principle of informed consent lies at the epicenter of research ethics. It is generally assumed that (barring exceptional circumstances) it is unethical to enlist people in biomedical research without their valid consent. Now despite its centrality, informed consent is actually regarded as neither sufficient nor necessary for ethical research (Emanuel et al. 2000). It is not regarded as sufficient because it is generally assumed that Institutional Review Boards (IRBs) must first determine—among other things—that the risks to subjects are reasonable in relation to the anticipated benefits to subjects or to others before people are given the opportunity to consent. It is also commonly accepted that informed consent is not strictly necessary for ethical research. Even if we set aside cases in which surrogates consent for the subject (for example, children), there are special circumstances, such as emergency research in which subjects are unconscious and surrogates can't be located and in which research may be justified even though no sort of consent is possible (Brody 1997). Research without *any* kind of consent may also be justifiable when it involves public health surveillance, collection of data from health records, or cluster randomized trials where it is impractical or impossible to seek everyone's consent. In addition, we may think that social and behavioral research without any sort of consent may be justifiable when the research is exclusively observational and that interventional research without *informed* consent may be justifiable when subjects must be deceived if research is to produce scientifically valid data. Indeed, federal regulations explicitly allow for waivers of informed consent under specific conditions.

In those cases in which we continue to think that informed consent is ethically required, it is uncontroversial that valid consent to participate in research must be voluntary. As the Nuremberg Code puts it, “The voluntary consent of the human subject is absolutely essential” (Nuremberg Code, 1949). Or in the words of the Belmont Report, the now canonical statement of “Ethical Principles and Guidelines for the Protection of Human Subjects of Research” issued by The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research—“An agreement to participate in research constitutes a valid consent only if voluntarily given” (Belmont Report 1979). Although Belmont maintains that “[t]his [voluntariness] element of informed consent requires conditions free of coercion and undue influence,” it does not say whether those conditions are thought to be sufficient to establish that a subject’s consent is voluntary. And what constitutes voluntariness or coercion or undue influence?

Here we encounter considerable controversy. Many people advance or accept claims about the voluntariness of consent to participate in research that are deeply puzzling and would seem to have little traction in many other consent contexts—commercial transactions, employment, sexual relations, litigation, or medical treatment. On some views, much consent to participate in research does not pass the test of voluntariness and thus, it would seem, should not be regarded as valid. Some argue for a “value neutral” account of voluntariness such that B’s consent is involuntary when A exercises “controlling influence” over B’s decision or when B has no reasonable alternative but to consent. I will argue that if we accept such an account of voluntariness, then we must give up the principle that valid consent must be voluntary. We can adopt a moralized account of voluntariness in which B’s consent can be regarded as voluntary so long as A has not acted illegitimately or threatened to violate B’s rights if B does not consent, but this view may fail to capture what we really mean by voluntariness. Either way, we may need to relax our insistence that valid consent must be voluntary.

## Worries About Voluntariness of Consent

In this chapter, I will focus on the claim that conditions of extreme poverty compromise the voluntariness of consent, but it will be useful to identify the sorts of worries that have been expressed about voluntariness to participate in research. The first two worries were expressed to me personally.

*Obligation.* I was recently asked to be in the control group of a study of thrombosis. Participation involved a blood draw and a forty-five-minute-long

survey that involved some cognitive tests. When the investigator thanked me (too) profusely for participating, I remarked that I believed and had written that people have an obligation to participate in such trials (Schaefer, Wertheimer, and Emanuel 2009). She replied, "I hope you didn't consent for that reason." Further conversation revealed that she thought that my consent would not have been sufficiently voluntary if I consented because I felt obligated to do so.

*Persuasion.* My physician encouraged me to participate in a phase 3 randomized trial of the timing of chemotherapy for asymptomatic chronic lymphocytic leukemia. The trial (which never completed for lack of subject accrual) was designed to determine whether it was more or less efficacious to wait for symptoms to appear before starting chemotherapy. After signing the consent forms, I was asked whether I'd also be willing to participate in a "quality of life" study that was piggybacked onto the clinical trial. The consent administrator said, "I know this is coercive, but we'd really like you to do this." I don't think she *really* thought it was coercive, but it was clear that she was worried that trying to persuade me to participate was bringing too much pressure to bear or that I would be concerned not to disappoint my physician and that my consent would not be sufficiently self-directed.

*Incentives.* Researchers frequently offer payment to prospective subjects as a recruitment incentive. In a recent survey of IRB members, my colleagues and I found that many IRB members think that payment coerces or constitutes an undue inducement whenever an incentive gets someone to participate when he would otherwise not have done so or when a prospective subject believes she has no reasonable alternative but to consent. And even if payment does not entail involuntariness, many think that offers of payment can constitute coercion or undue influence if payment is sufficiently large and thereby compromises the voluntariness of consent (Macklin 1989).

*Difficult or Desperate Background Conditions.* It is frequently argued that those in desperate conditions such as illness or extreme poverty may have no acceptable alternative but to participate in research, given their need for payment or medical care and that the voluntariness of their consent is therefore suspect. This concern is particularly acute in much international research in developing countries.

These worries about voluntariness are not merely "theoretical." They are of great practical importance to the conduct of biomedical research. Institutional Review Boards or Research Ethics Committees are responsible for ensuring that research subjects are adequately protected. If they think that prospective subjects cannot give voluntary informed consent to participate,



given the circumstances in which they find themselves, then they will not allow such research to go forward or will disallow the use of incentives that they believe will compromise the voluntariness of consent or will bind subjects to the risks of participation. To the extent that IRB members' views about voluntariness are conceptually and morally sound, then they appropriately prohibit some research or limit the use of incentives, as studies should not be approved if participants cannot give valid consent. If, however, IRB members' concerns are based on conceptual or ethical misconceptions, unnecessary limits may be placed on payments to research participants and impede valuable research without ethical cause.

### Some Background

Much clinical research—and a growing proportion of such research—is undertaken in low and middle income countries (LMICs), such as in Eastern Europe and Asia. In general, researchers prefer LMICs such as India that have *some* medical infrastructure, but which also have a large pool of prospective subjects as opposed to the poorest societies that do not. Some research in LMICs is for the benefit of people in LMICs, as with research on malaria and dengue fever. But much research in LMICs—particularly research sponsored by pharmaceutical companies—is primarily for the benefit of corporations and people in advanced industrial nations. Indeed, the Global Forum for Health Research has famously maintained that 90 percent of research is for the benefit of 10 percent of the world's population and 10 percent of research is for the benefit of 90 percent of the world's population.

There are numerous reasons why researchers might prefer conducting research in LMICs. It may be considerably cheaper, as the wages of staff and support personnel are likely to be relatively low and they can offer lower recruitment incentives. These countries may have a large pool of prospective subjects. In addition, researchers often prefer subjects who are “treatment naive,” that is, have never received treatment for the relevant condition. As one “contract research organization” advertised: “A huge population with a diversity of diseases that are untreated—yes, that is the ‘India Advantage’” (Igate Clinical Research, Inc.). Treatment naive populations are considered valuable because they do not have any background medication, or any medication, for that matter, that may obscure the effect of a tested drug. Although this may help the researchers demonstrate the efficacy of an intervention, it may also limit its applicability to patients who have been treated for the condition or for other conditions. Of greater relevance to the issue of voluntariness,

researchers may find it easier to recruit subjects in LMICs than in rich nations. Simply put, poor prospective subjects have greater incentive to enroll in research than more affluent persons. They might receive direct medical benefit from participation, such as a drug for diabetes they would otherwise not receive. They may receive medical screening or ancillary care. And while subjects in rich nations are also frequently paid for participation, the prospect of payment for participation may provide a greater incentive in LMICs. In addition, the oversight of research may be less rigorous in LMICs. For all these and other reasons, just as manufacturers find it profitable to establish factories in LMICs, so, too, for medical researchers.

In some cases, researchers prefer to conduct research in LMICS because they can conduct placebo-controlled trials that could not be conducted in a rich nation. The FDA does not require that a sponsor show that a drug is superior to alternatives that are already on the market. It need only show that a drug is safe and effective for the relevant disease or condition. There are several reasons why researchers may prefer a placebo-controlled trial to an active controlled trial in which an intervention is tested against one or more interventions that are currently available. It may be cheaper. One can attain the desired level of statistical power with fewer subjects. And the research can be completed more quickly.

It is generally impossible to conduct a placebo-controlled trial in a rich nation if a safe and effective treatment is available. First, institutional review boards (IRBs) or research ethics committees (RECs) are unlikely to approve such research, and some guidelines for the ethical conduct of research explicitly prohibit such studies. For example, the Declaration of Helsinki states that “[t]he benefits, risks, burdens and effectiveness of a new method should be tested against those of the best current prophylactic, diagnostic, and therapeutic methods.” This provision requires the use of an “active controlled” trial when proved effective treatments are available. So if a drug company were to test a new drug for hypertension, it would have to use the best available treatment in the control arm for comparison purposes rather than a placebo.

But even if it were permissible to conduct a placebo-controlled trial in a rich country, it is extremely unlikely that persons would consent to participate in research when they might receive a placebo if they were assured of receiving safe and effective treatment for their disease or condition. By contrast, if prospective subjects in LMICs would otherwise receive *no* treatment for their illness if they were not enrolled in research, then they stand to benefit from participating in a placebo-controlled trial and might well give informed consent to do so. It would be perfectly rational for them to think that a

50 percent chance of getting treatment is better than no treatment at all. I am not arguing that it is ethically permissible to conduct such studies, although I think it sometimes is permissible to do so. The issue here is whether such persons could give voluntary consent to enroll.

Now I have no doubt that there is some clearly unethical research that takes place in LMICs (as well as in rich nations), although the absolute amount and proportion of such research is hard to gauge. Oversight of research is frequently lax. Researchers may deceive subjects with respect to the risks and benefits of participation. Risks to subjects may not be minimized. Injuries to subjects may not be compensated in a context in which there is no medical care available.

Research in LMICs may also be characterized by serious defects in the quality of consent proffered by subjects, although there is also reason to worry about the quality of consent in rich nations as well. Subjects may not be adequately informed about the risks and benefits of participation. Even if the information is presented to them, it may not be well understood—randomization, double-blind studies, and placebo-control are difficult concepts. Subjects may not understand that dosage will not be personally tailored to their needs. They may be under considerable pressure from family or their community to participate, particularly if the community benefits from the research project. The prospect of financial or medical benefit may lead some to disregard the risks, and if subjects have a short-term time horizon, they may discount the long-term risks of participation. And subjects in LMICs, as elsewhere, may be in the grip of the “therapeutic misconception,” that is, they may believe that they are receiving personalized medical care designed for their benefit rather than participating in research that has the aim of developing generalizable knowledge.

If we bracket horror stories and set aside all of the possible cognitive deficiencies in a prospective subject’s consent, the question remains as to whether those who are extremely poor can give voluntary consent to participate in research from which they can reasonably expect to benefit either medically or financially. Now on an expansive conception of involuntariness, involuntariness refers to virtually any external or internal factor that compromises the validity of consent or the consentor’s capacity to act as an autonomous agent. Although little turns on words, we will achieve greater analytical clarity if we distinguish between (1) internal cognitive or reasoning deficiencies and (2) external constraints that impact voluntariness. On this narrower conception of involuntariness, for example, the therapeutic misconception is a cognitive error that may compromise the validity of consent, but it does not

render one's consent involuntary. Indeed, on this narrower conception of voluntariness, if A engages in deception or withholds important information, B's consent may not be valid, but A's action does not compromise the voluntariness of B's consent. In any case, our task here will be simplified if we assume for the sake of argument that subjects are fully competent, that they have been provided with all relevant information, that such information is well understood, that their reasoning is not distorted, and so on. I will assume that subjects fully understand the benefits and risks of participation. They know what they are doing.

## Two Studies

*The Short-Course ART Trial (SCAT)*. Placebo-controlled trials (PCTs) had unequivocally established the efficacy of a “long course” (ACTG 076) use of the antiretroviral drug zidovudine for reducing maternal-fetal transmission of HIV.<sup>1</sup> The protocol involved administering the drug orally to HIV-positive women during pregnancy, administering the drug intravenously during labor, and subsequently administering the drug to the newborn infant. When studied in developed countries, the regimen promised to save the lives of one in seven infants born to HIV-positive mothers. Unfortunately, the efficacy and use of the 076 regime could not be confidently extrapolated to LMICs. First, the drug might not be as efficacious in LMICs due to differences in immune status and breastfeeding practices. Second, even if the 076 regime proved to be efficacious in LMICs, many thought that its use was not administratively or economically feasible. It would prove too expensive, compliance with the regime would prove virtually impossible for many women, and many LMICs lacked the medical infrastructure to support its administration. Given these facts on the ground, investigators wanted to determine whether a cheaper and simpler “short course” use of zidovudine would be at least reasonably effective in reducing maternal-fetal transmission of HIV even if it would not be *as* effective as the 076 regimen.

To test the short-course regimen against the long-course regimen in a superiority study or active controlled trial (ACT) would not answer the scientific question. If the 076 regimen were found to be better than short-course antiretroviral treatment (ART), it would be unclear if and to what extent it was better than no treatment, and that was what the researchers wanted to know. It would have been impossible to conduct a placebo-controlled trial of the short-course regimen in a developed nation where the local standard of care would have included the 076 regimen. It would not be approved by an

IRB and even if it were approved, women would not consent to participate if the long course were available. By contrast, it was feasible to recruit subjects to a PCT of the short-course treatment in an LMIC where the local standard of care was to receive no treatment at all. Half a loaf is better than none.

Suppose that researchers in Thailand ask Kanya, a twenty-one-year-old pregnant woman, if she would be willing to enroll in the study. Kanya is HIV-positive and would like to reduce the chance that her child will be HIV-positive. She understands that she may receive a placebo. She consents to participate.

Consider the true story of Rambha Gajre, a woman in India. The story does not tell us the drugs that were administered to Rambha. We do know that she was desperately poor.

She and her family faced eviction from their cramped, tin-roof hut if she didn't soon repay loans she used to cover life-saving medical treatment for her son. . . . "Many people commit suicide and I didn't want to become one of those and I didn't want people to think I did it to avoid repaying. I have two young kids, 10 and 12 years old. What would become of them?" So Rambha did what thousands of other desperate women and men from India's slums, and across the world, now do to survive—she signed up to be a human guinea pig in drug trials for foreign pharmaceutical companies." In explaining her decision, Rambha said "I am helpless, I have to do this. . . . They don't really force us, but I don't have a choice."

(Open Channel 2012)

Once again, let us assume for the sake of argument that Kanya and Rambha knew precisely what they were doing. Kanya was participating in a placebo-controlled trial because it gave her a chance of reducing the chance that her child would be HIV-positive. Rambha was participating because she made a reasonable decision that given her desperate straits, the benefit of financial payment for participation was worth more to her than the risks and burdens of participation (including long-term medical risks, time, pain, inconvenience, and stigma). We can ask three questions: (1) can persons such as Kanya and Rambha give *voluntary* consent to participate in research given their circumstances? (2) can persons such as Kanya and Rambha give *valid* consent to participate in research given their circumstances? (3) does valid consent to participate in research (i.e., consent that would give moral permission to investigators to proceed) require that such consent is voluntary? In what follows, I will argue the following: the answer to (1) depends upon our conception

of voluntariness; the answer to (2) is yes; the answer to (3) depends on the conception of voluntariness we adopt in (1), but the answer may be no.

## The Involuntariness Argument

The standard view accepts what I will call “the involuntariness argument.” Reduced to its bare essentials, that argument goes like this:

1. Major Premise: Valid consent requires voluntariness
2. Minor Premise: B’s consent is involuntary (an “involuntariness claim”)
3. Conclusion: B’s consent is not valid

Virtually all commentators accept the major premise, namely, that a person’s consent is valid only if it is voluntary. Call this the “**validity requires voluntariness principle**”—VCRV. By valid consent, I refer to consent that is morally transformative, that is, consent that renders it permissible for another person to do that which it would be impermissible to do without such consent, for example, to have sexual intercourse, to provide medical treatment, to extract a kidney for transplant, or to use one as a research subject. Consent can be invalid on grounds of incompetence, inadequate information, or involuntariness. A non-competent subject such as a child or a demented adult cannot give valid consent, and consent is not valid if it is a consequence of fraud, deception, or inadequate disclosure. Here we are interested in involuntariness.

If we accept the “validity requires voluntariness principle,” it follows that if B’s consent is involuntary, then B’s consent is not valid. Let us refer to the claim that B’s consent is involuntary as an “involuntariness claim.” The present question is whether we should accept the involuntariness claim with respect to Kanya and Rambha. Before we determine whether we should accept an involuntariness claim, it appears that we must first determine its “truth conditions,” that is, the factors that would render it true.

Roughly speaking, there are three views as to the truth conditions of an involuntariness claim. One view maintains that a person acts involuntarily only when she acts without volition as when one is hypnotized or has no control over one’s actions. That is an excessively narrow understanding of voluntariness and so I set it aside.

There are two more plausible views of voluntariness. On the “value neutral” view, an involuntariness claim is a (reasonably) straightforward empirical or value-neutral proposition that refers to something about the subjectivity of the consentor or to the array of choices available to the consentor.

As Nelson and colleagues put it, “Voluntariness is not a value-laden concept” (Nelson et al. 2011, 7). On this view, an involuntariness claim depends on “synchronic non-moral facts” that can be settled by examining the agent’s options, beliefs, and capacities at the time of consenting. The crucial point is that whether it is legitimate for someone to exercise a controlling influence has nothing to do with whether B’s consent is voluntary.

The value-neutral view is compatible with different accounts of the empirical factors that render consent involuntary. Nelson and colleagues argue that a voluntary action be understood “in terms of two necessary and jointly sufficient conditions: intentional action ... and the absence of controlling influences” (Nelson et al. 2011, 6). Although it’s not entirely clear when influences are “controlling” on their account, they allow that in addition to intentional acts designed to control another person, controlling influences can refer to internal psychological states or external circumstances—“A person may feel controlled by severe illness [or the] lack of a basic resource” (Nelson et al. 2011, 9). In particular, they argue that whether it is morally legitimate for someone to exercise a controlling influence has nothing to do with whether B’s consent is voluntary.

Another popular empirical conception of involuntariness asserts that one chooses involuntarily if one’s choice is made because there are no acceptable alternatives. Consider the paradigmatic case in which a man hands over his money to a gunman because the gunman has threatened to kill him if he does not. Serena Olsaretti suggests that “the factors that make choices involuntary when carried out in response to a coercive threat are the very factors that make other types of limited choices involuntary, namely that “the agent makes the choice he makes because he has no acceptable alternative.” The alternative faced by the man who hands over the money when threatened with a gun is to be killed. The alternative of a worker who sells his labor for whatever price is to remain unemployed and eventually starve. The general point is that “the relevant condition which undermines voluntariness in the [gunman] case is also present in the [worker case], the absence of an acceptable alternative. Call this the “no reasonable alternative” (NRA) conception of involuntariness.

Within the framework of this view, there can be disputes over details. Is non-acceptability objective or subjective? Does a person act involuntarily if she believes or feels that there are no acceptable alternatives—even if she is mistaken? How bad must an alternative be for it to be the case that one has no acceptable alternative? Does one act involuntarily if one believes or if there are no morally acceptable alternatives? These seem to be at least partially moral questions and thus suggest that what is purported to be a value-neutral view is

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not purely value neutral. But it could still be distinguished from the moralized view because the legitimacy of the proposer's or inducer's action would have no bearing on the voluntariness of the target's consent. In any case, and I put these interpretive issues aside for present purposes, I will assume that we can identify when an agent is subject to controlling influence or has no acceptable alternatives and that this can be done (more or less) in value-neutral terms. The crucial question is whether a value-neutral conception of involuntariness can explain when one's consent is invalid. I will argue that it cannot.

Now I do not deny that involuntariness can be sensibly defined in value-neutral terms or that it captures many of our linguistic and moral intuitions. I will argue, however, that although the controlling influence and no acceptable alternative views have considerable intuitive and scholarly support, neither (or any other comparable) value-neutral view can provide a plausible account of the sort of involuntariness that compromises the validity of consent. The claim that B's consent is involuntary in a way that yields invalid consent must include reference to the moral legitimacy of the actions of those who induce or solicit the agent's consent.

## The Legal Approach

In their very helpful recent article, Paul Appelbaum and colleagues suggest that we turn to the law for guidance on voluntariness. They correctly note that for legal purpose, a decision "is presumed to be voluntary if no evidence exists that someone else has unduly influenced it or coerced the person deciding" (Appelbaum, Lidz, and Klitzman, 2010, 32). From this perspective, decision is not regarded as involuntary if it is driven by the agent's own values and preferences or the agent's circumstance such as poverty, illness, or, in medical cases, the lack of "alternative treatment options." Indeed, the law regards B's decisions as voluntary even if A has exercised controlling influence over B or has made other alternatives unacceptable to B—if A's actions are legitimate. The legal model is committed to VCRV and thus must adopt an account of voluntariness that would not yield unacceptable legal results. For example, the law does not want to invalidate a contract simply because the contractor had no reasonable alternatives.

Appelbaum and colleagues have pointed us in the right direction, but they do not provide an argument as to why the legal model is appropriate for ethical analysis of voluntariness. After all, there may be special reasons for the law to adopt a strict view as to what compromises the validity of consent. For example, the legal system may be concerned to reduce litigation or ex post


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challenges to agreements, and so provides only narrow bases on which to claim that one's consent is involuntary and therefore invalid. Moreover, whatever the law says about involuntariness, there might be some reason to think that from a moral perspective, if one consents because one has no acceptable alternatives or is subject to a controlling influence, then one's consent is involuntary and one's consent is not morally valid. We need to determine whether the legal model of voluntariness is defensible from a moral point of view.

## Words, Concepts, and Moral Force

Words such as *voluntariness*, *voluntary*, *voluntarily*, and *volunteer* have multiple legitimate meanings or usages. There is no reason to think that there is a univocal account of the proper use of the word. So to say that an agent acts involuntarily *may* simply denote that the agent had been subject to a controlling influence or had no acceptable alternatives. It may or may not have any significant bearing on the validity of the agent's consent. Call this *involuntariness<sub>descriptive</sub>* (Burra 2010). In other cases, and of most interest to our present inquiry, to say that an agent acts involuntarily may imply or entail that her consent should not be treated as valid, that it does not give A permission or obligate B to perform some act. Call this *involuntariness<sub>consent</sub>*.

Now it is logically possible that these two sorts of involuntariness claims always converge, that involuntariness<sub>descriptive</sub> always entails involuntariness<sub>consent</sub>. If this were so, then a straightforward value-neutral conception of voluntariness is all that we would need. But, as we will see, this is not so. There are numerous cases that seem to involve involuntariness<sub>descriptive</sub> but where we say that the agent's consent is voluntary or, at least, that the agent's consent should be regarded as valid.

## Widening the Lens

To see why involuntariness<sub>descriptive</sub> does not entail involuntariness<sub>consent</sub> in much of our moral discourse, let us widen the lens beyond the research context and consider a range of non-medical and medical consent cases.

## Non-Medical Cases

A "consent decree"—note the name—is a judicial order confirming agreement by a defendant to cease activities alleged by the government to be illegal in return for an end to the charges. The Environmental Protection Agency

may threaten to bring criminal or civil charges against, say, British Petroleum (BP), unless the latter agrees to stop certain activities and pay a specified financial settlement. In return, BP will not be required to admit guilt or fault. Surely BP would not agree to the settlement in the absence of a threat of suit or prosecution and the belief that the chances of losing big are sufficient to make it rational for it to settle.

Let us assume for the sake of argument that the EPA's threat exercises controlling influence over BP and that BP has no acceptable alternatives but to agree. In other words, let's assume that BP's consent is involuntary<sub>descriptive</sub>. We have three alternatives: (1) we can accept VCRV and say that because BP's consent is involuntary<sub>descriptive</sub>, it is therefore invalid; (2) we can reject VCRV and say that BP's consent decree is involuntary but valid nonetheless; (3) we can accept VCRV and say that although BP's consent is involuntary<sub>descriptive</sub>, it is voluntary<sub>consent</sub> and that it is the latter conception of **consent** that is crucial. On examination, it seems that (1) reaches an implausible conclusion about the validity of the consent decree, (2) reaches a plausible conclusion about validity, but it requires us to give up on VCRV, and (3) reaches a plausible conclusion, but it requires us to explain why and how BP's consent is *voluntary* given that the EPA exercised controlling influence and given that BP had no acceptable alternatives.

Consider the distinction between extortion and hard bargaining.

*Extortion.* Sam threatens to break the windows of John's restaurant unless John agrees to hire Sam's garbage removal company. John signs a contract.

*Hard Bargaining.* Tom, who is John's long-standing supplier of beef, tells John that he must agree to a 50 percent price increase or find another supplier. There is no other available supplier of acceptable quality beef. Tom signs a contract to pay the increased price for twelve months.

What should we say about the voluntariness and bindingness of the two agreements? I believe that most of us would regard John's agreement with extortionist Sam as involuntary and not morally binding, but regard John's agreement with Tom as voluntary or, if not voluntary, we would regard John's consent to Tom's proposal as valid—and this is so even though John had no acceptable alternative but to sign *both* contracts and it is arguable that both Sam and Tom exercised a controlling influence over John's decision. With respect to John's agreement with Tom, we have three alternatives once again:

(1) we could accept VCRV and treat John's agreement as involuntary<sub>descriptive</sub> and therefore invalid; (2) we could reject VCRV and treat John's consent as valid even though it is involuntary<sub>descriptive</sub>; (3) we could argue that there are two plausible conceptions of voluntariness and say that John's agreement is voluntary<sub>consent</sub> and valid even though it is involuntary<sub>descriptive</sub>. Once again, (1) reaches an implausible moral conclusion, (2) requires us to give up VCRV, and (3) requires us to explain why we should regard John's consent as voluntary.

Now consider some medical cases. Consider a case of life-saving medical treatment. Suppose that Sarah has cancer and an oncologist tells Sarah that her alternatives are to undergo chemotherapy or die. Sarah considers the alternatives and consents to undergo chemotherapy. Is Sarah's consent voluntary? Is it valid? Arthur Caplan has argued that it is "hard to imagine" that those facing "certain death" can "be said to exercise informed consent... since the very fact of imminent death limits the realities of choice to doing anything that a physician offers as holding any hope" (Caplan 1997, 35).

Let us assume that Sarah's consent is involuntary<sub>descriptive</sub> because she has no reasonable alternatives but to consent to chemotherapy. Now what? We could accept VCRV and say that Sarah's consent is involuntary and that her consent is therefore invalid. This would require us to say either that the oncologist cannot proceed with chemotherapy, which would be crazy, or that it is permissible to treat Sarah without her valid consent, which would not be crazy but would require us to give up the view that we cannot treat a patient without her consent. We could reject VCRV and say that Sarah's consent is involuntary<sub>descriptive</sub> but that the consent is valid nonetheless. We could accept VCRV and say that Sarah's consent is voluntary<sub>consent</sub> and valid on a moralized account of voluntariness because the oncologist is not threatening Sarah and is making a perfectly legitimate proposal. That reaches a plausible conclusion, but requires us to explain why we should regard Sarah's consent as truly voluntary given that she reasonably believes that she has no reasonable alternative.

Consider "voluntary euthanasia." Dutch euthanasia legislation states that euthanasia is only permissible if it is based on a voluntary request made in a situation of unbearable suffering to which there are no alternatives. Somewhat ironically, the legislation presupposes that a "voluntary request" is not only compatible with a situation in which there are "no alternatives"; it claims that such requests should be honored *only if* there are no alternatives. Because he accepts the "no reasonable alternative" account of involuntariness, Martin van Hees suggests that the legislation contains an internal contradiction. If

the patient has no acceptable alternatives, then “a request for euthanasia cannot be said to be voluntary” (van Hees 2003, 62).

Words do not matter much. Whatever words we use, what is often referred to as “voluntary euthanasia” would still stand in contrast to paradigmatically involuntary euthanasia in which the patient does not consent to or request that his life be ended. If, following van Hees, one claims that “voluntary euthanasia” is really involuntary, we would *still* have to decide whether there is an important moral distinction between involuntary/requested euthanasia and involuntary/non-requested euthanasia and we would still have to decide whether such requests render euthanasia permissible. No view about the concept of voluntariness will resolve this substantive moral issue.

Setting aside linguistic issues, is there a substantive moral justification for not permitting “voluntary euthanasia” on grounds of its alleged involuntariness? (There may be other reasons not to allow “voluntary euthanasia.”) Van Hees thinks that euthanasia might be defensible on consequentialist grounds as a means by which to end unavoidable suffering, but that it cannot be defended on deontological or autonomy-respecting grounds. On his view, since suffering itself vitiates the voluntariness of the patient’s request, the suffering “undermines one’s autonomy and thus also the moral legitimacy of the request” (van Hees 2003, 63). I disagree. As the themes of movies such as *Million Dollar Baby* and *Whose Life Is It Anyway?* serve to illustrate, we always have to ask what it is to act autonomously within one’s circumstances, horrible though they may be. We think that patients can autonomously refuse life-preserving treatment or request that such treatment be halted under dire circumstances and that their choices should be respected. Similarly, it may well be argued that patients can autonomously request euthanasia under truly awful conditions or, even further, that the ability to make such a request is a fundamental exercise of one’s autonomy.

Consider organ donation to a close relative. One might consent to donate a kidney to one’s brother because one feels obligated to do so or because one’s emotional ties are such that one feels as if one has no morally or emotionally acceptable alternative. Maryam Valpour seems to accept a notion of “moral unacceptability” when she argues that a person who feels morally obligated to donate an organ does not do so voluntarily or autonomously. “If obligation is experienced in such a way that a donor feels he/she cannot refuse donation even though he/she does not want to donate, then that consent is coming close to substantially controlled... and, therefore, nonautonomous” (Valpour 2008, 198). Arthur Caplan shares Valpour’s concern. He says that emotionally related donors “may find it impossible to give their consent freely... because

they feel coerced...by the nature of the obligations that they see as defining their relationship to the person in need.” On his view, “if consent is to be valid, then those giving it must feel free to say no” (Caplan, 1997, 117).

I find all this puzzling. A person who donates because he feels an overwhelming obligation to do so *does* want to donate, all things considered, when the things to be considered include one’s belief that one should donate and one’s motivation to do what one thinks one should do. If one had been wrongfully manipulated into feeling that one had an obligation to donate, then one’s decision might be regarded as “substantially controlled” and “non-autonomous.” But if someone should decide to donate to his sibling because after all, it’s “my brother,” I see no reason not to regard his consent as voluntary and autonomous even if—perhaps especially if—he believes that he has no morally acceptable alternative. I see no reason to think that emotionally (and biologically) related donors who choose to donate out of love or a sense of obligation are not doing so voluntarily or, more important, that we should be suspicious about the validity of their consent.

A more interesting problem arises when a person wants to donate for self-interested reasons—broadly understood. Consider this case.

A needs a kidney. B is A’s brother. B is a good match. A and B have never gotten along and, other things being equal, B would refuse. But both A and B do get along with other members of their family, and the other members bring considerable pressure to bear on B to donate. This pressure does not overwhelm B’s capacity to think about things rationally and despite the family’s urging, he’s still not convinced that he has an obligation to donate. Nonetheless, B values his relationship with his family and is concerned that this relationship would be damaged if he refused. B also fears that his parents might alter their will if he refused. B consents.

I see no reason not to regard B’s consent as valid and voluntary. He is making a reasonable judgment about his familial and financial interests in a context in which no one has threatened to violate his rights (he has no *right* to inherit from his parents) if he refuses.

The takeaway from these cases is this. If we temporarily set aside the issue as to whether the agent’s consent is voluntary, it seems clear that we simply cannot say that we should regard a person’s consent as invalid simply because someone exercises controlling influence over her choice or because she has no acceptable alternative but to consent. It follows that when someone like

Rambha or Kanya consents to participate in research because she has no reasonable alternatives, it does not follow that we should regard her consent as invalid. There *might* be other reasons to bar their participation or insist on certain terms for participation, but we cannot go straight from the fact that her consent is born of desperation to the conclusion that we should regard her consent as invalid.

## Validity

Let us continue to set aside questions about the voluntariness of consent and consider why we should regard Kanya's and Rambha's consent as valid—on the assumption that they understand the risks and benefits of their decisions and are making reasonable judgments about their interests or the interests of their families. We can consider this question from a consequentialist perspective and from a deontological or autonomy-respecting perspective.

From a consequentialist perspective, there are two reasons why we generally insist that certain sorts of transactions or interventions are permissible if but only if the agent consents. First, we regard the agent's voluntary consent as necessary to protect the person from interventions that are not wanted and that do not advance the party's interest. Second, and of paramount but often overlooked importance, we regard the agent's consent as sufficient (other things being equal) to authorize transactions or interventions or create binding obligations because doing so will advance her interests or aims. From a consequentialist perspective, it would be a serious mistake to regard consent as non-transformative just because the consenter had no acceptable alternatives or is subject to controlling influence. After all, going from a very bad situation to a less bad situation is still an improvement.

With respect to the cases under consideration, it seems that it is in the agent's interest that his or her consent be regarded as valid. BP would prefer not to be under the gun from the EPA, but if it is, it wants to be able to enter into a consent decree and avoid a costly suit. John hopes that Tom will continue to supply beef at the lower price, but if Tom insists on a higher price, John wants to be able to give consent that will be recognized as valid. Sarah hopes not to have cancer, but if she does have cancer, she wants to be able to authorize the oncologist to administer chemotherapy if that is the only effective treatment. It would be absurd to conclude that she cannot do so because her consent is involuntary. Rambha would prefer not to be desperately poor and not to be in debt because of her son's illness. But she very much wants to participate in research in exchange for payment, given the alternatives that are

available to her. Kanya would prefer not to be HIV-positive or, if she is, to have the long-course treatment available to her. But given that she is HIV-positive and given that she has access to no treatment to reduce maternal-fetal transmission, she wants to be able to participate in the short-course trial even though she might receive a placebo.

But here we encounter a problem. If we should treat an agreement as valid whenever it is in a party's interest (at that time) to do so, then it may be argued that agreements made in response to extortionate threats should also be treated as valid.

A, a gunman, tells B that he will kill B unless B gives A \$1,000. B does not have \$1,000 but is willing to sign an IOU for \$1,000.

Once B finds himself in this situation, it may well be in B's interests to be able to enter into a binding agreement with A. For if A realizes that the IOU would not be regarded as binding, A is more likely to kill B. So it would seem that consequentialist considerations tell in favor of treating B's IOU as valid and binding, in which case the consequentialist strategy seems to prove too much. But it does not prove too much. Although there might be occasional benefits to treating such agreements as valid and binding, a general policy of treating such agreements as valid would seriously threaten the stability of the basic framework of rights and liberties within which the possibility of consensual mutually advantageous transactions takes place. As a general matter, it is in one's ex ante interest to be the recipient of legitimate proposals such as an offer to perform life-saving surgery, but contrary to one's ex ante interests to receive extortionate threats.

Now consider deontological or autonomy-respecting argument for regarding many cases of consent as valid even when the consentor has no acceptable alternative or is subject to controlling influence. Although autonomy is a notoriously difficult concept, for present purposes I shall simply stipulate that to be autonomous is to be in control of one's life and exercise self-determination. There is both a negative and a positive dimension to respect for autonomy. On the one hand, we require that people's consent is voluntary and informed in order to protect their negative autonomy from interventions to which they do not genuinely agree. On other hand, we respect a person's positive autonomy when we allow him to authorize interventions or bind himself to do something. And so we fail to respect a person's positive autonomy when we do not allow him to authorize interventions or facilitate binding agreements. We would not respect the autonomy of people to engage in same-sex relations if, while

protecting them from non-consensual sexual relations, we did not allow them to render it permissible for other people to have sexual relations with them.

Because it is impossible to simultaneously maximize respect for both dimensions of autonomy, it is difficult to get the balance right. Consider a patient with a painful and terminal illness who is considering voluntary euthanasia. To emphasize her positive autonomy by allowing her to authorize such euthanasia is to risk allowing her to make such a decision when she is less than fully competent. On the other hand, to overemphasize or overweight her negative autonomy by not allowing her to authorize euthanasia because she is less than fully competent may be to condemn her to continued suffering. The present point is that any plausible conception of autonomy must be sensitive to both dimensions of autonomy.

When we focus on the positive dimension of autonomy, it becomes clear that any plausible conception of self-determination operates within a certain conception of the world in which people find themselves—a world that contains poverty, prosecutions, civil suits, illness, and, in the worst case, unbearable and unavoidable suffering. Sarah autonomously chooses chemotherapy within the world that she finds herself. In addition, the world in which we exercise our own self-determination is also defined by the rights of others who are exercising their autonomy. While it is typically illegitimate for A to threaten to violate B's rights if B fails to consent, it is typically legitimate for A to make B an offer if B does consent. Recall John, who has received an extortionate threat from Sam and a demand for a higher price from beef-supplier Tom. Sam threatens to violate John's rights if John does not consent, whereas Tom does not. John can reasonably want *ex ante* protection from such extortion (by a state that punishes such acts) and *ex post* protection by a policy of not treating his consent as valid. But as much as John might prefer that Tom continue to sell him beef at the lower price, Tom has a right to sell only at a higher price and John cannot reasonably claim that his right to operate his restaurant prohibits Tom from making such demands. Any account as to when John's consent is morally transformative must be rights-sensitive in this way.

Interestingly, Rambha does not claim that the researchers are coercing her or violating her rights. She certainly laments the fact that her situation is such that she has no viable alternative, but she doesn't blame the researchers for this. Rambha seems to accept this idea. When reflecting on her decision to participate in research, she remarked "I am helpless, I have to do this. . . . They don't really force us, but I don't have a choice." Rambha may not have what we may regard as an "autonomous life," but within the life she has, she is capable of making an autonomous decision.



We can reach a similar conclusion about the conditions of valid consent by adopting a contractualist theory with respect to the validity of consent. Although such a theory can be modeled in different ways, we can ask what principles about the validity of consent would be adopted in something like a Rawlsian original position in which people are choosing principles for a non-ideal world, not knowing what positions they would occupy in that world. The contractors would understand that illness, accident, and even unjust background conditions may place them in situations in which they can improve their situation only if they have the ability to authorize someone else to do something to them or for them. I think it is clear that they would not adopt a conception of valid transactions that renders one's consent invalid or non-transformative whenever one is in a position in which one has no acceptable alternative or is subject to controlling influence. And they would certainly not adopt a conception of valid consent that did not permit them to act on their considered moral views about their obligations, as in the case of donating an organ to a sibling.

## From Validity to Voluntariness

I have argued that there are sometimes good reasons to regard consent as valid even when the consenter has no acceptable alternatives or when the consenter is subject to controlling influence. On a moralized view, such consent might be involuntary<sub>descriptive</sub> but voluntary<sub>consent</sub>. But that still leaves open the question as to whether and why we should regard such consent as genuinely *voluntary*. To (re)use an example, can we defend a conception of voluntariness that allows us to say that John's response to extortionist Sam is involuntary whereas his response to beef-supplier Tom is voluntary given that he faces no reasonable alternative in both cases? It is relatively easy to show that Tom does not coerce John because he has not threatened to violate John's rights if John does not accept his proposal. But it is much more difficult to show that John's consent should be regarded as genuinely voluntary. Similarly, even if it is best to treat Kanya's consent and Rambha's consent as valid, does it make sense to say that their consent is genuinely voluntary?

There are several ways in which it could be argued that one acts voluntarily in those cases in which we think consent should be regarded as valid even though the consenter has no acceptable alternatives. Here I mention two. A "phenomenological" strategy notes that—as a matter of psychological fact—we tend to distinguish between those decisions that reflect our will within a situation as contrasted with cases in which our decisions are driven

by the will of another person who is seeking to determine our decisions in ways that we would reject. There are two points here. First, we distinguish between background or circumstantial constraints on our actions and those created by another person, and this is particularly so when our circumstances are “natural” as opposed to the product of social forces. Although we may sometimes be inclined to “shoot the messenger,” Sarah does not really blame the oncologist for her disease. There are many situations in which B feels as if a choice is *his* choice, not because he has numerous alternatives from which to choose, but principally because the choice is not someone else’s. Something like this may be true in voluntary euthanasia.

Second, we distinguish between interventions by others that motivate us to consent that we welcome or cannot reasonably reject and those that we can reasonably reject. Suppose that A persuades B that B should do X or offers B an incentive so that B will consent to do X. Although A is getting B to do what A wants B to do in both cases, B need not resent the fact that he is choosing what A wants B to choose, so long as B does not regard the means by which A is attempting to influence B’s choices as illegitimate or contrary to what B would prefer. Our experience of choice is sensitive to whether we think that others are acting within their rights, whether they are threatening to violate our rights if we refuse to go along or offering us a benefit if we do. So while John may be angry that Tom is demanding a price increase, he also recognizes that Tom has the right to do so. Given that context, he feels as if he is agreeing voluntarily.

Although I believe this phenomenological strategy lends some support toward explaining why we feel that our consent can be voluntary even when we have no reasonable alternative or are subject to a controlling influence, I am not sure that it is strong enough. Among other things, there will be cases in which people fail to make the distinction just noted. For example, although the EPA may be acting within its rights in attempting to exercise controlling influence over BP’s decision, BP’s decision-makers may still feel that their choice is forced or involuntary, even if they also want their consent decree to be treated as voluntary. There is no reason to think that the phenomenology of consent always tracks the validity of consent.

A second and related strategy appeals to the well-known hierarchical or two-tiered view of the will, first made famous by Harry Frankfurt (Frankfurt 1971). Although there is a sense in which we always do what we prefer, there is another (allegedly more important) sense in which acts are autonomous or voluntary when they are compatible with our more reflective (higher or underlying) preferences whereas involuntary acts are not. As Gerald Dworkin puts it, “Autonomy is conceived of as a second-order capacity

AQ:6

of persons to reflect critically upon their first-order preferences, desires, wishes and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values” (Dworkin **year**, 20). On this view, a drug addict’s decision to consume a drug is not autonomous or voluntary if she has a higher-order preference not to consume drugs, even if the decision to consume drugs is informed, rational (under the circumstances), and uncoerced. Along similar lines, we might argue that consent that appears not to be autonomous or voluntary, because the agent has no acceptable alternative or is subject to controlling influence at the time of the decision, can be considered as autonomous and voluntary if the agent has a higher order or reflective view about the terms on which her consent *should* be regarded as valid, for example, when one’s consent is driven by circumstantial pressures or is not driven by illegitimate pressures. Setting aside how Rambha feels about the consent she is offering, her consent is voluntary on this view because her higher-order preference is to have her consent to participate regarded as valid.

I am not sure that either of these approaches adequately explains or justifies our claiming that we should regard a person’s consent as voluntary in those cases in which it makes sense to regard a person’s consent as valid, even if the person has no reasonable alternative to consenting. There may be other strategies that work, but I do not know what they are and I doubt that they would be more successful than those I have mentioned.

## Conclusion: Giving Up on Voluntariness

Suppose that we are not successful in explaining why it makes sense to regard BP’s consent or John’s consent or Sarah’s consent as genuinely voluntary given that they can reasonably claim that they have “no choice” but to consent. What then? There seem to be at least three alternatives.

First, we can accept VCRV and a value-neutral or “no reasonable alternative” view of voluntariness. Unfortunately, this combination has morally unacceptable conclusions. It would require us to say that consent is invalid in a wide range of cases in which we think that a person should be able to give morally transformative consent. If a plausible theoretical principle combined with a plausible conceptual analysis leads to morally unacceptable conclusions, then I will reject the theoretical principle or conceptual analysis rather than accept what I regard as morally unacceptable conclusions. We simply cannot be committed to VCRV *and* a value-neutral conception of voluntariness given that it entails that consent is invalid in a wide variety of cases in which that upshot is unacceptable.

Our second alternative is to accept a value-neutral account of voluntariness, but give up our commitment to VCRV. We would be prepared to argue that a person's consent could be valid even though it is offered involuntarily. We might say, for example, that whereas coercion undermines validity, involuntariness does not. The good news here is that this approach allows us to reach morally acceptable conclusions with respect to the validity of consent. The bad news is that our commitment to VCRV is very deep—as evidenced by the Nuremberg Code's statement that “[t]he voluntary consent of the human subject is absolutely essential” (Nuremberg Code 1949). On this alternative, we would need to explain precisely how and why involuntary consent should be regarded as valid. Moreover, we would need a theory that explains when the involuntariness of consent defeats its validity and when it does not. Note that this alternative would be a pyrrhic victory for advocates of the value-neutral view or no reasonable alternative view of voluntariness, because the involuntariness of consent would have limited moral significance. I do not mean to deny that there is a moral point to showing that a person's consent is involuntary even when it should be regarded as valid. For example, there is often good moral reason to try to alter circumstances such as poverty and the absence of medical care that put people in a situation in which they have only one reasonable alternative. Moreover, pointing to the fact that a person has no reasonable alternative may absolve someone of blame for consenting to something that might otherwise be criticized. “Why did you agree to that?” “Because I had no other choice.” Still, pointing to involuntariness would no longer entail anything about the validity of a person's consent.

The third alternative is to keep VCRV and adopt a moralized account of voluntariness<sub>consent</sub>. In effect, this alternative adopts the legal model of voluntariness. On this view, a person who has no reasonable alternative or who consents involuntarily on a value-neutral view of voluntariness consents voluntarily in response to a proposal if it is legitimate for the proposer to make his proposal or, perhaps, if the proposer is not coercing the target by threatening to violate the target's rights if she decides not to consent. This approach has three advantages. First, it allows us to retain our commitment to VCRV. Second, it is consistent with at least some of our linguistic and moral intuitions. For at least some of us are inclined to say that John voluntarily agrees to pay a higher price and that Sarah voluntarily consents to undergo chemotherapy because neither Tom nor the oncologist have threatened to violate their respective rights if they say no. Put in different terms, this approach equates the voluntary with the not-coerced and not with the absence of controlling influence or the presence of reasonable alternatives. Third, this

alternative allows us to reach morally acceptable conclusions with respect to the validity of consent.

So what's the problem? The downside of this view is that the value-neutral view of voluntariness seems to capture something important and is difficult to resist. The Nuremberg Code does not speak of non-coerced consent; it speaks of voluntary consent, and, it might be said, a moralized account of voluntariness is too cramped. Although it is comparatively easy to show why Sarah's consent to chemotherapy is valid, it is much more difficult to show why we should regard it as genuinely voluntary given that she has no reasonable alternatives. I offered some suggestions as to how this might be done in the previous section, but I confess that I am not confident that they work or that they establish that such consent is voluntary in a robust way.







The second and third alternatives both require that we give up on voluntariness, albeit in different ways. The second alternative asks us to give up on the claim that valid consent requires voluntariness. The third alternative allows us to keep VCRV but does so only by adopting a moralized account of voluntariness that seems detached from the general point of voluntariness discourse, namely, some reference to the will of the consentor.

So maybe we should give up on voluntariness in one of these two ways and say the following: IRBs should decide that Rambha and Kanya can give valid consent to participate in research. The IRBs should not preclude Rambha's and Kanya's participation on consent-related grounds and should realize that doing so is contrary to each woman's interests. We might think that the women's circumstances are such that we understand why it might be claimed that they are not consenting voluntarily. Those circumstances—and that sort of involuntariness—are morally of great importance. There are strong moral reasons to strive to change the background situation of persons such as Rambha and Kanya such that it would not be in their interest to participate in such clinical research. But we should not accept VCRV and an account of voluntariness that would preclude their participation in research given the circumstances in which they find themselves. It is not in their interest to do so. And it does not respect their choices as autonomous persons.

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# Children's Rights, Parental Agency, and the Case for Non-coercive Responses to Care Drain

*Anca Gheaus*

## 1. Introduction

Worldwide, a large number of people migrate in order to take up temporary employment. Of those who have children, many cannot afford to bring them along and must, therefore, leave them in their country of origin. Thus, much temporary, years-long migration results in the separation of parents and children. This is a morally challenging situation. On the one hand, there is a widespread belief that children need continuity in care. That is, they need parental affection and guidance throughout their childhood. According to international conventions, children have a right<sup>1</sup> to proper parenting. By “parents,” throughout this article, I refer to social parents, that is, to the people who play the parenting role in children's lives, rather than to biological parents, that is, to the people who bring children into existence. The claim is therefore not that biological parents are best suited to ensure the well-being of their children and the protection of their rights. Rather, the claim is that, once the parenting relationship is established—whether via procreation or adoption—continuity in parenting is integral to children's well-being. Furthermore, a certain degree of regular physical presence is necessary in order to ensure affection and guidance. And, finally, it is generally accepted that parents bear a special responsibility to ensure their children's well-being; only if parents fail to discharge this responsibility are other agents,

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such as state institutions or the wider community, obligated to take responsibility for children. Migrating without one's children is, therefore, problematic.

On the other hand, much of the temporary migration is driven by poverty; unemployed or underemployed parents migrate in the hope to secure necessary work. It is also widely believed that people have a moral right to seek the fulfilment of their basic material needs, and, independently from this, a right to mobility. Moreover, one of the key motivations for migration, according to migrant parents' own testimony, is to be able to discharge their parental duties concerning their children's material well-being. Children have a right not only to continuity in care but also to proper nutrition, housing, and education, and at least some of the migrating parents are driven by their inability to ensure these in their country of origin.

There are, therefore, important moral reasons both for and against parents' migration. Since some of these reasons concern rights, and states have the responsibility to ensure that their citizens' rights—whether children or adult—are not violated, parents' migration is a political as well as an ethical issue.

In an ideally just world, the conflicts at stake could be avoided: between children's rights to material well-being on the one hand and to continuity in care on the other hand; and between parents' right to economic security and mobility on the one hand and their responsibility to provide continuity in care on the other hand. I assume that in such a world individuals would have at least the sufficient level of material resources necessary to ensure their own and their dependants' well-being.<sup>2</sup> Ideally, adults would generally not need to migrate for economic reasons. And if they needed to migrate in exceptional situations—due, for instance, to natural disasters—they would have the legal and material means to take their children with them. Yet such a world is unfortunately far from sight. Actually existing societies continue to be tarred by poverty. Some efforts are being made to allow migrant workers to bring their children along but we are far from effectively enabling all temporary migrants to do so.<sup>3</sup> These structural limitations are likely to continue for a long time, and, while trying to address them, we need temporary institutional solutions to ensure that children's rights to both material and emotional care are respected.

This paper has two closely related aims. First, it addresses the questions of parents' moral entitlement to migrate without their children in spite of the importance of parental continuity for children's well-being. It explains why parents who must choose between poverty and migration suffer from a form of impaired agency and are not therefore to be blamed for imposing on their children years-long separation. The second aim is to discuss the best ways of addressing the conflicts of rights and responsibilities described above in

non-ideal social circumstances. Legally restricting parents' migration unless they take their children with them would be illegitimate. We should rule out coercing parents to either not migrate or else migrate together with their children. This, however, does not mean that states are justified to withdraw any responsibility with respect to migrants' children's emotional well-being, nor that it is enough for states to pass laws requiring parents to ensure legal guardianship for their children during absence. Instead, I argue that states should put in place programs of counseling, attached to schools and preschool caring institutions, whose role is to provide robust emotional support and guidance to migrants' children during their parents' absence. These programs can be funded using some of the money raised by taxing remittances, which in certain cases constitute a significant part of the sending countries' gross domestic product (GDP). This solution is therefore less coercive than restricting migration. It makes use of coercion only to the extent to which it relies on taxation of remittances and to the extent to which schooling itself is mandatory. Both taxation and mandatory schooling, however, are coercive means already employed by most states. Less coercive ways of addressing parenting deficits are, other things being equal, preferable to more coercive approaches—or so I argue. Finally, I will explain why this solution makes fair use of the migrants' remittances. Yet the argument is that states owe this remedial measure both to migrants' children—who are among the most vulnerable members of society—and to their parents as a form of restoring their agency; therefore, when the money raised from taxed remittances is not enough to fund proper counseling, other sources of funding ought to be sought.

This chapter is structured as follows. Section 2 expands on the reasons why the long-term separation between parents and children in the context of temporary migration, a phenomenon sometimes called “care drain,” is morally problematic. Care drain negatively impacts on children's interest in continuity in care and, in some cases, on parents' moral agency. Care drain has been mostly discussed in the context of the feminization of migration. I assume that mothers and fathers are equally responsible for the continuity in care that ensures children's emotional well-being.

In the third section I first explore the more coercive responses to care drain. I argue that restricting migration for parents who are poor or at risk of poverty is illegitimate and legislative measures aimed at ensuring legal guardianship for children during their parents' absence are, by themselves, insufficient and likely to be inefficient. I then make the case for supplementing such legislation with counseling programs meant to ensure robust guidance and emotional support to the migrants' children.

The primary illustrations of the various problems raised by care drain are taken from the case of Romanian temporary migrants, but I indicate that these examples generalize to temporary migration from other countries such as Poland, Mexico, Pakistan, and countries in Southeast Asia—and, sometimes, even to migration within the borders of the same large country, such as China (Qin and Albin 2010).

## 2. Children's Rights and Parents' Agency in the Context of Care Drain

### A. *Care Drain*

Over the past few decades migration has become increasingly feminized—or at least, international women migrants started to show up in statistics in bigger numbers; in 2005 women represented half of the world's migrants (Morrison, Schiff, and Sjöblom 2008, 2). Female migration has also been receiving increased public—including scholarly—attention and much of this attention is directed to the effect of women's migration on the gendered division of labor in sending countries. Because in most societies women continue to be the main providers of care for dependent family members—not only children but also elderly parents and ill or disabled relatives—some scholars' attention has been drawn to the question of what happens when women start to migrate in higher numbers. The loss in hands-on care suffered by dependent family members left behind by migrant women is often referred to as “care drain” (see, for instance, Hochschild 2000; 2005). Care drain is said to consist mostly in migrants who move “in five main migratory streams—from Eastern Europe to Western Europe, from Mexico, Central and South America to the United States, from North Africa to Southern Europe, from South Asia to the oil-rich Persian Gulf and from the Philippines to much of the world—Hong Kong, the U.S., Europe, and Israel” (Isaksen, Devi, and Hochschild 2008, 405). In this paper I leave on the side the contentious issues of whether it is fair to focus exclusively on *women's* migration in the study of care drain (Dumitru 2011 argues it is not, and I discuss this in Gheaus 2013b) since my focus here is on responsibilities toward one group of dependents left behind: children. Both morally and legally, not only mothers but both parents—whether heterosexual or homosexual—bear the primary responsibility for their children's well-being. Hence, I talk about migrant parents rather than migrant mothers, thus bypassing the question of exactly what percentage of men's migration is responsible for care drain.

People migrate for various reasons. My interest here is in those migrants who meet all of the following criteria: (a) are parents of minor children whom they leave at home; (b) migrate in order to work on a temporary basis (often leaving when they have a contract, which they then renew, or else find a new contract while already abroad); and (c) are mostly motivated by poverty, corruption, and structural unemployment or underemployment in their place of origin. Of course, some parents who are not poor or at risk of poverty also migrate without their children. The normative analysis I offer here is not meant to apply to this group. It is plausible to assume that migrants whose agency is not impaired by poverty or the threat of poverty are more capable, and hence more likely, to migrate together with their children;<sup>4</sup> if they have this possibility and yet decide to separate from their children, and if as a result children suffer harm, these parents are likely to bear moral responsibility for the harm.

I shall take turns discussing what moral rights children have and why continuity in parental care is important for their development, analyzing the harms inflicted on them by separation from their migrant parents, and arguing why the parents discussed here should not, nevertheless, be held responsible for this situation.

### *B. Continuity in Care and Children's Moral Rights*

It is a truism that children need to be raised by grown-ups. Specifically, they need the care of committed and competent adults—adults capable and willing to take responsibility for their interests (which vary with age) and to foster their moral and practical agency. Without such care many children do not survive and those who do survive face great suffering and are less likely to flourish. As vulnerable, not yet fully autonomous human beings, who cannot be held responsible for their own existence and circumstances, children have a moral right to adequate care in order to protect them from harm and allow them to thrive.

One of the more contentious questions is whether the care owed to children should be given via parenting—that is, within an arrangement where a small number of adults are morally and legally responsible for every particular child's well-being over whom they exercise authority. Why is parenting better than bringing up children in well-run orphanages staffed with professional child minders or in communities such as the kibbutz? Such alternative child-rearing arrangements could avoid some of the undesirable consequences of parenting: most prominently, its tendency to unfairly disrupt social equality

(Rawls 1972; Blustein, 1982; Munoz-Darde 1999). Yet philosophers—like everybody else—tend to agree that parenting is the best way of raising children. A few philosophers (such as Narveson 2002) believe the justification of parental rights comes exclusively from parents' own interests and their proprietary relationship to their biological offspring. But most philosophers legitimize parenting by appeal either to children's own interests alone, or to a combination of children's and parents' interests, which dictate that children ought to be raised by parents (Blustein 1982; Clayton 2006; Brighouse, and Swift 2006; Archard 2010).<sup>5</sup> And the main reason for children having parents rather than more or less transitory caregivers is children's interest in being loved and cared for by someone who is there for them during their entire childhood.

Here I assume that continuity in care requires the frequent and regular presence of parents in their children's lives, and that some degree of physical presence is also necessary for continuity in care.<sup>6</sup> One may care *about* another person without providing any direct help with meeting that person's needs, and "caring about" may be very valuable for the recipients. Yet parents' importance in children's lives comes largely from them also caring *for* the children. (For the classical distinction between "caring about" and "caring for," see Tronto 1993.)

Before I go on to analyze children's interest in continuity in care, let me note that international documents protecting children's rights also recognize the importance of continuity in care. The United Nations Convention on the Rights of the Child (United Nations 1989) stipulates that only the child's best interest can justify the separation between a child and her or his parents against the parents' will (Article 9.1)—thus acknowledging, implicitly, that the child's interest in continuity in care can be trumped by other considerations (presumably, parental neglect or abuse.) Yet unless such special circumstances apply, parents and children have a right not to be separated. When physical separation is unavoidable, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests" (Article 9.3). Finally, in cases when children need adoption or fostering, the CRC stipulates that "[w]hen considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing" (Article 20.3).

Why is continuity in care so important to children's well-being? According to Anne Alstott, adequate parents are both nurturers and advocates of their child until she or he reaches maturity (Alstott 2004, 16), and their

continuous relationship with the child uniquely qualifies them in these capacities. Thanks to the long-term direct involvement with their children, parents acquire a depth of knowledge and psychological identification with the well-being of the child. Neither adequate knowledge nor psychological identification is possible in shorter-term relationships. For the claim that children's psychological well-being requires continuity in care, Alstott relies on the work of child psychologists such as Anna Freud, Albert Solnit, and Joseph Golstein. Their by-now classical theories of child development see disruptions in continuity in care as a possible source of psychological trauma for the children. At different ages, continuity in parental care is important for different reasons. For instance, "during the rebellions of adolescence, parents offer a stable relationship, permitting the child to experiment with rejection and distance without rejecting the child in return" (Alstott 2004, 17).

The second claim is that continuity in care is also important for social reasons; parents act as an interface between their children and the larger society, and their knowledge of the child makes them the best advocates of children's interests (Alstott 2004, 18). Indeed, parents are also supposed to legally represent their children's interests and make sure that their rights are being protected.

What happens then in the situation in which migrant parents, who cannot take their children with them, are absent for extended periods—sometimes months or years at a time?<sup>7</sup> To the extent to which children are attached to their migrant parents, they are bound to experience loss even if other, reliable, adults step in to take over their care. Perhaps the most straightforward way to explain it is that children become emotionally attached to their parents and, in general, people are non-fungible to the ones who love them. This is how non-fungibility is to be understood: "If an object having import to you is such that its being taken away ought to be experienced as a loss regardless of the state of other objects that might have or come to have import to you, then... that object has *non-fungible import*" (Helm 2010, 200). Parents are usually non-fungible to their children, which means that even if other competent and loving adults were to reliably take over the hands-on care of the migrants' children, children would be bound to experience loss.

Yet according to studies from different countries, the caring arrangements put in place for migrants' children are not always stable. Caring responsibilities are sometimes chaotically allocated, with various relatives and neighbors taking over, sometimes leaving children growing up on their own. Studies indicate that, for instance, in Romania, about thirty-five hundred children with migrant parents are cared for by neighbors, friends, or minor siblings

(UNICEF and AAS 2008).<sup>8</sup> Even when children remain in the care of a family member—most likely female, often a grandmother (for Romania, see Piperno 2007a; 2007b)—care arrangements tend to be unstable due to difference in age between children and grandparents, the overburdening of the person who takes over the caregivers' role, and the necessity to relocate the child (for instance from a city to the countryside) (Pantea 2012; 2013). Research on Polish migrants' children also indicates that caring arrangements for migrants' children can be unstable (Lutz and Palenga-Mollenbeck 2012). This may or may not generalize across the board, but many parents who migrate work in relatively precarious employment as seasonal agricultural laborers, workers in construction, or caregivers in private homes. It is plausible that they lack the ability to plan ahead: they need to seize job opportunities at short notice and cannot know if they will be able to find a new contract once they emigrate. Some parents have to leave without even giving proper warning to their children (Piperno 2007a).

Private arrangements for providing care to migrants' children seem insufficient for many of them: first, because even when they work well, children suffer the loss of parental continuous care; and second, because depending on particular contexts, the care arrangements may be unstable. This is more true for children growing up in nuclear families than for those raised in extended families where the contrast between primary caregivers (parents) and other adults is likely to be less sharp. The case for the state supplementing migrant children's care with counseling programs is weaker or stronger depending on how much continuity in care particular children already experience—for instance, are they being looked after by a grandparent who was already closely involved in raising the child before the parents' migration, or is their care taken over by a previously distant relative? Similarly, there is a stronger case for offering these services to children whose care arrangements, post migration, are less stable.

To sum up, years-long separation between children and their parents—defined as their primary caregivers—in the context of temporary migration harms children's strong interest in continuity in care. Children have a right to adequate levels of care, and there are good reasons to believe that continuity in care is a constitutive element of children's well-being. In particular, continuity in care is essential to their emotional and developmental well-being.

The above claim is compatible with the fact that the *overall* impact on children of their parents' migration is both complex and disputed (see sources cited in Lutz and Palenga-Mollenbeck 2012; Jordan and Graham 2012).<sup>9</sup>

Thanks to remittances, migrants' children—just like other family members—are materially better off than before migration and sometimes better off than children whose parents do not (need to) migrate. The money sent by their migrant parents buys them better food, accommodation, and education, but sometimes also functions to single them out among their peers, and even ostracize them (AAS 2006; Piperno 2007a; Isaksen, Devi, and Hochschild 2008). School performance and social behavior sometimes are and sometimes are not negatively affected (Kandel 2003; AAS 2006; SFR 2007; Jordan and Graham 2012).

But children from various parts of the world, who are separated from their migrant parents, do tend to report feelings of loss and betrayal, higher levels of depression, anxiety, and sheer unhappiness (AAS 2006; SFR 2007; Piperno 2007a; UNICEF and AAS 2008; Isaksen, Devi, and Hochschild 2008; Farooq and Javed 2009; Qin and Albin 2010), and sometimes even “guilt for the sacrifice made by their mothers” (Piperno 2007a). Separation in the context of temporary migration is not only introducing discontinuity in parental care but also, very probably, disrupting primary caring relationships. Research on migrants' children in Southeast Asia indicates that children of migrant parents, especially migrant mothers, are less likely to be happy compared with children in non-migrant households (Jordan and Graham 2012). Finally, children's relationships with the migrating parent and with the custodial parent sometimes deteriorate under the pressure of ad hoc, unclear allocations of caring responsibilities (SFR 2007; Pantea 2012).

Because migrants' children sometimes end up materially better off than otherwise similarly situated children whose parents do not migrate, and because remittances are used to fulfill some of their fundamental interests such as housing and education, sociologists are often reluctant to claim that migration harms the children. (By contrast, psychologists and educators quoted by studies on care drain usually deplore the effect of parental absence on children.) Are better education and proper housing more or less important than continuity in care? I avoid giving an answer to this question because I rely on a non-comparative account of harm (Shiffrin 1999), according to which one is harmed if one has a fundamental interest frustrated even if the action that frustrates the said interest is necessary for avoiding even greater harm. In other words, if children have a right to adequate care then they have a right to both necessary material means and continuity in care, and if a systematic and large-scale phenomenon such as temporary migration is frustrating their interest in continuity in care, they are being owed reparation.



### C. Parents' Agency

Who, then, is responsible for making sure that children do not suffer too large disruptions in continuity in care and, when disruptions are unavoidable, that children are helped to mitigate the negative emotional and developmental effects of separation from their parents?

One plausible answer is that migrant parents themselves are responsible for any frustration of their children's fundamental interests that result from parental migration. I argue that this answer is incorrect, at least in the case of those migrant parents I consider in this paper.

The *prima facie* plausibility of this answer comes from the fact that, in general, parents are the primary bearers of responsibility for the child's well-being. It is commonly believed that parents have the duty to make sure that their children's interests are being met and only in cases when they cannot do this is the responsibility transferred to other agents such as, for instance, child protection agencies. There is a debate about the content and the extent of what is owed to parents to help them meet their duties toward their children and/or to compensate them for the costs in time, income, and autonomy they incur in the process of childrearing. However, one of the reasons why it is legitimate for parents to have extensive rights over their children, rights they exercise to the exclusion of other adults, is that adequate childrearing requires designated bearers of responsibility for each individual child. Without allocating responsibility for individual children to individual adults, we would face a serious problem of coordination in the discharging of duties that adults as a group have toward children as a group (Goodin 1985). Moreover, some believe that parental responsibility makes an important contribution to parents' own well-being and is therefore a constitutive part of the content and justification of parental rights (Brighouse and Swift 2006). The standard exception to the rule that parents bear primary responsibility for their children's well-being is when parents cannot discharge their responsibility properly. One example is when parents do not have the means for ensuring their children's well-being—for instance, when they are too poor to do so—cases in which we believe that state institutions are called to step in and take charge for the unmet interest of the child. Another example concerns cases of child abuse and neglect. In these cases it may be legitimate for states to withdraw some or all parents' rights with respect to their children and seek to allocate them to individuals who would make adequate parents.

One may argue that it is the migrants' own duty to do all they can such that their children enjoy continuity in care; this means either not to migrate

or else to find a way to take their children with them. If so, the argument would go, parents who migrate without their children are to be held responsible for their children's fate. Parental migration, according to this view, is a form of parental abandonment.

This position is too harsh on migrant parents. Instead, it seems plausible that parental migration under circumstances of poverty or threat of poverty is more like situations when parents are unable to fulfill some of their children's fundamental interests. In the latter cases the proper response is not moral blame and the withholding of custody but the provision, via state institutions, of what is necessary in order to fulfill the child's needs.

Many parents engage in temporary migration because they feel trapped in poverty or threatened by poverty. They come from regions where there is structural unemployment or underemployment and/or from countries with endemic political corruption that makes improvements in labor markets unlikely in the short run. According to their own testimony, many parents migrate in the hope that they will be able to save sufficient money to provide basic goods such as adequate housing and education for their families left behind. So part of their motivation to migrate is a desire to meet their children's interests other than in continuity in care, interests that are their responsibility to meet.

True, international migrants are not likely to be the very worst off in their society: successful work migration presupposes some education, social connections, and starting capital. Yet not only poverty but also the threat of poverty is morally relevant; many temporary migrants come from countries plagued by corruption and with weak and continually degrading welfare states—Romania is an example of both (Piperno, 2007c; Dobre 2009). Both features impose on citizens risks such as unpredictably losing their jobs and finding themselves without healthcare and social security should they need it. Under such circumstances, the wealth one accumulates in the form of home ownership and savings can function as insurance against such risks. People who lack this security suffer a form of disadvantage even if they are not among the poorest citizens, because the imposition of high risks is itself a form of disadvantage (Wolff and De-Shalit 2007).

In the next section I argue that temporary migrants' poverty and the threat of poverty are relevant to what states owe them qua parents and to their children. But poverty and the threat of poverty are also relevant to judging parents' responsibility for imposing discontinuity in care on their children. Moral responsibility presupposes a kind of moral agency that poverty and insecurity undermine. Parents who migrate under these circumstances have a

limited form of agency qua parents because they lack full moral autonomy as well as truly voluntary choice.

Seana Shiffrin has argued that full moral autonomy is disrupted by situations of choice in which people lack a range of morally permissible options to choose from (Shiffrin 1991). Parents who contemplate migration due to poverty or serious uncertainty are in precisely this situation, because at least one of the options they face—and, arguably, both—is morally objectionable. Leaving their children behind means to impose on them discontinuities in care. Foregoing the possibility to migrate is clearly a prudentially problematic choice, if not migrating means to continue a life of poverty and/or uncertainty so that they will be unable to ensure the material basis for their and their family's living. And since parents bear special responsibility for their children's well-being, the latter option is also morally problematic: the parents who forego migration also forego the prospect of decent accommodation, education, and so forth for their children.

Poor parents, or parents who are seriously threatened by poverty, also lack voluntary choice with respect to migration. On Serena Olsaretti's analysis, a choice is voluntary if and only if it is not motivated by a lack of acceptable alternatives (Olsaretti 2004; 2008). Not migrating, and thus failing to ensure decent living conditions for oneself and one's family, is hardly an acceptable option. This makes the migration of parents who are poor or threatened by poverty not fully voluntary and hence not autonomous.

What about parents who migrate without their children even if they could find reasonable employment in their place of origin, or else if they had a reasonable prospect of taking their children with them while making migration financially worthwhile? Presumably, not all migrant parents' agency is impaired by poverty and/or insecurity to the level that would deem them not morally responsible for the harms incurred by their children who remain behind.<sup>10</sup> While these parents are not the focus of this paper, the policies advocated for the sake of children whose parents migrate out of lack of acceptable alternative will apply to all children separated from their migrant parents. This, I assume, is justified pragmatically, since policies cannot be sufficiently fine-grained to address each case on its merits. Moreover, even if some migrant parents are guilty of child abandonment, it does not necessarily follow that the best reaction is to withdraw their parental status and the rights over children that come with this status. Many think states should be very cautious about withdrawing parental rights and thus legally separating parents and children. The bond between parents and children is sufficiently important to children to make it difficult to judge whether the child's interest is

better served by legal separation from the parents or by enabling the parents to keep their parental status while trying to help the child in those respects in which parental care has failed (Brighthouse and Swift 2006; Macleod 2013).

Finally, it would not be fair to morally condemn migrant parents for having decided to become parents in the first place. First, in many parts of the world procreation is not a voluntary or fully voluntary choice. Second, most people presumably decide to parent in the reasonable hope that they will have adequate means to raise their children themselves; some parents become unable to do so *after* having become parents—for instance, because they lose their jobs and have to consider migration. Finally, and perhaps most important, it has been argued that raising a child is a fundamental interest, powerful enough to ground a moral right to parenting (Clayton 2006; Brighthouse and Swift 2006). If this is correct, then it is unfair to expect people to give up parenting because they are too poor or threatened by poverty, especially through no fault of their own. If adults who have the psychological and social skills that enable them to parent adequately have a moral right to raise a child, then fairness seems to require that they be given access to the material conditions for doing so.

To conclude this section, children's powerful interest in continuity of care is inevitably hurt by the temporary migration of their parents. Many of the parents cannot be held responsible for this fact, and therefore states should take responsibility for the children's emotional and developmental well-being, which is the most likely type of harm they suffer as a result of their parents' migration. What are states to do?

### 3. Policy Responses to Care Drain

#### A. Coercive Solutions

States can, and some do, adopt coercive approaches meant to ensure the well-being of migrants' children. One example is Romania, which passed a law requiring parents to make legal arrangements for the guardianship of the children who remain in the country of origin (Pantea 2013). Coercive policies, which do not allow parents to migrate without having arranged proper custody for the children left behind, can be implemented, for instance, by requiring migrants, when they cross the border, to prove they registered their children with appropriate authorities. And states can impose sanctions on migrants, such as significant fines if migrants are caught in an irregular situation or even the withdrawal of parental rights. Similar coercive measures restricting the migration of a certain class of citizens—interestingly, also

motivated by the need to ensure sufficient care in the country of origin—are not unheard of. Many countries face a dramatic shortage of healthcare, which is partly caused by the massive migration of doctors and nurses. They try to address this by limiting the migration of healthcare staff—for instance, by requiring them to serve a number of years in their home country before being allowed to migrate, withholding practice licenses, and/or imposing prohibiting fees on defaulters. (For numerous illustrations, see Frehywot et al. 2010. And for a lengthy helpful discussion of the legitimacy of such policies, see Stanczyk 2012.)

This potential approach to mitigating the effects of care drain suffers from three problems: it is, at least in some countries, inefficient; it does not solve the problem of ensuring continuity of care for migrants' children; and it is illegitimate. Below I examine each of these problems.

According to Pantea (2013), the efforts of Romanian authorities to ensure proper custody for the children left behind has been “[n]otoriously unsuccessful, with only seven per cent of the migrant parents officially entrusting their children to members of the extended family” and “the requirement became a binding law in 2011 with apparently not much change following its initiation” (Pantea 2013, 160). The explanation may lay in several facts about temporary migration that are not likely to change in the near future: First, many parents do not know in advance for how long they are going to be abroad; they leave with or without a contract, hope to renew their contract if they have one and/or to find a new job when the first one ends. Second, as I state earlier, many parents are obliged to leave on extremely short notice, and they do not have time to arrange legal custody for their children (Piperno 2007a). To the extent to which these facts about temporary migration generalize, laws meant to ensure legal custody for migrants' children are likely to be inefficient. Parents may prefer to risk fines than miss precious job opportunities, and states are unlikely to be able to suspend the parental rights of large numbers of migrants.

Moreover, coercive approaches to care drain—short of very drastic ones—fail to address the biggest problem, which is discontinuity in parental care. Parents may be required to arrange legal guardianship, but this does not in itself fulfill the children's emotional and developmental interest in parental care, for the guardians may be irresponsible or unloving. The more drastic measures of banning parents' migration are likely to affect negatively other fundamental interests of children, those in the material bases of a decent life. And legally requiring migrants to take their children with them would be in most cases economically, or otherwise, unfeasible. Finally, if sanctions are

imposed on parents who fail to respect the law, such as imposing fines or withdrawing parental rights, it would ultimately hurt the interests of those children whom the laws were meant to protect in the first place.

The most important problem with coercive approaches to care drain, however, is that they are illegitimate, because they put too much of the burden of the choices concerning migration on parents. As I discuss above, many parents migrate because they are poor or threatened by poverty and most are motivated to migrate by the desire to meet their children's interests other than in continuity of care. To prevent them from migrating without having ensured proper custody arrangements for their children means, in practice, to prevent them from migrating when work opportunities arise. If the analysis according to which migrant parents' agency with respect to migration is impaired by poverty or threat of poverty is correct, then to prevent them from migrating implies limiting their possibilities for future agency. For parents who are poor or threatened by poverty, mobility and the quest for more adequate working conditions are a means of seeking an economically better future when they can meet all their parental responsibilities—either by returning home with enough savings or else bringing their children to their country of destination, in case they settle down there.

### *B. Non-coercive Solutions*

The better approach is to encourage migrants to regulate their children's custodial situation without preventing them from migrating in case they fail to do so and, at the same time, try to mitigate the harm that discontinuity in care inflicts on children. These desiderata can be accomplished through two types of program. First, efforts should be made to educate potential temporary migrants about the importance of stable, well-planned care arrangements for their children and proper advance communication about the possibility/likelihood of migration. Second, state agencies should give children—and, possibly, their families—access to state-funded counseling services meant to help the children understand their parents' absence and cope with their feelings of depression, betrayal, guilt, and sheer loss. Children can be reached by attaching the counseling programs to the child care institutions that children attend anyway—such as school—and, for preschoolers and children who do not attend school, via local communities. Counseling services for children could be easily funded, in many of the countries that send migrants, by using some of the taxes on remittances. According to Dayton-Johnson et al., economists in global institutions like the World Bank think that remittances

sent by migrants from Third World countries constitute a significant source of income and development (Dayton-Johnson et al. 2007). The same holds true for some European countries from the former Soviet bloc, such as Romania where remittances in 2006 reached €4.8–5.3 billion (HIIIE 2007). Hence, it would take a small fraction of the taxes raised on remittances to ensure that all children have easy access to as much counseling as they need in order to minimize the harm of discontinuity in care.

The approach I suggest does a better job than coercive approaches. Although it cannot address directly children's interest in continuity in care, it tries to rectify the harms of separation. It is also more likely to be efficient: the non-compulsory nature of counseling is likely to make it more appealing, and so effective since no message of parental incompetence or blameworthiness is being sent. Indeed, existing studies in Romania show that educators, schoolteachers, workers in child protection agencies and in nongovernmental organizations that focus on children's well-being all agree that additional monitoring and counseling services are necessary to mitigate the harms entailed by discontinuity in parental care in the context of migration (AAS 2006; UNICEF and AAS 2008; SFR 2012).

I dedicate the rest of this section to explaining why the approach to care drain that I advocate is also legitimate. To start with, a non-coercive solution to care drain that aims to compensate children for their loss of continuity in care does right by children. Unlike restricting parents' migration, it does not deprive children of the welfare benefits that follow from their parents' migration. And unlike a mere requirement that parents legalize their children's custodial arrangements, it acknowledges that a central problem to be solved is that of the emotional loss entailed by separation. It also acknowledges parents' limited agency in the place of origin, and it is more likely to enhance their future agency as I explained in the previous section.

Reasons of distributive justice also recommend this approach. Feminists have long argued that economic justice should take into account the universal interest that we all have in care during the vulnerable periods of our lives. For example, Daniel Engster (2008) defends an understanding of economic justice according to which an economically just society ensures that all individuals are able to care for themselves and their families. According to Engster, a central motivation for working—one shared by the majority of people—is to be able to care for oneself and one's dependents. Therefore, an economic system that fails to enable most citizens to provide necessary care is deeply objectionable. Engster identifies several goals of economic justice: the promotion of sufficient prosperity to allow all people to meet their biological

and developmental needs; a fair distribution to ensure that the economic resources are actually used for meeting the relevant needs; and the support and accommodation of direct care services and personal caring activities, for instance by making possible for parents to combine work and childcare. This conception of an economically just society requires that all individuals should have access to jobs remunerated well enough to allow them to care for themselves and their dependents. Moreover, jobs should not systematically interfere with workers' ability to care, and governments should ensure that enough caring services are available.


To the extent to which countries of emigration do have the necessary resources that could ensure the meeting of all their citizens' important interests, but fail to accomplish this goal either due to corruption or to mismanagement or to unjust distributive institutions, they are ultimately responsible for the predicament of migrant parents and their children. However, some of the sending countries may indeed be too poor to ensure that all their able-bodied citizens can earn wages adequate for supporting themselves and their families, or else that they receive adequate material support from the state. It does not follow, however, that in such cases considerations of background distributive injustice are irrelevant to the treatment of migrants and their children. Various strands of cosmopolitanism (Blake 2005) in thinking about global justice all hold that an individual's place of birth is morally irrelevant and hence should not negatively impact her or his access to advantage (whether advantage is defined as resources, opportunities, capabilities, etc.). If sending states are poor, but distributively just, then those institutions that keep in place unjust distributions at the global level are responsible for the migrants' predicament. In either case, given the current level of technological development that should make possible the satisfaction of important needs on a global scale, it is very implausible that migrants and their children's predicament is the kind of situation for which no one can be held responsible.

It is worth emphasizing that migrant parents and their children have a claim of justice to resources in the form of public institutions able to address the emotional and developmental challenges of separation. In places where the welfare state has been shrinking, it is sometimes denied that migrants and their children are entitled to limited, state-funded child care resources in general—let alone to specialized counseling services. Some societies even doubt the former type of entitlement on the grounds that migration is a free choice. For instance, in Poland there is a "heated discussion about whether migrant children were entitled to placement in day-care. As the number of these care facilities is insufficient, single parents are now privileged when



applying because they are considered to have a justified claim to preferential treatment. In contrast, single parents in migrant families are considered fragmented ‘on their free choice and should bear the consequences of their decisions’—as the head of one kindergarten stated” (Lutz and Palenga-Mollenbeck 2012, 28). Of course, this argument is flawed since, whatever the parental responsibility for migration, it is unjust to deny necessary care to children. But, as I argued, parental choice to migrate is in many cases not fully voluntary and autonomous. Moreover, impaired agency, which is in itself regrettable, is imposed on parents by states’ failures in distributive justice—at least in cases where parental poverty is caused by corruption or deficient administration—rather than by scarcity of resources tout court.

## Notes

1. In this paper I use “right” to refer to legal rights—in most cases, to rights inscribed in international legal documents such as the United Nations Convention on the Rights of the Child. On the few occasions when I refer to a moral right, I specify the qualification. Also, I develop my reasoning in terms of children’s needs and fundamental interests, rather than moral rights. I do so in order to emphasize that mine is a moral, rather than legal, argument. Like other philosophers (Brighouse and Swift 2006) I believe that the interest theory of moral rights is correct, and that it is the only theory of moral rights that can make sense of the idea that children have moral rights.
2. One of the central debates in theories of distributive justice is whether resources or well-being should be distributed according to a principle of equality, priority toward the worst off, or sufficiency. Sufficiency is the least demanding of the three; thus, in a more egalitarian society parents would have even less material need to migrate than in a sufficientarian society.
3. One of the reasons why migrating together with one’s children is currently infeasible for temporary-work migrants is also economic: even if the countries of destination  would take responsibility for the healthcare, daycare, and education of migrants’ children, bringing children along may make it impossible for migrants to save enough to be able to return to their countries with a better economic situation.
4. I leave out of my analysis parents who flee their homes due to war and political, religious, or racial persecution. Sometimes they may also be unable to take their children with them; these are tragic cases in which the migrants’ (and presumably, their children’s) links of citizenship with their own states are deeply severed. This also complicates the question of who *should* take responsibility for the children left behind by migrants in these circumstances.
5. Though not necessarily by two parents. Three-parent families started to appear as a matter of practice and, recently, to gain some legal recognition. For defenses of the virtues of three-parent families, see Cutas (2011) and Brennan and Cameron (manuscript).

6. In Gheaus (2013b) I explain why this requirement is not likely to be met in the context of long-distance migration. The requirement of regular and frequent physical presence is not incompatible with children spending substantial amounts of time in non-parental care—indeed, it seems that non-parental care, when supplementing parental care, is generally beneficial to children (Waldfogel 2006). Increasing numbers of migrants use phone and teleconference in order to keep regular contact with their children—sometimes even to supervise their homework from a distance. I assume that, while this form of communication goes some way toward supplying continuity in care, it is as such not sufficient. Communication conducted exclusively via phoning and Skype is likely to distort relationships, especially in their emotional dimension, as some studies on migrant children suggest (Lutz and Palenga-Mollenbeck 2012).
7. Depending on how far the parents migrate and what kind of contracts they have, the separation varies from a few months to a few years at a time. For instance, women who migrate to the neighboring country within Europe often engage in rotational migration: they work for three months in the destination country, then return home for a few months and then leave again. By contrast, migrants from Mexico or the Philippines are sometimes unable to return home more often than every few years (Lutz and Palenga-Mollenbeck 2012).
8. The total number of Romanian minors who had at least one parent working abroad at the end of 2006 was 60,000, of which 21,400 were living without any of their parents.
9. I offer a more detailed analysis of the harms of care drain in the case of Romanian children and their immediate and extended families in Gheaus (2013a).
10. Some authors argue that women's migration is essentially a middle-class phenomenon (Lutz and Palenga-Mollenbeck 2012) and that migrants are often driven by a desire for upward social mobility (Ottonelli and Torresi, forthcoming). In various social circumstances—depending on the kind of social security one enjoys and the level of corruption and thus unpredictably that characterizes one's society—being middle-class or seeking upward mobility may or may not be a voluntary choice in the sense of voluntariness defined above.

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# Human Rights and Global Wrongs

## THE ROLE OF HUMAN RIGHTS DISCOURSE IN RESPONSES TO TRAFFICKING

*John Christman*

POLITICAL THEORY IN the non-ideal world can often function as a mode of interpretation, providing a framework for understanding ongoing injustice rather than a form of idealized model building. In many cases it is not as important to establish *that* some practice is right or wrong, just or unjust, but more exactly *why* it is unjust. In the case of forced labor and human trafficking, the question of injustice has been answered, at least after the issue of what counts as trafficking is settled. A more complex set of questions involves structuring our thought around how that injustice should be understood so as to better motivate efforts to respond to it, at the level of policy formulation as well as enforcement practices and extending to activism and public discourse.

What is labeled “human trafficking” is only one part of a complex mosaic of movement of people by irregular means for purposes relating to labor and work. Such a mosaic includes a spectrum that ranges from the intentional, concerted effort by people who themselves cross borders for work opportunities; at another, it extends to the kidnapping and trafficking (and organized rape) that global prostitution networks often involve. In between are any number of non-legal modes of movement and work that involve a highly variable set of methods, modes of treatment, harms, and benefits. So the first thing to stress in discussing trafficking is that it is quite unclear exactly how to define it and correspondingly unclear how to distinguish it from related phenomena.

The problem this presents is that of adopting specific policies as well as activist strategies that locate and respond to clear cases of forced transportation and labor while at the same time avoiding doubly victimizing those who

cross borders by irregular means, often doing so by smuggling and in ways that involve severely compromising their control over their situation but still undertaken in order to find sources of work and income. Various policy instruments from local to international levels have often failed in avoiding this and have over- or under-categorized the array of people to whom these resistance efforts apply. This happens, for example, when attempts to fight trafficking become highly compromised by (often draconian) anti-immigration policies, or when victims of trafficking are made eligible for protective visas that allow them to remain in the country and receive badly needed aid only on the condition that they testify in a criminal proceeding, as is often the case in the United States and elsewhere.

These last examples are just two of the many ways that policy responses to the evils of forced labor can fail. One broad approach to the classification and fight against trafficking involves the utilization of the apparatus of human rights. Such a view has the advantages of attacking the problem on the global scale in which it often functions. It also carries with it the broad enforcement and aid infrastructure of human rights institutions, both intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs) that can coordinate across borders and mobilize resources on a scale commensurate with the problem. Moreover, the language of human rights defines the injustices and crimes in question in a cosmopolitan moral language that ignores differences of geography, class, language, and culture.

But apart from problems of definition and classification, attempting to understand trafficking as primarily a human rights violation, especially in a narrow and conventional sense, carries with it several difficulties. For example, the problem of locating just *which* basic human rights are in play is difficult to delineate precisely (see, e.g., Munro 2008). Second, extending human rights to trafficked individuals significantly expands their scope and reach relative to traditional doctrine, as it applies to “horizontal” victimization between sub-state actors (individuals and groups not directly a part of the state, typically) in contrast to traditional human rights protections that were meant to apply to citizens *against* the state (Piotrowicz 2010). Further, the very language of human rights is thought by some to express parochial, if not neocolonial, conceptions of justice that narrowly manifest the individualism, materialism, and value perspectives of the “West.”

These and other difficulties are the sort often voiced about understanding the wrongs of trafficking according to a conventional, juridical, human rights framework. Of course, various rights advocates and defenders of global justice models discuss phenomena of this sort in broader terms and have attempted

to broaden the scope of human rights responses beyond the mere classification of trafficking as a rights violation of the kind that sparks a prosecutorial and juridical response.<sup>1</sup> However, this latter, admittedly narrower interpretation of the human rights framework will be the focus here, as this has been the object of the kinds of criticisms just mentioned.

The purpose of this paper, then, is to discuss the force and limitations of the human rights approach to capturing the harms and injustices of trafficking. Specifically, I want to focus on the narrow claim that what is wrong with human trafficking, when it is clearly wrong, is that it violates individuals' rights, in particular the right not to be enslaved. I will mention various problems with this position but will zero in on a particular cluster of difficulties, namely that such an approach motivates a juridical, prosecutorial response rather than more general efforts to facilitate attempts to find a minimally livable life situation for those caught in the trafficking web. More generally, I will argue that anti-trafficking efforts must be a part of an attack on systemic injustice, of which exploitative labor conditions, coercive processes of labor migration, global inequality, oppressive restrictions on immigration (and attendant exploitation of immigrant labor), and patriarchal gender roles and attitudes all play a part. In order to expand the diagnosis from individual rights violation to broad obligations to fight injustice at the systemic level, it will be important to see a theoretical connection between rights protections and the pursuit of the good that liberal theoretical frameworks often obscure. To make this last point I will take a brief side road to discuss the relation between rights and goods in political and legal philosophy. My conclusion, however, is that global efforts to fight trafficking and related evils must be part of a broad response to global injustices in order to avoid being self-defeating or doing much more harm than good.

I will proceed by first sketching the landscape of trafficking and transnational migration of which it is often an inseparable part. I will then move on to the human rights model and the various limitations brought up against it in theoretical and policy responses to trafficking. In this discussion it will be important to look closely at the complex concept of consent. I then turn to my positive alternative, which I call the systemic injustice model, and in explaining its contours I will argue for why those in destination locations, especially in the developed world, have special obligations in anti-trafficking efforts, not only to respond to rights violations but also promote the general welfare of the survivors and victims of these phenomena.

One last set of preliminaries. Any discussion of such a complex subject must be highly qualified and circumscribed, even at the cost of precision and at



the risk of using admittedly contested and potentially problematic language. For example, I will refer to trafficking as a transnational phenomenon, though I am sensitive to the fact that intra-state trafficking and forced labor that does not involve forced transport are serious and related practices. I also do not refer to sex trafficking in particular, attempting to side-step the trenchant debate about whether cross-border transport for sex work is trafficking per se, as some activists and some legal instruments have maintained.<sup>2</sup> Sex work merits our special attention, of course, independent of the abolitionist-reformist debates about prostitution, since the fact that girls and women are forced into commercial sex makes sex trafficking a particularly horrible form of forced labor, and hence worthy of special regard, whether or not we agree with those who claim that such activities in other contexts can, in principle, be voluntary.

Also, I will sometimes use the language of “victims” of trafficking but I am very keen to avoid characterizing those subject to trafficking as passive, as *merely* victims, or as never complicit in the processes and practices in question.<sup>3</sup> I train my eye on the United States (and more generally the so-called developed world), but of course that is merely used as an example; I do not imply that conditions across the globe are less relevant or easily fall under these same descriptions. Finally, these analyses and recommendations are all meant as provisional upon the greater participation by those currently or recently involved in trafficking themselves, so that any full articulation of a proper characterization of and response to trafficking must principally include the perspectives of those victimized by it. Indeed, it will be part of my conclusion that any adequate activist response or policy design will necessarily involve the central participation of trafficking subjects and survivors, whose voices and perspectives are often suppressed in these discussions.

## 1. The Tortured Landscape of Migration and Trafficking

Estimates of the number of individuals forced into labor through trafficking and related means are notoriously difficult to determine precisely. Such estimates vary from 800,000 to 4 million per year globally.<sup>4</sup> The range of these numbers reflects both the difficulty in gathering data on a phenomenon that by its nature is hidden as well as the ambiguities involved in defining the phenomenon itself.<sup>5</sup>

As I mentioned, what I am calling trafficking here is merely one part of a broad array of practices that involve movement for labor by irregular means. We can limit the category to illegal immigration, though of course, this artificially

occludes discussion of intra-national trafficking, forced labor not involving transport, and other cross-border movement not directly for labor purposes (such as asylum seeking), though all of these latter cases also involve issues closely related to trafficking as we discuss it here.<sup>6</sup> However, it is cross-border labor-related migration that is our general focus, with smuggling, trafficking, and forced labor our more specific concern.

One of the most trenchant difficulties in this area is adequately distinguishing trafficking from smuggling. The latter refers to irregular cross-border transport that ostensibly is agreed to by the subjects, even if the mode of transport is highly dangerous or unpredictable, involves severe incursion of debt, and takes place in stages with several different “middlemen.” Labor migration by irregular means is ubiquitous in the global landscape and the remittances sent back by successful migrants to families is a significant mode of economic support for impoverished people.<sup>7</sup>

Consider this description by Anti-Slavery International:

Trafficking, smuggling and migration are separate, but inter-related issues. Migration may take place through regular or irregular channels and may be freely chosen or forced upon the migrant as a means of survival (e.g., during a conflict, and economic crisis or an environmental disaster). If the method of migration is irregular, a . . . smuggler may demand an exorbitant fee and may expose the migrant to serious dangers in the course of their journey, but on arrival at their destination, the migrant is free to make their own way and normally does not see the smuggler again.

Trafficking is fundamentally different. . . . For most trafficked people, it is only once they arrive in the country of destination that . . . they are forced . . . to work in jobs or conditions . . . which they did not agree to.<sup>8</sup>

However, it may be a simplification to see trafficking as a separable and uniquely coercive and irregular form of border crossing and labor activity. For according to recent research, many or most trafficked individuals engage in processes of migration willingly (under some description of what they intend to do), and often modes of migration are legal. A woman may enter as a “bride,” for example, only to be subject to forced domestic labor at her destination. Other families are engaged in reasonable attempts to make a better life for their children through employment or education, sending them abroad through what turn out to be fraudulent brokers who pass the person off to others for exploitative and/or coercive labor (Anderson and Davidson 2003). There is also

a blurry line between traditional arranged marriages and selling young women to sexual and domestic servitude to a “husband.” Many sex workers are brought across borders by “boyfriends” whom they trust, only to be handed off to brothel owners and forced into prostitution (Daley 2012).

Mixed in with such scenarios, however, are those women who know or at least seem to accept that they will be doing sex work at their destination. There are documented cases of repeated appearances in some brothels, for example, by workers who have been “rescued.”<sup>9</sup> And a wide range of work in the service and entertainment industry might lure women across borders for work that only incidentally involves prostitution in the literal sense (Parrenas 2011). So the determination of just who is “trafficked” is not an easy task, either epistemically or conceptually speaking.

Indeed, issue can be taken with the entire focus on trafficking per se, that this subject and this paper trains our attention on, in that it focuses overly narrowly on simply one aspect of a broader human rights issue. We can follow Anderson and Davidson in stressing that a focus on trafficking blinds us to the broader problem of forced labor and coerced sex work. If our concern is with these forms of victimization, then concentrating on the process of border crossing or transport, which attention to trafficking per force will do, unduly entangles the analysis of the problem with questions of immigration and immigration control. Indeed, if a person is being forced to labor under inhumane conditions, then how she got to that place is ancillary to the injustice involved, and we should rather say that being trafficked is merely one stage of her victimization (Anderson and Davidson 2003).

But insofar as one is taken against one’s will to a location and made to work in conditions one would resist if given a choice, in particular across a national border, one is trafficked; and the question at issue here is how to characterize the precise wrong this involves so as to do the most in combating the practice and not doubly victimizing the subjects, whether subjects of trafficking itself or those involved in other practices of cross-border smuggling and migration. (Hence in what follows my use of the term *trafficking* can be understood to refer to “trafficking and forced labor.”<sup>10</sup>)

In the UN Protocol against trafficking, ratified in 2000, trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of

exploitation.” “Exploitation” is left (notoriously) undefined but includes working in “prostitution, forced labor, slavery or practices similar to slavery, servitude or the removal of organs” (United Nations 2004). We can note that the word *consent* does not appear in the definition, so that being the subject of coercion, fraud, or deception for the purposes of “exploitative” labor implies one was trafficked, whether or not one entered into the situation in question “voluntarily.” Of course, voluntariness in such situations must be highly qualified, since even those who seek out and actively pursue irregular migration of this sort do so from a background of severe poverty and need. However, the structure of the UN Protocol process is that each ratifying state must pass its own legislation to combat the practice, so definitions in each member country vary. A number of regional instruments have been adopted, such as the South Asian Association for Regional Cooperation Convention and the EU Framework Decision on Combating Trafficking in Human Beings.<sup>11</sup> The U.S. effort is governed by the Trafficking Victims Protection Act (TVPA), first passed in 2000 and renewed since then (though it has not been renewed by the time of this writing).

There is much one could say (critically) about the TVPA (or TVPRA—its reauthorization). The question for us here is whether making trafficking and forced labor as simply a violation of domestic law is the best method of fighting the practice, or, alternatively whether one should view it as a human rights violation.

In order to focus on this question, it is important to consider in further detail the condition of many trafficked persons in order to best understand the range of violations involved and the special vulnerabilities and needs this creates. Typical of such persons is that they do not speak the local language and have precarious immigration status. While under control of their “employers” they may be subject to violence, rape, or other forms of intimidation and coercion, or even if allowed some freedom of movement, may not know of their options or where to locate aid and advice. Their vulnerability to deportation makes them understandably suspicious of any local officials, including law enforcement but extending to other aid workers. This fear is realistic in that being sent back to one’s home country is often an automatic response to raiding sites of trafficked laborers. Also, especially for sex workers, returning home is often not a feasible option since such women will sometimes be shunned by family or village (or in some cases, be shamed for returning without sufficient funds to repay debts incurred by the family).<sup>12</sup>

Let me stress, however, that the population of people I am describing is extremely heterogeneous, and the description I just laid out ill fits a number of persons in similar situations. Nothing I say here should imply that such

persons are not agents or do not resist their situation or, in other cases, may be complicit in their condition. And of course, the situation varies significantly in different geographical areas and in different segments of the labor market. And I repeat that a full picture of such persons can only be filled out with the inclusion of the voices of the persons themselves describing and interpreting their situation.

But my focus on certain types of individuals is motivated by a concern that our conceptualization of the harms and wrongs of trafficking can doubly victimize certain groups. The principle approach to these cases is to see them as involving violations of fundamental human rights, in particular rights against enslavement and exploitation. Understanding this phenomenon in this way has certain benefits, in that it brings to bear, for example, the considerable heft of institutionalized human rights protections. Let us turn, then, to a discussion of both the benefits and the drawbacks of understanding trafficking and forced labor as basic human rights issues. Doing so will set the stage for an alternative approach.

## 2. Trafficking as a Human Rights Violation

Speaking generally, seeing trafficking as a violation of human rights utilizes an objective schedule of basic interests that is purportedly universally recognized as requiring protection. Various theories of human rights give different analyses of their basis,<sup>13</sup> but in the present context the distinguishing feature of that model is the implication that there are certain ways of being treated that are unacceptable no matter what the source of the treatment or the attitude of the subject of it. Indeed, what is often seen as controversial about human rights is the way that these basic interests receive protection independently of the attitude the subject brings to those interests, at least paradigmatically. As we will see, however, this raises subtle questions about whether the definition of such rights must be sensitive to the consent of the subject to the treatment in question.

The UN Protocol mentioned earlier was hailed as a breakthrough in the fight against trafficking, in that it represented the first international consensus on the definition as well as the need to combat practices of trafficking and forced labor. These practices are very often transnational phenomena (though not entirely so of course) and require a coordinated international response. The degree of public attention that such consensus elicits as well as the political weight and resources of IGOs and NGOs it mobilizes are seen by most as a welcome element in the fight against forced labor.

What must be noted about reliance on a human rights instrument of this sort is that it requires member states to invoke their own methods of enforcement and this factor (among others) brings to the fore certain limitations of this approach.<sup>14</sup> As I mentioned, the focus on trafficking per se means concern is limited to cross-border labor exploitation and coercion. This means that anti-trafficking measures are inevitably entangled with immigration policy. Of course it is true that being a foreign national in a coercive labor situation makes one especially vulnerable and victimized in multiple ways, especially since one is vulnerable to threats of deportation.

There are two separable aspects to this approach that we should note: seeing trafficking as primarily a violation of *rights*, on the one hand, and seeing the rights in question as internationally enforced *human* rights on the other. Regarding the second of these, long-standing debates concerning the alleged universality of human rights and issues with cross-cultural (mis-)understandings continue, debates that I put to the side here. Concerning rights more generally, to see an injury as primarily a rights violation is to focus on the subject as a victim and the perpetrator as a wrongdoer/criminal. This means that public response takes the form of juridical and prosecutorial action, securing the arrest and incarceration of the perpetrator as the focal aim of the effort. Victims of trafficking in this scenario are, like other crime victims, primarily witnesses in the proceedings that involve arrest and prosecution of the perpetrator. The welfare of the subject of trafficking is of secondary concern. In the United States, for example, one might be eligible for a special visa—called a T visa—so that one will not face immediate deportation if found to be the victim of trafficking. This also entitles the person to aid and shelter of various sorts. But a condition of receiving a T visa has been cooperation in the prosecution of one's traffickers. This not only reduces the person to a functionary in the prosecution of a crime, it makes her highly vulnerable to retribution and reprisal, either aimed at herself or her family. Moreover, especially in the case of sex work, the person will likely be the victim of extreme violence at the hand of her "pimp" (who might also have been her trafficker), but such a person is also the only source of protection and support she has known. The person may also be addicted to drugs, with her pimp as her supplier. Expecting a person to suddenly turn into a witness and trust law enforcement personnel (who are also often immigration officers) is a tall order indeed.

Despite attempts by the UN Protocol to elide questions of consent in defining trafficking, a person's complicity in the process of migration and work situation is often taken as disqualifying. For example, the person will often bear the burden of proof of coercion to be counted as trafficked and hence

eligible for protection and aid. Generally speaking, rights protections are mediated by the principle of *volenti non fit injuria*—voluntariness nullifies the injury—so that claiming a right is undercut by any action that is seen as agreeing to one's treatment. As I mentioned, what we are calling (very generally) trafficking in this context often involves semi-voluntary actions by a person or her family to cross borders and find work.

Also, the normative "grammar" of rights language carries with it certain implications that apply with special force in these contexts. To understand a harm in terms of rights is to invoke a deontological normative framework to the characterization of the wrong, even if the broader justification of that framework is a consequentialist one. That is, even if one thinks of systems of rights as justified based on the overall effects of enforcing such a system, the classification of the wrongs within that system as rights violations (as opposed, for example, to seeing them as a form of vice or a failure of adequate care) carries with it a certain normative logic.<sup>15</sup> For example, seeing harms as rights violations involves an all-or-nothing conception of wrongness, where the violation is against a victim whose status is insensitive to the gradations or multidimensionality of the harm (for discussion, see Brown 1995).

Further, the universality of human rights as a classification of wrongs and harms serves to de-contextualize the legal and moral judgment being made, where the designation of a victim of a rights violation is independent of the local circumstances that may well exacerbate, mitigate, or at the least complicate the nature of the harm in question. Whether or not a trafficked person comes from an impoverished background where her susceptibility to being victimized is a function of that poverty is irrelevant to the question of whether her rights were violated and in what way. Similarly, cultural contexts that may condemn the life of a sex worker more severely and hence make it difficult or impossible to return to one's cultural home after being rescued are similarly irrelevant to the classification of the rights violation, strictly speaking. But in marshalling legal and other resources to respond to the injustice in question, attention to these contextual details matter greatly.

Now as I noted earlier, the structure of the UN Anti-Trafficking protocols (the so-called Palermo protocols) are such that domestic law enforcement agencies are put in charge of investigation and enforcement, so such local contextual factors of the sort mentioned could in principle be brought to bear. However, the classification of the wrongs in question as *human* rights de-links the question of the kinds of harms that spur that level of enforcement from the local details shaping the choices and experiences of those caught up on webs of trafficking and labor migration. And more important, the local

agencies on the front lines of enforcement are the ones one might expect from that classification—security, police, and criminal justice mechanisms—and not social welfare agencies that may bring more nuanced diagnostic skills to the problem and the search for positive solutions.

Moreover, rights attach paradigmatically to individuals. So that a person's basic interests that are protected by rights—the right against violence, rape, enslavement, and so on—are hers as a single person, not as a member of a family, clan, culture, or other social group. Now group rights that accord with a basic liberal framework have been much discussed, in the context of anti-trafficking efforts framed as human rights protections, people are treated separately and atomistically. But critics have pointed out that the embedded and socially connected nature of people's interests in these settings make individual protections misdirected and often downright dangerous. For example, a trafficked person may have been put in that position in part by her family, who may be responding to local pressures (from economic need, for instance). Enforcing the trafficked person's rights apart from attending to those larger networks may leave her worse off and indeed may expose her to greater dangers, such as reprisals against her family. Or she may get cut off from the social connections (with fellow nationals, for example) that would be essential for her recovery and ultimate escape.

Additionally, utilization of the lens of human rights inevitably dichotomizes the population of migrant workers into categories of agents and victims (cf. Meyers 2011). The latter are classified as trafficked and treated with, at best, sympathy and concern while the former held responsible for their actions. Insofar as those actions often involve violation of immigration laws, such agents are seen as subject to prosecution and deportation. Legal rules that follow upon classification of behavior as a violation of rights necessarily draw sharp lines around crime victims and define specifically the nature of the behavior in violation of those rights. But as I mentioned and is well known, people involved in migratory labor, including those caught up in trafficking, are difficult to categorize in terms of active engagement in the process that put them in their current situation and powerless victimization by it. While certainly some individuals have been literally kidnapped into a kind of slavery with no opportunity to resist or negotiate their condition, many more who should be classified as being in need of aid and response have done things to engage the system of border crossing and employment. So the law's need to finely classify people as victims or not often misclassifies people based on the blurriness of their situation. Yet there is no question that the system of movement of people for purposes of laboring, including both sex work and other forms of labor,



is rife with exploitation and injury, and those caught up in that matrix are deserving of a social response. However, simply seeing them as persons whose rights have been violated fails in many cases to adequately capture their basic interests.

Others have criticized the rhetoric of human rights in this context for echoing neocolonial stereotypes of trafficked persons as passive dupes emanating from the Global South and infiltrating the economy and culture of the developed world (Kapur 2005, 95–136). The preoccupation with sex work as the chief mode of trafficking reflects this vision. Under the (George W.) Bush administration in the United States, for example, anti-trafficking efforts focused almost entirely on sex work and were seen as a broader attempt to eradicate all forms of prostitution (Brennan 2008).

As I said, sex work is a particularly heinous form of forced labor, so special attention to that form of trafficking is merited, even putting aside debates about the inherently exploitative nature of such work. Given the illegal (in most places) and subterranean nature of sex work, those forced into this labor are subject to arrest themselves in many areas where trafficking is investigated (see, e.g., English 2011). Having one's rights of one sort violated in no way immunizes one against prosecution for other crimes in a jurisdiction. This is not to argue on the reformist side of the prostitution debates (though my sympathies lie in that direction, albeit with many qualifications) but merely to stress that rights protections tend strongly to trigger a criminal justice response whose sole aim is preventing the violation (by way of prosecuting the violator), not helping to repair its damage.<sup>16</sup>

In sum, responses to human injustices that rely on the traditional language of human rights have been criticized for, among other things, seeing complex and interwoven phenomenon as simple cases of separating the guilty from the innocent, prosecuting the former and protecting the latter. They have also, more generally, been charged with utilizing an overly juridical model of justice, where guilt or innocence is determined as an all-or-nothing and final judgment utilizing piecemeal evidentiary testimony rather than more complex narratives. In the case of human trafficking, and especially in attempting to distinguish trafficking from other forms of irregular migration, the human rights framework has the effect of putting the question of coercion at the center of the analysis. This is because the violation of rights, as such, involves the intrusion into a person's sphere of personal autonomy against her will, making her a victim of a crime and distinguishing her from others who may engage in highly dangerous processes of cross-border migration for purposes of their own. Such an approach may be correctly criticized for ignoring the

tragic complexities that shape this phenomenon, including the background conditions in which people begin their movement to other locations; the complex nature of the exploitation involved in irregular migration; the involvement of “demand” (for farm labor, domestic work, child and adult prostitutes, etc.) in the various destination countries of the developed world; and the role that anti-immigration and homeland “security” policies play in global labor exploitation.

For these and related reasons, human rights language has been seen as inadequate in understanding the precise nature of the injustice of trafficking. Before sketching an alternative vision, an excursus is required into abstract theory in order to clarify the contrasts in play here. For the critique of rights language often reflects an overly narrow view of the relation between protecting people’s rights and advancing their good, though this oversimplification is sadly mirrored in the actual practice of anti-trafficking efforts.

#### *Excursus: The Right and the Good*

Traditional liberal political thought places a strict priority on principles of justice—the right—over advancing the social (or individual) good. Kant is thought to embody this priority most starkly in developing a conception of deontological morality and republican justice that defines the normative realm in a way entirely independent of the obligations to advance the actual goods of persons. (At least that is the rough picture of Kantian liberalism; the actual Kant is much more complex.<sup>17</sup>)

In contemporary political philosophy, this prioritization is pegged to a purely formal and procedural model of liberalism, attributed to the early Rawls by critics such as Michael Sandel and Charles Taylor, among others (Sandel 1982, Taylor 1989). Regarding rights protections, this rough picture implies that social obligation (including legal institutions) extends to the protection of entitlements on the part of individuals but not considerably further, at least not as a first-level social duty. Promoting the welfare of the needy is seen, in this picture, as supererogatory.

This simplified picture of liberal justice is clearly somewhat of a caricature. Rawls, for example, talks about the priority of right *and* conceptions of the good in his later theory (not the absolute priority of the first over the second). Other theorists look at the promotion of goods as fundamental to liberalism, in that protecting rights and freedoms is a mechanism by which people’s autonomy and pursuit of social goods is made possible (Galston 1991). Still others view social ideals such as autonomy, tolerance, and mutual

respect as goods uniquely promoted by liberal justice (see, e.g., Raz 1986 and Larmore 2008).

Even outside of the narrow purview of standard liberal theory, models of democratic justice view rights protections as part of a network of just practices and institutions that include obligations to promote those social and individual goods that are inherent in those democratic practices. There is nothing, then, about the focus on individual rights that require that the promotion of social goods be relegated to secondary status. Indeed, I would stress that collective promotion of goods such as positive freedom and (socially structured) autonomy is co-original (as Habermas puts it) with erecting rights-protecting legal institutions of democratic self-government (Habermas 1996).

In this way, there is no theoretical bar to arguing that protecting rights is complimentary to the promotion of social and individual welfare, the pursuit of which give meaning to the enjoyment of those rights. Protecting people against intrusion with no regard to their well-being makes those protections vacuous and inert. In the context of human rights protections, practices and institutions designed to institute those protections can and should be seen as part and parcel with more expansive efforts to advance the welfare of those vulnerable persons and groups whose rights are in question. A narrow, criminal justice response to the assignment of basic rights to persons is not at all the only approach allowed by that model.

It is important to note, however, that various human rights activists have forthrightly argued for a more holistic approach in the articulation, legal structuring, and enforcement of human rights, one that involves many of the broader social support mechanisms I discuss below. In particular, those activists who advocate women's rights as human rights, especially regarding issues of trafficking and prostitution, similarly press for broad social reform efforts as part of a general human rights framework.<sup>18</sup> These efforts and views should be seen, then, as attempts to reform and broaden the institutional structure and practice of human rights in very much the ways I advocate here.

Now, unfortunately, the more standard, narrow view of liberal rights protections that I have described is tragically enacted in practice, in that using police and other enforcement agencies as the sole instrument in the fight against trafficking and forced labor—as if the protection of rights is the only aim of justice and not viewing social services of all sorts as concomitant requirements in this response—is sadly the reality in many locales, as I have just discussed. So a broader understanding of the connection between rights and goods must not only be justified theoretically, it must be put into practice in reforming response mechanisms in these arenas.

I mentioned democracy earlier, but clearly the persons in need of protection and aid are not strictly members of the official citizenry of destination societies. So an argument is required for why the general population of such “host” countries has obligations that go beyond the protection of cosmopolitan human rights but extend also to the provision of needed services. In the next section I hope to supply such an argument.

### 3. Toward an Alternative Model

Trafficking is a transnational phenomenon, for the most part. As such, any claims that responses to trafficking are obligatory invite a cosmopolitan grounding. That is, it might be suspected that only if we have cosmopolitan obligations to all of humanity to halt injustices will we all (“we” citizens of developed countries, for example) have obligations to contribute to efforts to resist them. Seeing trafficking and forced labor as human rights violations provides such a cosmopolitan frame. But I have argued both that there are limitations and distortions that come with seeing things this way and that trafficking victims and survivors need more than mere protection, they need (and ought to be afforded) substantive resources and services by which they can survive their ordeals and pursue alternative life paths. I want to suggest, however, that going beyond the traditional human rights model need not involve a cosmopolitan obligation to help all people in need. For many citizens, complicity in systems that foment trafficking (and related crimes) puts them (us) in a position of obligation to aid efforts in combating these injustices.

Before turning to this argument, I should again stress how some theorists and activists who function under the banner of human rights similarly reject the narrow, juridical structure of that framework, especially as applied to women’s experiences and interests. For example, in their introduction to a collection of essays on seeing women’s rights as human rights, Peters and Wolper argue that “women’s rights must be understood as human rights... [however that]... understanding must lead to the transformation of prevailing concepts of human rights” (Peters and Wolper 1995, 3). The juridical, deontological structure of rights classifications that I have been discussing as the object of the critical appraisal of human rights talk in this context is similarly the object of revision and critique in these feminists’ theories. Charlotte Bunch, for example, claims that traditional human rights violations have taken place in the public sphere, in a landscape largely populated (traditionally) by men, while women’s victimization often takes place in the relatively private realm, or at least in the context of activity outside the formal institutionalized purview of

state action (albeit in ways in which the state is often complicit). (See Bunch, 1995, 14.)

Broadening the framework of human rights designations to include attention to social and economic context, private relations among persons (technically) outside the purview of state action, group connections as well as individual activity (classified as either voluntary or forced), and so on, will mean broadening the understanding of human rights protections in ways suggested by these feminist writers. I posit this claim in a manner that *contrasts* it with the human rights approach, since the latter has received so much critical attention in these contexts, but I can also be understood as arguing for its expansion as well.<sup>19</sup>

The broad outline of the argument I want to make here can be laid out briefly. Global economic conditions are verifiably unjust; this includes poverty and inequality and, in turn, manifest background conditions against which migratory labor and trafficking takes place. Demand for labor that includes both forced and (relatively) free migration as well as forced labor (without migration) in part drives the processes of labor movement and transfer that includes trafficking. Those in the developed world (and elsewhere) who benefit from the unjust structure of the global economy and/or do not sufficiently resist social and economic systems that drive this demand are complicit in these processes. Being minimally complicit in this way provides justification for supporting the promotion of the good and protection of the rights of the victims of these processes. So as a matter of justice, opportunities and resources, as well as rights protections, should be afforded to those who participate in these forms of labor.

This is a rather serpentine argument with many components. The heart of it, however, is the idea that help and protection ought to be provided to participants in the global labor force that includes, in particular, those forced to work. Trafficking and various forms of irregular migration can only be understood as part of a complex system with various and separable components, which include *background conditions* against which movement begins (poverty, localized violence, family and other pressures, as well as broader histories of colonial and commercial exploitation implicated in those conditions); *mode of transport*, including the role of choices and constrained exit options in irregular methods of cross-border travel; *migration aims*, which involve the nature of the activities resulting from the transport (labor for a wage, prostitution, asylum) as well as the conditions of exit and access to support outside of these conditions; and finally *demand* from destination countries for the type of labor or activity in question.

These complex components make up systemic injustice that requires a response that includes both the provision of aid and resources to those caught up in the system as well as protection of basic rights, including, in particular, rights against violence and coercion and the right to exit any labor situation without reprisals. These latter should be seen as part of the guarantees provided by human rights, and hence such rights protections should be seen as part of the required response to this injustice. But it is merely a component in the broader response that includes the provision of basic goods. The theoretical conclusion I reached in my excursus supports this idea, namely that protecting rights and advancing the basic goods of those who enjoy those rights go hand in hand.

A word, though, about “exit options”: it may well be that asking whether persons involved in migratory labor consented to the conditions in which they find themselves is not the right question to ask in trying to distinguish migration (including smuggling) that should be allowed, from trafficking that should be prohibited. The reason, as many have acknowledged, is that many components of irregular migration that people appear to voluntarily engage in are unplanned, unchosen, and beyond the current control of the participants. For this reason, requiring that non-trafficked people consent to the process is too demanding, since many stages of irregular labor movement are unchosen, but the results are ones the person accepts and often repeats (and from which her family benefits in important ways through remittances and other economic gains). As one activist-commentator puts it, “[C]oercion exists in any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>20</sup>

However, it is crucial that meaningful exit options be protected for all participants in migration of this sort. That is, the difference between the trafficked and the smuggled is that the former lack any options to exit the process, while in principle the participants in labor smuggling who accept their conditions have the option to opt out, physically, from the process of transfer.<sup>21</sup> If not, then the persons should be classified as trafficked.

But these options should be meaningful and not merely the formal option of physically leaving, since that may simply amount to homelessness or threats of deportation. A sizable number of those who migrate (even those who get caught up in trafficking) are seeking meaningful employment. Therefore, merely shutting down the brothel or meat-packing plant will not sufficiently aid the victims of the labor practices in question. Some meaningful avenues of employment and/or education, but clearly stable living conditions, must be provided in order to view the person’s choices as at all autonomous or voluntary. Moreover,

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for foreign nationals, cultural and linguistic support should also be available (perhaps relocation to émigré communities) in order to allow such persons to make valid decisions about their future outside of, say, sex work or exploitative workplaces.

Picking up on my earlier claims about the complimentary character of the protection of rights and promotion of associated goods, the claims I am making here involve insisting on providing material and social resources that make the enjoyment of the (human) rights in question meaningful. A structural commitment to the protection of rights, by which I mean the institutional, legal enforcement of rights claims is vacuous if the conditions under which the enjoyment of those rights is meaningful are denied. For the exercise of the rights against exploitation and enslavement to be valuable, subjects must have meaningful life options and resources so that life without enslavement is worth living. This means, in this context, that access to employment options that provide a livable wage is required so that the right not to be coercively employed is meaningful.

These latter requirements are, of course, utopian in many respects, especially in the current political climate in places like the United States. I merely describe them here to show where the argument leads. Although I should note that some measures along these lines are in fact being taken, albeit in fragmented and piecemeal ways. For example, the Council of Europe Convention on Action against Trafficking in Human Beings provides trafficked people with guaranteed protections that include at least thirty days to remain in the country and receive support, including emergency medical assistance, safe housing, and legal advice, after the person is “rescued” (van den Anker 2006, 167–68). Though this convention has yet to be fully ratified and enforcement remains woefully inadequate, it is a step in this utopian direction.

My main point, however, is to understand trafficking as part of global systemic injustice. In order for the obligations to provide resources of this kind to attach to states and citizens of the developed world, there must be reasons that imply that those people and entities are involved in the injustice in question. Seeing the protections of the human right against trafficking as entwined in a systemic network of injustice is part of the groundwork for such a commitment. Two components of this picture bear special emphasis: the nature of the “demand pull” for exploited and trafficked laborers and the complicity on the part of residents of destination countries that this implies.<sup>22</sup>

The various causes of human trafficking are difficult to pinpoint with precision. Clearly poverty, coercion, and abuse at the home locations of trafficked people are a key part of the story. But in addition, it is also clear that

global inequalities and increased poverty, which have benefits for the developed world, have intensified pressures on people to find work abroad and have increased the vulnerabilities of those who might be caught up in trafficking networks. The complicity this creates on the part of citizens of destination countries is evidenced by cheaper goods and services and other economic benefits systems that global trade allows, systems that allow and foster exploitative labor practices.

Lucinda Joy Peach puts the point succinctly:

National governments are heavily implicated in the construction of both “poor work” and “vulnerable workers” through their policies on immigration, employment, economic development, welfare, education, and so on. Even focusing on the “demand side” ... “is not simply to enquire about the individuals who exploit or consume the labour/services of trafficked persons, but also to question the way in which states—through a combination of action and inaction—construct conditions under which it is possible or profitable to consume or exploit such labour/services.”<sup>23</sup>

I have not focused greatly on trafficking for sex work, although I noted why such a focus is merited apart from questions about the inherent exploitation of such work. However, the complicity I refer to here includes the gendered and patriarchal structure of social life that fosters attitudes and actions that involve the objectification of women and that engenders directly the system of sex work trafficking we are discussing. From tolerating sex tourism and abusive forms of prostitution, to publishing ads for escorts without sufficient safeguards against minors’ or trafficked persons’ involvement, to fostering gender roles and attitudes that see using commercial sex as an acceptable element of masculinity—all contribute directly to the social system of which trafficking is a central part. Since data show overwhelmingly that commercial sexual activity amounts to women and girls submitting to men, the patriarchal system of the objectification of women in which these practices are integral is implicated in the structural injustice I am outlining here.

Such complicity, if only amounting to failures to stem the victimization in question and passively (even unintentionally) enjoying its benefits, grounds obligations to protect the rights and provide for the welfare of the victims of this system. If my property values increase because my neighbor uses undocumented workers and pays them exploitative (or no) wages, then I cannot complain when asked to contribute to programs aimed both at prohibition of such practices



and provision of social and material support for victims. Efforts to correct unjust systems that I benefit from are an obligation that I am duty bound to support, even if I did nothing intentionally to support such a system.<sup>24</sup>

This last example is not merely an analogy, of course. The social dynamics and economies of the developed world reflect and depend on a system of exploitative labor that provides inexpensive workers with little oversight or regulation of their labor conditions. As I mentioned, following Peach, developed economies both create the conditions in which exploitation of labor can occur so easily as well as benefit from those exploitative practices. Therefore, obligations to aid the victims of that exploitation must be borne by those beneficiaries.

My conclusion can be stated most generally (and loosely) this way: one way to characterize the wrongness of trafficking is that it involves the violation of the rights of individuals not to be treated in certain ways, in particular without their ongoing consent. My alternative description is that trafficking is wrong because it is part of an unjust system of global inequality and exploitation that chiefly involves coercive, fraudulent, or exploitative transfer of people in ways they have no meaningful option to exit from. Of course, a central component of the global system of injustice being sketched is the violation of the rights of individuals, and in this way the use of the institutional structure of human rights protections should (if applied adequately) be part of any anti-trafficking effort. But equally important parts of such an effort include working to counteract the conditions of global injustice at both “ends” of the process, particularly poverty at one end, exploitation (including gender exploitation) at the other, and abusive treatment in the middle.

Now there are many ways a people or a country can change its policies that would erase the grounds for this complicity-based argument, such as closing its borders to all migrant labor, but that would be itself unjust for independent reasons (I submit). Moreover, the economic and consumption patterns of developed countries depend heavily on immigrant labor for their provision, both domestically and internationally. This dependence on what can clearly be classified as exploited labor would have to be fundamentally altered to undercut the complicity described here. Various divestiture efforts on college campuses and elsewhere involving the refusal to buy consumer items that result from exploited labor is an example of such an alteration, albeit a relatively marginal one.

This argument, admittedly, has the perhaps paradoxical implication that those jurisdictions that actually ensure decent treatment and livable wages to all workers, just and generous though they are, actually have *less* of an obligation to aid those persons who are victimized by trafficking. This is because the basis for the obligation I am here describing would not be in evidence. But I

don't find this problematic, in that if any such society existed, **general** supererogatory virtues of charity generally would still apply, and would ground a perhaps weaker but still present set of obligations to help such people. And it would also be the case that insofar as trafficked people live within its borders, it is thereby clear that not enough is being done to protect the rights of vulnerable people, so a weaker form of complicity still applies.

It is my contention then that the normative framework through which we understand the injustice of trafficking be broadened to include the complex factors that make that practice possible and prevalent. Those factors will include, in addition to those already mentioned, the complex life situations and perspectives of those involved in practices of global labor activity and cross-border movement. The participants and victims of trafficking have numerous and complex motives, priorities, and values. Therefore, no full accounting of the structure of this phenomenon can be given without the robust participation of those caught up in it. For this reason, the framework I have set out to understand the injustices involved is merely a template within which the voices of those participants can be expressed, so that policy instruments, legal structures, and procedures are organized around the inclusion of such persons and their representatives.

## Conclusion

This discussion has included many elements that were under-theorized and less than fully substantiated. My hope, however, is that these elements can be set aside for the moment in order to focus on other parts of this complex picture. I have urged that seeing trafficking as *simply* a matter of the violation of individual rights is an overly narrow perspective from which to capture the injustice and injury involved and for organizing efforts to combat them. The alternative picture I have sketched—and clearly it is only a sketch—sees trafficking as part of a global system of exploitation and injustice that implicates citizens generally and calls for correspondingly systemic responses. These include both marshalling institutional measures to prosecute traffickers and their accomplices—the protection of rights element—but crucially also includes the provision of resources for the escapees to recover from the trauma of their experiences and move to more valuable and stable life (and work) situations. Only by accepting the interconnected nature of the global system of labor, production, and consumption, as well as the involvement of all people in that system, will the obligations to adequately respond to the injustices inherent in it be properly recognized.<sup>25</sup>

## Notes

1. For an example of such a broader human rights approach, see Ackerly and Okin 1999. This paper is mentioned by Diana Meyers in her contribution to the present volume. I am grateful to Professor Meyers for urging me to clarify this issue.
2. See, for example, Doezenia 2002 and Desyllas 2007.
3. For discussion of the difficulties with the simple dichotomy of perpetrator and victim, see Meyers 2011.
4. See, e.g., Bhabha and Zard 2006. According to Md. Shahidul Haque, trafficking has three core elements: movement; deception or coercion; “harm,” exploitation, or slavery-like conditions (Haque 2006, 4).
5. Much of this discrepancy is due to variable classification schemes and investigative methodologies; for discussion, see, e.g., Torgoley 2006, 558–59.
6. Forced labor, including forced prostitution, can occur with domestic populations as well as foreigners, for example, and many forced laborers may have entered the host country legally. For discussion, see Kaneti 2011, 355.
7. According to the World Bank, in nominal dollar terms, officially recorded remittance flows to developing countries were estimated to reach \$238 billion in 2008, up from \$265 billion in 2007. See Dilip, Mohapatra, and Xu 2008.
8. Quoted in Ruiz-Austria 6, 98–99. See also Kaye 2001.
9. See Kristoff and WuDunn 2009, chs. 1–2.
10. As I noted earlier, I am confining my analysis here to cross-border trafficking in order to highlight some of the complex difficulties involved in human rights models and their application. But it must be emphasized that intra-national forced labor is a grievous injustice that may well demand similar sorts of human rights responses.
11. For discussion of these provisions, see, e.g., Chuang et al. 2005.
12. For a journalistic account of such phenomena, see Kristoff and WuDunn 2009, chs. 1–2.
13. See, e.g., the essays in Reidy and Sellers 2005.
14. This is, of course, not inherent in the structure of human rights enforcement per se, as international courts can be used as transnational enforcement instruments. In the case of trafficking, however, this strategy has not been adopted, and indeed the complexities of local labor and immigration practices make it difficult to see how it could be otherwise, as we will touch on below.
15. For a discussion of this issue in the context of legal philosophy, see Habermas 1996, 84–89.
16. Economic and cultural rights are not protected in this way, but the violations we are discussing here are classified as criminal offenses and hence trigger juridical procedural responses.
17. For general discussion of this issues, see Christman 2001, ch. 4.
18. See, e.g., Peters and Wolper 1995 and Chuang, et al., 2005.
19. Indeed, attention to contextual factors that I earlier described as occluded in typical rights enforcement practices could be re-emphasized in the sort of expansion

- (of human rights language) alluded to here. Indeed, I noted how social welfare resources tend to be under-emphasized in favor of criminal investigation and prosecution. However, social agencies are already active in anti-trafficking in many locales. These calls for expansion would similarly demand expanding their role.
20. David Weisbrodt and Anti-Slavery International, U.N. Documents 2002, quoted in van den Anker 2006, 167. For a similar claim, see Kelly 2003.
  21. Of course, when debts for transfer are involved, this option becomes complicated, to say the least, and in many cases meaningful avenues of escape are blocked even for the smuggled migrant worker.
  22. The structure of my argument here, showing that obligations to fight injustice emanate in part from complicity in the global system manifesting that injustice, echoes that of Thomas Pogge (Pogge 2008).
  23. Peach 2010, 109, quoting Anderson and Davidson 2003, 2.
  24. For an argument along parallel lines for the obligation to supply aid to the impoverished across the globe, see Pogge 2008.
  25. I am grateful to Diana T. Meyers for helpful comments on an earlier draft of this essay.

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## Author Query

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