

Are We Violating the Human Rights of the World's Poor? Responses to Four Critics

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INTRODUCTION

Stimulated by the challenging reactions of four critics, this essay clarifies and elaborates a view I had laid out in an earlier issue of this *Journal*.¹ I will begin with a brief summary account and defense of my main thesis and will then expand on various aspects of it by engaging my critics one by one.

The topic of my inquiry can be defined through three distinctions. The first distinction concerns the different ways in which individual and collective agents can be related to unfulfilled human rights. Here, first, a human rights deficit may lie beyond an agent's capacities. In such cases, the agent bears no responsibility for the deficit (insofar as it lies in the past) and has no responsibilities in regard to it (insofar as it lies in the future). Second, an agent may have the capacity to diminish a human rights deficit and may then bear some responsibility for it (by virtue of neglecting a positive duty to reduce it) or have a responsibility to alleviate it. Third, an agent may have a role in bringing about a human rights deficit and may then (by virtue of violating a negative duty not to harm) bear some responsibility for it or have a responsibility not to contribute to it in the future. I call all and only such active contributions to the nonfulfillment of human rights, when they are foreseeable and reasonably avoidable by the agent, *human rights violations*. And I focus on cases of this kind, in part because I share the common view that, holding fixed what is at stake for the agent and for others, negative duties not to violate human rights are more stringent than positive duties to alleviate human rights deficits.

Moving to the second distinction, both kinds of duties have both *institutional* and *interactional* applications. The fulfillment of human rights depends on institutional arrangements such as laws, rules, conventions, practices and procedures, and human agents therefore have institutional responsibilities to help ensure institutional arrangements under which human rights are fulfilled insofar as this is reasonably possible. Holding institutional arrangements fixed, the fulfillment of human rights also depends

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1. Thomas Pogge, *Are We Violating the Human Rights of the World's Poor?* in 14:2 YALE HUM. RTS. & DEV. L.J. 1 (2011) [hereinafter Pogge, *Violating the Human Rights*].

on human conduct; and human agents therefore have additional interactional responsibilities to adjust their conduct so that it helps ensure the fulfillment of human rights. Because the profound importance of institutional responsibilities is still poorly understood, my focus is on them and especially on the negative duty not to contribute to the design or imposition of institutional arrangements under which human rights foreseeably and avoidably remain unfulfilled. Slavery in the United States serves as a relevant example. This slavery was not merely a crime, practiced by slaveholders and slave traders, but also an unjust social institution, which many other citizens also helped to uphold. Unlike their affluent Swedish contemporaries, such U.S. citizens were not merely bystanders, able to relieve some of the brutality inflicted on slaves; they were playing an active role in lending strength and legitimacy to the state that enforced property rights in persons within its territory. Like slaveholders and slave traders, these other citizens were actively violating human rights, albeit institutionally. My work here focuses specifically on such *institutional human rights violations*.

The third distinction is that between national and supranational institutional arrangements. The last thirty years have seen the rapid emergence of a dense regime of supranational institutional arrangements that—typically negotiated among officials from several countries or emerging through their regular interactions—structure and regulate human interactions within and across their jurisdictions. As exemplified by the rules and procedures of the World Trade Organization, such supranational institutional arrangements have a profound influence on national governance and the distribution of individual life prospects. Insofar as this regime generates a reasonably avoidable excess of unfulfilled human rights, it is arguably unjust, and agents contributing to its imposition are violating human rights insofar as they can and should foresee its adverse human rights impact. Fully specified, my focus is then on human rights violations that agents commit through their joint contributions to upholding unjust supranational institutional arrangements.

The existing international discourse on human rights is focused on the *interactional* responsibilities of states, with heavy emphasis on their negative duty to *respect*, and their positive duties to *protect* and to *fulfill*, their own citizens' human rights. Some institutional responsibilities have been belatedly recognized in the wake of the United Nation's General Comment on the Right to Adequate Food,² which assigns states a positive duty to *facilitate* human rights fulfillment through appropriate institutional reforms: to "pro-actively engage in activities intended to strengthen people's access" to the objects of their human rights. I extend this thought by emphasizing that states and other human agents also have negative duties not to contribute to the design and imposition of institutional arrangements that foreseeably produce reasonably avoidable human rights deficits. In terms of content, this duty does not add anything to the now-recognized duty to facilitate.

2. U.N. Economic and Social Counsel, *General Comment on the Right to Adequate Food*, ¶ 15, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

But as a negative duty, it has much greater stringency, which persists undiminished as one moves from friends and neighbors to distant strangers: while positive duties to promote human rights fulfillment may be much stronger to those close to us than to distant foreigners, no similar gradient exists for negative duties not to harm. The recognition of negative duties not to contribute to the design and imposition of supranational institutional arrangements that are not human-rights compliant discloses then the real possibility that we – reasonably well-off citizens of affluent countries – are involved in large-scale institutional violations of the human rights of distant foreigners whose deprivations we are inclined to relegate to the bottom of our moral priority list.

Readily available evidence suggests that basic social and economic human rights remain unfulfilled for roughly half the world's population and that the design of supranational institutional arrangements plays a major role in explaining why the poorest segment of humanity is suffering a rapid decline in its share of global household income. The latest figures from Branko Milanovic, then principal economist in the World Bank's Development Research Group, show that the global household income share of the three poorest deciles of humanity declined from 1.52% in 1988 to 1.25% in 2008³. This implies that the 2008 income share of the world's poorest 2 billion people would have been over 21 percent higher, if these three deciles had in the preceding 20 years participated proportionately in global economic growth. There is much celebration of the great efforts the world has supposedly made – in connection with the Millennium Development Goals, for instance – to “lift people out of poverty.” But, clearly, the effect of all this heavy lifting was overwhelmed by structural forces working to magnify global inequality. Milanovic's data show that the richest five percent of the world's population increased their share of global household income from 42.87% in 1988 to 45.75% in 2008.⁴ Had this substantial shift of nearly three percent of global household income gone to humanity's poorer half instead, it would have easily sufficed to end severe poverty on this planet.

The judgment that these trends really are substantially driven by the great importance that decisions about the design of supranational institutional arrangements have been acquiring is further supported by data about the richest segment of the U.S. population. This elite group has the best opportunities to shape supranational rules in its favor because the U.S. government is still the dominant force in international negotiations and because U.S. politicians are extraordinarily dependent on private money and therefore especially easy targets for successful lobbying. Looking just at the richest 1/100 percent of the U.S. population, we find that it increased its share of national household income from 0.86 percent in 1978 to 5.47 percent in 2012 – gaining 539% over and above the rise in the U.S. average in-

3. Email from Branko Milanovic, now Visiting Presidential Professor, City of New York Graduate Center, to author (Dec. 12, 2012) (on file with author).

4. *Id.*

come.⁵ These 31,000 people now have about half as much income as the poorer half (155 million) of Americans and about the same income as the poorest 35% (2.5 billion people) of humankind.⁶ The dramatic ascendancy of this group after a steady 50-year decline illustrates the importance of the supranational institutional arrangements that have emerged with such profound influence in the globalization period following the end of the Cold War. These arrangements are, in the first instance, the work of the more powerful states, which dominate the creation and revision of supranational rules and also exert pressure toward accession and compliance. But then the rule-shaping conduct of these states is itself shaped by their most influential constituents, the top executives and shareholders of the larger enterprises. These constituents are not hostile to the world's poor, they merely seek to bend supranational rules in their own favor so as to capture a larger share of global income for their firms and themselves. And they are quite successful at this game. The investment research firm Strategas has been selecting, in each calendar quarter, those ten percent of companies in the S&P 500 index that spend the most on lobbying as a percentage of their assets. The "Strategas Lobbying Index" tracks the investment returns that would be realized by investing and re-investing, each calendar quarter, equal amounts into these fifty biggest spenders on lobbying.⁷ This investment strategy would have outperformed the S&P 500 by an amazing 11% annually over the 2002–11 period.

Academic research consolidates these findings. In a well-known study, the average return from corporate lobbying has been estimated to be \$220 for every dollar "invested."⁸ This academic study focused specifically on the (misnamed) *American Jobs Creation Act* of 2004, which temporarily enabled US corporations to save 85% of the tax normally payable on dividends received from a foreign subsidiary, thereby effectively reducing their tax on corporate profits realized abroad from 35% to 5.25%.⁹ This victory is a good example of how the benefits firms obtain by lobbying are often associated with losses imposed on poor populations: the purchased tax holiday was

5. Table A3: Top fractiles income shares (including capital gains) in the U.S., Tables and Figures available at <http://elsa.berkeley.edu/~saez/TabFig2012prel.xls>, updating Thomas Piketti & Emmanuel Saez, *Income Inequality in the United States, 1913-1998*, 118(1) Q. J. ECON., 1 (2003), <http://elsa.berkeley.edu/~saez/pikettyqje.pdf>. See Table A3 in tables and figures. The national income share of the richest one percent rose from 8.95% to 22.46% in the same period—a 151% gain above the rise in the U.S. average income. The national income share of the richest 10% rose from 33.49% to 50.42%—a 51% gain above the rise in the U.S. average income.

6. This hugely expanded income share of the very rich is all the more remarkable as the U.S. income distribution had become steadily more equal in the 1928–78 period, through Democratic and Republican administrations, just as it has since that time become steadily more unequal regardless of the party in power.

7. *Money and Politics: Ask What Your Country Can Do For You*, THE ECONOMIST (Oct. 1, 2011), available at www.economist.com/node/21531014.

8. See Raquel M. Alexander, Stephen W. Mazza, and Susan Scholz, *Measuring Rates of Return on Lobbying Expenditures: An Empirical Case Study of Tax Breaks for Multinational Corporations*, 25 J.L. & POL'Y 401 (2009). The 93 corporations that lobbied for the *American Jobs Creation Act* spent \$282.7 million on their effort and harvested \$62.5 billion in tax savings. *Id.* at 404.

9. *Id.* at n.6.

directly related to the tax-dodging strategies that U.S. multinationals practice in the less developed countries. To avoid paying taxes on their profits abroad, most multinationals use various accounting gimmicks—such as mispriced transactions among subsidiaries involving goods, services and intellectual property—to shift their profits to specially created subsidiaries in tax havens.¹⁰ Such strategies for dodging foreign taxes are, however, lucrative only insofar as these profits can eventually be repatriated to the U.S. at a tax rate that is substantially lower than the tax rates on corporate profits in the relevant foreign country. This is precisely what tax holidays such as the *American Jobs Creation Act* allow.¹¹ Without the prospect of such tax holidays, the main reason multinationals now have for using tax havens would disappear, as taxes paid abroad could then be subtracted from the U.S. taxes they owe. It would be pointless to cheat less developed countries out of taxes due on profits there because any money so saved would only increase the firm's tax liability in the U.S.

Given that the U.S. political system renders its officials highly exposed to lobbying, and given that the U.S. government has been dominant in supranational rule making, it is not surprising that supranational institutional arrangements tend to serve the interests of (mostly U.S.-based) multinational corporations, banks, hedge funds, industry associations and extremely wealthy individuals. It is clear that when such highly privileged agents expand their share, others must suffer a corresponding decline. And it is foreseeable that this decline is likely to hit hardest those who are least able to defend their interests with words and action: the world's poor. Their deprivations and lack of resources make it especially hard for them to divert efforts to political action. This problem is compounded by several special factors concerning international deliberations and decision making: many poor countries are excluded from effective participation in the important fora such as the W.T.O., the U.N. and its related organizations including the I.M.F. and the World Bank; intergovernmental negotiations are highly nontransparent so that the adoption of rules harmful to the poor often cannot be traced to specific lobbies or lobbied negotiators; and powerful moral arguments can typically be sidelined by proclaiming that we cannot afford to make concessions to morality in the dangerously competitive world of international relations where our rivals may well take advantage of our self-restraint. To be sure, such proclamations are rarely convincing. The U.S. could certainly make efforts to get the more powerful states to agree to take into account the vital interests of poor populations in international decision making—starting with an agreement to commission careful independent assessments of how proposed treaties and other supranational rules and rule changes would affect poverty worldwide. But references to the “jungle” of international relations apparently suffice nonetheless to satisfy politicians, economic elites, media and the general public in more afflu-

10. Martin Hearson and Richard Brooks, *Calling Time*, ACTION AID (2010), available at www.actionaid.org.uk/doc_lib/calling_time_on_tax_avoidance.pdf.

11. Raquel M. Alexander et al., *supra* note 8, at 402–03.

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ent countries that what they do to the world's poor is morally acceptable.

My essay directly attacks this satisfaction. It argues that the more powerful states, which dominate the design and worldwide imposition of the new and still emerging supranational institutional order, bear a collective responsibility for the persistence of severe poverty. They are collectively responsible for that substantial part of the worldwide human rights deficit that would not exist if they were reliably committed against imposing supranational institutional arrangements that are foreseeably noncompliant with human rights. Implicated in this responsibility of states are the relevant state officials and those who work hard to influence these officials toward adopting rules that benefit corporate elites at the expense of poor populations. Similarly implicated are also ordinary members of influential democratic states. As citizens with voting rights and the rights of freedom of speech, press and peaceful assembly, we bear ultimate political responsibility for what our country does in our name; and as workers and taxpayers we constitute and contribute the economic and military strength that enables our government to play an important role in the design and imposition of supranational rules and regimes. Given the great and avoidable harms these rules and regimes foreseeably inflict on the world's poor, we collaboratively violate their human rights on a massive scale. We can end our role in this injustice either by successfully pressuring our government to be supportive of an institutional realization of human rights or by continuously compensating for our share of the harm we collectively cause through private efforts such as donations to effective NGOs. The former is the better route because it holds out the prospect of ending poverty once and for all. But given its uncertainty, we should pursue the latter route as well, by directly eradicating severe poverty at a rate that would lead to its full eradication if others similarly placed did their fair share as well.

With this thumbnail sketch of my position as background, I now take a close look at the challenging reactions my critics have composed.

RESPONSE TO ROB REICH ON THE RESPONSIBILITIES OF ORDINARY CITIZENS

I think about individual responsibility for global injustice primarily in first-person terms: what must *I* do to fulfill at least my negative duties not to harm? If my thoughts on this question have any plausibility, they can perhaps help others reach an understanding of their own negative responsibilities.

Reich is right to stress that institutional injustice is the fundamental obstacle to the realization of human rights in the modern world. But it does not follow that, when seeking to fulfill my negative responsibilities not to harm, I should exclusively or even mainly aim to reduce or eliminate institutional injustice. This does not follow because I may not be materially able to reduce the institutional injustice I am implicated in. When this is so, political reform efforts, no matter how costly to oneself, do not discharge one's

negative responsibilities. One is then reduced to the other two options.

Under Nazi rule, there was no realistic prospect of political reform. The Scholl siblings nonetheless tried this route, by distributing leaflets. They were quickly caught, then convicted and guillotined four days later.¹² Their conduct was certainly heroic, but it did not protect those whose lives were threatened by the Nazis. Convinced that political confrontation was futile, Willy Brandt went into early exile in Scandinavia.¹³ His conduct, too, did not protect the victims of the Nazis. But at least he did not contribute to the coming violence as his flight saved him from being conscripted into the German *Reichswehr* or interned in a labor camp. Oskar Schindler took the third route. He remained in Germany, a member of the NSDAP, and ran a factory producing enamelware and (at the end) munitions for the German army.¹⁴ This contribution to the German war effort enabled him to save some 1,200 Jews from being murdered.

Reich likens those who choose the third route (compensation) to a rich man who is sitting astride a poor man's back and mopping the poor man's brows rather than getting off his back. But this analogy is misleading in two ways. First, in contrast to slavery, the burdens on poor people today—say on Bangladeshi garment workers—are not controlled by a single person but imposed through structural conditions jointly upheld by many. Of course, these many could and should “get off the back” of the Bangladeshi garment workers. But none of them can remove the burden single-handedly. I can only *work toward* political reform, and even my best efforts may come to naught. Second, I can, through an effective NGO perhaps, free some Bangladeshi garment workers from their oppression; I can ensure, for instance, that they learn computer skills and get stable jobs with decent firms that outsource work to Bangladesh.¹⁵ Achieving this, I do not merely provide small mercies to oppressed people but end the oppression of some. If many more of the world's affluent were to engage in such effective compensation, there would be much less poverty and oppression. When the prospects of successful political reform are highly uncertain, I think I ought also to make (more achievable) compensation efforts so as to make sure of fulfilling my negative responsibilities.

I agree with Reich that emigration—including internal self-exile (“going off the grid”)—is an inferior option because, unlike political reform and compensation, it typically does nothing for the poor and oppressed. Still, Reich may overstate the case in two respects. First, there are exceptions. In cases where the harm is proportional to contributions, my abstention may really make a difference, albeit a tiny one diffused over large numbers of

12. See *Hans and Sophie Scholl*, WIKIPEDIA,

http://en.wikipedia.org/wiki/Hans_and_Sophie_Scholl (last updated June 30, 2014).

13. See *Willy Brandt*, WIKIPEDIA, http://en.wikipedia.org/wiki/Willy_Brandt (last updated Sept. 12, 2014).

14. See *Oskar Schindler*, WIKIPEDIA, http://en.wikipedia.org/wiki/Oskar_Schindler (last updated Sept. 3, 2014).

15. Donations to the NGO Samasource will accomplish this. See *How We Work*, SAMASOURCE, <http://samasource.org/mission/how-we-work/> (last visited Sept. 15, 2014).

victims.¹⁶ Those who pollute less thereby do make climate change a little less harmful. And those who went to Canada to avoid the draft thereby did make the US war in Vietnam a little shorter and less ferocious. Second, the question under consideration specifically concerns negative responsibilities (our “complicity footprint”), and these are reduced by self-exile. Even if those who went to Canada had made no difference at all to the war, they surely did not have the same complicity in this war as those who allowed themselves to be conscripted and ordered to fight there. The harm done to Vietnam’s population must be attributed to those who participated in inflicting this harm—soldiers, pilots, generals, navigators, politicians, munitions workers, other members of the US workforce—roughly in proportion to what each contributed to sustaining the violence. Those US citizens who sat out the war in Canada, like ordinary Canadians, typically made no such material contribution to the war and thus avoided complicity.

I agree then with Reich that a person’s complicity footprint does not depend on this person’s income alone. Surely someone who works to reform some unjust institutional arrangement is less complicit than one who actively contributes to upholding it. I remain unconvinced, however, on the relevance of intentions (foregrounded by Reich) and other inner states. Suppose two citizens contribute to building and sustaining popular support for a war their country is fighting abroad. Ann does so intending thereby to promote justice, Bob to promote U.S. interests. The war is in fact not promoting justice but rather massively violating human rights, though elaborate misinformation conceals this fact from Ann and many others. Clearly, Ann is *pro tanto* a better, less blameworthy person than Bob. But is she less complicit than Bob in the human rights violations to which both are contributing equally? Am I less complicit in my country’s unjust foreign policy than other philosophy professors merely because I am—ineffectually—opposed to it? I believe that the right answer to these questions is “no.” I intend in the near future to work out in greater detail how responsibility for harm that many produce together should be allocated among them—how much of this harm each would need to avert in order to fulfill her or his negative responsibility.

RESPONSE TO ALISTAIR MACLEOD ON THE DEFINITION AND SPECIAL WEIGHT OF
VIOLATIONS OF HUMAN RIGHTS

MacLeod focuses on how I seek to distinguish human rights violations within the larger class of unfulfilled human rights. He understands me to do this through three necessary and jointly sufficient conditions. Unfulfilled human rights involve human rights violations just in case there are agents or agencies that (i) “are causally responsible for (i.e., make a causal contri-

16. See DEREK PARFIT, REASONS AND PERSONS 80–81 (1984).

bution to) the 'non-fulfillment' of the right";¹⁷ (ii) are "morally responsible (and thus morally to blame) for the non-fulfillment of the right because they 'foreseeably and avoidably' contributed to the non-fulfillment of the right";¹⁸ and (iii) are "in breach of a negative human-rights-correlative duty."¹⁹ MacLeod's main conclusion is that I should drop the third condition.

While I use the word "contribution" in the narrow sense of *active contribution*, MacLeod uses the word in a broader sense reflecting "but-for causation"²⁰: for an agent to be a contributor to a harm, it must merely be true that there was some other way this agent could have acted with the result that this harm would not have occurred. Using the word in MacLeod's sense, we can then formulate our difference this way: while I hold that a human rights violation requires an agent who makes an *active* contribution to a human right being unfulfilled (in breach of a *negative* duty), MacLeod holds that *passive* contributions ("omissions") to a human right being unfulfilled (in breach of a *positive* duty) should also qualify as human rights violations when condition (ii) is met.

Here is a case where the difference would matter. Jill is a prominent white scientist, living in a rich suburb of a city in which she is highly respected. One night she gets up around 2 a.m. for a snack and sees from her back window that two policemen are aggressively accosting a black teenager who is walking by. The teenager is entirely peaceful, but the officers start slapping, taunting and punching him. Jill considers opening her window and calling attention to herself so the cops would know they are being observed and stop. But instead she just continues watching how the youth is beaten quite severely. Jill films the beating with her cell phone. But she keeps this recording and her observations of the whole incident to herself even after she reads a totally false report about it in the newspaper and then learns that the young man, Sam, faces serious criminal charges based on the testimony of the policemen. As a result of Jill's inaction, Sam is convicted of attacking a police officer and resisting arrest. Assuming that the cost to Jill of intervening during the beating and later during Sam's trial is negligible, Jill has clearly acted very badly. But has she *violated* Sam's human rights?

I think the majority of competent English speakers would side with me, against MacLeod, in judging that Jill, though she has wrongfully failed to prevent violations of Sam's human rights, has not herself violated his human rights. To them, the word "violate" indicates an *active* contribution. Limiting the use of the word in this way makes sense in view of the special "negative evaluative force of the term 'violated,'"²¹ in conjunction with the widespread belief that active contributions to harm are morally worse than passive ones when other things, and particularly what is at stake for all in-

17. Alistair MacLeod, *infra* Appendix B, at 96.

18. *Id.*

19. *Id.* at 98.

20. *Id.*

21. *Id.*

volved, are equal. While Jill acted very badly, the police officers acted much worse, or so most of us believe.

Because they reject this ordinary moral differentiation, certain consequentialists may want to extend the use of the expression "human rights violation" to Jill's conduct. MacLeod offers a different reason, namely that some cases of passive contribution are morally worse than some cases of active contribution. This is certainly so. Willfully denying one person the right to vote is a lesser wrong (breach of human rights) than passing up an easy opportunity to rescue 1000 people from excruciating torture by some distant dictatorship. So in asserting the greater stringency of negative duties, I try always to add an other-things-being-equal clause which stipulates that the costs and benefits to the protagonists must be the same. Thus I write in the essay: "*Other things equal*, it is worse to let an injustice persist if one is complicit in it than if one is merely an uninvolved bystander. If the injustice manifests itself in human rights deficits, then one is a human rights violator in the first case but not in the second."²² The ordinary use of the expression can then be defended. We call active contributions to human rights deficits *violations* to indicate that they are worse than their passive-contribution counterparts. We do not thereby suggest that *each* active contribution is worse than *any* passive one. Our use of "human rights violation" resembles then the ordinary use of adjectives like "large" and "small": to be a large hamster, one needs to be larger than the small hamsters, but not larger than the small elephants.

There is finally also an important political dimension to this question. My central ambition is to convince citizens of affluent countries that our governments and most of us are *actively* contributing to the persistence of massive human rights deficits in the developing world and are therefore human rights violators. This central point would be obscured, and perhaps lost, if I also sought to expand the ordinary conception of "human rights violation." To be sure, this ordinary conception should be revised if it is untenable. But this response has tried to show that it is not.

RESPONSE TO RICHARD ARNESON ON CONSENT BY THE VICTIMS AND ON
MEMBERS' RESPONSIBILITY FOR GROUP ACTION

Arneson presents two distinct challenges. The first attacks my claim that, leaving positive duties aside, affluent countries are harming poor people in the less developed countries by imposing upon them unjustly onerous terms of trade.²³ Arneson does not dispute that the trade regime in question is avoidably onerous, foreseeably leaving many people deeply impoverished and unable to meet their basic needs. But he holds that, so long as the poor accept the regime and are no worse off than they would be

22. Pogge, *Violating the Human Rights*, *supra* note 1, at 16.

23. Richard Arneson, *infra* Appendix C.

without it, this regime is not unjust and its imposition not a case of harming.

Arneson illustrates his point with a stylized example of a prosperous France and poor Africa. Absent positive duties to help the Africans, it is permissible for the French to offer terms of interaction that are strongly slanted in their own favor. So long as the Africans accept these terms and are not rendered worse off by the interaction, they are not being harmed by the French and not being subjected to unjust terms of interaction.

Arneson writes that “this simple point immediately casts a dark shadow on Pogge’s account of how the global international order harms the poor.”²⁴ But I think this shadow is not as long, nor as dark as he imagines. It is not long because Arneson would have a hard time showing that the terms of interaction imposed upon the world’s poor meet his two conditions: that these terms are accepted by the poor and also render the poor no worse off than they would be in the absence of interaction. The first condition is generally unfulfilled in cases where the acceptance comes from a ruler who lacks democratic legitimacy: the fact that Sani Abacha had signed a resource extraction agreement with the French does not show that the Nigerian people have accepted its terms. And the second condition is also often unfulfilled as the Nigerian people lose their national resources, suffer severe ecological damage, and find their tyrant strengthened by the money and weapons the French give him in exchange for oil. While millions die each year from poverty-related causes and hundreds of millions live in life-threatening poverty, we cannot be confident that the poor are no worse off than they would be without interaction with the affluent countries.

The shadow of Arneson’s point is also not as dark as he imagines because this point lacks moral credibility. Apart from the authority of Robert Nozick, liberally cited, Arneson provides no support for it. One reason to reject the Nozick-Arneson point is the fact that it would justify slavery. Suppose the Africans are in extreme peril that the French are able, but have no duty, to relieve.²⁵ In this case, the Africans may rationally accept enslavement if the French require this as a condition of rescue. Would the resulting slavery regime therefore be just? Would its maintenance by the French involve no harming of the enslaved Africans? Nozick, of course, happily embraces an affirmative answer and explicitly endorses slavery voluntarily entered into.²⁶ But slavery is widely regarded as a paradigm instance of unjust terms of interaction—regardless of how it had once come about. “I disagree,” writes Arneson.²⁷ But, since he offers no reason for his disagreement, I feel free to adhere to the majority view: slavery can be unjust, and its imposition a harm, even if the slaves had once accepted it and are no worse off than they would have been had they instead refused to ac-

24. *Id.* at 106.

25. We may suppose that any positive duties to aid are inapplicable here because helping the Africans would be too costly or too risky for the French.

26. ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* 331 (1974).

27. Richard Arneson, *infra* Appendix C, at 105.

cept their enslavement.²⁸

Arneson's second challenge concerns the transition from collective to individual responsibility. Suppose that the global institutional order does much grave harm and that we privileged citizens of the affluent countries are collectively responsible for this harm. Even then, so writes Arneson, "nothing immediately follows" about individual responsibility because "in determining what moral constraints apply to an individual and what it is all things considered morally permissible, optional, and required for her to do, the operative idea is counterfactual dependency—what difference would it make if the agent did this rather than some other action available to her. Actual causation is pretty much irrelevant, at most a minor consideration."²⁹ Really? Consider an armed gang that invades a village and kills all its inhabitants; suppose further that each member of the gang can truthfully say that the harm would have been exactly the same in his absence. Does none of them bear any individual responsibility for his participation in the massacre? I propose to avoid this absurd conclusion by requiring that, if a group is collectively responsible for a harm, then some members of this group must be individually responsible for fractions of this harm which add up to at least the full amount of harm inflicted by the group.³⁰

The U.S. government could not impose global rules that are harmful to many poor people in the developing world if it lacked the material and moral support of at least a sizable minority of the U.S. adult population. Because the U.S. government's imposition of unjust rules actually has much higher support, most of its U.S. supporters make no marginal contribution to the harm these rules inflict. Nonetheless, in analogy to the massacre case, we must conclude that these symmetrically-placed supporters are individually responsible for fractions of the total harm which add up to at least the full amount of harm they together inflict.

RESPONSE TO ANN CUDD ON THE CHALLENGES OF FORMULATING A PROMISING REFORM AGENDA

Cudd points out that citizens working toward supranational institutional reform face three formidable challenges. There is the epistemic challenge of working out what alternative institutional designs would in fact eradicate or optimally reduce the massive human rights deficits associated with the present global order. There is the feasibility challenge of designing supranational institutions that would actually work well, by attracting sufficient compliance and long-term political support. And there is the collec-

28. Consider also a two-person case. You undertake a dangerous rescue of a person in mortal peril after he agrees to become your slave for life. Is there then no injustice in his lifelong enslavement? Would you not be harming him if you kept him as a slave until he dies?

29. Richard Arneson, *infra* Appendix C, at 107.

30. "At least" because, if three people together murder a fourth, then each of the three may be considered a murderer, i.e., as on par with someone who committed murder on his own.

tivity problem of uniting, behind one institutional reform agenda, sufficiently many individuals to have a reasonable chance of realizing this agenda.

In regard to all three challenges, it helps to think of reform as involving not the replacement of the present global order with some alternative system, but piecemeal implementation with a lot of careful observation and analysis. This makes the prospect of reform less daunting by integrating it into the ongoing ordinary business of governments creating and revising supranational agreements. The crucial new element would be that inter-governmental negotiators would, under constant pressure from citizens worldwide, take a more impartial view of their mandate: they would aim for supranational institutional arrangements that are just (human rights compliant) rather than ones that serve their respective domestic elites.

Such gradualism helps with the epistemic problem insofar as relatively small reform ideas are much easier to assess and also much less risky. Here it makes sense initially to mobilize political support for reform projects whose relative impact is easier to assess.³¹ In addition, early reform projects should satisfy three further criteria. For the sake of feasibility, new institutional arrangements should cohere well with the larger institutional architecture both as it exists now and as it may exist after a significant series of institutional reforms. Early reform projects should be ones that can also attract substantial prudentially motivated support. And they should also be such that their achievement would facilitate the achievement of subsequent reforms that would further reduce the injustice of the global institutional order. An example of a reform that does well in terms of all four criteria is the Health Impact Fund proposal.³² Another example is the sidelining of tax havens and secrecy jurisdictions. These facilitate international criminal activity (human and drug trafficking, terrorism). They also stimulate huge drains of capital from developing countries, as well as revenue losses from developing and affluent countries through tax evasion, trade misinvoicing, embezzlement and other forms of corruption.

The gradualism described also helps with the collectivity challenge. It is much easier to get others to agree on a relatively small institutional reform (such as the Health Impact Fund) than on an entire alternative global order. The political mobilization required to realize such a limited institutional reform is also much smaller. A remaining difficulty, however, is that of agreeing on a plausible sequence of reforms. This has been a great political weakness of the global justice movement: that we have spread our political efforts over many good reform ideas. We should instead bring our best ideas into a plausible implementation sequence and then focus our combined political strength on one reform at a time. After its (much more likely) suc-

31. I agree with Cudd that we often don't know as much as we should about the likely effects of possible reform initiatives. Ann Cudd, *infra* Appendix D, at 116-17. We ought to do more social science research aimed at estimating the human-rights impact of feasible institutional-design options.

32. Thomas Pogge, *The Health Impact Fund: Enhancing Justice and Efficiency in Global Health*, 13 J. HUM. DEV. & CAPABILITIES 537 (2012).

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cess, we would then be able to carry the momentum into the next reform effort.

Even small supranational or national institutional design successes—completing a reform project on the gradualist agenda, or averting or weakening a “reform” that would place additional burdens on the poor—can have substantial impact. But then such successes also typically presuppose extensive collaboration; very few of us can attain a position where we can achieve such a success single-handedly. This makes us hostage to unfortunate circumstances. If the political climate is by and large supportive of the institutional arrangements our governments are imposing upon the world, then there may be nothing we can do politically to affect the reigning globalization agenda. We may then be reduced to the compensation option of helping to protect a few poor people from severe harms they would otherwise suffer. This may be “a less effective contribution than we might have hoped for”;³³ and one may end up reducing the global burdens of poverty by less than one millionth of one percent. Still, given the overall magnitude of the problem, even so small an achievement is quite substantial in human terms and can offset one’s own similarly fractional contribution to the (re)production of poverty. If we do this work explicitly to reduce harms we are also contributing to, we may thereby spread awareness of the injustice of existing institutional arrangements and inspire a greater willingness to help with their reform.

33. Ann Cudd, *infra* Appendix D, at 118.