

HUMAN RIGHTS AND GLOBAL HEALTH: A RESEARCH PROGRAM

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Abstract: One-third of all human lives end in early death from poverty-related causes. Most of these premature deaths are avoidable through global institutional reforms that would eradicate extreme poverty. Many are also avoidable through global health-system reform that would make medical knowledge freely available as a global public good. The rules should be redesigned so that the development of any new drug is rewarded in proportion to its impact on the global disease burden (not through monopoly rents). This reform would bring drug prices down worldwide close to their marginal cost of production and would powerfully stimulate pharmaceutical research into currently neglected diseases concentrated among the poor. Its feasibility shows that the existing medical-patent regime (trade-related aspects of intellectual property rights—TRIPS—as supplemented by bilateral agreements) is severely unjust—and its imposition a human-rights violation on account of the avoidable mortality and morbidity it foreseeably produces.

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Some eighteen million human beings die prematurely each year from medical conditions we can cure—this is equivalent to fifty thousand avoidable deaths per day, or one-third of all human deaths.¹ Hundreds of millions more suffer grievously from these conditions.² The lives of additional hundreds of millions are shattered by severe illnesses or

¹ In 2002, there were fifty-seven million human deaths. Among the main avoidable causes of death were (with death tolls in thousands): respiratory infections (3,963—mainly pneumonia), HIV/AIDS (2,777), perinatal conditions (2,462), diarrhea (1,798), tuberculosis (1,566), malaria (1,272), childhood diseases (1,124—mainly measles), maternal conditions (510), malnutrition (485), sexually transmitted diseases (180), meningitis (173), hepatitis (157), and tropical diseases (129). See WHO 2004b, annex table 2; cf. also FAO 1999 and UNICEF 2002.

² Such morbidity is due to the conditions listed in the preceding footnote as well as to a variety of other communicable diseases, including dengue fever, leprosy, trypanosomiasis

interventions we have undertaken in recent years and the huge, unrepayable loans our governments and their international financial institutions tend to extended to (often corrupt and oppressive) rulers and elites in the developing countries. Last, but not least, there is the important moral and social benefit of working with others, nationally and internationally, toward overcoming the morally preeminent problem of our age, which is the horrendous, poverty-induced and largely avoidable morbidity and mortality in the developing world.

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In the remainder of this essay, I will further underscore the moral urgency of the task of dramatically lessening the global burden of disease by formulating it in human-rights terms. We are used to relating human rights to the conduct of individual and collective agents—such as prison guards, generals, corporations, and governments, whose conduct may be criticized for failing to safeguard the human rights of persons falling within their domain of responsibility. And their conduct may also be criticized (typically more severely) for actively violating the human rights of persons. In the former case, such agents stand accused of failing to fulfill positive responsibilities they have toward specific persons by not taking reasonable steps toward ensuring these persons have secure access to the objects of their human rights.¹⁴ In the latter case, such agents stand accused of violating negative responsibilities they have toward all human beings by actively depriving some persons of secure access to the objects of some of their human rights.

Social (paradigmatically: legal) rules, too, can be criticized in human-rights terms. This is clearest when such rules explicitly mandate or authorize conduct that violates human rights, as with laws authorizing the enslavement of blacks and mandating the forcible return of fugitive slaves. Such laws violated the human rights of blacks. And those who participated in imposing such laws, even if they did not themselves own slaves, violated their negative responsibilities by helping to deprive blacks of secure access to the objects of their human rights.

Even social rules that do not explicitly mandate or authorize conduct that violates human rights may still violate human rights. This is most clearly the case with economic rules that avoidably produce massive extreme poverty or even famine, as exemplified by the economic regimes of feudal France and Russia, the economic rules Britain imposed on

¹⁴ Here the *object* of a human right is whatever this human right is a right to—adequate nutrition, for example, or physical integrity. And what matters is *secure access* to such objects, rather than these objects themselves, because an institutional order is not morally problematic merely because some of its participants are choosing to fast or to compete in boxing matches. For a more elaborate statement of my understanding of human rights, see Pogge 2002a, 2002b.

Ireland and India (causing the Irish potato famine of 1846 to 1850 and the great Bengal famines of 1770 and 1942 to 1945), and the economic regimes temporarily imposed in the Soviet Union and China (the “Great Leap Forward”), which led to massive famines from 1930 to 1933 and 1959 to 1962, respectively.

The assertion that the mentioned economic regimes violated human rights crucially presupposes the claim that the horrendous deprivations and famines in question were in part *due to* those regimes and would have been—partly or wholly—avoided if a suitably modified regime had been in place instead. If this presupposition holds, the economic regimes mentioned were indeed in violation of human rights.

Here it may be objected that a just economic order should be immune from criticism on human-rights grounds: If a laissez-faire libertarian or communist or feudal economic order is what justice requires, then it is right that such an order should be upheld, even if doing so avoidably leads to deprivations on a massive scale.

The flaw in this objection is obvious. The objection assumes that the justice of an economic order is independent of how this order affects the fulfillment of human rights. But human rights are the core values of our moral and political discourse, central to how justice is conceived in the modern world. Social rules that avoidably deprive large numbers of persons of secure access to the objects of their human rights are, for this reason alone, unjust (assuming again that these deprivations are avoidable, wholly or in part, through suitably modified rules). In the era of human rights, then, social rules are in good part judged by their effects on the fulfillment of human rights. To be just, such rules must not violate human rights, that is, they must afford human beings secure access to the objects of their human rights insofar as this is reasonably possible.

When social rules violate human rights without explicitly mandating or authorizing conduct that violates human rights, then those who participate in upholding these rules may not be human-rights violators. They are not violators of human rights when they are sincerely and on the basis of the best available evidence convinced that the social rules they are upholding do not violate human rights (that is, that these rules contribute to the realization of human rights insofar as this is reasonably possible). Participation in the imposition of social rules constitutes a human-rights violation only when these rules *foreseeably* and avoidably deprive human beings of secure access to the objects of their human rights—when the imposers of the rule could and should have known that these rules fail to realize human rights insofar as this is reasonably possible, could and should have known that there are feasible and practicable reforms of these rules through which a substantial portion of existing deprivations could be avoided.

Much of the account I have just given is suggested by Article 28 of the 1948 *Universal Declaration of Human Rights*:

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. (*UDHR*, Article 28; cf. also Article 22)

Three points are worth noting about this article. First, its peculiar status. As its reference to “the rights and freedoms set forth in this Declaration” indicates, Article 28 does not add a further right to the list but rather addresses the concept of a human right, says something about what a human right is. It is then consistent with any substantive account of what human rights there are—even while it significantly affects the meaning of any human rights postulated in the other articles of this *Universal Declaration*: They all are to be understood as claims on the institutional order of any comprehensive social system.

Second, this idea about how the human rights postulated in the *Universal Declaration* are to be understood fits well with what I have just outlined—with how human rights can figure centrally in the critical examination of social rules. In fact, we can achieve perfect congruence through four plausible interpretive conjectures:

- (1) Alternative institutional orders that do not satisfy the requirement of Article 28 can be ranked by how close they come to enabling the full realization of human rights: Social systems ought to be structured so that human rights can be realized in them as fully as possible.
- (2) How fully human rights *can* be realized under some institutional order is measured by how fully these human rights generally are, or (in the case of a hypothetical institutional order) generally would be, realized in it.
- (3) An institutional order *realizes* a human right insofar as (and fully if and only if) this human right is *fulfilled* for the persons upon whom this order is imposed.
- (4) A human right is fulfilled for some person if and only if this person enjoys *secure access to the object of this human right*.

Taking these four conjectures together, Article 28 should be read as holding that the moral quality, or justice, of any institutional order depends primarily on its success in affording all its participants secure access to the objects of their human rights: Any institutional order is to be assessed and reformed principally by reference to its relative impact on the realization of the human rights of those on whom it is imposed.¹⁵

The third noteworthy feature of Article 28 is its explicit reference to the international order. When we reflect on social rules, we tend to think of the institutional (and more specifically legal) rules of a territorial state

¹⁵ “Relative impact,” because a comparative judgment is needed about how much more or less fully human rights are realized in this institutional order than they would be realized in its feasible alternatives.

first and foremost. Less familiar, but no less important in the modern world, are the rules of the international institutional order, whose design profoundly affects the fulfillment of human rights, especially in the poorer and weaker countries. Recognizing this point, Article 28 requires that the rules of the international order be shaped, insofar as this is reasonably possible, so as to afford human beings everywhere secure access to the objects of their human rights.

In the world as it is, some eighteen million human beings die each year from poverty-related causes, mostly from communicable diseases that could easily be averted or cured. Insofar as these deaths and the immense suffering of those still surviving these diseases are avoidable, their victims are deprived of some of the objects of their human rights—for example, of their “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” (*UDHR*, Article 25; cf. *ICESCR*, Articles 11–12).

If these victims are so deprived, then who or what is depriving them, violating their human rights? Several factors, national and global, substantially contribute to the deprivations they suffer. As I have been arguing, one important such factor is the way pharmaceutical research into drugs and vaccines is incentivized under the current rules of the TRIPS Agreement as supplemented by various bilateral agreements the United States has been pursuing.

With this background, we can look once more at the question of why we citizens of the high-income countries should support a reform of the global health system that benefits others (poor people in the developing world) at our expense. The landholders of feudal France or Russia could have asked likewise. And the answers are closely analogous: We ought to support such a reform, even if it involves significant opportunity costs for us, because it is necessary for rendering minimally just (in the explicated sense of “realizing human rights insofar as this is reasonably possible”) the rules of the world economy considered as one scheme. Minimal justice in this sense is compatible with these rules being designed by, and with their greatly and disproportionately benefiting, the governments and corporations of the developed countries. However, minimal justice is not compatible with these rules being designed so that they result in a much higher incidence of extreme poverty and in much higher mortality and morbidity from curable diseases than would be reasonably avoidable.

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Against this line of argument, it may be objected that accession to the TRIPS Agreement (and the whole WTO Treaty) is voluntary. Since the poor countries have themselves signed on to the rules as they are, the