NOTES ON THOMAS POGGE’S “HUMAN RIGHTS AND GLOBAL JUSTICE” AND “RECOGNISED AND VIOLATED BY INTERNATIONAL LAW: THE HUMAN RIGHTS OF THE GLOBAL POOR”

Wendy Mitchell ‡

Abstract

Pogge’s conception of human rights pushes the emphasis on collective responsibility for human rights violations, and at a time when ‘world debt relief’ is politically viable, at least in principle, it is an appealing paper. It is appealing because it makes current popular support for a more just global economic system not simply desirable but morally mandatory. As a consequence, it forces affluent Western states to take responsibility for their impact on the severe poverty of the developing world. Despite these appealing characteristics, I argue against Pogge’s expansive notion of human rights violation on three key points. First, his understanding of citizens as organisers of their society’s institutions I argue is a misrepresentation of the current relationship between citizen and state in Western liberal democracies. This is crucial to his point that citizens are thereby responsible for the actions and dynamics of those institutions. Second, I argue that Pogge’s theory disregards intention and locates moral praise or blame in circumstances that are often out of the individual’s control and should rightly be placed on governments and other official governing bodies. Third, I argue that his notion of compensation is inadequately justified, and has unpalatable consequences.

Keywords: Thomas Pogge; human rights; compensation

1. INTRODUCTION

This paper focuses on a recent paper delivered by Thomas Pogge, “Recognized and Violated by International Law: The Human Rights of the Global Poor”. It is an elaboration on a section of his 2002 book, World Poverty and Human Rights, and as such will be treated comparatively. Though there has been little time for response to Pogge’s latest ideas, I hope to bring some discussion points into focus and prompt further, more extensive commentary.

Pogge’s conception of human rights pushes the emphasis on collective responsibility for human rights violations, and at a time when “world debt relief” is politically viable, at least in

‡ MA Researcher, School of Public Policy, UCL. Questions and comments: w.mitchell@ucl.ac.uk.


principle, it is an appealing paper. It is appealing because, rather astonishingly, it makes current popular support for a more just global economic system not simply desirable but mandatory, in a moral sense. Pogge’s argument is premised on his chapter in World Poverty, which runs as follows:

1. Human rights are moral claims on the organisation of one’s society
2. Citizens are collectively responsible for the organisation of their society
3. It follows from this that human rights make demands on (especially influential) citizens
4. These demands mean that citizens are responsible for re-organising their society’s institutions if those institutions are responsible for human rights violations
5. If citizens fail to do so, they are human rights violators

In “Recognized and Violated”, Pogge expands this to an international context, and calls the citizens of economically prosperous Western countries violators of the human rights of citizens of more economically deprived countries.

This would have clear consequences for international policy on debt relief and other economic aid to developing countries: a resulting effect is that such relief is a strong and direct responsibility of good government and not a supererogatory act of goodwill. Such an argument would supersede practical discussions of whether or not debt relief is politically rational or economically astute. It would also transform the way in which we traditionally conceptualise human rights violations: the policy of developed countries would be considered directly responsible for economic disadvantage in other areas of the world. The international policy of advantaged countries would be forced to address the issue of debt relief with an urgency and focus previously unseen, or be accused of systematic human rights violations.

However, there are a number of moves here that are not explained, and Pogge’s conception of responsibility lacks clarity as a result. In section one, I question Pogge’s very premise: are citizens in fact collectively responsible for the make-up of their society? How much influence do individuals (individually or collectively) have on the institutional arrangements of the countries in which they reside? Moreover, Pogge conflates individual and collective responsibility rather carelessly, so even if we accept Pogge’s assumption that citizens are responsible, there must still be a much more thorough analysis of how individual duties are elicited from this collective responsibility. In section two I propose that this conflation causes problems further on in his theory of global responsibility. The notion of individual intention, for example, is made redundant; the justness of an individual’s actions is assessed only by reference to collectively organised institutional arrangements. The move between points two and three of Pogge’s argument, as outlined above, is, then, an awkward one, as it works (perversely) to disempower the individual in striving for just institutions by typecasting them in the role of prima facie violator. Pogge is then forced to create the safety net conception of “compensation”, so that individuals who find themselves in an unjust collective end-state can be vindicated of this title. I argue in section three that compensation is not sufficient to create retrospective justice, and is a capitulation to a utilitarian mindset.

Further, I would like to propose some linguistic restraint in the use of the term “violator”. Pogge uses the term without due care, his intention presumably to have maximum impact on his readership and provoke them to activism on behalf of the radical economic inequalities between the West and the “rest”. However, there are profound consequences for these loose semantics which Pogge fails to acknowledge fully.

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3 At an Amnesty International event on 11th June 2006, comedian and activist Mark Thomas pointed out that as little as 5 years ago talk of world debt relief was dismissed as wildly naïve and unrealistic for government policy. Recent years have shown a huge acceleration in its popularity.

4 I take for granted in this essay that we can consider the actions and contributions of Western governments as contributing systematically to the disadvantage of other countries. This is a highly debatable point, and one which I do not have the space to consider fully in this paper. For this reason, I will follow Pogge’s argument this far, and focus my criticisms elsewhere.
There are two problems with using such a thin conception of the term “violation”. First, it relies on the notion of compensation. Since it is unfeasible for them to stop contributing economically (they do so through everyday consumption or labour) citizens are violators of human rights if they do not ‘compensate’ for their contribution to violating institutions. In “Recognized and Violated”, Pogge has developed the idea to include economic compensation from citizens of affluent Western societies to the economically disadvantaged.5 The justification of this expansive understanding of compensation is inadequate, designed to engender maximum collective guilt, and not necessarily the most useful way to approach global responsibility. This will be further discussed in section three. Second, by extension, the essential character of a human rights violation is lost; that of official disrespect which Pogge himself advocates in 2002, in his chapter of Human Rights and Global Justice, “How should human rights be conceived?” This is a central feature of a human rights violator, which is diffused of its force by Pogge in the very same essay which provides such careful definitional work on the concept.

A refutation of Pogge’s argument is in no way a wholesale denial of our responsibility for human rights violations being carried out systematically in our own societies. Neither do I shirk the responsibility of Western peoples for their contributions to the structural economic disadvantage of developing countries. However, there are more fruitful ways of understanding this responsibility than those proposed by Pogge in these papers.


Pogge’s argument is that human rights are moral claims on society’s organisation.6 He positions this against a conventional “interactional” model, where governments and individuals simply have a negative responsibility not to violate human rights.7 Recall my formulation of the second stage of Pogge’s argument: “Citizens are collectively responsible for the organisation of their society”. In Pogge’s view, not only are citizens responsible for this organisation, but “not violating” this responsibility extends to the duty of all citizens actively to create institutional structures which secure human rights.8 Because human rights are moral claims on the organisation of society, then, they necessarily make claims on the organisers of society and particularly, on the more influential organisers. For Pogge, these organisers are the citizens themselves.

What Pogge considers to be one of the great strengths of his argument is its ability to circumvent conventional libertarian objections to economic and social rights (so-called “positive rights”). He manages this by formulating the act of upholding a violating institution as a positive violation of human rights; we are positively interfering with the negative right through our contribution.9 This is analogous with any other negative right: we are actively interfering in the economy, which for Pogge is philosophically equivalent with an interference in the right to privacy, or the right to bodily integrity. This taxonomic reshuffle separates Pogge’s economic rights from the controversy that those rights usually provoke, owing to their perceived expense, their difficulty in implementation, and the tradition that they are matters for government policy.10 Pogge clarifies his point by using the example of a citizen sustaining a social order based on slavery through the contribution of taxes or labour to the economic order. In this case, even the citizen who does not own slaves is still positively contributing to the imposition of a coercive institution on slaves, a violation of the negative libertarian duties of non-interference.11

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5 Pogge, “Recognised and Violated by International Law.”
6 Pogge, World Poverty and Human Rights, 64.
8 Ibid.
9 Ibid., p. 65; see also Pogge, “Recognised and Violated by International Law,” 3.
11 Pogge, World Poverty and Human Rights, 66.
First, it is necessary to draw attention to something that Pogge describes himself, in *Human Rights and Global Justice*, as part of his initial definition of human rights violations: particular violations are distinctive because they are *official*. A criminal act would not be perceived as a human rights violation, no matter how reprehensible, unless official institutions carried it out themselves, condoned it, or systematically failed to punish it. The reason that Pogge gives for this understanding of human rights is that official violations are not simply taking the object or benefits of the rights from an individual, they are attacking the very right itself; the concepts of right and justice are subverted by official actions. For Pogge, this feature is constitutive of the character of a human rights violation. Pogge proposes quite an expansive understanding of “official” action here. He includes the actions of a guerrilla movement or of a large corporation, as well as of a government or a government institution. I think this is justified; it is acceptable that official, in a loose sense, can mean not only public officeholders but also “those who occupy positions of authority within a society”, under certain conditions. The problem comes when Pogge extends his conception of “official” to those “in whose name such officials are acting”.

This is where stage two of his argument comes into play, for official disrespect, according to Pogge, exists also because officials act directly in the “name” of their citizens. Citizens are implicated because they uphold social institutions which officially disrespect human rights. There is rather a perplexing consequence to this. If we take a country, X, which employs sweatshop workers to manufacture and export textiles, then those workers are necessarily contributing to the economy of X. According to Pogge, these workers, as citizens, are the ultimate guardians of what happens on their territory. Their inability to restructure society makes them human rights violators. And yet, they are also, clearly, the victims of a human rights violation. This is a simplification of Pogge’s argument, but it is a point that reveals the slightly problematic territory into which the theory can stray. Pogge may answer by calling this a distortion; that, of course, there are complex reasons why these workers are unable to reformulate their institutions effectively: they are un-influential, disenfranchised. But this example does uncover a question raised by Pogge’s argument: How effectively are citizens responsible for the organisation of their society? It seems to me that there is a leap in the argument at stage two, where Pogge assumes a kind of direct involvement in social organisation that many citizens simply do not have. Even in developed Western countries, for example, it has been widely argued that democratic processes are no longer majoritarian processes. To name a few points of a practical nature: there is widespread apathy in general elections, increased executive power has resulted in decisions against the will of the majority, government is less accessible and more technocratic, bureaucracy has complicated democratic processes. We need not say in all cases. But in some cases, the citizen is not the organiser and, by extension, does not have the empowerment of the reformer. It is crucial to Pogge’s theory that the citizen and the state are intrinsically and directly connected, yet this relationship is in many ways dysfunctional.

Pogge might answer that degree of responsibility could be directly proportional to degree of influence. Indeed, he considers more influential citizens to have greater responsibility. However, his argument is not conducted with any meaningful analysis of the relationship between responsibility and *what creates* responsibility. Rather, he explicitly states that every citizen of Western society is directly responsible for global human rights violations simply by virtue of their socio-economic status.

This makes it at best unclear what motivates Pogge’s responsibility conception. Further problems stem from this lack of clarity, which are discussed in sections two and three. It should be

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12 Ibid., 57-58.
13 Ibid., 57-59.
14 Ibid., 58.
15 Ibid.
16 Ibid., 63.
clear that they are initiated by Pogge’s fuzzy analysis of causal responsibility: his elision of collective and individual responsibility, and of the state and the individual. And so, even if we accept that only “influential” citizens are human rights violators, until we have better definitional work on the responsibility conception, the theory continues to produce consequences that seem intuitively unjust to individuals. This is because Pogge continues to theorise around a more sophisticated discussion of what constitutes causal responsibility.

3. Teleological Problems: the Dismissal of Intention in Pogge’s Theory

Pogge attempts to broach the problem by implying that the dysfunctional relationship between the citizen and the state is not necessarily a problem; he states explicitly that an active minority will do. However, Pogge originally brands citizens as collectively responsible for the makeup of their society. What happens to those who are not able to take responsibility, or even those who do not accept responsibility, for the violating institutions? To Pogge, these people are violators of human rights. And yet, these people are not necessarily just those who do not pay attention to social problems like our apathetic voters, and they are not just those who are too vulnerable to have influence, like our sweatshop workers. And so we arrive at another major problem with Pogge’s theory: it is entirely dependent on the results of compensatory action. Even if we protest and try to restructure our institutions, we are still violators until we have succeeded. And as we have noted, it is not necessarily possible (though not impossible) to achieve results. It is of especial interest that if democratic processes between citizens and their own governments have become weaker, democratic processes between citizens of contributing governments and international or supranational institutions such as the World Bank are virtually non-existent.

Further, the fact that an “active minority” is adequate for Pogge begins to unmask the character of his theory. If an active minority seek and succeed in their reformation of democratic institutions and this leads to a better implementation of human rights, then all other (apathetic, belligerent, powerless) citizens are no longer violators, for their economic contributions now are to a just order. And yet, this wholesale absolution seems strange, in consideration of their continuing passivity. This is an odd notion of causal responsibility, which writes off those who try but do not succeed and admonishes those who fail to utilise their reforming power. This happens without discrimination and entirely as a result of how organisational institutions stand at the end of the process. More, there is still a bizarre apportionment of blame or praise even if institutions are reformed from “above”, without any democratic input at all. Think, for example, of executives negotiating and ratifying international treaties without the involvement of parliament or referendum.

How, then, can we adequately compensate for the massive economic gains in Western countries from the economic human rights violations in developing countries? Pogge himself must admit that it is not really feasible to stop contributing. We are tarred by the same brush as the violating institutions in Pogge’s method until we achieve results. This kind of “original sin” attitude of Pogge’s approach is useful to him because it highlights the contributions of the Western world to structural economic inequality. However, this consequence of casting each individual as either “violator” or “violated” in a largely arbitrary fashion is unjustifiable. As earlier noted, because every person in some way contributes to this global order, even those in developing countries, it also inevitably leads to everyone being both violator and violated, and the value of the distinction is lost.

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18 It could also be pointed out here that a human rights violation seems an absolute term: one is either a violator or not a violator. Pogge’s terminology insists on this kind of absolute responsibility, and this prevents him from considering the relevance of degree of responsibility.
19 Pogge, World Poverty and Human Rights, 62.
20 Pogge’s expansive notion of the violator means he must concede that not contributing is impossible: this is his reason for introducing the notion of compensation. Pogge, “Recognised and Violated by International Law,” 3-4.
21 Ibid., 3n.
4. **POGGE’S COMPENSATION IS INCOMPATIBLE WITH THE LANGUAGE OF RIGHTS**

Next, I would like to draw attention briefly to a point that Pogge makes only in “Recognized and Violated by International Law: The human rights of the global poor”. Here, Pogge uses the example of Oskar Schindler as a human rights violator who “more than adequately” compensated for his economic contributions to the Nazi regime through his protection of some of the victims of that regime.\(^1\) The notion of “compensation” is thoroughly misappropriated in application to a human rights violation. Compensation is inevitably quantifiable. If I contribute to the deaths of ten people, but protect fifteen, then presumably I have adequately compensated. I am no longer a human rights violator. But this utilitarian tendency is intuitively unacceptable in the language of human rights, for it diminishes the integrity and centrality of the sacrificed individual and effectively renders them without any rights at all. My compensation against the system does not undo my contribution to it; to the deaths of the first ten people. As much as Pogge may protest, I do not believe that it is possible to avoid these kinds of utility balancing acts when dealing with “compensation”, and its language is unproductive for dealing with human rights.

Compensation is a way of avoiding problems with Pogge’s assumptions about responsibility and societal organisation. This way, if citizens find themselves in an unjust institutional “end-state”, which they cannot change, they are able to reclaim justness through the act of compensation. Compensation in this way acts as a “get-out” clause which is intended to divert Pogge’s audience from why compensation needs to be introduced in the first place. The answer to this question is that compensation allows citizens to distinguish themselves as individuals in a way that is prevented by Pogge’s responsibility conception, where they are institutionally branded in accordance with collective results. In other words, compensation reintroduces individualism into Pogge’s collective responsibility. It should be noted that this is a necessary manoeuvre on Pogge’s part because it seems unjust for well intentioned individuals to be branded as human rights violators simply because of their inevitable contributions to unjust institutions.

5. **CONCLUDING REMARKS**

I have two summarising points to make on Pogge. The first is that a better language might be the language of fairness. Instead of violations and compensation, I think that Pogge is really discussing fairness and responsibility. We have a very real moral obligation to change the institutional structures of our society, national and global, without having to rely on collective guilt at our massive human rights violations of the third world. We do not decide the system we are born into, or our role in contributing to that system (though we may decide how we contribute). Pogge’s language renders us all victims of our role, and therefore disempowers us from acting for reform. Our economic contribution to the world order does not make us causally responsible for the actions and dynamics of that world order. However, we could feasibly still say that it is distinctly unfair that we receive such benefits while developing countries suffer for them. There is a human rights violation here, but there is not a direct connection between the institutional violators and each and every individual who contributes to those violators. In *Human Rights and Global Justice*, Pogge jumps from a notion that people may “feel” implicated in the actions of their government and its officials to the notion that they *are* implicated in those actions.\(^2\) The reason that we are morally implicated in global injustice is not because we are contributing to it (though we are, of course), but because we are part of an unjust system that we may have the power to rectify.

My second and final point is that according to Pogge’s model, the human rights of Westerners must also be violated in their involvement in this system, because such rights are (taken on a universal scale) insecure. Pogge points out that one of the strengths of his argument is that rights fulfilment is linked to the insecurity of the institutional rights system rather than to every individual criminal act. That is, a human rights violation can be said to exist when:

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\(^{22}\) Pogge, *World Poverty and Human Rights*, 59.
A person may fully enjoy X even while her access to X is insecure (as when persons relevantly like her . . .) are beaten or threatened.\(^{23}\) [emphasis added.]

However, it cannot exist when a rogue government official commits a crime in a society which is generally very good at protecting human rights institutionally. Though we may be benefiting from the economic system presently, economic rights are not secure. And this is where his emphasis on the distinct character of “official disrespect” is important; for it truly brings home the fact that this violation is an attack on rights themselves, and not just the objects of those rights. Though, as citizens of affluent countries we may enjoy the objects of our rights, do we enjoy the security of the rights themselves? The answer is no, for there are people relevantly like us who do not.\(^{24}\) So it follows that if Western economies do not have respect for human rights, it is not just to the detriment of the victims in developing countries, but to the detriment of global society, for global society’s rights are insecure. It is not so unlikely, for example, that powerful corporations could violate the economic rights of those in developed countries as well as those in developing countries. The point that Pogge rightly makes is that the system is the most important aspect of rights to get “right”, in order to implement rights successfully and fully. If the system is wrong, then violations occur. If we are interested in protecting human rights, then it is in our interests and in the interests of fairness to establish a set of credible institutions. In the meantime, our involvement in the world does not make us prima facie human rights violators, just as the contributions of the sweat-shop workers of Country X do not make them violators. But that is not to suggest that we are admonished from moral responsibility.

In conclusion, we may still consider debt relief and other economic aid for the third world morally necessary. It may be valuable from a policy perspective, as Pogge’s work suggests, to reconceptualise our understanding of moral responsibility with regard to other countries when our governments are involved in their systematic disadvantage. It is also important to engage with the idea that such economic poverty can be considered a violation of human rights and move away from a blanket attitude that the black box of state alone takes responsibility for its own problems. Whether this necessitates a further leap to the kind of blame culture that is implied by Pogge’s paper is another question. Pogge begins with the kind of international policy that he desires and works backwards philosophically. This methodological approach has obviously attractive policy outcomes – taking third world poverty seriously – but also irretrievably confuses some of the theoretical issues at stake.

**References**


\(^{23}\) Ibid., 58.

\(^{24}\) This necessarily takes Pogge’s Cosmopolitanism as read: we accept his (controversial) idea that there is a global society of individuals. Relevantly like us, then, signifies the fact that there are the same global institutions governing Western and non-Western countries alike. Whether we have domestic institutions which guarantee our rights becomes irrelevant when we are dealing with Pogge’s idea of cosmopolitan justice.