

Taking Economic and Social Rights Seriously: A Way to Fight Poverty†

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English Abstract

This paper aims to show that although the major conventions and treaties affirm the obligation of the different states to satisfy economic and social rights for all, many people live in countries on less than two dollars per day. The problems involved in taking economic and social rights seriously are not only practical, they are also present in philosophical theories. Some thinkers claim that such rights are too concerned with the individual and therefore fail to take into account the cultural realities within and among different countries. In this paper I show the distinction between individual and cultural rights in order to argue that cultural rights are often ignored because individual rights are not taken seriously. My point is that we should regard rights as a form of respect and as a way of fulfilling human needs in order to fight against poverty.

Resumen en español

Este trabajo intenta mostrar que, a pesar de que las convenciones y los tratados más importantes afirman la obligación que tienen los Estados diferentes de satisfacer los derechos económicos y sociales para todos, muchas personas viven con menos de dos dólares por día. Los problemas relacionados con la idea de tomar los derechos económicos y sociales seriamente no son sólo prácticos, también están presentes en las teorías filosóficas. Algunos pensadores afirman que esos derechos están relacionados con cuestiones individuales y que, por ello, no pueden tomar en cuenta las realidades culturales que se encuentran dentro de los países diferentes. En este trabajo muestro la distinción entre derechos individuales y culturales para argumentar que los derechos culturales son ignorados porque los derechos individuales no son tomados seriamente. Lo que sostengo es que debemos considerar los derechos como una forma de respeto y como una manera de satisfacer las necesidades humanas para combatir la pobreza.

Resumo em português

Este trabalho tem como objetivo mostrar que, embora as convenções e tratados principais afirmam a obrigação dos Estados de cumprir várias direitos econômicos e sociais para todos, muitas pessoas vivem com menos de dois dólares por dia. Os problemas associados com a idéia de levar os direitos econômicos e sociais graves não são apenas práticos, eles também estão presentes nas teorias filosóficas. Alguns pensadores afirmam que esses direitos dizem respeito a questões individuais e, portanto, não pode ter em conta as realidades culturais que se encontram dentro de diferentes países. Aqui eu mostro a distinção entre direitos individuais e culturais para argumentar que os direitos culturais são ignoradas porque os direitos individuais não são levadas a sério. O que estou argumentando é que devemos considerar os direitos

como uma forma de respeito e como uma forma de satisfazer as necessidades humanas de combate à pobreza.

Articles 25 and 28 of the Universal Declaration of Human Rights state the following: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”[1] Certain countries have also incorporated in their respective constitutions some of the same rights enshrined in the UDHR. For instance, Article 4 of the Mexican constitution stipulates, “[E]very person has a right to the protection of health. The Law shall set forth the bases and the means for access to health services and shall likewise lay down the complementary responsibilities of the Federation and its Federated States in matters of general health. ... Each person has the right to an adequate environment for his or her development and well-being.”[2]

In addition, in 2000 at the Millennium Summit of the United Nations, 189 world leaders agreed to the Millennium Development Goals, a series of measurable objectives for combating poverty, hunger, disease, illiteracy, environmental degradation, and discrimination against women with a series of deadlines for achieving these aims. The conference also agreed to set up a world development program, the Millennium Project. Paragraph III.11 of the introduction to the document establishing this project reads: “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected.”[3]

It is common knowledge, however, that the rights referred to as economic and social rights have not been complied with, and the goals of the Millennium Summit are far from being achieved. At the present time “some 2,800 million or 46 percent of humankind live below the World Bank’s \$2/day poverty line—precisely in households whose income per person per day has less purchasing power than \$2.15 had in the U.S. in 1993. On average, the people living below this line fall 44.4 percent below it. Over 1,200 million of them live on less than half, below the World Bank’s better known \$1/day poverty line.”[4] In Mexico in 2005, about 18 million people fell below the extreme poverty line of less than one dollar per day.

The above figures should prompt us to ask whether social and economic rights are only pious words or whether they constitute actual duties of national and international institutions. In many countries such rights are ignored, while other nations have recourse to the economic claim that their available resources are not sufficient to satisfy even the most basic rights, or that economic development has not yet reached

the level that would enable the reduction of poverty. This problem is made even more challenging because it is not clear that economic growth is even possible under conditions of extreme poverty. According to the report *Poverty Reduction and Growth: Virtuous and Vicious Circles*, the World Bank points out that while it is true that growth is key to the reduction of poverty, poverty itself makes it more difficult to attain high and sustained rates of growth in Latin America. This region remains one of the most unequal in the world, with one-quarter of its overall population having an income of less than two U.S. dollars per day.[5]

David Bilchitz makes an interesting proposal for turning economic and social rights into a tool to fight poverty. According to Bilchitz, those rights must be legally accomplished; he explains that in a democracy it is the judiciary power that should guarantee their accomplishment:

Many countries have thought it preferable to give power or review to judges to ensure that these higher norms are complied with other branches of government. The judiciary is believed to have the requisite structural independence, as well as training, to interpret fundamental rights. It has also been seen as better placed to exercise judgments concerning fundamental rights in a manner that is not subject simply to the representation of particular interest groups. The interests of the poor have also been particularly badly protected in democracies: in some cases this arises through middle-class majorities primarily being catered to, the lack of mobilization of the poor and the failure of politicians adequately to protect the needs of the poor. ... Since the judiciary is charged with protecting the very legitimacy of the very democratic system itself, this fact provides an argument for strong effective measures to be taken where these are necessary to ensure the realization of these rights.[6]

In some countries the judiciary instructs other government sectors in establishing certain economic and social rights, which seems a necessary component to fighting poverty.

But the problems involved in taking economic and social rights seriously are not only practical, they are also present in philosophical theories. Some thinkers claim that such rights are too concerned with the individual, and therefore fail to take into account the cultural realities within and among different countries.[7] This thesis originates from those theorists who wish to defend the integrity of different cultural traditions and who believe that human rights correspond to a model of the nation-state that views citizens in a homogeneous way.[8] On the other hand, a considerable number of philosophers, such as Joel Feinberg[9], believe that the only rights that can be regarded as valid are those to which corresponding obligations can be legally assigned. This means that if we identify a rights holder, we must likewise be able to identify the holder of a corresponding obligation. These authors uphold a minimalist vision of rights as opposed to a maximalist one, as we shall see.[10] In the following sections of this paper I examine the two above-mentioned views on rights, following which I focus on theories

that defend the possibility of taking economic and social rights seriously through what I call a maximalist conception of rights.

I “Rights of Peoples” or Cultural Rights

In Mexico, as in other Latin American countries, the issue of poverty cannot be simply reduced to cultural factors, yet unfortunately the discussion about cultural diversity has weighed much more heavily in the national agenda than that about poverty itself. I then attempt to establish the importance of economic and social rights as stated by the UDHR; however, it is worthwhile to start by considering the position of those who defend cultural rights. When we speak of positions that attack human rights for their individualistic character and for overlooking cultural diversity, it is important to make an initial differentiation. There are some countries where great cultural diversity exists, and where members of minority cultures have reached an economic and political level comparable to those of the majority. This is the case, for example, of the Catalans in Spain or the Quebecois in Canada. However, in other countries we find minority communities whose customs and usages are very different from those of the majority, and who at the same time occupy a very low socioeconomic position relative to the majority culture. This often makes it difficult for these minority groups to make their presence felt in the political life of their countries. This is the case in Mexico and many other Latin American countries with considerable indigenous populations. It is important to make this distinction because if the cultural objection to human rights can be made in the case of relatively wealthy and politically integrated communities, it is indefensible in the case of poor and politically alienated cultural groups. It is the latter case that characterizes the predicament of many indigenous communities in Latin America, and especially in Mexico. I therefore begin by addressing the criticism that has been voiced in Mexico of the rights proclaimed in the UDHR.

The importance of the subject of cultural rights is shown by the fact that on December 10, 1992, in a ceremony in New York marking the official start of the International Year of the World’s Indigenous Peoples, Boutros Boutros-Ghali, then secretary general of the United Nations, declared that the protection of indigenous peoples would constitute in the future a decisive proof of the integrity and effectiveness of the UN’s entire human rights system.[11] Likewise, Article 7 of Convention 169 of the International Labor Organization (1989) upholds the right of indigenous and tribal peoples to control “to the extent possible” their own development and that of the lands they traditionally occupy or exploit. Articles 5 and 8 of the Convention recognize the right of indigenous peoples to maintain their own legal systems and institutions, and Articles 13-19 deal with rights and traditions regarding lands. Articles 4 and 6 stipulate that governments must obtain the consent of indigenous peoples before taking any measure that might affect them directly or that could give them preferential treatment relative to other citizens. Articles 2 and 3 provide the same rights and privileges as other citizens to indigenous peoples, to the extent that they choose, meaning their individual rights.[12]

This section offers as an exemplary case the discussion that has taken place in Mexico on the rights of peoples, a controversy that burst onto the political agenda following the uprising of the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, or EZLN) in 1994.[13] The armed movement presented itself as a champion of the country's indigenous peoples as a whole, and especially those living in the state of Chiapas. The uprising not only brought about an increased awareness of the situation, it also set off a legal debate that led to changes in the constitution involving the incorporation of certain cultural rights that had previously been limited by guarantees of individual rights.[14] Before that negotiation tables had been established between members of the EZLN and members of the Senate. Although certain cultural rights had been incorporated into the constitution, members of the EZLN considered those provisions insufficient for the needs of indigenous peoples. The rejection of the provisions for cultural rights in the constitution served as a pretext for five communities, named Los Caracoles, to proclaim their autonomy from the Mexican state in July 2003. The discussion on whether to allow the existence of autonomous communities in Mexico and under what conditions continues today.[15] This seems to have fulfilled the predictions of some multicultural theorists, such as Kymlicka, who observed that "since the end of the Cold War, ethnocultural conflicts have become the most common source of political violence in the world, and they show no sign of abating." [16]

For the purpose of this paper I take the World Bank's definition of indigenous peoples as "any group having its own identity within the nation in which it lives," as well as the following four features:

1. Self-identification as members of distinct cultural groups and recognition of this identity by others.
2. Collective attachment to geographically distinct or ancestral territories in the project area and to the natural resources in these habitats and territories.
3. Customary cultural, economic, social, or political institutions that separate from those of the dominant society and culture.
4. An indigenous language, often different from the official language of the country and region.[17]

If we take as our starting point this conception of an indigenous people then, according to international law and the United Nations Charter, "all historical communities that fulfill the four requirements indicated shall have the right to self-determination, and not only existing nation-states." [18] However, granting self-determination to such groups can come at the expense of an intolerable sacrifice of basic social and economic human rights.

Defenders of the rights of peoples claim that the notion of human rights is peculiar to the context of the nation-state and to an individualist conception of citizenship. One of the aims of such states has been to establish homogeneous conditions for all citizens, and they have thus overlooked the differences of particular cultural groups living within their territory. As a result, a diversity of groups has been subjected to the legislation of nation-states, ignoring the fact that many communities,

especially indigenous communities, govern themselves by what are often called “customs and usages” that are distinct from the national laws. Likewise, in Mexico social programs have been implemented from the center by the federal government, ignoring the particular social norms and cultural conditions of such groups. Educational syllabi, for instance, have been written mainly in Spanish, thus ignoring the languages, history, and past of indigenous peoples.[19]

For instance Luis Villoro feels Mexico must:

acknowledge indigenous peoples in the general Constitution. The State must promote, as a constitutional guarantee, the acknowledgment of the right to *free determination* of the indigenous people—by which should be understood the descendants of populations that inhabited the country in times of the Conquest and Colonization and in times of the establishment of the actual State frontiers, and who, regardless of their juridical situation, conserve their own social, economic, cultural and political institutions, or at least part of them. The awareness of their indigenous identity must be considered a fundamental criterion for determining the groups to which the dispositions for indigenous peoples will be applied.[20]

Villoro’s use of the concepts of “free determination” and “cultural identity” implies that by acknowledging the rights of indigenous people the constitution of the United States of Mexico allows indigenous communities to not be bound by the individual rights and guarantees established by the constitution. Those who defend the rights of peoples argue that the nation-state regards its citizens as homogenous, despite the fact that in certain communities the term “human rights” is not even meaningful because their members think exclusively in terms of the rules that apply to the community as a whole. For example, members of some indigenous communities such as the Huicholes or the Tojolabales[21] identify themselves more strongly as members of these specific communities than as Mexican citizens. Therefore it is argued that the constitution should commit to guaranteeing the rights of peoples since in some cases these are more meaningful for indigenous communities.

As Kymlicka points out,[22] recognition politics have been following the idea that such rights are too concerned with the individual and therefore fail to take into account the cultural realities within and among different countries. That is why authors such as Charles Taylor and Nancy Fraser have put forward the idea of “recognition.” This idea is not based on a definition of human rights as procedural and formal; instead, they have proposed the recognition of one another as a means of achieving justice and equality. Taylor asserts that “cultures defend themselves, within reasonable bounds. But the further demand we are looking at here is that we all *recognize* the equal value of different cultures; that we not only let them survive, but acknowledge their worth.”[23] On the other hand, Fraser considers recognition to be a question of social status: “From this perspective, what requires recognition is not group-specific identity but the status of individual group members as full partners in social interaction. Misrecognition, accordingly, does not mean the depreciation and deformation of group identity, but

social subordination. In the sense of being prevented from participating as a peer in social life.”[24]

Without wishing to disregard the importance of the recognition thesis, it is my contention that proponents of the concept of the rights of peoples must take into account the human rights that are set out in the UDHR, since many of the problems faced by indigenous communities are a consequence of their poverty and not of their happening to belong to a particular people or ethnic group. Despite the incorporation of recognition of indigenous peoples into the Mexican constitution, in Mexico 1.5 million members of indigenous communities continue to live in extreme poverty. I therefore suggest that the solution to the problem of the indigenous communities cannot possibly be reached through a denial of the value of economic and social rights but, on the contrary, requires that such rights be guaranteed. The state of neglect suffered by these peoples is due to their lack of economic resources and reflects the lack of concern with which they have been regarded by the authorities of the respective states. This issue was clearly raised by Guillermo Morales Hernández, the chairman of the Indigenous Council of Oaxaca, in a speech directed at President Vicente Fox on August 9, 2002, during the celebration of the International Day of the World’s Indigenous People: “We do not wish to cease being indigenous people. What we do want is to not continue to be poor.”[25]

Rodolfo Stavenhagen, special rapporteur on the situation of human rights and basic liberties of indigenous people at the Office of the High Commission on Human Rights in Mexico to the UN, has denounced the following violations of the rights of members of indigenous communities:

They have not only been marginalized; they have also been threatened constantly by paramilitary groups. They have been subjected to trial in Spanish without being allowed the assistance of interpreters, and this has led to their being imprisoned at times without even being aware of the offense of which they stand accused. They have been despoiled of their lands, and their properties, and their rights to possession thereof have not been recognized. ... As regards the agrarian question, one can observe a systematic default in the administration and imparting of justice and procrastination in procedures to resolve conflicts.[26]

As this statement points out, the members of indigenous communities have had their cultural rights flagrantly violated, which is why the EZLN movement is still very powerful. Nevertheless, while it is important to acknowledge that indigenous people face peculiar problems, poverty is a problem that concerns not only these groups. We must remember that 16.5 million nonindigenous persons live on less than a dollar a day in Mexico. That is why we need to focus our attention on universal human rights, particularly as they concern basic social and economic rights, in order to propose public policies to attend to the basic universal needs of all persons, regardless of their complex gender, cultural, or religious situations.

The thesis I wish to defend is that poverty is a universal problem because it applies to all human beings regardless of their cultural group. The privation suffered by individuals in extreme poverty cannot be reduced to their cultural conditions. Extreme poverty has criteria that are universal and objectively identifiable. There is no reason to assume that basic social and economic rights must come at the expense of the rights of peoples. In fact, it can be argued that it is only through the protection of basic rights that cultural groups can preserve their identity. The cultural argument against individual human rights thus fails. Cultural considerations should certainly be taken into account in order to most effectively meet the demands of basic human rights in particular contexts, but they are not relevant for the purpose of stipulating what such needs are. For example, the amount of calories a person needs to consume every day is determined by factors of a universal nature; what may change is the form in which we consume them. The same applies to education: children must receive education, but it can be done in Spanish or in the native language or both. When cultural rights are incorporated into national constitutions, as is the case in Mexico, it must always be done within the limits determined by individual rights.

In regard to arguments that criticize human rights for being too individualistic, it must be asserted that the negation of such rights may contribute to an increase in levels of poverty. Irrespective of their cultural situation, when people are denied basic economic and social rights their human right to a decent and respectable life is violated. Furthermore, people living in extreme poverty lack the ability to fulfill their cultural lives, making the protection of basic universal human rights a necessary condition for the meaningful protection of cultural rights. Compliance with the economic and social articles that the UDHR establishes would guarantee that the battle against poverty is fought for each and every one of the country's citizens.

Even though it is necessary to state that I support the universal nature of economic and social rights, it is important to consider the subject of recognition. We might then be able to achieve a situation in which the thorough observance of economic and social rights would contribute to the recognition of marginal groups as people in a severe state of poverty, among them the indigenous in Mexico.

II Minimalist Account of Rights

Another source of criticism of economic and social rights comes from those thinkers who defend a minimalist account of human rights, which holds that economic and social rights have no legal force because they do not generate specific corresponding duties for specific actors. In philosophical, political, and legal literature we often encounter the point of view that the only human rights that really deserve to be called rights are "negative" or "minimal" rights. This conception of rights is based on the thesis that all human rights are negative rights in the sense that all the duties they entail are negative duties. If we take this to mean that rights are only negative and can only create negative duties of "not to do something" (to not kill somebody, for instance), then it follows that any reference to rights that correspond to positive duties, such as helping

others to not starve, is simply an inappropriate use of the concept of a right. We thus end up confusing nonrights claims, good intentions, political convenience, or manifestos with what really count as rights.

For example, if a national constitution states that all citizens have the right to enjoy the protection of their health, what is really being said is that “it would be a good thing if it were so.” It is indeed a fact that in many countries where such a right is deemed to exist the state lacks the necessary resources for it to be satisfied. Such is the case with Mexico. The only rights that the state can undertake to satisfy with a binding force are those that protect the political and civil rights of citizens. The same negative conception of rights seems to be reflected in the Universal Declaration of Human Rights in which, according to some, binding force can only be imputed to certain articles such as Article 2, which prohibits racial and other forms of discrimination. The negative rights of freedom from discrimination can be contrasted with the rights enshrined in Article 25, which states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care.” The defenders of a minimalist conception of rights consider this article of the Universal Declaration of Human Rights nothing more than a bundle of good intentions.

Defenders of the minimalist point of view believe that whereas the “valid claims or demands” of people who work must be satisfied by means of payment in some form that will enable individuals to obtain the goods and services they need, people who are unemployed may enjoy the benefit of charitable, philanthropic, or altruistic acts. A state may promote such actions by means of appropriate tax deductions. Nonetheless, as even minimalists would agree, we are violating a right when we fail to protect individuals against aggression by agents of the state or other persons, or when we fail to permit them to express their political or religious opinions. The same ought to be true in the case of our failing to take countermeasures to avoid a situation in which individuals live, for example, in a state of poverty, malnutrition, and illiteracy.

This line of thought leads us to question the reasons why it is not possible to establish the relation between economic and social rights and negative duties. For example, if a country has sufficient resources to give all its members minimal health care, it is not clear why economic and social rights cannot be considered to have corresponding negative duties to prevent its citizens from suffering easily preventable ills or dying easily preventable deaths. It therefore seems that for the rights proclaimed in Article 25 of the UDHR to have a direct correlation with negative duties, we need to arrange our political and economic institutions in such a way that noncompliance can be seen as a violation of those rights. They can be seen as such particularly because failure to comply gives rise, for a large part of the population, to a state of insecurity and incapacity to fully exercise their citizenship. To view rights in this way implies the acceptance of negative duties “to not” allow people to live in a state of poverty, illiteracy, or malnutrition. This enables us to regard economic and social rights as rights in the full

sense of the word. We must thus design our redistributive economic and political systems so that everyone has the satisfaction of these rights guaranteed.

I now address three prominent minimalist critiques of social and economic rights. First, minimalists claim that social and economic rights are not justiciable. Against this we can say that is the case only when positive rights are not clearly defined. Indeed, they require specification and interpretation, just like rights to speech and assembly. But so long as we have a clear definition of social and economic rights, such as a defined minimum income, we should be able to draw a clear line.

Second, minimalists claim that positive social and economic rights create duties that perhaps cannot be met; some very poor countries cannot meet the burden of even a minimum provision of social and economic rights to their citizens. However, any reasonable account of human rights, their correlative duties should have an “insofar-as-possible” rider attached, since “ought” implies “can.” In any case, a proposed human right is not defeated by the fact that it cannot be fully realized at present. Moreover, since we are discussing universal human rights, there is an obligation for all people to make sure they are met. This could be done today at very little cost to the wealthy world so long as the standard of human rights is set to prohibit only extreme or severe poverty.

Third, minimalists claim that negative rights correspond only to duties to not cause some form of harm, and therefore social and economic conditions are not the proper focus of rights. However, a strong argument was recently advanced by Thomas Pogge, who points out that international institutions actually do cause a great deal of the world’s poverty. Therefore, Pogge argues, as a derivative of our negative duty to not cause harm we have a positive obligation (entailed by the negative duty) to change those harmful institutions and to compensate the victims of those institutions. Pogge’s argument is indeed negative, though. It is not that we have a duty to help people, but that we have a duty to not cause them harm through unjust institutions. Note that this argument is made in negative terms in order to demonstrate, against those who hold the minimalist position, that the negative right to not be harmed implies a positive duty of a certain kind. This formulation circumvents the problems associated with the argument that positive rights are also sources of duties.[27]

However, Pogge does not go far enough because his negative argument does not require us to prevent all extreme poverty but only the extreme poverty that we are somehow responsible for. We also need a positive argument stating that human rights are deserved by people simply because they are human beings, because those rights are necessary in order to fulfill the notion of personhood. Its fulfillment requires both negative and positive rights. Personhood means that people are moral beings who are characterized by their autonomy and who deserve respect. People therefore have a human right to not live in the sort of extreme poverty that prevents them from being autonomous and have self-respect. As I show further on, people have a human right to have their basic needs met. That is why, as long as we are able, all people have a duty

to work toward ensuring that all other people have a minimum level of well-being. Thus the arguments that some countries are not capable of meeting this minimum level or that we are responsible only for alleviating the extreme poverty that we have caused ignore the universal duties that a human right implies.[28]

While I have defended the individual nature of human rights against those who would deny their universal character, it seems to me that there are two different bases for upholding these rights at the personal level. The first consists of regarding rights as elements that enable us to establish a position in conflict situations: if someone denies me the possibility of obtaining a job on account of my race, sex, or religion, I can state that my human rights as established by the UDHR have been violated. The second basis lies in seeing rights as guarantees that we obtain as a consequence of belonging to a community. If we view them in this way we can postulate that rights are a means of guaranteeing what we need to be active and participating members of society. If certain members of a society lack a standard of living adequate for their own and their families' health and well-being—including food, clothing, housing, and medical care—the state and the community are not fulfilling their negative duties toward citizens. Furthermore, if problems of health and illiteracy exist in a community its members will be unable to act as an integral part of it, and this can also be viewed as a form of discrimination. Rights conceived in this way are not seen merely negatively as limits protecting individual members of the community against harm or against possible actions of the state, but as positive conditions making it possible to relate to our fellow men in an egalitarian manner.

This raises the question of whether a state can violate human rights through action only or also through omission. Judgment regarding political acts of omission is a complicated philosophical problem because of, among other things, the difficulty of determining when a series of events is due to an action or an omission, that of distinguishing between the point of view of the agent and that of the moral critic, and the impossibility of our feeling responsible for all our omissions. Despite the considerable philosophical reflection required to arrive at a sound theory of action and omission, one can at least uphold the thesis that a human right can be violated by omission. For example, it is easy to condemn the violation of the right of all persons to exercise the freedom of religion: a state violates by action this right when it persecutes certain religious practices or when it allows members of one religion to persecute those of another. In the same way, it is possible to argue that the state commits the same kind of fault by omission when it allows people to live in poverty and marginalization, since such people are similarly deprived of their right to exercise another kind of freedom.

Of course, talking about economic and social rights always begs the question of the state's capacity to satisfy them. Obviously the fulfillment of social and economic rights depends in many cases on the economic resources available to a country. The ability of a state to fulfill a right such as the protection of health will depend on the health-service infrastructure that a particular state has developed. For example, Article 4 of the Mexican constitution establishes that "every person has the right to the protection

of his or her health;”[29] however, in a recent study on health in Mexico carried out by the Organization for Economic Cooperation and Development (OECD), serious problems were detected that effectively prevent the fulfillment of Article 25 of the UDHR.[30] Nevertheless, most of these problems have to do with excessive and avoidable expenditures in the administration of health services, with labor and employment problems, and particularly with the lack of an adequate taxation system that would allow the state to have greater resources to spend on health care.

Governments have the obligation to respect the rights of individuals and to not violate them whether by action or by omission. Citizens, on the other hand, have the obligation to cooperate so that everyone has access to the services stipulated in Article 25 of the UDHR. I wish to insist that the right to health protection should be seen as something that is assured to all by virtue of their membership in the community. It is also important to remember that when the economic resources available to a country are insufficient this is often due to unjust policies by other countries or to unjust global institutional arrangements. Global institutions and individual states fail to fulfill their obligations when they do not provide, for example, security against violence, and the same applies regarding the protection of health. In Mexico 50 million people do not have access to adequate health care because they are not right holders[31] in any health system and thus have to pay for health care out of their own pockets.[32] This results in one of the so-called vicious circles of poverty. Those who do not have a guarantee to the protection of their health have to spend their own money to acquire it, and by doing so their poverty increases. It should be evident that it is impossible to guarantee human rights in a situation of extreme poverty and unsatisfied basic needs.

III The Maximalist Account of Rights

The basic ideas of the maximalist account of rights are reflected in Articles 25 and 28 of the UDHR, as well as the Millennium Objectives. The ideas underlying this account are first, that all individuals have basic human rights, and second, that institutions, both national and international, have the obligation to satisfy these rights. To my mind, the concept at the basis of the idea of rights is that of the respect that all human beings deserve. As I later show, a necessary consequence of noncompliance with economic and social rights is the existence of a large number of people whose basic needs are not satisfied, and are therefore denied the respect that they deserve.

IV Rights and Respect

In order to explain the concept of respect I begin with an idea proposed by John Rawls. When speaking of primary goods as units of distribution that a theory of justice ought to take into consideration, Rawls refers to the social bases of self-respect: “The social bases of self-respect are those aspects of basic institutions that are normally essential if citizens are to have a lively sense of their own worth as moral persons and to be able to realize their highest-order interests and advance their ends with self-confidence.”[33] In *A Theory of Justice* he affirms: “We may define self-respect (or self-

esteem) as having two aspects. First of all ... it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is in one's power, to fulfill one's intentions. When we feel that our plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors.”[34]

It is worth noting that philosophers who concern themselves with matters involving the idea of a just world have emphasized the ethical aspect of poverty. According to this point of view, poverty has an economic character but also an ethical dimension. The lack of goods and services necessary to satisfy basic needs condemns individuals to a level of subsistence that prevents them from making the choices necessary to construct their own life plans and put them into effect. This places them at the mercy of the forces of nature and the will of other individuals. When addressing the problem of people who live in a state of poverty and marginalization we need to be aware of the direct relation between the economic and the moral aspects of these situations.

As I have already mentioned, for individuals to be regarded as agents worthy of respect it is necessary for them to first acquire the capacity to overcome the dangers presented by natural contingencies. In Mexico, particularly in some rural environments, there are areas of settlement where there is an extreme shortage of water. People who live in these areas may spend as much as seven hours a day in search of water. On the other hand, a large number of men and women depend exclusively on the social programs provided by the state for their nutritional, health, and educational needs. This total dependency prevents them from exercising their autonomy and choosing goals even in the short term. Situations like these deny individuals the respect they deserve, and lead them to be regarded as mere quantifiable objects for measuring the degree of success or failure of social policies, as numbers serving to announce political achievements but rarely as human beings deserving respect.

For this reason any theory or practice that aims to combat poverty must have the idea of respect for individuals in mind. Any social policy that fails to take into account the moral dimension of poverty runs the risk of failure. The struggle against poverty must seek to increase individuals' income and improve their well-being by providing them with the tools to pursue their own ends. Material welfare and well-being have instrumental value to the fulfillment of higher-order rights: the right to autonomy and self-respect. This idea of the respect that individuals deserve has been advocated by Charles Beitz, who states that “an important motive of egalitarian social thought has been concern about the debilitating effects of material deprivation on self-respect and the capacity for self-direction. In part this concern has derived from an ideal of society as a community of equals; but in part it also reflects a non-comparative conception of the minimum conditions of a decent human life.”[35] Poverty is an offense against the dignity of persons, irrespective of race, sex, or nationality, and prevents them from being treated with respect. This calls for the inclusion of the prevention of poverty among the

conditions necessary for compliance with Article 1 of the UDHR, which states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”[36]

V Rights and Basic Needs

The right to a standard of living adequate for one’s own and one’s family’s health and well-being, including food, clothing, housing, and medical care, is intimately related to the notion of basic needs. If over 1,200 million people live below the World Bank’s \$1/day poverty line, this means that we live in a world in which the basic needs of an enormous number of people are unsatisfied. What makes a need basic is the fact that failure to satisfy it causes harm in a double sense. It causes physiological harm, in Daniels’ terms, to individuals seen as typical, normal members of a species.[37] Such harm is related to medical attention, nutrition, and decent accommodations. However, there is also damage done to individuals as moral beings (as contrasted with merely biological damage). Thus the failure to satisfy basic needs is also intimately related to the incapacity to make choices and to manifest preferences. As I mentioned above, dependence on the forces of nature or on social programs, which in turn depend on the whims of the politicians who hold power, considerably reduces the possibility of people acquiring the social bases of self-respect.

It also seems necessary to mention that the relation between rights, as they are stipulated in Article 25 of the UDHR, and needs is twofold. On the one hand, those people whose basic needs are not covered can only take advantage of the benefits that their rights guarantee them with great difficulty. On the other hand, if such rights are not satisfied these men and women will find that the non-satisfaction of their needs increases, and they may thus suffer harm that cannot be repaired. For example, in Mexico a person who lives in a rural environment is regarded as having the right to protection of health satisfied if there is a hospital near his or her home. “Near” is defined as within two kilometers by rural roads, five kilometers by state highway, or ten kilometers by federal highway. It is obvious that in the case of serious health emergencies the distance that patients would have to travel could be excessive, thus the more serious the emergency the less possibility there is of satisfying their right to the protection of health. In addition, rural areas only have clinics that provide a basic level of medical care;[38] they cannot attend to cases involving very severe illness. For this reason, in reference to the obstetric problems facing women, the following is a typical report: “In the poorest zones of Mexico, the clinics that provide a basic level of attention are very far from the women they are supposed to serve and, as a consequence, in an obstetric emergency patients often die on the way to hospital from avoidable complications.”[39] This example demonstrates once again the vicious circle of poverty: those who are in most urgent need of medical services, despite the constitutional guarantee, may find their access to them blocked—it is not easy to travel two kilometers of rural tracks, in, for instance, the Lacandon Rainforest. Likewise, those who do make it to medical services find that the inadequate conditions of the clinics and

their inability to pay out of their own pockets mean that they cannot be attended to adequately and that their state of insecurity and likelihood of suffering harm are heightened.

A state and its citizens that permit the existence of people whose basic needs are unsatisfied together form a society that fails to comply with its obligations and that exercises a form of coercion on many of its members by denying them the possibility of choice. On the other hand, the existence of a social program may cause people to remain trapped in their situation of extreme poverty out of fear of losing their benefits. Thus societies fail to respect individuals and subject them to a situation of continuous humiliation. One way of preventing such situations lies in the capacity of individuals and civil society organizations to sue and punish the state when this happens. It is therefore necessary for the legislative and judicial branches of the state to examine the adequacy and monitor the application of social programs. Likewise, citizens must understand that they have obligations toward the most vulnerable sectors of the population. It would also be a positive step for international institutions like the World Bank, the Inter-American Development Bank, the OECD, and UNICEF to exercise some kind of sanction against countries that tolerate the existence of individuals living in extreme poverty.

VI Possible Solutions

In spite of the stipulation of social and economic rights, poverty has increased worldwide, particularly in developing countries. In order to struggle against this tendency it is necessary to propose solutions. We need to improve our policies in order to achieve the satisfaction of social and economic rights for all human beings.

First, it is necessary to show that human rights as a concept are able to resist criticism from those who reject their homogeneous and universal character. We must not forget that respect for rights constitutes on the one hand a necessary condition for cultural life, and on the other a limit on certain practices when they are harmful to individuals. It would be useful, however, to discuss the possible relations between individual and cultural rights. For example, in some indigenous communities, a practical reality of bilingual teaching is required for the right to education to be achieved.

Second, as part of our strategy we must demonstrate the importance of the defense of minimalist rights. Unfortunately, violence has increased in many parts of Latin America. A culture of minimalist rights is necessary if our institutions are to be taken seriously. Theoretical discussions on the rights to protection from the state and other citizens will doubtless help victims know what actions legal institutions may and may not perform. For example, as we have already seen, in certain indigenous communities these rights are being violated by permitting a situation in which people are put on trial in Spanish without providing them with an interpreter, and this has caused many to be sent to prison without being fully aware of the accusation against them. Likewise, men and women who live in a state of poverty face considerable difficulties in filing accusations when they are victims of a crime.

Third, we cannot fail to insist on our institutions taking seriously the contents of Article 25 of the UDHR. The defense of economic and social rights must aim at two goals: reducing poverty and combating inequality. It is not difficult to show how these circumstances humiliate people and prevent them from being able to imagine the possibility of living a decent life and of being respected. The right to an acceptable standard of living is an ethical imperative.

Another matter is the need to monitor the programs for combating poverty that emanate directly from central governments and that are applied to all those who find themselves in a situation of poverty. These programs' results need to be evaluated at both the national and international level. This obligation falls on public and private institutions and on citizens. The programs for combating poverty must be accompanied by educational efforts regarding the culture of human rights in order to make the concept of human rights known to people with few resources and to enable them to effectively demand their fulfillment.

Aside from central government programs, special emphasis must be placed on those initiatives that strengthen relations among communities and municipalities, federal states or provinces, and the central government. Two kinds of social programs are needed in countries where extreme poverty exists: policies aimed at assistance, and policies designed to offer people ways to begin productive activities. The former are indispensable in enabling people to escape from situations of extreme poverty; the latter are necessary in helping those who are in a disadvantageous situation to be incorporated into the productive process. Reducing the inequality that exists between different parts of a country is essential since, in Mexico for instance, there are enormous differences between the resources generated and received in the states of the north and those of the south. In order to improve the conditions of people who live in a state of poverty, both the OECD and the World Bank have insisted that countries where high levels of inequality exist, particularly in Latin America, must make structural corrections to their fiscal systems since their shortcomings increase the vicious circle of inequality.[40]

However, it is a fact that we live in a globalized world; domestic economies depend to a large extent on international policies. In 2004 the World Bank drew up a document on poverty in Mexico, and in 2005 the OECD published a critical study of the country's policies on health care. While the former document recognizes a certain degree of success in some programs designed to fight poverty, it concludes that a considerable amount must still be done in order to comply with the Millennium Development Goals. Thus international organizations have the obligation to monitor whether resources are being utilized in the best way possible; this may help prevent waste and fight corruption, among other things. On the other hand, local institutions have the obligation to negotiate with international organizations to ensure that international agreements do not affect the exercise of their sovereignty or their ability to meet citizens' needs.

Finally, I should like to add that in order to achieve the satisfaction of the human rights stated in Article 25 of UDHR, it is necessary that all people should have their basic needs satisfied, irrespective of the communities to which they belong. We must therefore continue to defend the universal character of human rights. Likewise, social programs of various kinds must be set up at both the national and international level so as to enable men and women to choose those that are most suitable to their particular life plans. It is also necessary for social policies to be governed by laws and to not depend on the whims of whatever administration happens to be in power at a particular time. In the area of social development a secure legal framework makes it possible to identify when a violation is being committed, who is to be sanctioned for noncompliance, and the nature of the penalty incurred. It must therefore be possible to impute responsibility. If we consider rights to be part of our lives in the community, responsibility falls on all of its members.

We must not cease to struggle, in theory and practice, until the right of all people to a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, housing, and medical care, is satisfied. Unfortunately, there are still many countries in which Articles 25 and 28 of the Universal Declaration of Human Rights are constantly violated. We must find a way to fight this intolerable situation.

Notes

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[1] Universal Declaration of Human Rights, 2012. *Universal Declaration of Human Rights*. Pdf version available at: <http://www.un.org/en/documents/udhr/> (accessed March 22, 2012).

[2] *Constitución Política de los Estados Unidos Mexicanos*. <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf> (accessed April 5, 2013).

[3] *United Nations Millennium Declaration* 2006.

[4] Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), 2.

[5] Guillermo Perry et al., *Poverty Reduction and Growth: Virtuous and Vicious Circles* (Washington, DC: World Bank, 2012). Also available in pdf version at: http://www.mef.gob.pe/contenidos/pol_econ/documentos/virtuous_circles1_complete.pdf (accessed March 18, 2012).

[6] David Bilchitz, "Taking Socioeconomic Rights Seriously: The Substantive and Procedural Implications" in *Freedom from Poverty as a Human Right: Law's Duty to the Poor* ed Geraldine Van Beuren (Paris: UNESCO, 2009) 36-37.

[7] Will Kymlicka ed. "Introduction" in *The Rights of Minority Cultures* (Oxford: Oxford UP, 1996).

[8] Luis Villoro, "¿Crisis del Estado-nación?" in *Los valores humanos en México*, coordinated by Josu Landa y Juliana González (Mexico City: Fondo de Cultura Económica, 1995), 258.

[9] Joel Feinberg, *Social Philosophy* (New Jersey: Prentice-Hall, 1973), chapter 4.

[10] Pogge, *World Poverty and Human Rights*, 64.

[11] Érica-Irene A. Daes "Breve revisión de los derechos humanos fundamentales de los pueblos indígenas del mundo" in *Los derechos de los pueblos indígenas, Comisión Nacional de los Derechos Humanos* (Mexico City: Comisión Nacional de los Derechos Humanos, 2003).

[12] Ibid.

[13] This armed movement appeared on the day following the coming into force of the North American Free Trade Agreement (NAFTA), signed by the governments of the United States, Canada, and Mexico. It was interesting to discover that while Mexico had pretensions of being a "modern" nation, this self-conception was challenged by the existence of indigenous groups living in a state of subsistence poverty.

[14] *Constitución Política de los Estados Unidos Mexicanos*, Art. 2.

[15] As Subcomandante Marcos has stated in the Mexican newspaper *La Jornada*, Politics Section, on July 19, 2003.

[16] Kymlicka, "Introduction," 1.

[17] World Bank, "OP 4.10 -- Indigenous Peoples," 2012 Document available at: <http://www.forestpeoples.org/topics/responsible-finance/world-bank/indigenous-peoples-policy-od-420-obbp-410> (accessed March, 18, 2012).

[18] This declaration (*Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*) was drawn up in the form of an authorized construal of the United Nations Charter, and not as a modification of it. I take this note from the editors of *Los derechos de los pueblos indígenas* (Mexico City: Comisión Nacional de los Derechos Humanos, 2003), 89.

[19] It is worth stressing that in Mexico an increasing effort has been made to provide a bilingual education and to modify the obligatory texts distributed by the Public Education Ministry. This has been a considerable challenge for the Mexican educational authorities, since at present there are sixty-two recognized ethnic groups, each with their own language.

[20] Villoro, "¿Crisis del Estado-nación?", 258.

[21] Indigenous communities living in México in the states of Jalisco and Chiapas, respectively.

[22] Kymlicka, "Introduction."

[23] Charles Taylor, "The Politics of Recognition" in *Multiculturalism* ed Amy Gutman (Princeton, NJ: Princeton UP, 1994), 64 emphasis included.

[24] Nancy Fraser, "Rethinking Recognition." *New Left Review* 3 2000, 5 <http://newleftreview.org/II/3/nancy-fraser-rethinking-recognition> (accessed May 25, 2012). I appreciate the arbiter's suggestion to take into account the philosophical theories of recognition. They undoubtedly provide a powerful tool for approaching the subject of poverty.

[25] Speech broadcast on the television news program "Noticiero con Joaquín López Dóriga" (Televisa, channel 2) August 2002.

[26] Rodolfo Stavenhagen, "Cuestiones indígenas." Comisión Nacional de los Derechos Humanos, typescript, December 23, 2003.

[27] Pogge, *World Poverty and Human Rights*, 64.

[28] I am in debt to Thomas Pogge and Mike Ravvin for suggesting these ideas. I appreciate the arbiter's suggestion to analyze economic and social rights as "positive" rights. I previously developed this subject in my book *Poverty: A Philosophical Approach* (Amsterdam/New York: Rodopi Philosophical Studies, 2005), chapter 3. Nevertheless, it seems to me that Pogge's conception offers an interesting and novel point of view from which to approach the subject of rights and poverty.

[29] *Constitución Política de los Estados Unidos Mexicanos* 2002, 11.

[30] “Enfoque: Un país enfermo,” *Reforma* (Mexico City, April 10, 2005), 12.

[31] The term “right holder” means only those individuals who, on account of their work situation, are enrolled with one of the two major public health institutions: IMSS and ISSSTE. Other options do exist, however, such as the Health Ministry public clinics. Although one of the goals of the Mexican government is full health care coverage for the entire population, this still has not been achieved.

[32] Organization for Economic Co-operation and Development, *Estudios de la OCDE sobre los sistemas de salud* (Mexico City: Organization for Economic Co-operation and Development, 2011), 27.

[33] John Rawls, “Social Unity and Primary Goods” in *Collected Papers* ed Samuel Freeman (Cambridge, MA: Harvard UP, 1999), 366.

[34] John Rawls *A Theory of Justice* (Cambridge, MA: Harvard UP, 1971), 440.

[35] Charles Beitz, “Does Global Inequality Matter?” in *Global Justice* ed Thomas Pogge (Oxford: Blackwell, 2001), 117.

[36] Universal Declaration of Human Rights, 2012.

[37] Norman Daniels, *Just Health Care* (Cambridge: Cambridge UP, 2001).

[38] The first-level clinics focus on the promotion of individual, family, and community health, prevention, and the ambulatory treatment of the most common illnesses. They lack specialized services.

[39] Gladis Torres Ruiz, “La mayoría de las muertes maternas son predecibles,” *Cimacnoticias, Periodismo con perspectiva de género* 2012. Document available at: <http://www.cimacnoticias.com.mx/site/10090209-Permanece-alto-el-n.43998.0.html> (accessed March, 18, 2012).

[40] Perry et al., *Poverty Reduction and Growth*.