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Poverty, Dignity and Humiliation
on Poverty as a Violation of Human Rights and Access to Justice

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INTRODUCTION

The statement that poverty is a violation of human rights may have significant ethical and political implications that deserve a careful exploration. As contribution to UNESCO’s proposal to abolish poverty through the framework of international human rights law, I will explore three challenges. Taken together, they may touch upon some provocative issues. My main thesis is that the ultimate goal of the abolition of poverty needs to be linked to the more primary aim of the avoidance of humiliation. We rarely give much thought to humiliation: justice and equality are more often the focus of concern. My purpose here is to develop an innovative view on the relation between poverty and rights that can be supportive for a further grounding of UNESCO’s proposal.

The first challenge that will be taken up here emerges from the relation between poverty and rights, or more precisely from the view that poverty is a violation of human rights. In such a view the emphasis is on violations, which draws the attention to issues of responsibility and accountability of those in positions of authority and power. In my view, the primary focus needs to shift from the condition of poverty to those involved: how can people who live in conditions of poverty get access to justice on an equal basis?

The second challenge is whether the condition of poverty can also be seen as an infringement of human dignity, as numerous UN documents suggest. This raises serious questions about the concept and justification of dignity. Can the proposal to abolish poverty in fact be rooted in human dignity as the foundation of international law? Poverty has multiple dimensions, is not only grave injustice and inequality but also a restriction of freedoms, human misery and suffering. The ethical and political concerns with poverty can therefore not be limited to the elimination of injustice and inequality. Of equal significance is the avoidance of humiliation as downside of human dignity. This does not imply that concepts such as the ‘redistribution’ of goods and resources would have to be substituted by the ‘recognition’ of dignity and the elimination of humiliation. There is rather a need to further develop concrete moral and political concepts in which those affected by injustice, inequality and humiliation might recognize their everyday experiences and find supportive orientations.

The third challenge concerns the more general idea today that rights-based approaches should have superseded needs-related approaches. Yet, in everyday life human needs may become so critical because human rights are being violated. This inevitably involves the humanitarian imperative to reduce an excess of hardship and suffering. If poverty in all its dimensions could be related to human dignity as basic humanitarian standard, then the abolishment of poverty would be raised to a status equivalent to protecting the foundations of international society. These foundations imply a vital connection between emerging or persistent needs and rights. This connection will be revisited here, because of its renewed and continuing relevance in the areas of human rights implementation, development cooperation and humanitarian action.

The three challenges as summarized here, correspond with three different sections of this contribution: the first is on the emphasis given to violations in rights-based approaches to poverty (1); the second is on the relation between poverty, humiliation and human dignity (2); and the third is on global justice, equal access to justice, and non-humiliating institutions (3). UNESCO’s proposal to abolish poverty by using the international human rights framework is the main point of departure for my reflections and will therefore be introduced first. The particular features of dignity and humiliation drive my analysis and orient my view on how poverty and human rights relate. I will deal with these issues from basically three different but overlapping discourses: a philosophical, legal and political.

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1 The UN Committee on Economic, Social and Cultural Rights offered a clear definition of poverty in its multidimensional aspects and in relation to human rights: “…poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights” (UN-CESCR, 2001, no. 8).
1. Abolishing poverty through the international human rights framework

Pierre Sané, Assistant Director-General of UNESCO, launched a clear proposal to abolish poverty in global society by using the framework of international human rights law, as happened earlier with slavery, torture and apartheid. These realities were judged in moral terms as unacceptable, were politically declared illegitimate, and became legally prohibited by international law. The proposal includes the mobilization of global public opinion and the development of an international strategy towards the abolition of poverty (Sané, 2004, 271). As part of this strategy a connection is being made between a rights-based approach to poverty; the proposition that poverty is a violation of human rights; and the view that the body of international human rights standards can be used as an instrument to remove poverty.

In fact, in a study that constituted the first comprehensive UN analysis of poverty and human rights, the former Special Rapporteur on Human Rights and Extreme Poverty, Leandro Despouy, stated already that extreme poverty - with its wretched living conditions, the sufferings and the degradation it produces in human beings - recalls phenomena such as slavery and apartheid (Despouy 1996, n. 186, emphasis added). In line with such antecedents, though not limited to ‘extreme’ poverty, UNESCO’s proposal is grounded in three basic assumptions. First, by declaring that poverty needs to be abolished through international law, poverty would be given a higher and more powerful priority in the international community. Poverty eradication strategies would not only be part of policy orientations but linked to legal obligations on the part of states as well. Second, when poverty is seen from the perspective of human rights, the understanding of poverty changes from considering it a general social problem to recognizing poverty as a binding and compelling imperative to act. And third, the use of a legal framework would have the potential to generate more effective motivations and strategies to end poverty than moral imperatives that are predominantly grounded in humanitarian concerns with poverty.

Of course, when such a proposal on the worldwide poverty abolition is being launched, many questions arise. Can processes towards the legal abolition of the institutions of slavery and apartheid be compared with current rights-based approaches to eradicate poverty? Is abolition just another motto in the wide range of strategies to alleviate, eradicate, or eliminate poverty while having to recognize in the end that poverty still continues to persist? Most obviously, just evoking or passing international laws that would declare poverty illegal would not abolish its existence. And, definitely, the legal abolition of poverty would not make poverty disappear at once, as genocide or child labour have not gone since they became legally prohibited. Yet, “it will place poverty in the conscience of humankind at the same level as those past injustices, the present survival of which challenges us, shocks us, and calls to action” (Sané 2004, 273). Other immediate questions certainly relate to the scope of such a project and the political and legal implications. And of course there are concerns about what the feasible remedies would be that might encourage those in poor living conditions to activate their rights in a perspective of reparation, redress and compensation (UNESCO 2003; Plessis 2003).

Rights-based approaches to poverty

The human rights framework is increasingly being explored today as an instrument to eradicate poverty. Yet, how can this framework be used to end further impoverishment in global society? And how can the relation between poverty and rights be conceived? First of all, poverty, ‘the greatest ethical

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2 This new paradigm and strategy to end poverty has been proposed by UNESCO in the context of the implementation of the first of the Millennium Development Goals (MDGs), of halving the proportion of people living in extreme poverty by the year 2015. In the process of implementing the MDGs, UNESCO aims at concerted global efforts to further develop the view that poverty is a violation of human rights, while consequently integrating this view in the UN system as a whole. This proposal is a response to the request by Kofi Annan, UN Secretary General, that all Specialized Agencies reorient their programs to meet the MDGs.
challenge facing the world today' (Bengoa 2004), sets the need to protect human life and human security: to become free from violence and fear, from deprivation and coercion. Linking poverty to human rights implies that those who are committed to poverty eradication -individuals, organisations and institutions- assume the existing universal standards and norms that are integral part of human rights law. The distinctive characteristic of a rights-based approach is indeed its legal foundation: human rights offer a universal and normative framework, and a set of political and legal instruments of a binding nature - that principally relate to the right to an adequate standard of living.

Where the concept of rights is being introduced through rights-based approaches, the focus is on people’s entitlements that give rise to legal obligations (OHCHR 2002, 1). Such a legal framework clarifies that people’s entitlements are protected by human rights and places an obligation on states (and non-state actors) to ensure that all rights are being met. In fact, rights-based approaches bring to the fore a unifying set of standards as a common reference for setting objectives and strategies. The advantage of using human rights instruments is that they have been recognised by those who hold power. Human rights instruments have been publicly recognized, signed and ratified by states: they have committed themselves legally and are in a position of political power. This binding element is clearly something that development approaches lack. In brief, using human rights as a political instrument of transformation allows people to articulate their human needs with a clear back up in international legal protection mechanisms.

**Poverty as a violation of human rights**

Just as a start, and even before talking about violations, can poverty be identified with the absence or denial of the realisation of human rights? And can the abolition of poverty be acknowledged as a necessary condition to prevent the violation of rights? Is poverty in fact a violation of human rights and ought it to be perceived and dealt with as such? Then, what would constitute the violation of these rights? Two justice-related principles seem to be present in the proposition that poverty is a violation of human rights. The first is that poverty implies injustice, which is seen as a morally unacceptable condition, which consequently needs to be recognized as politically illegitimate and declared illegal according to international law. The second principle is that of corrective justice: states (or the international community as a whole) are implied in the causation or persistence of poverty and are somehow obliged to recompense those who are worse off. In other words, the statement that poverty is a violation of human rights might contribute to a stronger international awareness of the link between poverty and different aspects of justice. Moreover, if the abolishment of poverty would be declared internationally, the status of poverty would be raised to an issue of justice and become prioritised as a denial of justice (Sâné 2004, 272).

Yet, much more evidence is needed to clarify what exactly the violations are and what they do consist of. First, it has been argued that the violation of any human right may produce simultaneous violations of different other rights that converge towards poverty: “the systematic violation of any one of these rights degenerates rapidly into poverty” (Sâné 2004, 272). According to this point of view, violations of human rights as such create poverty. A second way of identifying what violations precisely occur is the observation that as a result of living in conditions of poverty, the worse off are more frequently despised, disrespected and discriminated against, which implies that living in poverty breeds a violation of their human rights in general (Campbell 2003, 5). In both senses, it seems that it is the condition of poverty as such that is either the effect of violations of human rights or generates such violations. And third, if this condition of poverty, including the hardship and suffering it involves, is caused by the conduct of identifiable actors, that conduct is being seen as the violation. A fourth, and again different but related view, takes the persistence of poverty as central element and identifies the violation that occurs in the failure to act by those who are in an appropriate position to do something effective (Campbell 2003, 6 and 8). In the last two meanings of violation, the condition of poverty is related to issues of responsibility and accountability.

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3 In the same sense, poverty has been called “the worst form of violation of human rights” (Sengupta 2002, 884). See also United Nations General Assembly, Document A/57/369, August 2002, No. 4.
The view that poverty is a ‘massive, flagrant and systematic’ violation of human rights (Bengoa 2004) can indeed be seen as a forceful ethical statement that poverty can never be accepted by any state or political system that claims moral and political legitimacy. Since the implementation of human rights sets the standards of achievement of a society today, the participation of a state in international society is increasingly conditional upon a state's respect for human rights. The failure in this regard implies delegitimation, exclusion or the risk of intervention by international society to take whatever action necessary to protect human rights. In other words, meeting human rights lends legitimacy to those who hold positions of authority and power. The element of moral and political legitimacy clearly highlights the role of the state in implementing international law and in dealing with the accessibility and distribution of available resources. Thus, legitimacy connects to the political obligations of governments. Certainly, in adopting the necessary policies and strategies it is imperative for any government to be internationally accepted as morally and politically legitimate (UNESCO-CROP 2003, 3). Next to such political obligations there are of course the legal obligations that any state has to face.

The relation between poverty, violations of human rights and international legitimacy, however, is not that simple, as it seems at first sight. A state can clearly be held responsible for not taking all measures within its power to ensure the progressive realization of rights without unnecessary delay. Yet, it is a misconception to think that the mere existence of poverty would be proof enough to affirm that human rights, in particular economic, social and cultural rights, are being violated. And, vice versa, it is also a mistake to think that the absence of poverty would demonstrate evidence enough that human rights are being respected. The fact that poverty exists within the territory of a state does not necessarily imply that this state is in non-compliance with international human rights obligations. Provided that a state has taken all reasonable measures towards the progressive realization of rights and has taken immediate steps to fulfill specific rights, then such a state cannot be held responsible for the fact that poverty continues to exist and many rights still remain unfulfilled. Such a state is not in non-compliance with its obligations under international human rights law (OHCHR 2002, 3). Indeed, when a country is complying with all the proper measures mandated by the human rights treaties, and is appropriately allocating its available resources to guarantee adequate food, health and housing, but poverty still persists because the resources are insufficient, then no human rights violation takes place by the state. And, vice versa, when a resource-rich state fails to take adequate steps to protect food security, it might be violating the right to food even if no one suffers from lack of food and no one is living in poverty there (Green 2001, 1075).

My question now is why rights-based approaches focus predominantly on violations of human rights. This single focus on violations seems not only to be too limited but also tends to restrict the scope of analysis mainly to state-related actors and issues of compliance, responsibility and accountability. In my view, rights-based approaches might contribute most effectively by shifting the focus to creating conditions that improve people’s access to justice and the legal system. Violations approaches and access approaches may be seen as necessarily complementary in eradicating poverty (Klein Goldewijk & Gaay Fortman 1999). As part of building up an access-based focus in human rights, the connection between the standards of justice and humanity needs to be explored: these are often seen as competitive.

**Does justice have priority over humanity?**

As noted before, rights-based approaches include notions such as justice and equality, responsibility and accountability. Yet, poverty involves much more than that; it is also the restriction of fundamental freedoms and grave human suffering from harm, misery and despair. From an ethical point of view, the relief of misery and suffering are relevant for their own sake. Whereas the standard of justice draws the attention to unfair social systems and their role in producing or maintaining the condition of poverty, the standard of humanity is based on humanitarian support of people, irrespective of how the situation in which they live emerged, why the suffering happens, or who is suffering. Therefore, both moral standards of humanity and justice need to be actively present in views that poverty is a violation of human rights. In conditions of
extreme poverty or human emergency the standard of humanity may even come before justice; humanity may have priority over justice (Campbell 2003, 11):

“In the case of extreme poverty, humanity renders some considerations of justice irrelevant and is certainly not dependent on it for triggering an obligation to act so as to eradicate it...If poverty is a violation of human rights it is primarily because of the stringency of the demands arising from the existence of suffering... subsistence rights are grounded primarily in the universal humanitarian obligation to participate in the relief of extreme suffering. The universality of this obligation is relative to the capacity of the person or collective to contribute to the reduction of extreme poverty. The duty of relieving world poverty falls on everybody in proportion to their capacity to do so, although it may be enhanced by any role they may have in contributing to the existence of that poverty” (Campbell 2003, 11).

In fact, in situations of extreme poverty or emergency, human rights obligations primarily derive from duties of humanity rather than duties of justice (Campbell 2003, 7). If this makes sense, it is disputable whether it can be maintained, as often happens, that the standard of humanity presents a morally less compelling basis to act than the standard of justice: both are intrinsically linked to human needs and human rights, and both include associated responsibilities and obligations. It is not justice alone that prompts to act in favour of the eradication of poverty; humanity offers an equally forceful trigger, as well as a clear basis for identifying moral, political and legal obligations. If poverty ought to be abolished as a matter of urgency, both standards of humanity and justice are indispensable and, yes, at times humanity may come first.

2. Poverty, humiliation and dignity

The justification of rights is dependent on values and norms, principles and standards that are acknowledged and accepted by international society. Whereas it is frequently stated that poverty violates human rights, it is equally often argued that poverty is an infringement of human dignity. Yet, it is not at all clear why the latter would be the case and what the basis for such statements would be. Already in 1992, the United Nations General Assembly noted: “extreme poverty is a violation of human dignity and might, in some situations, constitute a threat to the right to life”. In almost the same wording, the Vienna Declaration, adopted at the 1993 World Conference on Human Rights, affirmed: “extreme poverty and social exclusion constitute a violation of human dignity”. In Resolution 2003/24 the Commission on Human Rights recalled: “extreme poverty and exclusion from society constitute a violation of human dignity”. And the UN Independent Expert on Human rights and extreme poverty, in her recent Report noted: “extreme poverty as a violation of human dignity and all human rights” (Lizin 2004, 30 and 78). Many other examples could be added.

Such statements, however, are not limited to extreme poverty. There is a landmark judgment in the South African Grootboom case, where the Constitutional Court linked poverty to dignity and declared: “There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter” (par 23). Some statements by the UNDP move along the same lines: “poverty limits freedom and deprives a person of dignity” (UNDP, 2000, 73). Others have argued that poverty implies an unacceptable level of deprivation of well being that is incompatible with or a degradation of human dignity (Sengupta 2002, 885; Sengupta 2003, 2; Mbonda 2004, 278 and 280). Many questions arise from such statements: are they plausible? What concepts of dignity are at stake? Are such expressions inherent to views that consider poverty to be a violation of human rights? Or do they just fail to offer an adequate account of the relation between poverty and dignity?

6 Government of the Republic of South Africa and Others v Grootboom and Others, 2001 (1) sa 46 (cc); case no cct 11/2000, Constitutional Court, para 23, Judge Yacoob J.
Humiliation as the downside of human dignity

The most straightforward way to explore human dignity is to start by its counterpart: the experience of humiliation. Living in situations of sustained deprivation and with an inadequate standard of living often goes together with inequalities in opportunities and life-orienting choices. Differences in living conditions, when comparing to how others live, may cause people to feel shame and inferiority about how they have to live. Accordingly, the wrong is not so much the condition of poverty as such, but certain forms of social inequality that may bring a sense of being looked down upon. In other words, living in poverty and hardship is not necessarily felt as being downgraded: this is the case when elements of inequality and comparison enter. The question now is why a sense of inferiority is being associated with some forms of inequality and when this is experienced in terms of humiliation. Fist some clarifications about the concept of humiliation itself.

Humiliation can refer to feelings and acts, structures and institutions. Whereas the realities of humiliation have a long history, the notion of humiliation has only recently gained more common visibility and attention. In contemporary global society, humiliation and counter-humiliation have clearly become visible as political instruments in the context of (counter)terrorist war and conflict. The shocking images of Iraqi prisoners being forced by United States military personnel into sexual poses or abuse in the Abu Ghraib prison have now become "iconic images" (Pham 2004, 91) of humiliation in the war on terrorism. Another appalling image is that of the dead American soldier, dragged by an exultant crowd through the streets of Mogadishu (1993). This eventually led to the U.S. withdrawal from Somalia. Moreover, we saw jubilant citizens in Iraq dragging the corpses of U.S. contractors through the streets of Fallujah, hanging them from the bridge spanning the Euphrates River (2004). This, however, did not lead to a departure of the U.S. from Iraq.

In spite of its relevance, the concept of humiliation has rarely been systematically explored in the fields of international relations, international law, political theory, conflict or cultural studies. And, as far as I am aware, the notions of humiliation and dignity have not at all been systematically researched in the context of poverty. In studies on poverty, concepts such as discrimination and inequality, marginalisation and exclusion have thus far prevailed. What follows here opens the field and brings some insights together.

Humiliation is the downside of human dignity. In fact, without a concept of dignity there is no concept of humiliation (Statman, 2000, 524). In common sense, humiliation refers to a downward movement: pushing down or keeping down, degrade or denigrate, lower or belittle. There is much more to humiliation than the violation of rights: humiliation violates dignity (Margalit 1996, 52). Humiliation is an injury to self-respect, that is, to the respect a human being is worthy of for the very fact of being human (Margalit 1996, 19). The notions of self-respect and self-esteem can be seen as different and belonging to other categories. Self-respect is an attitude based on norms or standards of worthiness that are inherent to the awareness of belonging to humanity and are endorsed by the individual. In this regard "we have self-respect only if we treat ourselves as morally equal to all other human beings" (Statman 2000, 527). Self-esteem is not so much an attitude but rather a judgement of one's own value or worth, related to how one is looked upon or valued by others.

What is experienced as humiliation? What does humiliation do with people? Why does humiliation matter so much? Humiliation is something deeper down in the human soul than the experience of marginalisation or injustice: to be humiliated is to be brought to feel unworthy of respect, subjugated, existentially rejected and excluded. "Humiliation, as the rejection of human beings as human, even if it is performed ritually or symbolically without any physical cruelty, serves as a signal of existential rejection that is not symbolic at all" (Margalit 1996, 122, emphasis added). In fact, when the humanity of the person is rejected, then a person is not seen or treated as a human being but inferiorized, instrumentalized, used as a thing or a tool. In other words, humiliation entails a forced ejection and expulsion of individuals or collectivities while

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1 Humiliation has been defined as: “Any sort of behaviour or condition that constitutes a sound reason for a person to consider his or her self-respect injured” (Margalit 1996, 9).
conveying the message that they are fundamentally inadequate to belong to a certain group, organisation or institution. “Humiliation involves being violently pushed down and/or forcibly kept below the boundary line that separates the worthy from the unworthy” (Smith 2001, 542). Systematic humiliation, then, is a form of cruelty that undermines self-respect and autonomy, including the capacity to take initiatives, to be actor of change in the own situation, and have some saying about the directions and orientations in life (Klein Goldewijk 2002, 6-8). Humiliation in its systematic form is integral part of social structures and institutions in contemporary society.

The key point now is why and when humiliation is connected with social inequality. As noted, not all deprivation can be associated with inequality. And not all cases of inequality are humiliating: the humiliation involved in inequality depends on the meaning and effects of the forms of inequality involved. Most obviously, inequality involves social or cultural relations where the advantaged exercise an unacceptable degree of coercion or control over others, often through institutional mechanisms, thereby severely restricting the opportunities and choices. In other words, social inequalities “deprive some people of significant control over the conduct of their own lives by changing and narrowing the range of alternatives from among which they are effectively able to choose” (Beitz 2001, 106). And this is humiliating when social inequality that does not permit upward mobility (Margalit 1997, 149-150) brings people into a status of being rejected, not belonging, while undermining their fundamental freedoms and disrupting the conditions for social fairness or procedural justice.

If humiliation basically means that the humanity of the person is being rejected, then there need not be any explicit humiliating intent for situations of inequality to be considered humiliating and unjust. In fact, humiliation may be enacted either deliberately or unintentionally, through violent suppression, verbal insult or cold neglect (Smith 2001, 542). It always carries the message that the other individual or group is on a lower plane and that there is an unbridgeable gulf between us and them. Against these backgrounds it is comprehensible that a perspective has emerged in which the elimination of humiliation gets practical priority over the implementation of basic rights (Honneth 1997, 309; Margalit 1996, 4).

**Human dignity in a universal and (inter)subjective sense**

The notion of dignity touches the multi-dimensional roots of poverty and is considered as being of great support in creating more just and equal opportunities in economic, social and cultural life. Dignity clearly captures the equal worth of each and everyone, as well as the principle of the equality of all before the law. Yet, the weight that is being given today to equal human worthiness represents a profound and radical change in the historical development of the notion of dignity, from legitimating inequality to legitimating equality. As long as human worthiness had been ranked in an established and hierarchical order, morally accepted as right during ages, the concept of dignity lend itself to legitimizing inequality. Now that human dignity is being recognized as the foundation of human rights, the same concept forcefully dismantles any established form of ranking and institutionalized inequality. Consequently, human subjugation passes from being socially accepted as legitimate to a socially illegitimate practice: today all are equally dignified.

In the course of the twentieth century, dignity has come to be seen as, what I would call, a basic quality of human beings, primarily attributed to the individual person. The notion first appeared in the constitutions of Mexico (1917), Ireland (1937), and Cuba (1940) and then found its way to intergovernmental instruments: the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). In these instruments the notion of dignity fully expresses the moral primacy of the individual over any collectivity, as well as the equal worthiness of each and everyone, thereby establishing the foundation of a new international order. The notion of dignity was further elaborated in the two International Covenants that came along with the UDHR: on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural

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8 See also Häyry 2004, 7. Yet, the German Constitution, approved in 1949, a few years after the end of the Second World War, is one of the most impressive constitutions in regard to the notion of human dignity as comes out already in its first article 1(1): “The dignity of man is inviolable. To respect and protect it is the duty of all state authority”.

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Poverty as a violation of Human Rights

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Rights (ICESCR), both were adopted in 1966 and entered into force in 1976. When taken together, these international instruments grounded and legitimized the connection between dignity and human rights, and established this connection as integral part of international law.9

These backgrounds are necessary to explain a basic distinction between two different meanings of human dignity that are sometimes fully conflated and at other times strongly opposed: dignity in a universal sense, with normative or objective associations, and dignity in an (inter)subjective or descriptive sense (Statman 2000, 524; Nordenfelt 2004). Underlying such a distinction is the concern as to whether human dignity and the worthiness of a human being are an endowment or an acquirement (Iglesias 2001, 122-123). This needs to be briefly clarified here, since it has considerable implications for how to understand the connections between poverty and dignity.

The universal meaning of dignity refers to the intrinsic or inherent worth of every human being; that is, what is constitutive of who we are, of our very being, which pertains to everyone as an endowment. Dignity in this universal sense is unconditional: independent of any limiting condition given by a person’s status, gender, race or rank, efforts or virtue. This sense of dignity finds its origins and roots in the vision of a universal humanity pertaining to each and every human being: everyone belongs to the human condition, is of equal standing and being worthy of equal respect. This view has generated the association of the intrinsic worthiness with the intrinsic inviolability of the human person. The universal view on humanity and the equal worth of all human beings has received numerous philosophical and theological, ethical, legal and political justifications throughout the ages, but is most often associated with Immanuel Kant. He translated the notion of dignity into a moral principle and a categorical imperative, while connecting dignity with moral autonomy and human agency.10

In this universal sense, human dignity can never be gained or lost: dignity belongs to our being human and is therefore not something we ‘have’, can ‘gain’, ‘earn’, or ‘loose’. It can never be lost or taken away, in whatever (poor) condition the person may live, whatever an individual may do, or however inhuman someone may be treated or regarded, because dignity is an intrinsic and inherent part of the human condition. What is more, if dignity cannot be lost it has “a seemingly indefinite persistence beyond death” (Badcott 2003, 123), with roots in the full history and diversity of humanity. This basic condition of being human, always present in who we are, is seen as the foundation for respect under all circumstances. In this sense, dignity is a basic humanitarian standard that protects a profound valuing of the human being throughout ages and across cultures.

The (inter)subjective meaning of dignity is different and connects to a descriptive account of it. Here dignity is part of social and cultural relationships, behaviour and feelings. Dignity may come through position, rank or merit, supremacy and privilege, personal efforts or virtue, reason why a person is being respected and honoured by others. Others grant dignity: the attitude of (dis)respect or (in)consideration by them is decisive. Thus, dignity is a human feature that can be acquired or lost. In contemporary honour-based cultures, the element of honour continues to have such significance and impact that it has to be preserved and realized at all costs against public shame, even if this implies conflict, war and honour-killings. Where a descriptive way of understanding dignity is being followed, there is an intimate connection between dignity, honour and respect on the one hand and (the threat of) humiliation, shame or the feeling of being rejected on the other.

9 In fact, the notion of dignity forms the basis of all international human rights instruments, including the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949); the Convention on the Elimination of All Form of Discrimination against Women (1979); and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984).
10 In the broader context of bioethics and life sciences, or in debates about animal rights, this connection between dignity, moral autonomy and human agency has become highly disputable. Whereas human dignity is universally accepted today as normative principle in law, it is not at all univocally received in bioethics. In a noticeable document, UNESCO (1997) has opted for human dignity as a key notion in reflecting the impact of biotechnology.
In terms of this (inter)subjective meaning, the elements of respect and honour are so relevant that disrespect affects the sense of entitlement to position, rank or privilege. This notion of dignity involves self-respect as integrity and autonomy that can be damaged or injured because of humiliation by others. Shattered self-respect makes people feel unworthy, looked down upon, devalued. Indeed, here, people's feeling of worth is tied to how they feel that others look at them: dignity is dependent on the others' appreciation of it.\textsuperscript{11}

**Is poverty an infringement of dignity and rights?**

Both meanings of dignity seem to enter into current statements on how poverty and dignity relate. On the face of it, affirmations that poverty implies a degradation of human dignity appear to be incompatible with a universal or normative understanding of the notion of dignity. Because, if belonging to humanity is the basis for recognizing the inherent dignity of each and everyone, and if dignity is unconditional and inviolable, no condition of poverty could violate human dignity. Since the universal recognition of human dignity is independent of any individual's circumstances, no human being could exist who could be robbed of dignity or lose dignity since it cannot be diminished by others' disregard for it. And, because dignity, in its universal sense, is the foundation of human rights, nothing done to a human being can take away these rights. Of course, one “can treat another human being as if she had no rights, or as if she had no dignity” (Statman 2000, 526), but that is not the same as making it the case that a human person can lose dignity or rights.

When dignity is being understood in a universal sense, as is the case in international human rights instruments, then it seems at least ambiguous that UN documents today put forward that poverty violates human dignity. If an (inter)subjective interpretation of dignity would implicitly be present in UN statements on poverty as a violation of dignity, then such statements could hardly be reconciled with dignity as the universal foundation of human rights. But if a universal interpretation of dignity would be present in such statements, whereby the intrinsic worthiness of the human being relates to the inviolability of the human person, then the violation of human dignity by the condition of poverty would even be more difficult to understand.

Apart from noting serious inconsistencies in current statements on poverty as a violation of human dignity, it must be said that any moral, political or legal justification of human dignity is left open in UN human rights declarations and treaties. This is surprising and noteworthy. My suggestion would be, first, to acknowledge and value this open justification of dignity on pragmatic and existential grounds. And second, to take this up as a key to interpret the view that poverty is a violation of human dignity. In fact, international agreement on dignity as the foundation of human rights has been achieved on the basis of both pragmatic and existential considerations. The immediate ‘never again’-motive in the wake of the atrocities after World War II facilitated a quick and practical agreement on the foundation for the UDHR: human dignity was most commonly accepted as foundation on pragmatic grounds. This would otherwise have been impossible. In addition, the real meaning of dignity in human life appears almost intuitively and most convincingly only in situations where people face dehumanizing treatment, abuse, cruelty, serious harm or suffering. In such existential circumstances, human dignity is transparent to itself, evident and self-explanatory: human dignity touches everyday roots that need no further justification.

What has been said here about the pragmatic and existential relevance of dignity holds true for the notion of universality as well. Whereas today, with a diversity of cultures and a multiplicity of approaches, any reference to universal foundations and principles has declined, there seems to have emerged some sort of consensus about the pragmatic and existential sense of universality, conditioned by a plurality of cultural elements.\textsuperscript{12} In my view, dignity is a category of being, not of having: dignity is integral and universal part of

\textsuperscript{11} In all such different meanings, dignity has gradually received a highly relevant place on the agenda of international law, bioethics, health care, and in the context of illness, ageing, birth and death.

\textsuperscript{12} For a more detailed exploration of human dignity in a variety of cultures and religions see my chapter ‘Human Dignity and Humiliation’ (Klein Goldewijk & Gaay Fortman 1999, 55-72).
what makes us human beings. Statements that declare poverty as a violation of human dignity want in the end to express, I presume, that living in poverty is a life not worthy of a human being or that the condition of poverty prevents a dignified existence, as in the case of other inhuman circumstances that go against article 25 of the UDHR, impeding the full enjoyment of all human rights.

The justification of human dignity, as it came out here, raises various questions. Yet, anyone who takes rights seriously must accept, as a minimum, this “vague but powerful idea of human dignity” (Dworkin 1977, 198). Whereas dignity needs to be explored in relation to notions of humiliation, self-esteem and self-respect, it gets its full significance in relation to the notion of rights. “Rights are interests”, writes Margalit, and these interests are protected by international law. In fact, whereas human dignity is the foundation of human rights, the core function of these rights is to express and protect dignity. Indeed, “the justification for human rights is that they are meant to protect human dignity” (Margalit 1996, 39). In other words, views that present human dignity as a “right” have to be seen as a conceptual curiosity (Jaber 2000: 31).

3. Global justice and equal access to justice

Most obviously, the advancement of global justice through the abolition of slavery, apartheid or torture has primarily been the result of struggles by those concerned. In the same way, the direct involvement of people in matters that affect them in the first place is indispensible to the protection of their human rights and the use of international law in their support. Poverty and injustice are sustained by concrete practices that violate the rights of people and go against the equality of access to the law. Equality, in fact, consists of creating fair chances for all. Working towards accessible justice thus requires that inequities related to poverty be first taken up. Giving priority to those who live in conditions of poverty and humiliating inequality is therefore a main condition to come closer to equality of all before the law. This implies that humiliation’s counterpart, human dignity, is necessary in the concept of global justice.

Here I will develop a view on the relation between poverty and human rights that takes global justice and equal access to justice as its focus. Access to justice means that people have the ability to use the legal system including the justice institutions they need, without limits imposed by their condition of poverty. And equal access to justice means that qualifications of economic position, social class or caste, gender, cultural or religious identities do not impede such access. In my view, any further improvement of rights-based approaches to poverty needs to become firmly anchored in this focus, where justice and equality are directly linked.  

In principle, the key function of the rule of law is to protect citizens from the abuse of political power. Accordingly, the legal system has at least three core tasks: a) to offer the conditions by which people can defend themselves from misuse by those in power; b) to be a reliable place where conflicts can be resolved; c) to represent a context where accountability and responsibility for violations of rights is acknowledged. Yet, in everyday practice, access to the legal system is restricted, the pursuit of equal access even more. Whereas courts are supposed to be a place where everyone can stand as equal before the law, in reality, most of the courts are inaccessible for the less wealthy and their legitimate interests.

To get access to justice matters most to those people who have to cope with malfunctioning legal systems, abuse of state power and massive denial of their basic rights. Yet, how can those who are worse off in society make use of their human rights to protect their legitimate interests? Would it be possible to use contemporary legal systems to obtain remedies and redress? How can social justice and the justice system become more accessible to all? How to make legal systems fair, less intimidating, more efficient and

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13 Whereas the notion international justice refers principally to relations between states and nations, the term global justice is being used here in reference to individuals and groups in global society who enjoy inalienable human rights.
responsive to the dignity, needs and rights of people who live in conditions of poverty? In brief, how to increase the responsiveness of legal systems to each and everyone?

**Poverty, constraints and reluctance in getting access to justice**

In response to such questions, some serious constraints must be mentioned that impede access to justice and find protection by the legal system. Constraints engender reluctance to use the administration of justice. At least seven major constraints might be briefly mentioned that prevent people living in poor conditions to make use of the legal system (Klein Goldewijk 2003, 170-172). First, national laws are not always drafted in favour or fairness to those who live in poor circumstances. Where the contents and implementation of the laws are against them, it is not surprising that they regard the legal system as their opponent. And where the legal system is part of prevalent injustices there is reasonable reluctance to use the legal system. This can be seen as one of the major motivations why people living in poverty are most often not using the legal system to prevent any further impoverishment.

Second, in many cultures there is widespread social shame and dishonour attributed to encounters with the law. Dealing with the law often means getting even more in trouble (Anderson 2003: 16-17). The reluctant attitude of people to deal with the law can thus be seen as a rational response to the risks that any involvement with the law and the legal system presents: “Alienation is inevitable when police malpractice goes unpunished, courts operate in a foreign language with formalistic procedures and obscure technical terms, and where the outcome is often determined by bribes or influence” (Stewart, Anderson et al. 2002: 20).

Third, people who live in conditions of poverty often live in illegality. This is reason enough to stay away from the legal system. They may live in squatter settlements, illegal forms of housing, on occupied land, or be engaged in informal work and illegal income-generating activities. They may also use most creatively the electricity net and go against urban planning policies. Contacts with the legal system, in such situations, can better be avoided (Stewart, Anderson et al. (2002: 20). Fourth, more frequently than others, people who live in poor conditions are looked down upon, face intimidation and humiliation. Illegal squatters, informal workers or displaced people are more likely to be subjected to arbitrary treatment or degrading and disrespectful behaviour by public officials; they are more likely to be ignored or mistreated, leading to the abuse of the full range of human rights. Fifth, people in conditions of poverty are meeting the legal system predominantly in its criminal law aspects. They face the law primarily in forms of criminal prosecutions and criminal law courts. This is often the most visible side of the law in everyday life. Sixth, in everyday life, those who are worse off may be more sensitive to facing double standards and non-compliance, or the general anti-poor bias of legal institutions. The misuse of human rights, the neglect of development goals, the unfairness of political decision-making processes that produce just more inequality, have made legal and political systems suspect and doubtful, and have increased general scepticism and disbelief.

Seventh, there are high financial and opportunity costs in dealing with the legal system. The lack of access to (financial) resources has created additional hardships and can be seen as decisive for the inability to use the legal system. Using legal institutions to get access to justice, taking lawyers into service and paying the costs of their fees, can be very expensive indeed or simply impossible when people live in poverty. Apart from that, there are opportunity costs: trying to get access to justice and preparing a well-founded case takes considerable time from income-generating activities, whereas there is always a possibility that the case may be lost.

**Lawlessness, (un)-rule of law and distrust of legal institutions**

It is generally accepted that the rule of law is the basis for the legitimacy of the state, thus preventing the arbitrary use of power. Yet, people in poor circumstances live increasingly in conditions of lawlessness: where the rule of law is absent or has completely broken down. Lawlessness is often accompanied by a huge abuse of power, most visible today in Iraq, Afghanistan, Cambodia, Indonesia, Colombia, Zimbabwe,
just to mention a few of the many countries where this happens. Un-rule of law implies a situation where extreme human rights abuses prevail, including disappearances, unchecked martial law, mass arrests and paramilitary units with license to torture and kill. Less brutal but nevertheless disastrous regimes maintain everyday repression by means of highly symbolical occasional arrests, police forewarnings, all sorts of restrictions and preventive detention (Anderson 2003; Stewart & Anderson et al. 2002). Lawlessness is most alarming: it creates and sustains a political vacuum and a decline in social connectedness. Where the rule of law is disrespected, societies lose any sense of humanity and thus a key opportunity to get people out of poverty, hardship and despair.

Lawlessness can thus be seen as part of the enduring conditions and manifestations of poverty. Obviously, the absence of a legal system directly affects the lives of those who live in poverty. They are the ones most at risk from lawlessness. In everyday life, lawlessness means a breakdown of trust in the legal system, chaos, desolation, an endless cycle of violence. It implies water and electricity shortages, lack of all basic necessities, overwhelmed hospitals, no reliance on public officials, or the judiciary and the police. In such situations a culture of fear expands: a basic fear for uncontrollable and unaccountable forces, fear for what might happen next, fear for the law. Imposing silence can be seen as integral part of the un-rule of law: silence induced by fear paralyzes. Putting people under constant tension, bringing them to silence, while depriving them of all basic means of subsistence has damaging effects with long-lasting consequences. Clearly, patterns of violence discourage any use of the legal system by people who live in poverty. Consequently, they might express a deep distrust of legal institutions and usually keep away from them as much as possible.

In conclusion, access to justice is most often restricted to those who live in poor conditions, the pursuit of equal access even more. Establishing the rule of law can therefore play a key role in poverty eradication and the improvement of access to justice. Yet, even where the rule of law is formally established, the main point remains: that people living in poverty are on the whole the least likely to be protected by justice institutions and have the least opportunities to address them. If two of the core dimensions of the maintenance of poverty are lawlessness and lack of opportunity, the question emerges how to realize an effective change of the conditions, structures and institutions under which poverty continues to exist.

Non-humiliating institutions, emerging needs and rights

As noted, there are serious structural and institutional constraints that prevent people from using the legal system to move out of poverty and get access to justice. Such obstacles just get worse under conditions of lawlessness. In the context of poverty this means: people who live in poor conditions not only face restrictions of their freedoms and exclusion from an adequate and decent standard of living. Poverty is also accompanied by inequalities of access to justice. These inequalities become humiliating when people are brought to a status of being rejected by legal and political institutions that have no other reason for existence than protecting their rights. This is the more urgent since people living in poor conditions are more likely to suffer from the abuse of their rights, mistreatment, intimidation, or being ignored and held down. Yet, even those who in the end would bring their case to court and have their ‘day in court’ may not always be convinced that justice has been done: “even those who win in court can lose in life” (Rhode 2003, 49).

The avoidance of humiliation and the affirmation of dignity seem, at first sight, to have less politically motivating content than notions of inequality and access to justice. But humiliation is inscribed in the social and political order: it has an influential potential in contemporary organisations and institutions, and has always been a forceful mechanism in the shaping of societies. In times of globalisation, humiliation has become highly visible as a form of social rejection and exclusion, as a breach of the entitlement to be respected. Humiliating institutions, implicitly or explicitly, convey the message of rejecting the humanity of people. And to allow someone in his or her institutional capacity to humiliate citizens is also to allow the institution to humiliate. Consequently, the elimination of systematic and institutionalized humiliation would
imply a change of institutional arrangements in global society, as well as the avoidance of institutional participation in humiliating acts.

For Margalit (1996), a decent society is one whose institutions do not humiliate people; a civilized society is one in which individual people do not humiliate each other. Maybe this distinction can be understood as the difference between public and private forms of humiliation. A non-humiliating society will avoid any form of discrimination against individuals and collectivities, both culturally patterned and institutional. When realism recommends that at least decent societies become the first aim, then the avoidance of public humiliation is the focus, as well as the (re)creation of institutions that are free from humiliating mechanisms.

This brings me to the following statement: in societies characterized by deep inequalities because of discrimination and neglect or deprivation and exclusion, access to justice has not only to be equal, but has also to address human needs that emerge from humiliating institutions. Let us at this point revisit the relation between needs and rights: how do emerging needs and rights relate? Where do they meet? Can they be seen as alternatives? And, what is the role of human needs in the construction and further development of human rights?

Today it is often affirmed that needs-related approaches, particularly prevalent in the field of development cooperation and humanitarian action, are extremely limited when compared to rights-based approaches to poverty and ineffective in poverty eradication programmes (Bengoa 2004). In fact, needs-based approaches seem to have fallen out of support, are discredited as traditional, associated with compassion and charity, and portrayed in blunt opposition to rights-based approaches. In exploring rights-based approaches to poverty, however, I see no serious grounds for the view that rights language should have superseded needs language. Needs and rights are different but therefore not incompatible. First, in the continuing development of human rights there has always been an internal relationship between emergent needs and human rights, which has to be sustained and seen in terms of mutual implication. Indeed, human rights correspond to concrete needs. And human needs have been framed as legitimate rights to which the state and increasingly non-state actors have obligations and responsibilities. Second, the standards of humanity and justice that motivate both development cooperation and humanitarian action continue to be firmly grounded in both human needs and human rights: contemporary global society cannot do without such standards.

Under a former development paradigm, food, housing, health, work and education were in fact conceived as basic needs. The emergence of a needs-based approach in development cooperation was a response to a general disappointment with growth-centred orientations. Soon the concept of basic needs was replaced by human needs. It was broadly recognized that human needs might become so critical that the existence of these needs is in itself a violation of human rights. The question now is: does human rights language provide the most appropriate vocabulary when facing persistent or emerging human needs? Needs-related language has the advantage that it is very concrete and tangible: “Talk of needs sounds somehow more compassionate, more open, more responsive, less aggressively individualistic …” (Waldron 2000, 123). What is more, those in poor living conditions most commonly express their needs in ways that come close to the context of their everyday lives and do not easily use the much more abstract language of human rights.

As soon as people set off to articulate their rights, their emerging or persistent needs activate the rights they struggle for. Yet when rights are proclaimed in international legal discourse, the language in which the concrete needs are expressed changes. Hence, the core content of a specific right (to adequate food for instance) is rarely self-evident: the entitlement to food does not imply a handout of food and does not

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14 UNDP clearly affirmed: “…a decent standard of living, adequate nutrition, health care and other social and economic achievements are not just development goals. They are human rights inherent in human freedom and dignity. But these rights do not mean an entitlement to a handout. They are claims to a set of social arrangements -norms, institutions, laws, an enabling economic environment - that can best secure the
appear to meet the immediate need. Moreover, in the process of formulating rights, the need itself can easily become invisible, obscured, forgotten. The contrary view, that by meeting the need for food also the right to adequate food would be realized is evidently nonsense. It cannot be affirmed that the right to food is fulfilled when food is sufficiently provided. It is the actual removal of the specific deprivation (food insecurity) that constitutes the fulfillment of the right to food. In other words, the realisation of rights is not the same as meeting or responding to human needs.

Where exactly do needs and rights meet? Of course, not all needs justify rights and it is not need alone which justifies a right (Klein Goldewijk & Gaay Fortman 1999, 48). It can be said that needs and rights meet when they are related to human interests and thus get moral and social legitimation. Obviously, needs are not moral and social statements per se: they get this force when they relate to the standard of humanity. Needs-statements are of themselves value-neutral but evoke a moral or humanitarian imperative to others to intervene (Waldron 2000, 123). Rights, in turn, are moral and legal entitlements per se: they get meaning by protecting the substance of these entitlements and by identifying corresponding responsibilities (Darcy & Hofmann 2003, 5). In other words, conceptualizing the need for food, or water and housing, in terms of rights emphasizes that meeting or protecting these needs relates to a human interest.

Since human needs encompass basic humanitarian standards, it is evident that such needs are rooted in human dignity: this is also the prerequisite of linking needs to rights.

The genesis and realisation of human rights can in fact be seen as a legitimation process of human dignity. When needs emerge because of humiliating institutions, and these needs are being recognized as human, valid and justifiable, they are also rightful, to be expressed in terms of human rights. In everyday reality, human needs emerge at different times in life, in different contexts and may change over time; they require the ongoing elaboration, clarification and further development of rights. Formal legal declarations, covenants and conventions are of course a useful but in no way a conclusive or an exhaustive framework for implementing rights. The human rights project has to remain open and open-ended. This reality of newly emerging needs that relate to humiliation thus urges a continuing reflection on dignity as fundamental standard of humanity, as well as innovative strategies for the implementation of human rights.

CONCLUSIONS

The concept of humiliation has both an analytical content and reflects everyday experiences: everyone knows what it is to be humiliated. Primacy was given therefore to the moral, legal and political significance of humiliation, most visible today in contexts of globalization and (counter)terrorist war, lawlessness and poverty. If strategies to abolish poverty need to become effective, they will have to relate closer to the living traditions, the cultural roots and identities of those affected by such contexts. Direct involvement of those concerned is the basic reason why the struggle against humiliation needs to get pragmatic and existential priority over the realization of goals such as global justice and equality of opportunity. My thesis is that the elimination of humiliation needs to be taken up as a primary step towards such goals. Whereas global justice and equality of opportunity are central notions in the view that poverty is a violation of human rights, it has become very clear that the everyday practices of humiliation are too elementary to be fully grasped in such terms. This was the reason why the basic standard of humanity entered the analysis. Of course, more specific ethical and political implications of the statement that poverty is a violation of human rights need to be taken up next: the further identification of appropriate legal instruments, the right to reparation, or the relation between rights-holders and duty-bearers. In fact, the notions of humiliation and dignity might provide the hard core for such further explorations, since they express two sides of the most fundamental standard of humanity.
Equal access to justice has been examined here as one of the main keys in commitments towards the abolition of poverty. This requires major efforts to make legal and political institutions accessible and more responsive to those who are worse off. Such efforts also demonstrate that human rights motivate towards social change and transformation of political and legal institutions. And this is amongst the core implementation issues of human rights today. A rights-based approach to poverty illustrates that not only the existence of the condition of poverty is objectionable, even more so certain forms of social inequality (often associated with poverty) that reject the humanity of individuals.

The avoidance of humiliation, particularly in the public domain, can be seen as a moral and political obligation that is derived from human dignity as the foundation of human rights. Dignity is often seen as a self-evident and unconditional humanitarian standard. The complexity of its justification has clearly been demonstrated. Yet, if human dignity would be abandoned it would be replaced instantly with a similar standard to maintain some basic coherence in the human condition. Most analyses in the field of human rights note the wide gap that persists between the fundamental principles or standards of human rights and the practice of their structural non-implementation. For that reason a more pragmatic and realistic perspective was presented: UNESCO’s concrete involvement in social and cultural transformation by (re)creating institutions that are free from humiliating mechanisms. The ultimate goal of the abolition of poverty through the framework of international human rights might become more tangible, more visible, by taking up such an elementary and relevant challenge.
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