

# POVERTY AS A MATTER OF JUSTICE

SILVINA RIBOTTA<sup>1</sup>

**Abstract:** Poverty is the outcome of the unequal distribution of resources reinforced by a legal, political, economic, and cultural model and is the central expression of social injustice. The impact of economic inequality on humanity's quality of life can be better explained from the perspective of basic needs and their ties with rights, the unequal opportunities and their connection with the degree of autonomy that situated individuals effectively enjoy, and the effectiveness of public policy and the responsibilities and duties of the governments. This article discusses the close (and not visible) ties between justice, law, and poverty, emphasizing that the current legal framework -even the human rights system- legitimizes an unequal status quo that prevents real access to and enjoyment of rights and freedoms for people living in poverty conditions. Moreover, it also endangers democratic stability.

**Keywords:** Poverty, economics inequalities, social injustice, basic needs, equality of opportunity, autonomy, democracy.

**SUMMARY:** 1. WE MUST TALK ABOUT POVERTY (BECAUSE THE TOPIC IS AVOIDED). 2. POVERTY AND INJUSTICE (BECAUSE POVERTY INVOLVES SOCIAL INJUSTICE). 3. POVERTY, UNEQUAL OPPORTUNITIES, AUTONOMY, AND RIGHTS (BECAUSE WE ARE NOT FREE IF WE ARE POOR). 4. LAW AND SOCIAL JUSTICE (BECAUSE LAW LEGITIMIZES SOCIAL INJUSTICE).

## 1. WE MUST TALK ABOUT POVERTY (BECAUSE THE TOPIC IS AVOIDED)

We must talk about poverty, mainly because too many avoid the topic. Poverty is discussed euphemistically, not to mention hunger, deprivation, despair, unemployment, exclusion, or death and disease due to poverty. These are day-to-day realities for millions of human beings worldwide. Still, the global community, the United Nations, International Organizations and regional supranational Organizations, governments, domestic legal frameworks, human rights protection systems (both at regional and international level), and even scholars and academia turn a blind eye. Discussing about poverty diminishes scholarly discourses and narratives, and simplistically and maliciously, some ideologically tie those to anti-democracy and anti-establishment approaches.

Far from that, discussing about poverty is essential for the law, the stability of democratic governments, and quality of life of humanity and the Earth's overall balance. Poverty must be a central subject for politics, economics, sociology, ecology and environmental sciences, history and social sciences and, obviously, for legal studies.

---

<sup>1</sup> Silvina Ribotta, Associate Professor (Profesora Titular) of Philosophy of Law, Political Philosophy and Human Rights, Carlos III de Madrid University-Spain (silvina.ribotta@uc3m.es). ORCID Number: 0000-0002-7698-6596. This article has been finalized during the stay as *visiting professor* at Università degli Studi di Brescia-Italia (april-june 2022). Is published as part of the PROJECT DER2016-76078-P "Condicionantes sociales de la salud y justicia: los desafíos del derecho a la salud", Programa Estatal de Investigación Científica y Técnica de Excelencia del Ministerio de Economía, Industria y Competitividad.

However, ironically (or perhaps with political intention), poverty has lost some momentum as a relevant topic and *has been made* invisible in political, social, and economic debates as well as in legal discourses. Apparently, it is not rigorous or relevant to talk about or make a research about law and poverty, access to justice for poor persons, criminalization of poverty, unfair distribution of wealth in the world, poor migrants, intersectionalities between poverty and gender, poverty and disability, poverty and indigenous populations, poverty and LGBTQ+ individuals, poverty and childhood, poverty and racism, among many other aggravating situations of discrimination and vulnerability<sup>2</sup>.

Even more, poverty has been totally neglected, as if there was nothing to do about it other than assuming it is a natural outcome of resource scarcity, the only possible result from the only possible economic and political model. Thus, poverty can only be confronted by trying to mitigate some of its effects. In 2000, the first of the United Nations Millennium Development Goals was to eradicate extreme poverty and hunger. In 2015, the United Nations adopted the 2030 Agenda for Sustainable Development to renew the unfulfilled commitment to end poverty in all its forms throughout the world, now for the period 2015-2030 (UN 2015). And, although the Agenda provides meaningful commitments, such as taking urgent action to combat climate change and its impacts or promoting peaceful and sustainable societies, the need to reduce inequality within and among countries is situated in goal 10. Self-evidently, this does not convey the extreme need and urgency attached to poverty nowadays, disregarding the millions of underprivileged human beings suffering bad living conditions and dying due to poverty all around the world. Moreover, those actions do not demand properly (and not mention) structural changes that required the genuine goal of eliminating extreme poverty (Alegre 2007: 242-244).

Indeed, if we look the world in the face observing the various social and political realities, we will notice that we have structured and consolidated models of State and law that are functional to a model of exclusion and systems of hierarchies of rights distanced from the real needs of human beings. However, poverty-related matters as what poverty involves, its causes, how its ties with the way we have arranged access to resources, how it allows or prevents to enjoy individual freedoms, the enforcement of rights or life itself, and its connection with democracies and their stability remain side issues for research, debate and policymaking as legitimate justice claims.

Obviously, major human rights organizations, academia, politics, economics, sociology and legal scholars must overcome the reluctance to discuss and research poverty-related topics, and acknowledge the economic aspects of rights, since economic inequality and poverty are not only economic issues. In fact, they are mainly issues to rights and human rights (Alston 2015: 1). We can no continuous disregard the close ties between human rights, poverty and inequality, acting as if resources, redistribution and promoting human rights were unrelated. Moreover, particularly not now, because this world pandemic has taught us that illness, life and death have a lot to do with our place in the social structure (Garret 2020 [1995]; Wade 2020). No one develops its abilities regardless of its

---

<sup>2</sup> See my approach to poverty and intersectionalities because of COVID pandemic in Ribotta 2021a.

position in society's class structure, the sex-gender structure, ethnic structures, capability-based structures and, generally, the social, political, cultural and economic structures of this unfair world. Indeed, every advantage and every disadvantages are severely impacted by our place in social stratification. Social structures deal the cards, providing different life opportunities and enabling or preventing the exercise of rights and freedoms, the enjoyment of life and quality of living, even illness and death (Ribotta 2021b).

Departing from this premise, I will discuss the close ties between justice, law and poverty, particularly assuming that poverty is the result of a specific (and unequal) resource distribution reinforced by a legal, political, economic and cultural model. These ties could be examined from various approaches. I will discuss them by advocating a very specific concept of poverty with regard to economic inequality, emphasizing that the current legal framework, compatible with human rights, barely relies on basic needs to justify or support the various rights and entitlements or at least understanding those as good reasons for the justification of rights. Thereby, legitimizing an inequality-based *status quo* completely detached from basic needs, thus preventing real access to, and enjoyment of, rights and freedoms, reproducing the structural conditions of poverty that make it impossible for people to be genuinely autonomous. Relying on these insights, I will argue that extreme poverty is a major expression of social injustice, empirically linked to economic inequality and which the law fulfills legitimizing and reproducing roles of that injustice. Non-fulfillment of basic needs of the underprivileged within contexts of major economic inequality does not only show utmost unfairness, but also the potential to shorten that gap by implementing redistribution approaches aimed at achieving social justice.

## 2. POVERTY AND INJUSTICE (BECAUSE POVERTY INVOLVES SOCIAL INJUSTICE)

When we say someone is poor or discuss situations of poverty, we are generally referring to deprivations, i.e., to the scarcity of necessary resources and commodities and to the subsequent impact of such scarcity on the lives of people in need. However, the analysis of this impact on people's lives, a deep understanding of poverty and its causes, and how to tackle it, are directly dependent on our conceptual and ideological framework. For instance, poverty is usually connected with food shortages, but it is not often tied to the lack of freedom or autonomy. Among the various approaches to the notion of poverty, it is worth noting the concept of *multidimensional poverty* or the global Multidimensional Poverty Index (MPI) embraced in 2010 by the United Nations Development Program (UNDP), which replaced the Human Poverty Index (HPI). The MPI considers poverty as a multidimensional phenomenon connected with health, education and quality of life<sup>3</sup>, with the aim of providing more accurate poverty measurements and a better assessment of the Human Development Index (HDI), the Inequality-adjusted Human Development Index (I-HDI) and the Gender Development Index (G-HDI).

---

<sup>3</sup> The Report explains the new developments and innovations in poverty and inequality measurement, focusing on the IHDI, the GDI and the MPI (UNDP 2010: 85-101). Technical note 4 explains the calculation of the MPI (UNDP 2010: 215 and 221-222).

Some of these efforts in defining and accurately measuring and assessing poverty stem from Sen's works. He views poverty as the deprivation of basic *intrinsically important* capabilities-functionings, in contrast with income that defined as only instrumentally important. So, he shifting the focus from the means, commodities and resources to the capabilities or ends that individuals have reason to pursue and, therefore, to the *freedoms necessary* to enable them to satisfy these ends (Sen 1973: 229; Sen 1992: 54-67; Sen 1999: 99 ff. and 351 ff.; Nussbaum & Sen 1993: 56-64)<sup>4</sup>. Consequently, Sen warns that poverty should be construed as the deprivation of capabilities as functionings leading to the non-fulfillment of a minimum standard of living, due to deprivations, lack of income and other factors related to the cultural, family, social and personal context (Sen, 1973: 224 and 241; Sen 1992: 124-127; Sen, 1999: 114 ff.; Nussbaum & Sen 1993: 68). The lack of income is essential in the deprivation of capabilities and paves the way for an impoverished life. Nevertheless, many other factors better account for the deprivation of capabilities and show more clearly the situations of poverty. Still, the lack of rent and income is merely circumstantial and conditional. Therefore, deprivations will depend on other related aspects, such as personal heterogeneity and social conditions, resource distribution within families, environment-related diversity, weather conditions, epidemiological factors, geography, social environment, historical, cultural, and political contexts, or the differences in culturally biased relationship perspectives<sup>5</sup>.

Poverty is not a matter of little well-being but of the *inability* to achieve such well-being precisely because of the lack of resources. These resources play a relevant role but do not have a decisive role because having enough economic resources cannot be assessed, disregarding the real possibilities of turning such resources into capabilities. Income only tells part of the story, while the whole story will depend on the person's ability to function, relying on such income or resources. Thus, assessing how people can transform their available resources into capabilities and functionings matters. It will not be an easy process: personal and social conditions, age or capabilities-disabilities, health status or illness, among other factors, can make people more difficult or reduce their ability to obtain resources. Also, converting income into capabilities will become more complex because of the parametric variations due to personal characteristics and circumstances. In sum, the point is not if the earnings are *reduced* -in terms of quantity-, but whether they *suffice* to be converted into acceptable capabilities. Accordingly, individual capacity mainly expresses one's freedom to achieve valuable capabilities. Therefore, capacity is primarily a reflection of the freedom to acquire valuable functionings by identifying the actual alternatives that are offered to people. That is, capacity represents a person's freedom to achieve their well-being. For this reason, the freedom of choice is directly

---

<sup>4</sup> A rich person that voluntarily chooses to fast or to take a vow of poverty can be undernourished, just like a person with no resources. However, although the outcome may be the same, the rich person's capability set is very different from that of the poor person when the first freely *decide not to* eat. Fasting involves choice and freedom.

<sup>5</sup> Sen makes differences between a person's well-being, the characteristics of commodities, personal functionings and capabilities, and the resources needed by persons to achieve such functionings. All of these are different but interconnected concepts that, overall, embody the human functionings-capabilities to attain freedoms (Sen 1985: 9-10 and 25-26).

important for the quality of life and for the well-being of a person; obtaining well-being is not independent of the process through which people achieve various functions and of the role that their decisions play in those choices.

The capabilities approach thus allows assessing the performed functionings as those that a person *is able* to conduct, or the set of capabilities available to such person as *real opportunities*. The first assessment will give us information on *what a person does* and the second will reveal *what a person has the fundamental freedom to do*. In this connection, Sen argues that the human capability approach mostly focuses on the fundamental freedom of individuals to live the life they have reason to value and to increase the real options among which they can choose. Thus, a person, considering his or her individuality, and the individual, family and social context, has capabilities to do or be what he or she has reasons to value. There can be direct reasons for action if the involved functioning can improve someone's life or clearly impact on his or her welfare (being well nourished or healthy) or indirect reasons, where the involved functioning can increase benefits, better one's social position, or affect production or the market (Sen 1992: 75 and 81-83)<sup>6</sup>.

Therefore, I assume that poverty is always a *state* in which people or groups or States find themselves, as a temporary condition and not as a permanent state, making a relevant difference between *poor persons* and *persons who are living in a poverty condition*<sup>7</sup>. When we assume that persons *are* poor or that individual X *is* poor, we construe poverty as a feature of one's *identity*, attaching it to notions such as *responsibility*, *being deserving of something*, or *blame* for poverty. Thus, we interpret poverty as a feature that is there to stay, with a vocation for permanence. Indeed, we connect poverty with particular features or traits that identify people as poor, thereby tying poverty to specific behaviors, cultural patterns, organizational and personal habits, or family structures. It is worth noting that we tend to explain poverty because of actions or omissions by individuals, groups, or even countries/States, inferring that they are being poor as a direct result of the exercise of their freedom because of their will and actions. Thus, making invisible the structural and contextual conditions in which these people live, and these aspects become directly attached to the poor and poverty and negatively impact poverty public policy. Reinforcing this idea, we usually associate poverty with resource scarcity, and thus with the inability to change the advantaged-disadvantaged scale or share, which has even been explained by major theories of justice like Rawls's theory<sup>8</sup>.

---

<sup>6</sup> Sen examines how the complexity of the concept of freedom affects the functionings-capabilities approach. Noting that, when we weigh social and economic inequality in the world—in terms of being able to prevent illnesses, hunger or early mortality (being free from illness and being free from hunger), we are examining differences in well-being, but also any fundamental freedoms enabled or prevented by these situations. Thus, there is a difference between *being free* from hunger and the remaining freedoms arising from not being hungry. The relevant part of assessing the notion of being free from hunger is to determine if there is a dimension of freedom related to hunger, other than the freedoms arising from being free from hunger. This approach draws major criticism. For instance, Cohen argues that Sen puts forward an ambiguous notion of freedom, because he thinks that being free from hunger is not, by itself, an exercise of freedom (Cohen 1993: 47 ff.).

<sup>7</sup> In Spanish language is more understandable the difference between *estar* and *ser*, the difference between *ser pobre* and *estar pobre*, because a different word is used.

<sup>8</sup> On the criticism of justice theories, especially of egalitarian theories of justice by John Rawls, Ronald Dworkin and Amartya Sen, see Barry 1973; Blocker and Smith 1982; Daniels 1975; Gargarella 2009; Ribotta 2010.

Nonetheless, if we assume that poor persons are because of a circumstantial condition of their present existence we change the frame of analysis. Our consideration changes, shifting the focus of study from the person to the socioeconomic context within which the individual lives in poverty, assessing poverty as a temporary state of being, which is therefore modifiable. We do not only make a change of word but of concept, through which poverty would be construed as a condition in which people live situated in specific social, political, economic, cultural, and historical conditions, and where individual responsibility plays any role but does not fully explain the state of poverty faced by the individual.

Poverty should be no longer considered only as the outcome of freedoms by poor people. Rather, they should consider the result of specific deprivations and struggles suffered by those people and their strategies for survival tied to the available resources, valuing poverty as a state, a condition, which can change and be modified. So, being responsible or being deserving definitely have to be examined in light of the underprivileged lives of persons due to the decisions they have made, but they do not only depend on those decisions. In fact, these conditions have a lot to do with the socioeconomic context and the general circumstances surrounding a person's life. These conditions cannot be directly explained by human agency.

Conversely, they are more closely related to social and political responsibility and duties of accountability and government's responsibilities<sup>9</sup>. As pointed out by Nino, individuals are not truly autonomous if they lack sufficient resources to fulfill their needs and exercise their freedoms, at least in two moments. When choosing one's own life plan, including the freedom to select and create such a plan, and when realizing those life plans, since it would make no sense to choose life plans that cannot materialize or materialize life plans that have not been freely chosen (Nino 1990: 24). This clash between choice/definition and realization revolves around the availability of resources or lack thereof in quantity and quality to carry out our plans of life, considering that resources are finite. Therefore, Nino warns that the scarcity of resources does not only limit the ability to define or choose life plans, but can also undermine or enable the realization of the plan. Additionally, the impact of resource scarcity is not always the same, because one could have little or abundant resources at his or her disposal when sketching the life plan whilst lacking these resources when it comes to developing it.

As a result, the dimensions of autonomy and choosing/defining and realizing life plans are based on material conditions and resource availability. Moreover, the most unsuitable condition for the full enjoyment of personal autonomy is poverty, regarding both the choice and implementation of life plans, since poverty always entails deprivation and limits in liberties.

Accordingly, poverty cannot be considered the result of individual decision-making, a natural condemn or fate. Rather, poverty stems from a structural and contextual socioeconomic situation that affect individuals that can thus be modified or reversed.

---

<sup>9</sup> See Wenar for a meaningful analysis on responsibility and poverty, roles and the types of responsibility (Wenar 2007).

Something can be done, socially and politically, or could be required, in order to change the situation (in terms of teleological egalitarianism<sup>10</sup>). To change the rules that are leading to poverty and that are linked with the *material conditions of individuals' social origins*. Such conditions have a decisive influence on autonomy, at all levels, they are closely tied to the various dimensions of equal opportunity, and those considered *natural* talents and desert.

This line of reasoning entails taking a theoretical-conceptual approach to poverty as well as an ideological stance regarding the causes, implications, the possible ways of overcoming or solution and the kind of policies implemented to mitigate or tackle poverty. People are poor, rather they are living in poor situations as a social condition outside their will and choice or, in any case, the direct responsibility of poor people, as a concrete intention or will to find themselves in the situation of poverty or, in terms of Sen, as an exercise of their freedom. Better said, persons/societies/countries can be impoverished because of a social condition that is beyond of them will or choice and beyond their direct responsibility.

Admittedly, poverty and scarcity are related to the finite amount of natural and material resources required for the fulfillment of personal and social needs. Obviously, there are resources that qualify as essential for life but remain scarce, since all resources are, by definition, scarce within the limits and sustainability of our planet. However, this is not involve that scarcity justifies an economic and political dominance model rooted in an unequal way of producing and distributing world resources. One thing, therefore, is to affirm that the world's resources are scarce and that poverty explains why they are scarce in terms of availability in some part of the world or for some person or group of persons, and quite another to understand that there is poverty in the world because resources are scarce. Scarcity does not entail that certain persons or groups have little resources or none at all. In the world we live, there are shortcomings in specific social contexts or within certain social groups or locations, but this scarcity does not have a global scope, it does not affect the world population as a whole.

Consequently, extreme inequality must be construed as an untenable and unjustifiable barrier preventing the effective enforcement of human rights within our current socioeconomic and political contexts, evidencing the close empirical-conceptual ties between economic inequality and poverty. This approach gives rise to an axiological and political criterion regarding poverty and inequality, also requiring taking a stance on justice (Alston 2015:1).

Thus, although there are many demonstrations of poverty, the most significant is being hindered access and unavailability of resources, income and commodities as satisfiers of basic needs, which leads to shortcomings in terms of economic, social, political and legal power because prevent individuals from satisfying their *basic needs*, developing their *basic capabilities* and exercising their *real freedom*. Moreover, it is not a matter of amount of resources, but rather of resource distribution.

---

<sup>10</sup> As explained by Parfit 2002: 81-125. See my insights in Ribotta 2021c.

Therefore, it becomes a matter of justice, because there are specific actions that could rearrange or restructure society to make it fairer. There are possible actions, also in the field of law. Claims that we can make to the legal system in a concrete and direct way, such as its contribution to the invisibility of a clear structural problem, regulating rights disregarding or neglecting the fulfillment of basic human needs, consolidating social inequality structures based on major economic inequalities and perpetuating inequalities in the effectiveness and enforcement of rights. As noted by Alegre, we should urge States and public authorities in general not to simply deal or manage poverty and the effects thereof, but to decidedly try to eradicate it (Alegre 2007: 237; Alston 2015: 3).

In addition, to examine better the relationship between poverty and inequality we must first understand the key role of basic needs and how they intertwine with the rights framework and the human rights framework in particular. The current legal framework, in general, even human rights framework, barely relies on basic needs to justify or support the various rights. Among other consequences, social rights are pushed into the background, dismissed and subordinated to civil and political rights, undermining the very democratic core of modern State (Campbell 2007). Although, the approach to needs has often been rather unappealing and unsystematic, as well as full of prejudices and not as meaningful as it should have been. Current egalitarian theories of justice discuss human needs in a fearful and naive manner, through misleading and non-knowledgeable approaches or in a suspicious or distrustful way (Dworkin 1981: 70-86; Rawls 1999; Rawls 1993: 79-85; Ribotta 2008; Ribotta 2010: 122-216)

There is a wide array of approaches to needs that provide many concepts, constructs, stances and categorizations thereof<sup>11</sup>. Aside from each theory's specificities, broadly, they all draw a line between needs and rights, needs and satisfiers, although some authors confuse these elements or misuse them. This debate becomes particularly fruitful regarding the conceptualization and the role of needs as foundations of rights.

I assume that we should not confuse needs and rights, because needs can (and should) primarily qualify as justifications or grounds for the provision or acknowledgment of rights (De Lucas and Añón Roig 1990: 58; Añón Roig 1994: 283 ff.). Also, needs should be construed as non-conclusive reasons to action, orienting or guiding decision-making unless other factors indicate otherwise. On top of that, identifying an unfulfilled need is, by itself, a good reason for fulfilling it, although it does not necessarily provide grounds for granting a right<sup>12</sup>. The notion of needs I advocate is based on the distinction

---

<sup>11</sup> Añón Roig explains the various theories of needs and provides approaches to the definition of needs. Añón Roig 1994: 33-93, 93-147 and 151-193. Among others, see Braybrooke 1987; Doyal and Gough 1991: 193-304; Galtung. et al. 1980b; Marmor 2003; Miller 2002; Nussbaum 2000; Wiggins 1987; Zimmerling 1990.

<sup>12</sup> See Pogge's analysis of whether there is (or we can lay down) a right to basic needs, meaning a *right to the fulfillment* of basic needs. Pogge wonders if needs themselves can give rise to a right to fulfillment and examines how the claims for subsequent obligations to address extreme poverty should work, without entailing extraordinary claims against other stakeholders (Pogge 2007b: 14-15). We can establish a connection between this and Ashford's analyses on positive and negative obligations within the hypothetical human right to basic needs (Ashford 2007).



between needs and need satisfiers, and needs and preferences, where needs prevail over preferences (Frankfurt 1988; Braybrooke 1987: 60-75). For these distinctions, we must draw a boundary between the non-volitional aspects of needs over the volitional aspect for the preferences, as well as between the biological need to preserve life and the sociocultural constraints of situated individuals<sup>13</sup>. From certain structural preconditions (socio-environmentally balanced setting construed as adequate natural and social environment for the development and fulfillment of needs), I make a distinction between basic needs and needs arising from satisfiers, distinguish between adequate satisfiers and preferred satisfiers, basic needs (comprise absolute or strictly human needs and relational or social needs) and preferences. Need satisfiers are defined within the situated social context of the person in need, as specific location, time and cultural context, and they are conditioned by historical, economic, cultural, political and social (Galtung 1980a: 60-72). Although, admittedly there are unique or essential satisfiers, like water and air, and access to situated energy services (Thomson & Snell 2013: 52, 563-572, among others). These resources must be available in public access, in sufficient quantity and quality to preserve human life and allow for human development. Therefore, they qualify as cross-sectoral satisfiers fulfilling all human needs.

Unquestionably, in situations of poverty and unfulfilled needs, human beings are neither free nor truly autonomous. Although the causes of poverty are complex, poverty is unquestionably a matter of structural injustice related to the distribution of world resources as well as domestic resource allocation inside each State<sup>14</sup>. As a result, there are significant economic inequalities empirically leading to poverty. Economic inequality is a major cause for poverty and the greatest obstacle to eradicating it<sup>15</sup>. The uneven distribution of wealth is the proof that there are sufficient resources to eradicate poverty (or mitigate it, at least) prioritizing the most urgent or *strictly human needs*, which are those that allow human life in adequate conditions. The degree which makes—both poverty and inequality—concerning or unfair, will depend on the gap between both sides of the inequality spectrum, of how low the lower limit is and if it is enough to cover basic needs within a specific, diverse and situated context in which people live.

---

<sup>13</sup> See my approach to needs and the categorization thereof in Ribotta 2011.

<sup>14</sup> Pogge explains the causes related to *interactional harms*, *interactional failures to alleviate*, causes related to social institutions and those tied to the contemporary world order (Pogge 2007a: 16-51).

<sup>15</sup> Economic inequality is not the same as income or wealth inequality. Rather, it has to do with unequal access or unavailability of appropriate satisfiers (income or resources) which, on top of personal, social, and contextual factors of the individuals involved, prevents them from developing and pursuing their basic capabilities. Income and wealth thus qualify as means that enable access to resources and refer to two distinct tiers of economic inequality. Within contexts of economic inequality, wealth inequality will often exceed income inequality. Moreover, as income inequality increases, it becomes easier to generate more wealth, thereby widening the wealth gap (except in bad strategies or bad luck). Also, there could be social scenarios with something close to income equality although showing deep wealth inequalities triggered by inheritance policies and laws based on strong social stratification criteria, without social mobility. Both income and wealth inequalities are closely tied and affect each other, but they are conceptually different, arise from separate economic dynamics, and neither fully explain nor cover economic inequalities or all the dimensions thereof.

Accordingly, the philosophical, legal, economic and political concerns about economic inequality and poverty should go beyond noticing that some people are wealthier than others are, and have more (or less) resources, to develop their life plans. Philosophy, law, economy and political and social science, in general, should focus on how economic inequality lays the groundwork for poverty and leads to it, preventing the underprivileged from exercising their basic capabilities on an equal footing and thus preventing them from enjoying their freely chosen life plans. Moreover, it has a severe impact on the democratic stability of each State and the world system.

Likewise, to fully grasp the overall impact of economic inequality, we must differentiate it from other forms of inequality, assuming human diversity and the heterogeneity of our social and natural contexts affecting our lives. Thus, individuals are equal human beings, equality being a social construct, but completely different in terms of internal and external human traits (physical, psychological, cultural, and moral traits) determined by our social, economic, religious, cultural and historical context (Añón Roig 2001; Atkinson, Glaude and Olier 2001; Temkin, 1996: 19-52; Williams, 1970). Therefore, whereas difference is descriptive, equality is a normative concept and refers to the constructed social arrangement requiring that all persons be treated equally as justice criteria. Inequality, on the other hand, results from the way us human beings arrange ourselves and distribute resources and social assets, as well as from the societal positions arising from such arrangement and distribution. Briefly, inequality is a historical, cultural, economic and legal phenomenon tied to social stratification and can turn into a serious social issue (De Lucas 1996: 493; López Aranguren 2005: 60 ff.).

Accordingly, social differentiation is inherent to all human beings, but social inequality is based on context and has to do with the positions held by individuals within any given social structure. Those positions are linked to major and traditional grounds for discrimination, as sex-gender, ethnicity-race, social or cultural background, or socioeconomic status. There are additional sources of inequality based on age, talents, capabilities-disabilities, nationality or religion, among others. All of those grounds for discrimination and inequality works as intersectionalities and are transversally tied to heteropatriarchy and colonialism (Kerbo 2000: 11 ff.)<sup>16</sup>. In consequence, these forms of inequality are connected, they overlap and influence each other in various ways depending on social context and historical, political or economic moments, thus establishing various hierarchies and having various situated implications for the quality of life and rights. However, taking a poverty-based approach, economic inequality can be the most harmful inequality, being able to directly predetermining the remaining social inequalities and hindering possible strategies to overcome these inequalities and furthering the exclusion of underprivileged groups.

---

<sup>16</sup> These aspects trigger various inequalities due to the social assessment of societal differences, leading to a different consideration of individual features or an unequal or hierarchical arrangement of social roles (standing, honor, social status). Moreover, because certain social positions place some persons in a more suitable position to access a more significant share of goods and satisfiers (social inequality in terms of access to privileged social positions, wealth-poverty).

As a result, economic inequality operates as an *aggravating factor for inequality, vulnerability and discrimination*<sup>17</sup>, creating a vicious circle in economic inequality scenarios that chronicles the economic inequality itself and its most direct and grave consequence, the poverty. This endemic inequality is mostly due to an ongoing legacy of unequal opportunity, based on an injustice social stratification system that deepens inequality even more and the discrimination against them resulting therefrom. Consequently, economic inequality can thus qualify as a context allowing for *questionable poverty*, as a claim for justice, where poverty is defined in relational terms and examined as a social issue that demands political and social actions. Anyway, poverty is tied to situations where resources can be redistributed more fairly or in a given redistribution that can be assessed in terms of justice or injustice.

Poverty can also be assessed in comparative and relative terms. So, while a given society can fulfill greater and more sophisticated needs for some of its members, the needs that can be fulfilled by such society for all of its members must will also increase. Indeed, the greater the available options for that society in terms of overall wealth, the greater its potential to fulfill a wider range of needs for all its members, not only including basic needs, *strictly human needs*, but also cultural and social needs and the preferences. There is a significant connection between the overall degrees of economic development achieved by a concrete society, its form of government, its internal economic inequality, the quality of life of *all* its members. Moreover, at the same time, the assessment that the situation of poverty is more unjustifiable and unfair. This allows *shifting* the degree of poverty and inequality qualifying as unfair based on the overall society's wealth or the quality of life enjoyed by a share of the population compared to the poorer share. In order to re-assess the scope for political, economic and legal actions and decision-making for mitigating poverty and inequality and for contextualizing and putting into perspective potential justice claims.

Based on these arguments, I assume that poverty is an outcome of economic inequality, which results from a distinct and deeply unequal arrangement and allocation of resources reinforced by a legal, political, economic and cultural model. The impact of economic inequality on humanity's quality of life can be better explained from the perspective of basic needs and their ties with rights -social rights, in particular-, the effectiveness of public policymaking, and the unequal opportunity and its connection with the degree of autonomy that actually enjoyed by situated individuals.

### **3. POVERTY, UNEQUAL OPPORTUNITIES, AUTONOMY, AND RIGHTS (BECAUSE WE ARE NOT FREE IF WE ARE POOR)**

Indeed, impoverished human beings are enslaved to their shortcomings, hardships and deprivation, as well as to the various sources of social oppression entailed thereby. Sadly, the law and legal frameworks play a major role in furthering and consolidating hindered access to, and enjoyment of, rights and entitlements, thereby distorting equal

---

<sup>17</sup> I discussed this matter in detail in Ribotta 2020.

opportunity and reproducing structural poverty. Under structural and circumstantial poverty conditions, an anthropologically empty freedom is enjoyed, thus creating a vicious circle of *inherited unequal opportunities* based on a social stratification system where social classes act like castes. In fact, social classes acts like castes with the law legitimizing the unequal opportunities and strategies of life allegedly based on merits-desert and innate talents, through policies that further consolidate a strong and deeply rooted social stratification with barely any social mobility (or none), tied to a strict and hypocritical system of individual responsibility<sup>18</sup>.

Equal opportunity has been widely discussed from many stances, including the most egalitarian positions and the utmost liberal approaches (Arrow, Bowles, Durlauf 2000: Part III; Barry, 1988: 23-46; Bowie 1988; Roemer, 1998). In order to present the controversial issues in line with my arguments, Cohen's classification is highly illustrative, because for him, equal opportunity removes obstacles to accessing the opportunities available to some people but not to others (Cohen 1989; Cohen 1999; Parfit 2002).

First, Cohen distinguish a minimum equal opportunity standard that ends restrictions on equal opportunity based on socially constructed status, as those experienced by serfs in feudalism or black people within racist societies. This kind of equal opportunity widens the range of feasible options for people, removing the restrictions arising from pre-awarded rights and social perceptions. Thus, it is an inclusive equal opportunity brings all persons into dynamics of democracy and freedom. Obviously, is extremely important for the exercise and enforcement of rights, as well as required for democracies to work, particularly in ours liberal modern times. However, it most certainly does not suffice to secure equal opportunity.

The second model of equality of opportunity goes a step further, because it tackles the restrictive social effects disregarded by liberal equality, as circumstances at birth or education. They have the ability to exclude people, not because they award a lower status from the outset, but because they throw individuals into poverty and poverty-related deprivation. Indeed, deprivations and hardships addressed by the second kind of equal opportunities approach to equal opportunity directly arise from personal circumstances, where their ability to restrict freedoms has nothing to do with social perceptions or pre-awarded rights. So, when these equal opportunities is fully achieved, their natural talents and choices determine the fate of people. Thus, under this approach, whether some people are better off or worst, not depends on their social background. For this reason, correcting social disadvantages but not innate or birth disadvantages, which qualify as structural. This kind of equal opportunity thus remains compatible with considerably unequal outcomes.

Cohen's third kind of equality of opportunity is the so-called socialist equality of opportunity. Under this approach, inequalities stemming from innate or structural differences are as unfair as those arising from unwanted social backgrounds are. Socialist equal opportunity seeks to remedy any disadvantages that have not been chosen, disadvantages for which the person involved cannot be reasonably held accountable,

---

<sup>18</sup> The current levels of income inequality far exceed what can be justified because of talent, personal effort and merit. See Piketty, 2014: 302-448, among others.

whether disadvantages reflecting social misfortune or natural misfortune. If socialist equality of opportunity prevails, differences in outcome solely reflect differences in tastes or choices, but not different capabilities or differences innate talents or social powers. So, under this kind of equal opportunity, income gaps are acceptable if they only show different preferences (as wanting higher earnings or more spare time).

Cohen argues that socialist equality of opportunity is the closest to achieving equal outcomes for all, since no egalitarian thinker could challenge these outcomes because such differences do not amount to inequalities in life advantages unless individuals can be held accountable for them. Instead, the previous approach to equal opportunity supports that not chosen social disadvantages may be detrimental to people, but it does not inquire about what makes social disadvantages unfair. If these disadvantages are unfair just because they were not chosen, insofar as natural disadvantages neither are matters of choice, no this model of equality advocates should reject the socialist approach to equality of opportunities. This shift to socialist equality of opportunity can only be rejected by those who draw a distinction between social and natural disadvantages claiming that social disadvantages are unfair due to additional reasons other than being not chosen or unwanted

This approach to equality of opportunity is based on Cohen's theory of equality, aimed at reducing or eliminating involuntary disadvantage or, in the words of Parfit, which certain people not be worse off than others (Parfit, 2002). It is a largely relational proposal, where only equality (and not priority) can remove such disadvantage<sup>19</sup>. *Access to advantage* refers to any asset, regardless of how the person obtained it, even if it did not entail any exploitation or exercise of capabilities, since it requires considering all states of persons, including those situations that have neither been caused or triggered thereby, as desirable states achieved without exercising any capability (Cohen 1993). In Cohen's view, the key distinction should be between choices and luck in determining persons' fate, since a person should be considered exploited when advantages are distributed unequally and suffers from bad luck that is not the product of risky decisions that they could have been avoided. What matters is that there be no major inequalities regarding what is necessary, since having opportunities does not ensure that persons have actual access to the advantages offered to them as opportunities (Cohen 1989: 920)<sup>20</sup>.

Cohen did not define the advantages or whether they can be ranked or hierarchically arranged<sup>21</sup>. However, he assumes that the absence of resources and welfare

---

<sup>19</sup> Cohen's equal access to advantage theory is highly influenced by Richard Arneson's equality of opportunity for welfare theory, and can be considered a critical review of Dworkin's, Rawls's and Sen's theories (Arneson 1989; Cohen 1989; Ribotta 2010: 119-243).

<sup>20</sup> Cohen places particular importance on individual responsibility. However, it draws a clear boundary between responsibility and bad luck, understanding the effects of genuine choices contrast with brute luck (Cohen 1989: 931; Daniels 1990: 290-291).

<sup>21</sup> According to Cohen, the advantage is a heterogeneous collection of desirable states of the person that cannot be reduced to Rawlsian goods nor Dworkin's resource bundles. Cohen's definition of advantage includes welfare considerations and resembles a broad interpretation of the Sen's notion of functionings. Cohen is reluctant to use the word advantage, but it has not been able to find a better one for his proposal, and he posits his theory without any competitive connotations (Cohen 1989: 917, notes 17 and 18).

lead to different types of disadvantages that also trigger additional sub-categories such as poverty, physical weakness, shortages, scarcity or non-fulfillment of the objectives pursued<sup>22</sup>. Cohen, in line with Sen, seeks to eliminate involuntary disadvantages for which the sufferer cannot be held responsible, ensuring that persons have all external means available to develop and realize their life plans on an equal opportunity basis, not only assessing equality in terms of resources but also regarding each individual's internal utility. Nevertheless, what is most significant for Cohen is to draw a distinction between personal choices and the bad luck affecting their fates. He claims that any inequalities arising from unwanted or not chosen conditions should be compensated. In fact, in Cohen's view, the deep inequalities we currently witness evidence an unequal access to advantage.

From Cohen and Sen approaches, the understanding of equal opportunity on the basis of natural talents or not chosen structural conditions leads to injustice, even if these natural conditions can be somewhat traced back to persons' choices, as long as the latter are not truly free. Innate talents are not alien to the material and social conditions for personal development, assuming those *strictly human needs*, as well as social or relational needs, should be appropriately fulfilled. Thus, the talents on which the exercise of capabilities is based are potential abilities that will develop mostly depending on the material conditions of persons' social backgrounds and other social conditions not directly related with social background, tied to the satisfiers needed to develop capabilities and realize life plans. There are material and social constraints on talents, since having the potential is (at most) a precondition to develop a talent, but it does not guarantee that an individual will develop their innate talent or how he or she will do so.

We are born with a certain potential and a skill set that do not guarantee a specific outcome. These innate conditions do foster talent and lay the groundwork for developing it. However, the development of innate talents will only take place throughout a person's life and will depend on the contextual circumstances. In addition, these talents will differ (different kind of talents and in different amounts), but they will always be affected by additional factors, which may or may not flow from will or personal choices as well as by a dose -generally high- of luck. These factors could encourage, hinder or even prevent the fulfillment of an individual's potential. Factors will ultimately make the difference when it comes to having and developing certain talents or capacities, and they will be directly tied to the poverty conditions suffered by disadvantaged people. Indeed, these factors have a major impact on the appropriate fulfillment of strictly human and social or relational needs, as well as on the access to equal opportunity conditions allowing them to enjoy those social advantages that enable the exercise of actual freedom.

---

<sup>22</sup> Cohen emphasizes that his equal access to advantage is more far-reaching than Sen's basic capabilities approach since access includes the capability itself and the opportunity to realize it, the external control of the means and the opportunity to implement them. Cohen differentiates between capability and capacity. Capabilities could be construed as skills/talents, and capacity as the ability to do something, resembling Sen's functionings and capabilities. (Cohen 1989: 941; Cohen 1993).

#### 4. LAW AND SOCIAL JUSTICE (BECAUSE LAW LEGITIMIZES SOCIAL INJUSTICE)

Poverty is a form of social oppression and a violation of rights, particularly human rights, since poverty necessarily entails the violation of the rights to life, health, education, housing, a job, freedom, political participation, and all its manifestations. Moreover, the most basic and relevant rights accompany the idea of human dignity (Arnsperger 2004; Cohen 2005; Fleurbaey 2007; Gargarella 2006; Pogge 2007a: 11-15). As noted by Sengupta, poverty is always a degradation of human dignity, and extreme poverty is, therefore, a form of severe degradation (Sengupta 2007: 324-325). Poverty, without further qualification, constitutes a human rights violation. Poverty compromises the preservation of human nature and the exercise of basic human freedoms. In addition, poverty entails exerting economic violence on society as a whole. Its effects resemble those of physical violence, but it can be even more dangerous (Fleurbaey 2007: 141). Eradicating poverty is thus a moral and ethical obligation, but also a legal and political obligation (Pogge 2007a: 13).

In addition, poverty entails exerting economic violence on society as a whole. Its effects resemble physical violence but can be even more dangerous (Fleurbaey 2007: 141). Eradicating poverty is thus a moral and ethical obligation, and a legal and political one.

Living without poverty or hunger is one of the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights, reaffirmed in the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocols. These international instruments confirm that poverty is a denial of human rights, since misery entails a violation of all rights, thus undermining the quality of life and threatening life itself.

Therefore, hunger and poverty should not only be regarded as the utmost violation of rights. They could also qualify as degrading treatment or even rise to torture, in light of the case law of the Inter-American Court of Human Rights, the former European Commission on Human Rights, the European Court of Human Rights, and UN experts. According to these legal sources, hunger, poverty, misery, and social exclusion could be considered a form of torture, cruel, inhuman, and degrading treatment (Barcelona 2017; Gialdino 2003; Parra Vera 2012)<sup>23</sup>. Therefore, poverty conditions imply abuse or ill-treatment.

---

<sup>23</sup> See, e.g., the Inter-American Court of Human Rights cases “Niños de la calle (Villagrán Morales *et al.*) v. Guatemala”, Judgment of 19 November 1999, C Series No. 63; “Loayza Tamayo v. Peru”, Judgment of 17 September 1997, C Series No. 33; “Instituto de Reeducción del Menor v. Paraguay”, Judgment of 2 September 2004, C Series No. 112 and “Servellón García *et al.* v. Honduras”, Judgment of 21 September 2006, C Series No. 152. Within the former European Commission on Human Rights, see “Van Volsen v. Belgium,” Commission Decision of 9 May 1990, Complaint No. 14641/89 and “F.N. v. France,” Decision of 10 October 1994, Complaint No. 18725/91. Regarding the cases of European Court of Human Rights, see “Moldovan *et al.* v. Romania”, No. 2, Judgment of 12 July 2005, Complaints No. 41138/98 and 6432/01; “M.S.S. v. Greece and Belgium”, Judgment of 21 January 2011, Complaint No. 30696/09; “S.H.H. v. United Kingdom”, Judgment of 29 January 2013, Complaint No. 60367/10; “F.H. v. Greece”, Judgment of 31 July 2014, Complaint No. 78456/11; “V.M. *et al.* v. Belgium”, Judgment of 7 July 2015, Complaint No. 60125/11, “A.S. v. Switzerland”, Judgment of 30 June 2015, Complaint No. 39350/13 and “Amadou v. Greece”, Judgment of 4 February 2016, Complaint No. 37991/11.

They violate the most basic rules of International Human Rights Law, undermining the fundamental principles of non-discrimination and equality and breaching civil, political, economic, social, and cultural rights.

Thus, poverty is one of the most blatant expressions of social injustice, empirically tied to economic inequality, where the non-fulfillment of basic needs of the underprivileged shows the extent of the injustice. And at the same time, the potential to mitigate such disadvantage because of the possibility of implementing redistributive strategies based on social justice standards. Economic inequality places people in a different and unequal relationship regarding their satisfiers and preferences within their social, political, economic, and cultural framework.

Admittedly, poverty can be a relative concept directly tied to wealth and the development of each society. However, poverty can be identified as a social issue when hindered access and enjoyment involves that basic needs are left unfulfilled. Moreover, there is a set of objective, universal and indispensable needs; non-fulfillment of those needs is incompatible with preserving life or even survival. According to Cohen, inequality hinders equal access to advantage by the underprivileged, preventing the satisfaction of underprivileged persons' needs (Cohen 1989; Cohen 1993).

Therefore, testing inequality through justice standards entails assessing how disadvantaged the underprivileged are and how advantaged those in the upper end of the inequality gap are. The first leg of the justice test refers to the need to question or challenge poverty based on the non-fulfillment of strictly human needs. The second leg of the justice test refers to redistributing resources, which seems possible considering that we are sure about the enormous amount of resources exceeding a share of the population's needs. This clash shows the assessment of social injustice. The lower threshold for the underprivileged, thus giving rise to a social issue and questionable poverty, is provided by the non-fulfillment of strictly human needs required to develop basic human capabilities. At the same time, the upper threshold of those belonging to the more advantaged people provides the framework for redistributive options.

However, this claim does not justify the opposite. The absence of economic inequality does not always imply greater social justice; better said, reducing economic inequalities does not necessarily entail a decrease in poverty. At least two general situations can occur when societies do not suffer significant levels of economic inequality, or their internal gap has been steadily bridged. In first group of cases, we can see societies with very low economic inequality or even actual equality recording no losses in the Human Development Index (HDI) concerning the Inequality-adjusted Human Development Index (IHDI). So, there is no overall loss to human development due to equality—simultaneously showing an objectively high level of human development for all members of society<sup>24</sup>. And in the second group, societies with a low level of inequality, a small gap between rich

---

<sup>24</sup> Countries such as Finland, Iceland, Denmark, Belgium, Austria, Sweden, Netherlands, Norway, UK. UNDP 2022: 281-285. [https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf\\_1.pdf](https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf)



and poor, but where people suffer from questionable poverty, with unfulfilled basic needs facing poverty, structural poverty conditions or extreme poverty, thus being countries with some of the world's lowest HDIs<sup>25</sup>.

In any case, assuming that economic inequalities generate unequal access to social advantages, the higher the inequality level, the wider the gap between social groups and the more unlikely it will be to find average groups (Kerbo 2000: 11 ff.; UNDP, 2022). In addition, the more challenging it is to access social advantages, the more questionable the poverty suffered by the underprivileged because they will have a lesser chance to fulfill their strictly human needs and the remaining basic or relational needs. Simultaneously, that gap shows that societies have specific resources that could be redistributed through social and tax policies or other public policies, narrowing the gap. However, it requires taking a critical stance toward economic efficiency and Pareto Efficiency -or Pareto Optimality- from a proposal that overcomes *leveling down* and advocating a robust equality position (Cohen 1995; Sen 1970; Ribotta 2010: 388-400; Ribotta 2017).

Economic inequality does not only empirically lead to poverty. It turns poverty into a matter of social justice because it confirms that there is something we can do about it, actions to tackle it and reduce it. Unquestionably, it is for public authorities and governments to implement these actions since they are the rule-makers and policymakers, as well as the ones responsible for allocating rights and resources while enabling the enforcement of rights. So, poverty construed as a social issue becomes a matter of social (in)justice when perceived or examined as the result of political and legal decisions, the impact of the world's policies about the resources, rights, and powers distribution, and the injustice underlying global agreements (Pogge 2007a: 52-53).

It is worth emphasizing that poverty is not a natural phenomenon. Indeed, it is a political and social process resulting from how we have arranged our societies, following a concrete economic, social, political, and legal system called capitalism (and its different ways). In any case, Countries must commit themselves to the enforcement of human rights seeking to reduce economic inequalities to achieve overall equality. And they must directly incorporate the issue of resources and redistribution into the human rights agenda (Alston 2015: 2).

Poverty must be construed as the result of high economic inequality levels that hinder the appropriate fulfillment of human needs, thus preventing impoverished human beings from developing their capabilities and plans of life, depriving them of their spheres of freedom and access to social advantages. As a result, this creates a situation that is not only intuitively unfair, but also morally reprehensible, economically inefficient, and politically unacceptable.

---

<sup>25</sup> Countries like Democratic Republic of the Congo, Malawi, Ethiopia, Yemen, Burkina Faso, Burundi, Mozambique, Mali, and Niger, which records the world's lowest HDI. UNDP 2022: 281-285. [https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf\\_1.pdf](https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf)

However, paradoxically, poverty conditions occur within legal scenarios and frameworks where, on an *a priori* basis at least, poverty is not perceived as a human rights violation. As noted by Fleurbaey, human rights are narrowly construed, allowing for significant economic inequalities that, shockingly, are found perfectly compatible with human rights. Self-evidently, one should seriously question this compatibility between economic inequality and human rights compliance upon confirming that poverty qualifies as a severe human rights violation (Fleurbaey, 2007: 133; Ribotta, 2015). Alston calls on the International Community and Human Rights Organizations to take responsibility and face the fact that extreme inequality undermines human rights and that are specific boundaries beyond which a certain level of inequality is incompatible with equality, dignity, and human rights. Supporting human rights entails assuming, in each democratic State and as a global society, the need to reduce the extreme inequality to eliminate radically. They should do this by implementing suitable redistributive measures based on consistent and sound tax policies and turning the effectiveness of social rights into the core of public policies (Alston, 2015; Alston & Reisch, 2019).

Therefore, we must make visible all internal legal structures that legitimize, allow, and even encourage an unequal social framework. Legal structures also provide the basis for legal systems and hierarchies that turn their back on social justice claims arising from poverty and economic inequality. Moreover, the legal systems in general, even the Human Rights System, do not adequately contemplate and, in some cases, even disregard needs as reasons (*good reasons*) to grounds for establishing rights. At the same process, they do not adequately contemplate and, in some cases, even disregard the relationships and interconnections among the core values of democracy, such as freedom and equality and the actual and effective enjoyment of equal opportunity conditions with the situations of poverty.

Indeed, the existing significant inequalities, unfulfilled needs, and ongoing poverty conditions severely threaten the human rights system because they necessarily entail rights violations. Inequality and poverty undermine social, economic, and cultural rights and the exercise and enjoyment of individual civil and political rights. In fact, the most pressing material needs are the ones closely connected with social rights, which are often subordinated to civil and political rights.

As stated by Campbell, even when social rights are officially given the same importance as civil and political rights, there is no doubt that, for one reason or another, they end up being ignored in practice (Campbell 2007: 56). Moreover, more importantly, those being neglected is not socially and politically perceived as a violation of the non-derogable democratic core of modern and democratic States. These neglected social rights can even be limited, restricted, or denied while the authorities and institutions disregard the parasitic relationship between them and individual, civil and political rights. In addition, therefore, the severe negative impact that the ineffectiveness of social rights implies on the effectiveness of civil, individual, and political rights.

Social and economic rights must become a central element of the human rights system, and they should be regarded as relevant as civil and political rights (Alston 2015: 2).

Assuming this conceptual framework on poverty and inequality—and, the relevant role of needs as grounds for rights—invite (as logical action) challenge the structural hierarchy of the rights frameworks currently in place, particularly of the Human Rights System. We should transfer the scheme of needs to a scheme of rights, which implies, concerning the current model of human rights, a vindication of social, economic, and cultural rights over the rest of the rights. The clear conceptual, empirical, and connected effectiveness interrelationships that civil, individual, and political rights exercise over social rights are visible and highlight the close link between strictly human and basic or relational needs and social rights.

For those reasons, poverty is a matter of justice because it is a social, economic, and political question involving political and legal decisions. Any approach to the issue from a social justice perspective requires drafting redistributive policies that implement Social State requirements while acknowledging and actually enforcing social rights. This approach should incorporate tax policies and regulations as a central element of human rights. Implementing redistribution effectively through suitable tax policies is essential for society to enjoy human rights entirely. As noted by Alston, tax policies *are* human rights policies.

In addition, it should be acknowledged that a country's form of government, tax schemes (whether more progressive or more regressive), the applicability of tax exemptions or deductions to specific groups, and subsidy-related or public spending decisions have a major impact on the enjoyment and effectiveness of human rights. Adopting appropriate redistributive measures with sound tax policies supporting a solid welfare system providing for social and economic rights is a political decision, there is no doubt. Nevertheless, it is also the *only appropriate political decision* to guarantee that society as a whole fully enjoys human rights (Alston 2015: 2-3; Alston & Reisch 2019)<sup>26</sup>.

It is vital to develop legal frameworks closer to the theory of needs when providing grounds for rights, not ignoring the requirements of material equality and satisfaction of basic needs for the exercise of basic human capacities, guaranteeing the enjoyment of genuine freedom and the development of freely chosen life plans.

As pointed out by Fleurbaey, if we regard poverty and inequality as forms of oppression, the fundamental rights to personal integrity are only fulfilled if we simultaneously acknowledge an extended right to *escape* poverty (Fleurbaey 2007: 154). Unquestionably, these goals call for governments that take tax policies seriously. For those reasons, the governments that implement tax policies as human right policies secure egalitarian and effective social frameworks leading to socially and environmentally sustainable economic growth. Such a system must be supported by sustainable economies and legal systems ensuring a high level of social justice.

In few words, if poverty has been a product of legal and political decisions, eradicating poverty also requires legal and political decisions.

---

<sup>26</sup> It is worth inquiring about the relationship between tax policies and human rights in connection with corruption and transparency and accountability requirements (Alston & Reisch 2019: Part III; Malem Seña 2017).

## REFERENCES

- ALEGRE, M. (2007), "Extreme Poverty in a Wealthy World: What Justice Demands Today", Pogge T. (ed.), *Freedom for Poverty as a Human Right. Who Owes What to the Very Poor?*, UNESCO-Oxford University Press, Oxford, pp. 237-254.
- ALSTON, P. (2015), "Extreme inequality as the antithesis of human rights", *Open democracy*, pp. 1-3.
- ALSTON, P. Y REISCH, N. (2019), *Tax, Inequality, and Human Rights*, Oxford University Press, Oxford. <https://doi.org/10.1093/oso/9780190882228.001.0001>
- AÑÓN ROIG, M.J. (1994), *Necesidades y Derechos. Un Ensayo de Fundamentación*, Centro de Estudios Constitucionales, Madrid.
- AÑÓN ROIG, M.J. (2001), *Igualdad, Diferencias y Desigualdades*, Fontamara, México.
- ARNESON, A. (1989), "Equality and Equal Opportunity for Welfare", *Philosophical Studies*, 56 (1): 77-93. <https://doi.org/10.1007/BF00646210>
- ARNSPERGER, C. (2004), "Poverty and human rights: The issue of systemic economic discrimination and some concrete proposals for reform", *International Social Science Journal*, N° 180, pp. 289-299. <https://doi.org/10.1111/j.0020-8701.2004.00491.x>
- ARROW, K., BOWLES, S. & DURLAUF, S. (EDS.) (2000), *Meritocracy and Economic Inequality*, Princeton University Press, Princeton-New Jersey. <https://doi.org/10.1515/9780691190334>
- ASHFORD, E. (2007), "The duties imposed by the Human Rights to basic Necessities", Pogge T. (ed.), *Freedom for Poverty as a Human Right. Who Owes What to the Very Poor?*, UNESCO-Oxford University Press, Oxford, pp. 183-218.
- ATKINSON, A., GLAUDE, M. Y OLIER, L., (2001), *Inégalités économiques*, Conseil d'Analyse Économique, Paris, 2001, pp. 11-137.
- BARCELONA, J. (2017), "El Tribunal Europeo de Derechos Humanos y la pobreza", *Ivs Fvgit*, N° 20, pp. 323-370.
- BARRY, B. (1973), *The liberal Theory of Justice*, Oxford University Press, Oxford.
- BARRY, B. (1988), "Equal Opportunity and Moral Arbitrariness", Bowie, N., (ed.), *Equal Opportunity*, Westview Press, Boulder, pp. 23-46. <https://doi.org/10.1108/eb010489>
- BLOCKER, H. & SMITH, E. (EDIT.) (1982), *John Rawls' Theory of Social Justice. An Introduction*, Ohio University Press, Ohio.
- BOWIE, N. (EDIT.) (1988), *Equal Opportunity*, Westview Press, Colorado.
- BRAYBROOKE, D. (1987), *Meeting Needs*, Princeton University Press, Princeton-New Jersey.
- CAMPBELL, T. (2007), "Poverty as a violation of Human Rights: Inhumanity or Injustice?", Pogge, T. (edited), *Freedom for poverty as a Human Rights, Who Owes what to the very poor?*, UNESCO-Oxford University Press, Oxford, pp 55-74.

- COHEN, G.A. (1989), "On the Currency of Egalitarian Justice", *Ethics*, 99 (4), pp. 906-944. <https://doi.org/10.1086/293126>
- COHEN, G.A. (1993), "Equality of What? on Welfare, Goods, and Capabilities", Nussbaum, M. & Sen, A. (edit.), *The Quality of Life*, Claredon Press, Oxford, pp. 9-29. <https://doi.org/10.1093/0198287976.003.0002>
- COHEN, G.A. (1995), "The Pareto argument for inequality", *Social Philosophy and Policy*, Vol. 12, N° 1, pp. 160-185. <https://doi.org/10.1017/S026505250000460X>
- COHEN, G.A. (1999), "Socialism and Equality of Opportunity", Rosen, M. & Wolff, J. (edit.), *Political Thought*, Oxford University Press, Oxford, pp. 354-358.
- COHEN, J. (2005), "¿Sufrir en silencio?", Gargarella, R., *El derecho a resistir el derecho*, Miño y Dávila Editores, Buenos Aires, pp. 79-89.
- DANIELS, N. (EDIT.) (1975), *Reading Rawls. Critical Studies on Rawls' A Theory of Justice*, Basic Books, New York.
- DANIELS, N. (1990), "Equality of What: Welfare, Resources, or Capabilities?", *Philosophy and Phenomenological Research*, N° 50, pp. 273-296 <https://doi.org/10.2307/2108044>
- DE LUCAS, J. Y AÑÓN ROIG, M.J. (1990), "Necesidades, Razones, Derechos", *Doxa*, N° 7, pp. 55-81.
- DE LUCAS, J. (1996), "La igualdad ante la ley", Garzón Valdés, E. & Laporta, F., *El Derecho y la justicia*, Enciclopedia Iberoamericana de Filosofía, Trotta, Madrid, pp. 493-500.
- DOYAL, L. & GOUGH, I. (1991), *A Theory of Human Need*, Guilford Press, New York. <https://doi.org/10.1007/978-1-349-21500-3>
- DWORKIN, R. (1981), "What is Equality? Part 2: Equality of Resources", *Philosophy and Public Affairs*, 10, N° 4, pp. 283-345.
- FLEURBAEY, M. (2007), "Poverty as a Form of Oppression", Pogge, T. (ed.), *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor?*, Oxford University Press- Unesco, Oxford, pp. 133-154.
- FRANKFURT, H. (1988), "Necessity and desire", *The importance of what we care about. Philosophical essays*, Cambridge University Press, Cambridge, pp. 104-116. <https://doi.org/10.1017/CBO9780511818172.010>
- GALTUNG, J. ET AL. (1980a), *Human Needs. A Contribution to the Current Debate*, Oelgeschlager, Gunn & Hain Publishers, Cambridge Mass.
- GALTUNG, J., (1980b), "The Basic Needs Approach", Galtung, J. et al., *Human Needs. A Contribution to the Current Debate*, Oelgeschlager, Gunn & Hain Publishers, Cambridge Mass, pp. 55-125.
- GARGARELLA, R. (2009), *Las teorías de la justicia después de Rawls*, Paidós, Barcelona.
- GARGARELLA, R. (ed.), (2006), *El derecho a resistir el derecho*, Miño y Dávila, Madrid.

- GARRET, L., *The coming plague: Newly Emerging Diseases in a World out of Balance*, Picador, New York, 2020 (Penguin Book, 1995).
- GIALDINO, R. (2003), “La pobreza extrema como violación del derecho de toda persona a la vida y a no ser sometida a tortura o tratos crueles, inhumanos o degradantes, entre otros derechos humanos”, *Jurisprudencia Argentina*, 26-2-2003, 1079-1100.
- KERBO, H. (2000), *Social stratification and inequality: class conflict in historical, comparative, and global perspective*, 4th ed., McGraw-Hill, Boston.
- LÓPEZ ARANGUREN, E. (2005), *Problemas sociales. Desigualdad, pobreza, exclusión social*, Biblioteca Nueva, Madrid.
- MALEM SEÑA, J. (2017), *Pobreza, corrupción, (in)seguridad jurídica*, Marcial Pons, Madrid. <https://doi.org/10.2307/j.ctv10qr07r>
- MARMOR, A. (2003), “The Intrinsic Value of Economic Equality”, Meyer, L., Paulson, S., Pogge, T. (eds.), *Rights, Culture, and Law. Themes from the Legal and Political Philosophy of Joseph Raz*, Oxford University Press, Oxford, pp. 127-141. <https://doi.org/10.1093/acprof:oso/9780199248254.003.0008>
- MILLER, D. (2002), *Social justice*, Clarendon Press, Oxford. Nino, C. (1990), “Autonomía y Necesidades Básicas”, *Doxa*, N° 7, pp. 21-34. <https://doi.org/10.14198/DOXA1990.7.01>
- NUSSBAUM, M. (2000), *Women and Human Development: The Capabilities Approach*, Cambridge University Press, Cambridge. <https://doi.org/10.1017/CBO9780511841286>
- NUSSBAUM, M. & SEN, A. (EDIT) (1993), *The Quality of Life*, Oxford University Press, Oxford. <https://doi.org/10.1093/0198287976.001.0001>
- PARFIT, D. (2002), “Equality or Priority”, Clayton, M. y Williams, A. (eds.), *The Ideal of Equality*, Palgrave MacMillan, Hampshire, pp. 81-125.
- PARRA VERA, Ó. (2012), “Derechos Humanos y Pobreza en el Sistema Interamericano”, *Revista IIDH*, 56, pp. 273-320.
- PIKETTY, T. (2014), *Capital in the Twenty-First Century*, Harvard University Press, Cambridge-MA. <https://doi.org/10.4159/9780674369542>
- POGGE, T. (2007a), “Severe Poverty as a Human Rights Violation”, Pogge T. (ed.): *Freedom for Poverty as a Human Right. Who Owes What to the Very Poor?*, UNESCO-Oxford University Press, Oxford, pp. 11-53.
- POGGE T. (ED.), 2007b, *Freedom for Poverty as a Human Right. Who Owes What to the Very Poor?*, UNESCO-Oxford University Press, Oxford.
- RAWLS, J. (1993), *Political Liberalism*, Columbia University Press, New York.
- RAWLS, J. (1999), *A Theory of Justice. Revised Edition*, The Belknap Press of Harvard University Press, Cambridge-Massachusetts. <https://doi.org/10.4159/9780674042582>

- RIBOTTA, S. (2008), “Necesidades y derechos: Un debate no zanjado sobre fundamentación de derechos (consideraciones para personas reales en un mundo real)”, *Revista Jurídicas*, 5 (1), pp. 29-56.
- RIBOTTA, S. (2010), *Las desigualdades económicas en las teorías de la justicia. Pobreza, redistribución e injusticia social*, Centro de Estudios Políticos y Constitucionales, Madrid.
- RIBOTTA, S. (2011), “Necesidades, igualdad y justicia. Construyendo una propuesta igualitaria de necesidades básicas”, *Derechos y Libertades*, N° 24, Época II, enero, pp. 259-299.
- RIBOTTA, S. (2015), “Poverty as a violation of Human Rights”, *Essays on Human Rights*, de Asís Roig, R. & Ansuátegui Roig, F., (direct.), Thomson Reuters y Editorial Aranzadi, Navarra, pp. 511- 538.
- RIBOTTA, S. (2017), “Defendiendo la igualdad de la objeción de nivelar a la baja”, *Cuadernos Electrónicos de Filosofía del Derecho*, N° 36, pp. 148-168.
- RIBOTTA, S. (2021a), “Desigualdad y pobreza en la vida de las mujeres atravesando la pandemia” en *Derecho, derechos y pandemia*, Pozzolo, S., Grande P., and Moresso JJ. (edit.), Palestra, Lima, pp. 181-226.
- RIBOTTA, S. (2021b), “Pobreza y desigualdad como problema de salud”, *Los determinantes sociales de la salud: más allá del derecho a la salud*, Lema Añón C. (edit.), Dykinson, Madrid, pp. 261-294. <https://doi.org/10.2307/j.ctv282jh7t.12>
- RIBOTTA, S. (2021c), “Condiciones materiales para el ejercicio de la autonomía. El jaque de la desigualdad a la libertad”, *Revista Derecho del Estado-Universidad Externado de Colombia*, No. 48, January-April, pp. 149-182. <https://doi.org/10.18601/01229893.n48.06>
- ROEMER, J. (1998), *Equality of Opportunity*, Harvard University Press, Cambridge-Massachusetts. <https://doi.org/10.4159/9780674042872>
- SEN, A. (1970), “The Impossibility of a Paretian Liberal”, *Journal of Political Economy*, N° 78, pp. 152-157. <https://doi.org/10.1086/259614>
- SEN, A. (1973), *On Economic Inequality (expanded ed.)*, Clarendon Press-Oxford University Press, Oxford-New York.
- SEN, A. (1985), *Commodities and Capabilities*, Elsevier Science Publishers, Amsterdam. [https://doi.org/10.1016/0044-8486\(85\)90002-X](https://doi.org/10.1016/0044-8486(85)90002-X)
- SEN, A. (1992), *Inequality Reexamined*, New York: Oxford University Press.
- SEN, A. (1999), *Development as freedom*, Oxford University Press, New York.
- SENGUPTA, A., (2007), “Poverty Eradication and Human Rights”, Pogge, T. (ed.), *Freedom From Poverty as a Human Right: Who Owes What to the Very Poor?*, Oxford University Press-UNESCO, Oxford, pp. 323-344.
- TEMKIN, L. (1996), *Inequality*, Oxford University Press, New York.

- THOMSON, H. & SNELL, C. (2013), “Quantifying the prevalence of fuel poverty across the European Union”, *Energy Policy*, 52, pp. 563-572. <https://doi.org/10.1016/j.enpol.2012.10.009>
- UNITED NATIONS-GENERAL ASSEMBLY (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 21 October.
- UNITED NATIONS-UNITED NATIONS DEVELOPMENT PROGRAMME (2010), *Human Development Report 2010*, United Nations, New York.
- UNITED NATIONS-UNITED NATIONS DEVELOPMENT PROGRAMME-UNDP (2022), *Human Development Report 2021-22: Uncertain Times, Unsettled Lives: Shaping our Future in a Transforming World*, NEW YORK. [https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf\\_1.pdf](https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf)
- WADE, L. (2020), “An unequal blow. In past pandemics, people on the margins suffered the most”, *Science*, N° 368-6492, pp. 700-703. <https://doi.org/10.1126/science.368.6492.700>
- WENAR, L. (2007), “Responsibility and Severe Poverty”, en Pogge T. (ed.), *Freedom for Poverty as a Human Right. Who Owes What to the Very Poor?*, Oxford University Press, Oxford, pp. 255-274.
- WIGGINS, D. (1987), *Needs, Values, Truth. Essays in the Philosophy of Value*, Basil Blackwell, Oxford.
- WILLIAMS, B. (1970), “The idea of equality”, Feinberg, J. (comp.), *Moral Concepts*, Oxford University Press, Oxford, pp. 153-171.
- ZIMMERLING, R. (1990), “Necesidades Básicas y Relativismo Moral”, *Doxa*, N° 7, pp. 35-54. <https://doi.org/10.14198/DOXA1990.7.02>

Received: August 1<sup>st</sup> 2022

Accepted: November 21<sup>st</sup> 2022

