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**Economic Rights: The Terrain**

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## **Abstract**

Economic rights are central to the international human rights regime, even if they have received less attention historically (at least in the West). This chapter, and the volume from which it is drawn, investigates the central conceptual, measurement, and policy issues confronting economic rights. While many important aspects remain to be addressed, conceiving problems in terms of economic rights may provide novel, effective ways to reduce world poverty, and to enhance respect for human dignity.

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## Economic Rights: The Terrain

Shareen Hertel and Lanse Minkler<sup>1</sup>

If morality is centrally concerned with harm and the intent to prevent or minimize harm, then world poverty is the great moral issue of our time. Yet with all of the attention on security and political freedoms it would not seem that way. Consider some telling comparisons. From 1998 to 2005, terrorism killed 20,000 people globally (UNDP 2005, 151). In contrast, in one year (2001) 22 million people died preventable deaths due to deprivation—that is, from poverty (Commission on Human Security 2003, 6).<sup>2</sup> In that same year, almost 1.1 billion people lived on a dollar-a-day or less, and over 2.7 billion (i.e., slightly under half of the earth’s population) lived on two dollars a day or less (Chen & Ravallion 2004).<sup>3</sup> Despite this evidence of unfathomable suffering experienced by much of the world’s population, military security and political freedoms capture the most attention.<sup>4</sup> Moreover, despite recent pioneering intellectual work, economic rights

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<sup>1</sup> We thank Audrey Chapman, Serena Parekh, and Richard Ashby Wilson for insightful comments that improved this chapter.

<sup>2</sup> As another comparison, Thomas Pogge (2005) estimates that the death toll from all wars, civil wars, genocides, and other government repression was 200 million in all of the 20th century. By his count, it took only 11 years at the end of the century for approximately the same number of deaths to result from poverty.

<sup>3</sup> This is the authoritative source on global poverty headcounts. It is true that there has been some progress; the 1.1 billion number represents a 400 million decrease from 20 years earlier, while China itself saw a 400 million decrease over that period.

<sup>4</sup> As Scott Leckie (1998, 83) laments: “[M]ost would recoil in horror at the deprivation of freedom of life when active violence is involved, but display considerably more tolerance when human suffering or death stem from preventable denials of the basic necessities of life such as food, health care or a secure place to live. Ambivalence towards violations of economic, social, and cultural rights—whether by those entrusted with their implementation or those mandated to monitor compliance with them—remains commonplace.”

remain less well articulated conceptually than civil and political rights, less accurately measured, and less consistently implemented in public policy (Steiner & Alston 1996; Kunnemann 1995). But a different kind of freedom and a new kind of security need to share center stage. For billions of people, freedom from deprivation and the kind of human security arising from that freedom are crucially important. Economic rights are perhaps the best way to secure that freedom, and new scholarship needs to emerge to lead the way.

Since economic rights are human rights, they are rights belonging to all human beings by virtue of our humanity. That means that *all* humans have an inherent right to the resources necessary for a minimally decent life. Economic rights may mean more than that, but they surely mean at least that.<sup>5</sup> Anyone anywhere who suffers from severe poverty not of their own choosing is having their economic rights violated. If we were to actually enforce economic rights, there would be no involuntary poverty anywhere in the world.

Of course such a claim needs extensive scrutiny; that is what this book aims to achieve. But if true, this claim carries tremendous implications for governments, private citizens, international actors, and corporations. Typically, when considering world poverty, scholars and policy makers alike focus on poverty's elimination as a desirable social goal, not as any individual's inherent entitlement. For instance, economists have historically recommended income growth strategies as the primary means to reduce poverty. The focus has been mostly on accumulating physical and human capital and enhancing macroeconomic stability, but the "Washington Consensus" that emerged in the 1980s also included an emphasis on securing property rights and the privatization of state owned enterprises. More recently, economists have acknowledged the role of income redistribution as a way of reducing poverty, mostly by focusing on

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<sup>5</sup> Among the many who view economic rights primarily as assuring a minimum floor are Shue (1996), Copp (1992), and Beetham (1995).

careful institutional design.<sup>6</sup> Newer policy recommendations include not only investment in social infrastructure in order to improve government accountability, openness and the business climate (i.e., legal institutions that promote investment by securing exchanges and contracts), but also credit institutions to funnel capital to the poor. While not denying a role for international aid, most economists seem to place the responsibility for installing these institutions squarely on domestic governments.<sup>7</sup>

Some policy makers and even economists are arguing that while these approaches are important, they are insufficient to eradicate world poverty. As a result, member states of the United Nations unanimously adopted the Millennium Declaration in September 2000. After consultation with many international organizations (the World Bank and International Monetary Fund (IMF) chief among them), a roadmap emerged that includes eight important goals, accompanied by associated targets and indicators. The first goal is to eradicate extreme poverty and hunger. It sets a target of reducing by half the percentage of the world's population living under \$1 a day by the year 2015 (from the base year of 1990). The second target does the same for those who suffer from hunger. The last goal--Goal 8, to "develop a global partnership for development"--includes target 12, which entails "a commitment to good governance, development, and poverty reduction both nationally and internationally."<sup>8</sup> Indicator 32 of Goal 8 calls upon OECD countries to donate 0.7%, and "lower developed countries" to donate 0.15% of their GNPs in order to achieve poverty reduction. As Sakiko Fukuda-

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<sup>6</sup> For a good discussion of the intellectual history and evidence of poverty reduction strategies in the economics profession, see Besley and Burgess (2003). Also, see Kimenyi's contribution in this volume.

<sup>7</sup> In addition to Besley and Burgess (2003), see Easterly (2003).

<sup>8</sup> To see the complete list of goals, targets and indicators, go to [www.developmentgoals.org](http://www.developmentgoals.org). Also see the 2003 Human Development Report (UNDP), which is explicitly devoted to the Millennium Development Goals.

Parr argues in this volume, Goal 8 is fundamentally important because it explicitly recognizes the shared duties and responsibilities that all states have to end world poverty. More generally, by moving to a human rights framework the elimination of poverty becomes more than just a desirable, charitable, or even moral policy goal. It becomes an international duty of states.

That is not to say that sound domestic economic policies and institutions that promote income growth and job creation are not crucial. Indeed they are. For one thing, there is a clear inverse statistical relationship between the numbers of people in poverty and growth (see Besley & Burgess 2003). Moreover, those who are employed at minimally decent jobs can provide for themselves and their families, so job creation and promotion policies can play an important role in any poverty reduction agenda. But, by themselves, such policies do not go far enough to meet the obligations associated with economic rights. Economic rights require that each and every person secures the resources necessary for a minimally decent life.

To ground this notion more fully, we should clarify what we mean by “economic rights.” The principal human rights documents are the *Universal Declaration of Human Rights* (UDHR) adopted by the United Nations General Assembly in December 1948, and the associated covenants: the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR), both of which were passed in December 1966 and entered into force in March 1976. Combined, the three documents are often referred to as the *International Bill of Human Rights*. The human rights enumerated in these documents are usually conceptually founded on notions like autonomy, purposive agency, human need, or human dignity—the concept explicitly employed in the documents (these justifications will be discussed further in the next section).

While there can be problems with this simplifying distinction, we may say that the first 21 Articles of the UDHR refer primarily to civil and political human rights, while Articles 22--30 refer to economic, social and cultural rights.<sup>9</sup> For us, though not necessarily all the other authors in this volume, Articles 23, 25, and 26 enumerate three fundamental economic rights.<sup>10</sup> First comes the most basic economic right—the right to an adequate standard of living—or as explicitly spelled out in the first clause of the first paragraph of Article 25: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and

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<sup>9</sup> Article 16 refers to marriage and family, and is probably best thought of referring to social rights. Article 17 refers to property rights, which may be thought of as both a political and economic right (Libertarians strongly support property rights, but not economic rights). The origin and history of such distinctions is the topic of Jack Donnelly’s chapter in this volume. No matter how one distinguishes among different human rights, Donnelly is in the camp which argues that all of the human rights recognized in the UDHR are indivisible and interdependent. Nevertheless, indivisibility and interdependence does not eliminate the necessity for conceptual distinctions. To illustrate, consider the metaphor of a game such as golf. That game requires both the conceptually distinct objects of golf clubs and golf balls. While they are mutually reliant on each other for the task at hand, both kinds of equipment require different types of engineering. Similarly, all human rights are mutually reliant upon one another, but each distinct right requires different policies and institutions so that all can best serve people in the game of life.

<sup>10</sup> We started to develop this conceptualization in Hertel (2006). As we will see in section 4, this definition corresponds to how at least some activists conceive of economic rights in their grassroots efforts. Harvey (2003) also highlights articles 23 and 25 as he distinguishes between the right to work and a conditional right to a Basic Income Guarantee. Article 22 refers to social security, which we see as mutually reinforcing of paragraph 1 of article 25. The much maligned article 24 deals with the right to rest and leisure “including periodic holidays with pay.” We see this primarily as a further requirement of the right to work—particularly as it relates to forced overtime.

necessary social services . . .”<sup>11</sup> But since an adequate standard of living also requires a basic education, we include it as well, as specified in Article 26.<sup>12</sup> The second economic right is the right to employment without any discrimination, and at “favourable remuneration ensuring for himself and his family an existence worthy of human dignity,” as articulated in the third paragraph of Article 23. This right is protected in part by the right to join trade unions, as specified in paragraph four of Article 23. The third economic right is to what is sometimes called a Basic Income Guarantee (BIG), and is referred to in the second clause of the first paragraph of Article 25: “. . . [everyone has] the right to security to in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.”

Those three basic economic rights are also included in and expanded upon in the ICESCR.<sup>13</sup> Article 11 of the ICESCR covers the right to an adequate standard of living, while Articles 12 and 13 cover rights to health and education, which are all bundled in our characterization of the most basic economic right above. The ICECSR refers to the second economic right in Articles 6, 7, and 8, which all elaborate specific elements of employment rights (including protections for free choice of work; provisions for equal access to training, fair wages and promotion; and protection of trade union rights). And Article 9 includes income

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<sup>11</sup> We interpret food to include water. *No* sustenance is possible without clean water.

<sup>12</sup> The right to education is sometimes referred to as a social right, possibly because the act of educating requires language, which is a social institution. We include it as a basic economic right because it would be virtually impossible to provide for one’s own adequate standard of living without some minimal level of education. Still, like property rights, it is best to not just think of the right to education as one “type” of right.

<sup>13</sup> Notably, and unlike the UDHR, the ICESCR is a treaty that establishes monitoring by a specific body, the Committee on Economic, Social and Cultural Rights.

protection in the form of social security and social insurance, which corresponds to BIG, the third economic right mentioned above.

There are several things to note about our three part conceptualization of economic rights. First, the basic right to an adequate standard of living is quite clear as to what it implies. It explicitly refers to the level of nutrition, shelter, and medical care necessary for adequate health and well-being. It establishes a minimum floor of well-being that each human has a right to. Of course there will be individual differences; a grown man needs significantly more calories and clean water than an infant in order to sustain an adequate level of well-being, but the requisite amount of calories and water needed is reasonably determinant in each case. Adequate shelter refers to whatever modest housing will protect one from the local elements. Adequate medical care can be more difficult to define because some individuals require a great amount of medical services in order to achieve the same well-being as someone who is otherwise fit and healthy. However, when interpreted as a minimum, the right to adequate medical care means that everyone has the right to access to routine health care such as basic immunizations.<sup>14</sup>

How these criteria should be met is a question best answered by public discussion between technical experts, policy makers and citizens so that technical, social, and cultural considerations could all get a fair hearing.<sup>15</sup> While there may seem to be some arbitrary line drawing when *applying* the fundamental economic right to an adequate standard of living, this is not peculiar to such a right or its

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<sup>14</sup> Copp (1992) and Beetham (1995) are among the many authors that address this issue, and both recognize that meeting adequate health care needs is problematic. Copp (1992, 245) addresses the resource/obligations issue, one that we will discuss further in the next section, by proposing a “stop-loss provision” that “would specify that a state is not obligated to exceed a defined relative cost in order to enable any given person to enjoy an adequate standard of living.”

<sup>15</sup> We will discuss this political process more in sections 3 and 4 below.

foundations. As indicated by just one example from ethics, the acceptability of “white lies” or lying to prevent great harm does not conceptually undermine the moral precept “lying is wrong” espoused by virtually all great moral traditions and religions. It just means that blurry lines can give rise to reasoned disagreement in some applications (see Bok 1978).<sup>16</sup>

Now consider the reasons for why and how we differentiate amongst the three economic rights. The first thing to note is that virtually all conceptual justifications for human rights apply to the basic economic right to an adequate standard of living. Suppose that any individual was not entitled to an adequate standard of living. She would not be entitled to be free from malnutrition, would not be entitled to be free from exposure to the elements, and would not be entitled to be free from crippling illness. Such an individual would not be assured of the minimal conditions necessary to be autonomous (self-legislating), or a purposeful agent because she could not fulfill her own plans or objectives, or be free from deprivation.<sup>17</sup> The claim becomes most obvious in the case of people who die from malnutrition, exposure, or sickness.

It might seem that the same could not be said for either of the other two economic rights. That is, any individual who does not have the right to employment could still be autonomous, a purposeful agent, or free from deprivation so long as they possess the other economic right, in this case to BIG,

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<sup>16</sup> For instance, Kant saw *any* lie as violating the moral law, whereas (act) Utilitarians would endorse any lie so long as it prevented a greater harm. Sissela Bok (1978) argues that the best way to handle difficult cases of when it is or is not permissible to lie would be to appeal to a jury of reasonable persons.

<sup>17</sup> Similarly, Copp (1992) emphasizes the centrality of the right to an adequate standard of living as a way to meet basic needs, and also notes that basic needs fulfillment is consistent with a variety of moral theories. Unlike us, he does not consider the other economic rights—to employment or to BIG—or their relation to an adequate standard of living (or “The Right” as he calls it). Moreover, in his framework The Right is a conditional right against the state, with no role for international obligations.

because it could secure an adequate standard of living. The same is true for those who could work for wages even if they did not have a right to BIG, but they did have a right to employment. However, it is hard to see how either just a right to employment or just a right to BIG could individually fulfill the basic right to an adequate standard of living. The right to employment provides no relief to those unable to participate in the labor market (young, elderly, severely disabled); some kind of social security will also be required to fulfill those individuals' basic economic right to an adequate standard of living. For such people, the right to BIG instantiates that right.

But the right to BIG *by itself* also suffers from some fairly significant problems. First is the cost. One (1999) estimate for the U.S. places the cost of BIG in that country at 1.7 trillion dollars per year, effectively doubling federal spending (Harvey 2003). Next is the fact that even if that obstacle could be overcome for all countries of the world, BIG would still do nothing to guarantee jobs for those who want them, thereby doing nothing to remedy violations against the right to work.<sup>18</sup> Finally, a conceptual problem arises if a universal right to BIG means that there is also a right *not* to work.<sup>19</sup> The basic idea behind BIG is that everyone should get sufficient income for an adequate standard of living quite apart from wage labor. That would seem to indicate that a right to BIG is a right not to work. But if everyone enjoyed such a right, the right to an adequate standard of living would be meaningless because there would be no economic resources to distribute in the first place. Perhaps this conceptual challenge could be overcome, but it does appear problematic.

For all of these reasons, both the right to employment and the right to BIG must be used in some combination with each other in order to realize the basic economic right to an adequate standard of living. Combined, the right to

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<sup>18</sup> See Harvey's chapter in this volume.

<sup>19</sup> Michael Goodhart recognizes this issue in his contribution to this volume.

employment and BIG are instrumental to that end, but taken all together the three rights are mutually constitutive. The right to an adequate standard of living defines the necessary conditions that the other economic rights must fulfill. Note, moreover, that this conceptualization allows for cultural, social, and historical differences. So long as the right to an adequate standard of living is honored, whatever combination of the other economic rights society employs is up to that society, provided the combination is non-discriminatory.<sup>20</sup>

In the rest of this chapter we will discuss some of the important issues surrounding economic rights in more detail. We consider conceptual, measurement, and policy issues, in turn, first by discussing some of the key points and then by briefly describing the unique contributions from the authors included in this volume. Those contributions emerged from a conference held at the University of Connecticut in October 2005 with the same title as this book. All of the scholars and invited guests at the conference had the single aim of thinking critically about the following issues. Nevertheless, the final section of this chapter addresses one important omission from both the conference and this volume,

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<sup>20</sup> For example, most proponents of BIG do not subscribe to the kind of conditional version offered in Article 25 of the UDHR. By limiting it to those who are otherwise unemployable (or limiting it in any way), a conditional vision tends to, among other things, exclude those who do valuable work in the household. Michael Goodhart offers such a critique in his chapter in this volume. It seems to us that a still conditional version of BIG could accommodate that objection for the reasons given. One virtue of the right to employment is that it creates economic resources by definition, while also enabling the rights-holder to actively participate in fulfilling their own well-being. For more on the right to employment, see Harvey Philip's chapter in this volume. Relatedly, Wiktor Osiatyski argues, in his chapter in this volume, that economic rights should be severely circumscribed because most people meet their own needs by participating in the market. In contrast, only government can provide civil and political "services," and that is why civil and political rights are enshrined as rights more readily than economic and social rights.

namely, the role of social movement activism in the actualization of economic rights.

## 1. Conceptual Issues

Philosophers, lawyers, political scientists and others have wrestled with a wide range of conceptual human rights issues. In this section we touch upon a few of the most important with respect to economic rights, including their foundations/justifications, and obligations.

### *a. Foundations*

The UDHR intertwines dignity and rights in its earliest provisions. The fifth paragraph of the Preamble reads:

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

The very first Article reads in full:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

The Covenants are even more explicit about the relationship between dignity and human rights. The second paragraph in the Preamble of each reads: “Recognizing that these rights derive from the inherent dignity of the human person . . .” When it means inherent worth, dignity can be used to justify human rights in general because those rights assure and protect the intrinsic value of all human beings. However, like virtually all groundings for human rights, dignity as a foundation is contentious. For instance, Wiktor Osiatynski suggests in this volume that dignity

is too vague a concept to provide a tight grounding for human rights.<sup>21</sup> In stark contrast, in Alan Gewirth's conception of human rights (discussed below), human dignity is universal and the result of purposeful action. For Gewirth, that all human beings possess dignity is literally true in the sense of moral realism, and dignity is sufficiently precise that human rights are needed to assure and protect purposeful human action.

It is worth noting that any current contentiousness about the foundations of human rights does not derive from the absence of careful thought and consideration before the drafting of the UDHR.<sup>22</sup> The drafting body, the Commission on Human Rights, included international governmental representatives of considerable intellectual heft. For instance, China appointed a diplomat with a doctorate and a strong background in Confucianism. Lebanon chose a former professor of philosophy, while France picked a professor of international law. The commission had access to and advice from expert staff, as well as a variety of international organizations. In order to help reconcile the inevitable differences and to answer philosophical questions that arose during the its deliberations, the commission invited written comments from 150 people, including the diverse voices of Kabir and Ghandi from India, anthropologist A.P. Elkin from Australia, and philosopher F.S.C. Norththrop of Yale University, among others. Moreover, UNESCO convened a special Committee on the Philosophical Principles on the Rights of Man in 1947. Throughout, the goal was not to achieve consensus among the multitude of doctrines represented, but rather

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<sup>21</sup> Moreover, he references Hollenbach (1982), who further suggests that this vagueness leaves the concept almost vacuous. To overcome this problem, dignity would have to be linked to particular freedoms, needs and relationships.

<sup>22</sup> That is not to say that there are not any current, valid conceptual controversies. But the bigger problem involves mustering the political will necessary to commit to the binding agreements on resources needed to fulfill human rights in general, and economic rights in particular.

common ground on which to base the UDHR.<sup>23</sup> Dignity as a concept was an important component of their choice.

More recently, scholars have sought to investigate the roles of claiming, needs, agency, autonomy, and freedoms in conceptualizations of human rights in general, and economic rights in particular. All of these conceptualizations ultimately refer to the necessity of fulfilling human needs as necessary conditions for what it is to be uniquely human. For instance, in a highly influential article, Joel Feinberg suggests that claiming is what gives rights their special moral significance and what necessitates correlative obligations from others (Feinberg 1970). Significantly, basic human needs constitute at least *prima facie* claims. Feinberg sympathizes with the view that those needs do not have to correspond to duties for anyone in particular. For him, “Natural needs are real claims if only upon hypothetical future beings not yet in existence. I accept the moral principle that to have an unfulfilled need is to have a kind of claim against the world, even if against no one in particular” (Feinberg 1970, 72). Moreover, he suggests that to think of someone as having human dignity is to think of them as a potential claims-maker.

Consider some other important foundations for human rights. Henry Shue (1996) focuses on basic rights, or the minimum reasonable demands that everyone can place on the rest of humanity. No self-respecting person would consent to lesser demands. What is distinctive about basic rights is that their enjoyment is necessary for the enjoyment of all other rights. There are two kinds of basic rights: security rights and subsistence rights. The first refers to the right to be free from murder, torture, rape, and assault; the second refers to rights to unpolluted air and water, adequate food, clothing, shelter, and health care. Security can be associated with civil and political rights, subsistence with economic rights. But

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<sup>23</sup> This brief history comes from the excellent account offered by Lauren (1998, 219--25).

for Shue, they are both basic. “Deficiencies in the means of subsistence can be just as fatal, incapacitating, or painful as violations of physical security. The resulting damage or death can at least as decisively prevent the enjoyment of any right as can the effects of security violations” (Shue 1996, 24). For Shue, then, all rights are founded on basic rights and basic rights are founded on the reasonable, minimal demands required for self-respect.

Purposeful human action provides another kind of foundation (Gewirth 1992, 1996). All agents or prospective agents freely deliberate on their ends and those ends chosen are deemed worthy by the agents. An individual agent deems her purposes worthy because she deems herself worthy, in part because of her own purposiveness. But purposeful action requires freedom and well-being. Thus the purposive agent is entitled to the rights to those things by virtue of her necessity to actualize her own worth. Moreover, because this attribution of worth is attributable to purposiveness, the rational agent must also attribute the same worth to other active or prospective agents. Therefore, these rights, human rights, are universal. To deny the necessity of human rights is to deny the conditions necessary for purposeful action and hence one’s own worth, which is a logical contradiction. As noted above, for Alan Gewirth humans possess dignity because they engage in purposeful action.

Some argue that the fulfillment of basic needs is a necessary condition for human autonomy. For instance, David Copp defines basic needs as those things a person requires regardless of other goals or desires. Copp (1992) includes nutritious food and clean water, the ability to otherwise preserve the body, rest and relaxation, companionship, education, social acceptance, and self-respect. Autonomy refers to the ability to form one’s own values and to live one’s life accordingly. So if one is deprived of basic needs, they are deprived of both the physical and psychological integrity required for autonomy. Since the right to an adequate standard of living as described in Article 25 of the UDHR and Article 11

of the ICESCR goes a long way to meeting these basic needs, its ultimate justification resides in the interest each person has in assuring his or her autonomy.

A more expansive notion of freedom provides another kind of foundation. In his contemporary classic *Development as Freedom* (1999), Amartya Sen argues that the development should not focus solely on economic growth with its utilitarian foundations, but rather on the kind of development that would promote various kinds of freedoms. Because we all have reason to value good and long lives, we should all value not only political and civil freedoms, but also freedom from under-nutrition, poor health, illiteracy, and economic insecurity. Recently, he more explicitly extended the idea in relation to human rights (Sen 2004). Human rights can be justified because of the freedoms they confer, and that goes for economic as well as civil and political rights. Always, which freedoms a society chooses should be the result of public discourse and deliberation.

*b. Positive versus Negative Rights and Obligations*

Negative rights refer to the entitlement to be free *from* interference. Civil and political rights are often given as examples; we have the right to be free from restrictions on our speech, movements, associations, political choices, and so on. Positive rights refer to entitlements *to* something, like the provision of welfare goods. When considering human rights, sometimes civil and political rights have been referred to as negative rights, economic and social rights as positive rights.<sup>24</sup> Hopefully, the previous section will have demonstrated that such a distinction cannot rest on the justifications for any human right because any justification used applies to all human rights equally.

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<sup>24</sup> Similarly, civil and political rights have been called “first generation” rights, economic and social rights “second generation” rights. We do not continue that terminology here because it perpetuates a false distinction.

Obligations provide another candidate for distinguishing between different human rights. Historically, it was thought that negative rights entail negative correlative obligations, while positive rights entail positive correlative obligations.<sup>25</sup> Negative rights merely require governments and others to refrain from interfering with an individual's plans, but positive rights obligate government and others to actually provide something to an individual. Based on this kind of a distinction, Maurice Cranston (1967) famously derided economic and social rights as debasing real human rights (civil and political) because the former depends on a government's ability to pay. A universal right cannot depend upon a particular government's economic circumstances, the argument goes, because "ought implies can." Moreover, the identities of those holding negative obligations are precise: the government and everyone else has the obligation not to interfere in another's plans. The same cannot be said for positive obligations; who exactly is obligated to provide the aid required to fulfill economic rights? Further, even well off governments would have difficulty meeting the obligations associated with positive economic rights because those rights could refer to boundless aspirations (e.g., perfect health). We have already offered a definition of economic rights that emphasizes a minimum floor; while such a conceptualization addresses boundless aspirations, the objection about negative versus positive obligation warrants serious consideration.

The most compelling response first notes that *all* human rights require governments to take costly actions. In the first instance the civil human right to be free from slavery obligates the government to not engage in slavery. However, the government is also obligated to stop others from engaging in slavery as well. That

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<sup>25</sup> Philosophers are quick to point out that while rights do necessitate correlative obligations, the reverse is not true; that is, obligations do not necessitate correlative rights. For instance, deontological ethics, like that of Immanuel Kant, specify duties without any necessary appeal to rights.

*does* require resources in the form of the provision of police protection, labor inspections, etc. The right to a fair public hearing (trial) requires a costly legal system. The same goes for private property rights. The right to freely choose our political representatives is also anything but free. Therefore, it simply is not true that some human rights entail costly obligations while others do not, so that can not be a basis for distinguishing between different human rights.

Henry Shue takes the argument further by redefining the obligations associated with any basic right (1980, 52). He suggests that all basic human rights entail duties (a) to *avoid* depriving, (b) to *protect* from deprivation, and (c) to *aid* the deprived. With respect to security rights, like the right to be free from torture, his formulation means that there are duties not to eliminate a person's security (avoid), to protect people against the deprivation of security by other people (protect), and to provide security for those unable to provide it for themselves (aid). But exactly the same taxonomy applies to subsistence rights, which are integral to economic rights. In that case, there are duties to not eliminate a person's only available means to subsistence, to protect their only means of subsistence from deprivation by other people, and to provide subsistence for those unable to provide it for themselves. Shue's formulation simultaneously blurs the purported distinction between negative and positive obligations, while providing a coherent account of obligations inherent to all human rights, at least basic ones.<sup>26</sup>

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<sup>26</sup> Another possible distinction, one coming from Kant (1956 [1788]), concerns perfect versus imperfect obligations. Perfect obligations refer to inviolate obligations, which for Kant, were the negative injunctions comprising the moral law. The obligation not to torture is an example. In contrast, imperfect obligations refer to desirable acts we should do, but are under no compulsion to do. Improving one's own knowledge and character are examples. It turns out, as Sen (2004) notes, that all human rights entail both kinds of obligations. Sen uses the example of those witnessing a killing. There is the imperfect obligation to try to stop it, but not the perfect obligation. If one can help, the obligation is to consider doing so. To use Shue's framework above, governments (and others) have the

Nevertheless, the question about the exact identity of duty bearers is an important one, and constitutes one of the most fertile areas of research on the conceptual foundations of economic rights. Typically, the primary duty bearer is assumed to be an individual's own government, just as it is in civil and political rights. That interpretation derives partly because historically it is governments that have been the primary human rights violators, and partly for practical reasons. One's own government is best situated to uphold any given individual's human rights. But that interpretation has been broadened to account for the interrelated notions of wider responsibility and also the resource constraints experienced by poorer countries. For instance, James Nickel (2005, 396) argues that human rights really require a division of labor of duties along the following lines: (1) governments are the primary duty-holders with respect to their own citizens; (2) governments have the duty to respect the rights of other citizens; (3) each individual has the negative duty to respect all other individuals rights; (4) citizens have the responsibility to promote human rights in their own country; and (5) "governments, international organizations and individuals have back-up responsibilities for the fulfillment of human rights around the world."

In a somewhat controversial thesis, Thomas Pogge (2002a; 2005) argues that richer nations are obligated to provide assistance to poorer nations because the particular history and institutionalization of the current global international order—built on the foundations of slavery and colonization—have caused

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perfect obligation not to eliminate either a person's security or only means to subsistence. But when it comes to costly actions by government (or others), the obligations may be imperfect in both cases. Just as a government should shepherd the resources to aid those in need of subsistence, so too is it under the imperfect obligation to shepherd the resources to provide the police, legal, and political systems necessary to protect its citizen's security. All basic rights entail both perfect and imperfect obligations. That is not to say that particular rights might not entail a different bundle of perfect and imperfect obligations; it is simply to say that the distinction is not peculiar to any particular human right.

benefits to the rich and harm to the poor.<sup>27</sup> Since alternative, feasible global orders are available, the well-off are responsible for the massive suffering of the poor, and therein lies the source of their obligation. In any case, as a practical matter the notion of wider responsibility is recognized in international agreements such as the ICESCR and the Millennium Development Goals, both of which call for international assistance. In fact, according to Skogly and Gibney in this volume, those international human rights agreements justify the obligations for international assistance. Such a legal foundation hinges on justiciability, a topic to be discussed shortly in the policy section of this chapter.

This brief tour has highlighted not only the various justifications of economic rights, but also the joint nature of those justifications. *All* human rights are similarly justified, even if there exist conceptual differences around the edges, as is particularly true in relation to obligations. That kind of a claim might then lead some to question the validity of *any* human right. Since that kind of objection is about the nature of human rights in general, it is beyond our scope here. But the objection that human rights are on shaky ground always seems to reduce to a normative claim about whether one person should have reason to take into account the welfare of another. Those arguing against human rights base their objection on positive and normative assertions about human self-interest. Those arguing for human rights counter that the existence of human empathy, the ability to identify with others, the ability to consciously reflect about truth and duty, and evolutionary mechanisms that select for those who cooperate with others all provide motivations beyond self-interest.<sup>28</sup> Without wading into those waters, we

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<sup>27</sup> In the same spirit, Elizabeth Ashford (2006) carefully argues that international obligations seem masked because the pertinent relationship is between a large group of indirectly responsible agents and a large group of victims.

<sup>28</sup> For instance, on empathy (and identification) see Jenks (1990); on identification see Nagel (1978); on conscious reflection see Korsgaard (1986 and 1994); and on evolutionary mechanisms see Frank (1988). If a person holds a

merely point out that human beings at least have the capacity to consider the welfare of others, as innumerable acts of helping, decency and cooperation amongst people (both known and unknown) suggest. That simple observation settles the debate on whether or not human rights are possible—indeed, they are.

*c. Contributions to this Volume*

In the first contribution, Jack Donnelly attacks the myth that western industrial democracies as a whole were, and are, opposed to economic rights. We already touched on the misconception that human rights emerged solely as a western construct. Through careful historical research, Donnelly debunks the notion that the West supported civil and political rights and only reluctantly acquiesced to economic rights in order to secure passage of the UDHR. One purported reason for that false bifurcation is that the West recognized that economic rights are non-justiciable. Donnelly's lucid treatment of the justiciability issue exposes yet another false distinction between different kinds of human rights. Both his historical account and his fresh treatment of the justiciability issue will likely provoke much debate.

Three of the authors in this volume offer new justifications for economic rights. Wiktor Osiatynski takes a different tact, one that *does* preserve the distinction between civil and political and social and economic rights, but on a novel basis. To do so, Osiatynski differentiates between kinds of needs. All humans need the ability to express ourselves and also fairness in our interactions with others, just as we need nutrition, health, and education. All such needs are important; the distinction lies in how these needs should be fulfilled. In

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proposition like “harming others is wrong” or “minimizing harm is right” to be true, she has reason (though not necessarily overriding reason) to support human rights (Minkler 2007, ch. 8). That kind of analysis appeals to what philosophers call internalist reasons: the truth or perceived truth of a proposition provides the motivation for acting in accordance with that proposition.

Osiatynski's account, only government can provide the services to meet some needs. Only government can provide political and civil services like police protection, fair trials, protection of free speech and so on. In contrast, most people acquire the services to meet their other needs in the market, primarily through their own efforts. We buy our own food, shelter, education and medical care, although the last two may be provided by government if they are otherwise deemed social goals. But Osiatynski's point is that since political and civil services can only be provided by the state, human rights are required to assure that provision. In contrast, since most people can fulfill their other needs on their own in the market, social and economic rights should be circumscribed to cover only those that can not meet those needs through no fault of their own (e.g., severe disability, young or old age, etc.). While one could argue about a further requirement for an *a priori* classification of needs before describing what government should provide versus does it does provide, Osiatynski's conceptualization has certainly influenced our own thinking about economic rights. His emphasis on the responsibility for each to try to provide for his or her own subsistence needs not only limits society's obligations, but also provides a strong justification for the right to work.

In the next chapter, Albino Barrera provides a new kind of justification for economic rights. Barrera argues that if one supports the notion of an efficient economy (i.e., one that uses the least amount of resources to produce a given output bundle), as most economists do, then one should also support economic rights. To achieve this conclusion Barrera first notes that the nature of the economy has changed to emphasize knowledge, its production and use, and that implies the importance of human capital formation. But human capital formation hinges on basic needs being fulfilled, needs that the market itself cannot always fulfill. Hence economic rights are required to meet basic needs, basic needs

fulfillment is required for human capital formation, and human capital formation is required for the efficient operation of the knowledge economy.

Michael Goodhart uses a similar kind of reasoning, focusing on human emancipation instead of an efficient economy. Goodhart shows that a commitment to an emancipatory version of democracy also implies a commitment to economic rights. Working in the tradition of emancipatory democrats like Paine and Wollstonecraft, Goodhart uses emancipation to mean political freedom, equality, independence, and freedom from domination. And like Franklin D. Roosevelt's admonition that "a necessitous man is not a free man," a person in need is subject to domination—the control of another who has resources one needs. Thus the function of economic rights is to assure emancipation and also to secure other fundamental rights (*a' la* Shue). Goodhart emphasizes subsistence rights more than economic rights, particularly as embodied in BIG, because only BIG can assure that subsistence needs are met for all.

The section concludes with Philip Harvey's contribution that explicitly focuses on the right to work. Harvey offers a conceptual clarification about the right with the hopes of nudging advocates to better recognize all of its varied elements. To do so, he distinguishes between four dimensions of the right: the quantitative, qualitative, distributive, and scope. For instance, recent International Labour Organization efforts have focused on the qualitative, or "decent work" aspect of the right, while BIG proponents have focused on the scope, or what kind of work "counts." Harvey suggests that advocates are missing a central component of the right, namely, the quantitative dimension, because they have abandoned the goal of full employment (whereby everyone who wants paid employment should be entitled to it). In addition to spelling out why he thinks that is mistaken, Harvey also provides a definition and measure of full employment that is consistent with the right to work.

## 2. Measurement

Given some of the debates over the conceptual status of economic rights reviewed above, it is not surprising that this type of human right poses particular measurement challenges. In this section, we first distinguish economic rights indicators from earlier data on economic development and more recent human development indicators. By tracing the historical emergence of economic rights indicators, we aim to eliminate at the outset some of the (considerable) confusion over the basic nature of these indicators. Next, we explore attempts at measuring government “effort” to fulfill economic rights—particularly in light of notions of “maximum-available resources” and “progressive realization,” which qualify related state obligations under international law. Third, we explore the challenge of obtaining data on economic rights that is disaggregated by gender and other characteristics. Disaggregated data is essential to determining how equitably (or not) resources are distributed—which, in turn, is central to analyzing the realization of economic rights.

### *a. Economic Rights Indicators – a brief historical perspective*

The modern conception of human rights and corresponding institutional structures for implementation are relatively new—less than a century old. When drafted in 1948, the UDHR placed all rights on an equal footing in theoretical terms. But the institution-building that took place in the human rights regime *after* the promulgation of the UDHR had the practical effect of hampering the measurement of economic rights—and with it, their monitoring and implementation. A treaty monitoring body was created for the ICCPR and began work immediately upon the treaty’s entry into force (in 1976), whereas it took nearly a decade for the ICESCR’s treaty-monitoring body to be created (in 1985). This meant that expertise on developing indicators for monitoring and assessing

economic rights performance lagged behind that on civil and political rights from the outset (Alston 1992). The following section traces the evolution of economic indicators in general; it focuses first on base indicators of economic growth and human development, then on rights based approaches to development, all as predecessors to contemporary efforts at measuring economic rights.

Since for most of the twentieth century the dominant economic paradigm was growth-oriented, one common problem that emerged in relation to economic rights measurement was the overly facile equation of economic growth with economic rights. Economic development is a necessary but not sufficient condition for the attainment of economic rights. From a measurement perspective, Malhotra and Fasel (2005, 17) point out that socioeconomic development data has generally failed to convey information on mechanisms for redress and/or accountability that are vital to understanding the processes by which economic rights are protected.

For instance, poor people may be granted temporary work by the state—but how evenly is the work distributed? Are there equitable rules of access for obtaining particularly desirable jobs? Are there special considerations given to vulnerable groups (for example, female-headed households) in access to state-provided work relief? Are there means by which unemployed people can hold the state accountable for inequities or inefficiencies in delivery of such work? Simply counting the state revenues spent on “work relief” would not account for these types of concerns.

Todd Landman (2005, 39) distinguishes between three general types of human rights measures: measures of *de jure* protection of human rights, as expressed through legal commitments; measures of *de facto* enjoyment of human rights on the ground; and what he terms measures of “various components of public policy, such as inputs, processes, outputs, and outcomes.” Measures of *de facto* enjoyment of rights can be further distinguished, Landman explains (2005,

44--45), between events-based measures, standards-based measures and survey-based measures.<sup>29</sup> The measurement of economic rights for much of the past half-century has fallen short because the *de facto* enjoyment of economic development (or lack thereof) was often equated with economic rights—instead of measuring the more nuanced components of access, redress, and accountability highlighted above by Malhotra and Fasel.

The launching of the UN Development Programme’s annual “Human Development Index” (HDI) in 1991 ushered in a focus on human development, which inched the academic and policy communities closer to developing robust measures of economic rights. The HDI integrates GDP, education and longevity data for all UN member states and ranks them in terms of human development. Its creation presaged the shift toward an explicitly rights-oriented approach to development defined in the mid-1990s by the UN Office of the High Commissioner for Human Rights as a process that expressly links development to rights. It also emphasizes accountability, empowerment, participation in decision-making by people at all levels of society, as well as non-discrimination and attention to vulnerable groups (Marks 2003, 6). The rights-based approach to development applies to all categories of rights, but is particularly relevant to discussion of economic rights, since it takes people’s participation centrally into consideration.

Participation is integral to achieving economic rights. Significantly, the UN *Convention on the Rights of the Child* of 1989, which came into force in 1990 and quickly became most widely ratified convention in UN history, includes

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<sup>29</sup> As per Landman (2005, 44): “Events-based measures . . . count specific occurrences of human rights violations, be they against individuals or groups. Standards-based measures use the legal ideal established by the international law of human rights and then code country performances on limited ordinal scales that reward and punish countries for their human rights records. Survey-based scales use survey data on individual level perceptions of human rights on the ground.”

explicit language on children’s right to participate in decision-making concerning their well-being (Article 12). Such explicit references to participation were new in human rights treaty law, and the CRC was thus an important forerunner to later policy documents that would refine the notion of participation as central to rights-based development. This shift coincided with scholarly interest in the consolidation of democracy and economic development in post-authoritarian settings in the 1990s—including proposals for land and resource redistribution in the pacted transitions to democracy that followed civil wars and regime change in Central America and elsewhere (de Soto & del Castillo 1994). In part, the shift was also related to the broader integration of the concept of governance into discussions of development—fueled by increasing concern in the 1990s over the detrimental impact that corruption can have on the development process.

Even the World Bank—an institution with an officially non-political mandate, according to its Articles of Agreement—began to explore rights-based development approaches in earnest in the 1990s (Ackerman 2005) along with the UN Office of the High Commissioner for Human Rights (2004) and numerous NGOs.<sup>30</sup> Scholarship on grassroots movements for environmental justice (Fox & Brown 1998; Khagram 2004) and against contemporary forms of economic globalization (Bandy & Smith 2005) has also grappled—albeit often indirectly—with the concept of economic rights as it relates to popular participation in economic policymaking.

But the rights-based notion of development—for all its attention to accountability, empowerment and participation—remains more of a slogan than a

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<sup>30</sup> A comprehensive bibliography on a rights-based approach to development is available from InterAction (a US-based policy and advocacy organization that counts 160 development and humanitarian NGOs as members): <http://www.interaction.org/rba/documents.html#intro>.

concrete framework for measuring human rights, particularly economic rights. As Landman observes (2005, 49):

[T]here remains a lack of clarity concerning the precise scope of state obligation and the core content of individual economic, social, and cultural rights, which in turn makes it difficult to identify events and practices that clearly amount to violations....[and] there continues to be a debate over how economic, social, and cultural rights are to be realized progressively through the use of the maximum available resources. Such a view of progressive realization implies that the protection of such rights is still relative...It has been impossible so far to provide meaningful and comparative measures of these rights for global comparative analysis.

The following sections address Landman’s observations in detail.

*b. Measuring “Effort”*

International law requires all states that have signed and ratified binding treaty law—such as the ICESCR—to make an effort toward fulfilling all economic rights to the maximum extent possible.<sup>31</sup> Maximal, not minimal effort is the baseline. Economic rights, however, do not have to be realized immediately—but instead, can be realized “progressively” (i.e., over time) in light of differences in the amount of resources available to countries at varying stages of development. Article 2, paragraph 1 of the treaty articulates the nature of this obligation for rich and poor states alike as follows:

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<sup>31</sup> International treaty law—or “hard law”—places more binding obligations upon states than does “soft law” (i.e., declarations or conference documents). The UDHR, however, has assumed the force of customary law over time, both because it has informed constitutional drafting in scores of countries and because its principles are widely incorporated into domestic statutes (Henkin, Neuman, Orentlicher & Leebon 1999, 295--98).

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the *maximum of its available resources*, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures [emphasis added].

Progressive realization is not an excuse for inaction, however, and mainstream legal interpretations of the ICESCR reinforce this explicitly. The Limburg Principles on the Implementation of the *International Covenant on Economic, Social and Cultural Rights* (drafted by a group of international legal experts, 2-6 June 1986, Maastricht, The Netherlands) state in Part B, paragraphs 21--24:

The obligation 'to achieve progressively the full realization of the rights' requires States parties to move as expeditiously as possible toward the realization of the rights. Under no circumstances shall this be interpreted as implying for States the right to defer indefinitely to take steps to fulfill their obligations under the Covenant. Some steps . . . require immediate implementation . . . such as the prohibition of discrimination. . . . The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available. Progressive implementation can be effected not only by increasing resources, but also by the development of societal resources necessary for the realization of the rights recognized in the Covenant.

However, the processes for state reporting on the ICCPR and ICESCR assume the distinction between immediately binding and "progressively realized rights," and the data collected to fulfill reporting requirements also mirrors this distinction. The very existence of the distinction has rendered it relatively easier to establish a baseline for reporting related to the ICCPR than the ICESCR. Setting baselines for measuring violations of economic rights as well as

fulfillment—even of the fundamental economic rights to an adequate standard of living, to work, and to basic income guarantees—has been hobbled by conflicting notions of “how much is enough” or “what is appropriate” for fulfillment, particularly fulfillment over time.

Debates over a “living wage” provide a good example. Both the UDHR and the ICESCR include related provisions: Article 23 of the UDHR stipulates the “right to just and favourable remuneration ensuring for [a worker] himself and his family an existence worthy of human dignity” while Article 7, paragraphs a, (i) and (ii) of the ICESCR refer to “remuneration which provides all workers, as a minimum, with fair wages” and “a decent living for themselves and their families.” If the legally established minimum wage is not enough to enable a worker to meet this wage threshold, then how much above that minimum wage is necessary to ensure a “decent living?” How do cross-cultural factors affect the calculation of a living wage? What role should the state versus private sector employers play in fulfilling such a wage? What type of phase-in is permissible in moving from an existing sub-standard minimum wage to a living wage?

Rosenbaum (2000; 2004) and a team of colleagues in the nongovernmental sector have calculated living wage standards for a number of countries using a participatory methodology involving workers themselves in gathering data. And American economists have taken a renewed interest in the issue with the passage of living wage ordinances in municipalities throughout the United States.<sup>32</sup> But there are not yet agreed-upon international standards for calculating living wage globally.

Moreover, some authors, including Donnelly in this volume, have argued that the distinction between immediately actionable versus progressively realized rights is itself over-stretched. They point to empirical evidence of the difficulty

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<sup>32</sup> For detail on the efforts to promote adoption of living wage ordinances in U.S. cities, see Stephanie Luce (2004). See also Robert Pollin (2005, 3--24).

people face in exercising the civil and political rights to which they are supposedly immediately entitled—particularly in poor countries. For example, though the state’s obligation to fulfill the right to a fair trial may be immediately actionable, citizens of democratic but poor countries like Costa Rica are nevertheless incarcerated for lengthy periods of time while awaiting trial. In that country, one in four inmates is in this position. The rates are even higher in neighboring Central American countries—e.g., in Honduras, three in four inmates are awaiting trial (O’Donnell, Vargas-Cullell & Iazzetta 2004, 132).

There is also debate over how to evaluate a given state’s efforts not only to use its own resources to fulfill economic rights but also to effectively use the resources available to it through international development assistance for this purpose. As noted in the Limburg Principles above, the obligation of states under the ICESCR is to use resources as effectively as possible. And monetary increases in aid are not the only resource necessary to achieve the fulfillment of economic rights; the Limburg Principles clearly state that society’s resources—social capital (Putnam 1993)—can also play a key role.<sup>33</sup>

And there is debate over how to measure the effort of wealthier states to do their part in enabling poorer ones to realize economic rights. The literature on cosmopolitanism has grappled extensively with the nature of this type of obligation (Pogge 2002a; Brooks, Miller & Pogge 2002) as do several authors in this volume, discussed below. In practical terms, UNDP first vetted the idea of a “20/20 initiative” in 1992—a plan whereby poor countries would dedicate 20% of their budgets to provision of basic social services, and donors would channel 20% of their aid to this end. The 20/20 formula was endorsed at the UN World Summit

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<sup>33</sup> Social capital “refers to features of social organization, such as trust, norms, and networks, that can improve the efficiency of society by facilitating coordinated actions” (Putnam 1993, 167). For an overview of related debates and literature, see <http://www.socialcapitalgateway.org/>.

for Social Development in 1995, and has since re-circulated in the context of discussions over the UN Millennium Development Goals (Vandemoortele, Tostensen & Tostensen 2003). The challenge, however, is to reframe related discussions in terms of economic rights—rather than charity—and to measure accurately government “efforts” to this end.

*c. The Importance of Disaggregation*

Data on economic development, access, and participation, which are integral to building accurate measures of de facto economic rights enjoyment, tend to be reflected in aggregate measures (e.g., GDP/capita, mortality rates, etc.). This, in turn, has hampered the development of economic rights measures. National statistical offices worldwide have only begun to compile gender-disaggregated data since the mid-1970s. And these data are still not routinely or comprehensively gathered, nor disaggregated across other categories such as race, ethnicity, or disability, which would help determine the level of discrimination (or lack thereof) in a given population. Nor are data regularly compiled on distribution of economic resources at the local, national, regional or international level.<sup>34</sup>

Past *Human Development Reports* have disaggregated data for some states by gender and race to illustrate the powerful impact that inequality can have on

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<sup>34</sup> National level statistical bodies, particularly in developing countries, often lack trained staff and adequate budgets for maintaining annual surveys, which can create significant “missing data” problems for researchers. Moreover, collecting gender disaggregated data at the field level would require surveys designed to identify the role gender plays in shaping household income accumulation and consumption patterns. But international and national bodies charged with setting the standards for data collection have not always issued clear guidelines. Indeed, states are often reluctant to recognize or address the longstanding inequalities and abuses that give rise to gender-based and other forms of inequality. Poor economic rights measures are thus in part a reflection not only of technical shortfalls, but also of a lack of political will (Beetham 1995; Hertel 2006).

overall development outcomes in a given state—although this is not standard practice with respect to race, the results are revealing. The 1993 Human Development Report (UNDP 1993, 18) reported that white citizens in the United States ranked number 1 in the world in terms of human development, while African-Americans ranked number 31 (next to Trinidad and Tobago in the country rankings) and Latinos ranked number 35 (next to Estonia).

As a compliment to the HDI, the UN Development Programme has developed a “Gender-related Development Index” (GDI) reflecting differential achievement by gender, along with a “Gender Empowerment Measure” (GEM) to rank countries according to the level of women’s participation in political decision-making, their access to professional opportunities, and their earning power (UNDP 1995). Yet as useful as these measures are, they do not capture the processes by which gender equality (or inequality) is institutionalized over time, nor the means available to women for redress—both key components of economic rights.

*d. Contributions to this Volume*

Despite all of these measurement challenges, several chapters in this volume break new ground by offering actual indices for ranking country performance on economic rights and by developing new conceptual tools for measurement. But first, Audrey Chapman revisits the “violations approach” developed in her seminal 1996 article analyzing its utility and limitations along with those of three additional approaches: one focused on core obligations, another on individual country budget analysis, and the third on various indicators and benchmarks. Then, in the next chapter, Clair Apodaca focuses in particular on a specific set of variables for measuring “progressive violations.” She appeals directly to the ICESR for her list of basic subsistence rights, and then offers a pyramid of measures, from quantitative to qualitative. For instance, with respect

to the right to work, Apodaca suggests using the quantitative measure of unemployment rates, along with looking at government funding for training and work programs, as well as in-depth qualitative studies on a state's economic conditions affecting employment. Both Chapman and Apodaca highlight the ongoing challenge of capturing distributional inequities and standardizing that information across countries.

Mwangi Samson Kimenyi develops a “pro-poor index” of economic growth that ranks government effort to implement macroeconomic policies that benefit the poor at the domestic level. Kimenyi defines pro-poor growth as economic expansion associated with reductions in relevant measures of poverty; in such a scenario, income growth by the poorest group exceeds the average income growth rate. Kimenyi acknowledges that pre-existing high levels of inequality can reduce the impact of even the best intentioned policies, and argues that growth with redistribution is the key to achieve poverty reduction and overall human development. His chapter explores a range of institutional factors that affect related policy development and poverty reduction effectiveness.

David Cingranelli and David Richards develop a general index for ranking country “willingness” to fulfill economic rights, presented in their chapter in this volume. The index draws on data from a sample of 191 countries from the years 1980 to 2000 (i.e., the Cingranelli and Richards Data Set, available at [www.humanrightsdata.com](http://www.humanrightsdata.com)). The authors argue that countries with more resources gain an unfair advantage if rankings simply reflect the overall rate of growth irrespective of how it is channeled. Hence, Cingranelli and Richards score countries based on how much they raise the living standards of their poorest residents, given what would be expected in light of the state's existing resources. If a country raises the standard of living of the poor more than would be expected given resource constraints, its ranking is higher than a comparably wealthy

country that does only as much or less than what would be expected, given its resources.

Shawna Sweeney, in turn, draws on the Cingranelli and Richards Data Set to develop a highly detailed, cross-country analysis of respect for women's economic rights in 160 countries from 1981 to 2003, presented in her contribution to this volume. Sweeney provides evidence that political secularism, democracy, trade globalization, and economic development all positively impact women's economic rights attainment.

### 3. Policy

Three of the principal policy challenges related to economic rights are: specifying the nature of obligations; demonstrating the justiciability of these rights; and determining the appropriate institutional framework and/or mechanisms for implementing such rights. This section takes up all three in turn.

#### *a. Obligations*

In human rights law, the state has traditionally been considered the obligated party because states are parties to the treaties central to the human rights regime. Legal scholars (particularly in the liberal tradition) have been careful to delineate a zone of privacy around individuals which the state must respect and protect in relation to civil and political rights.

Eide's (1989) classic respect-protect-fulfill framework, however, captures the scope of responsibility more fully. States must not only refrain from causing harm themselves and endeavor to protect their citizens and residents from harm, they must also set in place an enabling environment for the realization of human rights. The state has a vital role to play in crafting a policy and regulatory framework within which economic growth and distribution with equity can take place, just as it must set in place the enabling environment for the realization of

civil and political rights through the creation of a functional judicial system, for example.

The obligation for respecting, protecting and fulfilling economic rights can also be extended to another important sector of non-state actors—namely, corporate actors. The extension of obligations to private corporations reflects the reality that although such corporations do not set public policy per se, they can exercise indirect influence over elected or appointed officials who do, both through political contributions and through the threat of exit (Hirschman 1970). Moreover, corporate activities can affect significantly the quality of life for people in those states where corporations source production inputs, produce goods and services, and market them (Hertel 2003). The idea is that corporations have the power to compromise the enabling environment in which rights are realized; corporate responsibility and obligation derives from that power.

Yet as Craig Scott (2001a; 2001b) explains, efforts to hold corporations responsible for even the most classic human rights violations—“such as detention and torture of environmental activists, union leaders, or political opponents of government policy regarding the company”—are in their “very embryonic” stage at best (2001b, 568). Legal experts such as Beth Stephens (2001; 2002) have traced efforts to use the US court systems to this end. But as Scott points out, there remains considerable debate over what the “appropriate juridical forms of regulation and site of institutional scrutiny” should be (2001b, 568).

The only instruments in international law that explicitly include corporations as obligated parties are either non-binding declarations of principle—such as the International Labour Organization’s 1977 *Tripartite Declaration of Principles Concerning Multinational Enterprises (MNEs)* and

*Social Policy*<sup>35</sup>—or voluntary codes of conduct or auditing standards adopted by companies themselves. The latter may reference binding treaty law (such as the ICESCR, CRC, or key ILO conventions) but they do so only to set a normative baseline for action by companies because states, not corporations, are the entities directly bound by such treaties.

Moser and Norton (2001, vii--viii) have developed several key concepts useful for interpreting the economic rights obligations of state as well as non-state actors. They argue that the responsibility to fulfill rights obliges the state “to *facilitate, provide and promote*” the conditions necessary to do so (emphasis added). For example, the state has the obligation not only to protect property rights but also to ensure equal access to economic opportunity both through effective enforcement of non-discrimination laws and through legislation aimed at promoting the well-being of vulnerable groups.<sup>36</sup> This, in turn, has led Moser and Norton to develop a “*how-does-who-claim-what-from-whom*” framework for “applying rights to sustainable livelihoods.” The framework undergirds a “channels of contestation matrix” used to map the institutional channels through which claims can be made, the nature of claims, the methods of staking claims, and the nature of obligation. The matrix helps illustrate the manner by which economic rights are fulfilled through a process of social struggle involving civil society actors as claimants and the state as well as corporate actors as obligated parties.<sup>37</sup>

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<sup>35</sup> Additional examples include the OECD Guidelines for Multinational Enterprises (2000) and the United Nations draft “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights” (2002). For an extensive review, see the UN Economic and Social Council, Commission on Human Rights (2005).

<sup>36</sup> See also Green (2001, 1071--72).

<sup>37</sup> Foweraker and Landman (1997) trace a similar process of contestation in relation to civil and political rights in their work on citizenship rights and social movements.

*b. Justiciability*

The ability to settle something in a court of law—the justiciability of an issue—has been considered a major stumbling block for the implementation of economic rights for much of the past half century. We first draw insights from Donnelly’s chapter in this volume to suggest that non-justiciability lacks strong theoretical grounds and is more an artifact of institutional design than a reflection of the inherent nature of economic rights themselves. We then present concrete evidence of how economic rights can be dealt with through the legal system.

At present, economic rights are not as well institutionalized as their civil or political rights counterparts. There are countries with constitutional guarantees and/or legislation on the books related to economic rights; however, there are many countries without them. The non-justiciability of economic rights is an artifact of the historically constrained choices made concerning how to construct the institutions of the human rights regime in the 1940s to 1960s, as well as subsequent decisions at the national level concerning how to instantiate such rights in law.<sup>38</sup> It is not a reflection of the inherent character of these rights, though this argument is often made.

The official treaty monitoring bodies of the UN system, as well as the many nongovernmental organizations that fill the human rights sector, have tended to focus their efforts around monitoring negative rights abuse—disproportionately in the civil and political realm—which has only contributed to the entrenchment of the view that economic rights are non-justiciable. When economic rights are litigated on at all, the groups that have brought suits or lodged complaints with intergovernmental treaty bodies have focused on arbitrary and discriminatory treatment rather than distributive justice.

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<sup>38</sup> These “contingent political decisions” are richly detailed in Donnelly’s contribution to this volume—see in particular p. 9--10, or xx in final version.

In so doing, they have employed a “violations approach” (Chapman 1996) to monitoring economic rights that are aimed at shifting the paradigm away from progressive realization of economic rights toward a focus on immediately realizable rights, such as the right to nondiscrimination in access and treatment. Such an approach has been attractive to advocates because it could be mapped onto existing legal strategies; the perpetrator-victim-remedy line of argument is easier to adjudicate in court than progressive violation (Roth 2004).<sup>39</sup>

Indeed, those who argue against the justiciability of economic rights claim that the perpetrator and victim are easier to judge in the case of civil and political rights than economic ones. Judging abuse of so-called negative rights is more straightforward, they claim, than judging non-fulfillment of “positive” rights. Tracing “who-has-harmed-who-and-how” is easier, this argument runs, when the nature of harm is immediately evident (as is the case with negative rights) and can be linked to a readily identifiable source of harm, than when there are questions over the extent to which harm has been done or who the agent of harm is (Roth 2004).

But the argument against the justiciability of economic rights is problematic on a number of levels. First, the negative/positive rights dichotomy itself is a false one, as we have already noted. Most rights have both a positive and a negative dimension. For example, the right to a fair trial entails not only protection against the denial of the trial itself but also provision of the legal infrastructure to make the trial possible.

Second, Beetham and others (including Chapman in this volume) argue it is possible to specify a minimal floor for economic rights, which means that “such

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<sup>39</sup> This view contrasts with that of Pogge (2002, 2005) and Ashford (2006). Those authors argue that by implementing and supporting an international economic system that harms the poor, the economic rights of the poor are violated precisely because rich nations are violating the (negative) obligation not to harm.

rights can increasingly be justiciable, and amenable to individual petition and complaint” (Beetham 1995, 48).<sup>40</sup> Chapman, both in this volume and in other work, has detailed efforts by the Committee on Economic, Social and Cultural Rights to define such “core” obligations in relation to the right to health.<sup>41</sup>

Sometimes it is thought that the nature of economic and social rights claims do differ from civil and political rights because economic rights claims are treated less as individual claims than as statements of public policy goals. But there are elements of economic rights – such as labor rights – that are already readily justiciable, as will be discussed below. And there are public policy goals with distinctly civil or political rights character (such as military defense) that are also not framed in terms of individual rights claims yet are not denigrated as simply wishful thinking in the manner that economic rights often are.<sup>42</sup>

Virginia Leary (1996) has demonstrated the justiciability of labor rights, and their central relationship to human rights, more generally. As she explains, several core labor rights standards should be considered part of international customary law—law to which states are bound regardless of whether or not they have actually signed a treaty. Because prohibitions on slavery and on torture are already considered part of customary international law, analogous practices in the workplace such as forced or bonded labor (prohibited under ILO Conventions 29, 105, and 182) should also be prohibited under customary law. Leary argues that

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<sup>40</sup> Beetham cites 1992 reporting by the UN Committee on Economic, Social and Cultural Rights that explored creating an individual complaint mechanism under the ICESCR. See Annex IV of the Seventh Session of the Committee, UN Doc E/C 12/1992/2, pp. 87--108, cited in Beetham (1995, 48).

<sup>41</sup> Defining core rights is not an unproblematic exercise. As Chapman points out, a minimum “floor” could eventually become a “ceiling” (Chapman, 14 in this volume – xx in final version). Moreover, this type of “thinking small” in the course of setting priorities for core rights goes against the grain of what most human rights advocates are accustomed to doing (Chapman & Russell 2002, 195--97).

<sup>42</sup> See Donnelly’s chapter in this volume, pages 5 and 9 -- xx in final version.

the international community is moving toward the inclusion of freedom of association (protected under ILO Conventions 87 and 98, among others) in the category of customary law as well.

And human rights advocates have used the Alien Tort Statute (also known as the Alien Tort Claims Act of 1789) available under U.S. law to file suit on behalf of foreign plaintiffs harmed by the actions of multinational corporations acting alone or in concert with a foreign state.<sup>43</sup> The types of crimes central to modern suits have included summary execution, torture, and slavery—all occurring in the context of the workplace or work-related settings. These suits demonstrate starkly the manner in which civil, political, economic and social rights violations overlap. They also demonstrate new attempts at enforcing the accountability of non-state actors extra-territorially. As will be discussed below in section 4, such innovations in legal advocacy are the hallmark of creative activists committed to expanding the legal purview of economic rights.

### *c. Implementing Economic Rights*

One of the frustrations for scholars and policymakers interested in economic rights application is that the intensity of debate over conceptual and measurement issues seems to overshadow practical discussion of how to implement such rights. In this section, we explore questions related to the types of legal, institutional and normative frameworks necessary for realizing economic rights on the ground. We also include some cautionary notes by veteran human rights scholars included in this volume.

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<sup>43</sup> For a critique of activists' use of the Alien Tort Claims Act, see Gary Clyde Hufbauer and Nicholas K. Mitrokostas (2003). For a proponent's view, see Terry Collingsworth, "The Alien Tort Claims Act – A Vital Tool for Preventing Corporations from Violating Fundamental Human Rights."

The most conventionally “familiar” mechanisms for economic rights implementation are at the international level, namely, UN treaties on various aspects of economic rights and their respective monitoring bodies (either created under the language of the treaty itself or afterwards, as in the case of the Committee on Economic, Social and Cultural Rights). This short overview provides only the most basic facts and highlights several key debates.<sup>44</sup>

The monitoring bodies specific to each convention—one for the ICESCR, another for the CEDAW, another for the CRC, others for the various ILO conventions or regional human rights conventions, etc.—have all developed significant bodies of knowledge on key aspects of their respective treaties. Work by Sepulveda (2003), Chapman and Russell (2002), and Eide et al. (2001) details the evolution of core concepts and reporting approaches developed in relation to specific aspects of the ICESCR, such as the right to access to health care. In particular, they explore the shift from a “violations” approach to an “obligations” approach to reporting, which Chapman further refines in her contribution to this volume. The challenge to monitoring and implementing rights from an “obligations” approach is specifying a core set of obligations (i.e., what Chapman terms in this volume “minimum core content”). Work on the rights to food, education and health has advanced in this regard, with Hunt (1996) developing key concepts in relation to the minimum essential levels of the right to access to health services, in particular.

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<sup>44</sup> Alston (1992), Hunt (1996), Eide, Krause and Rosas (2001), Sepulveda (2003), and Chapman and Russell (2002) all offer fine-grained accounts of important institutions in the human rights regime that address economic rights, along with analyses of the difficulty of enforcing rights of this nature through international law. Sepulveda (2003) and Alston (1999; 2005), in particular, also highlight the role of regional courts and human rights implementation mechanisms (such as the European Court of Human Rights and the Inter-American Court of Human Rights).

Moving from the international to the national level is natural in a discussion of economic rights implementation because states parties to treaties are responsible for fulfilling the obligations of the treaty at the national level, and have obligations to support other states in doing so through international assistance and cooperation, as discussed above. Action on implementing economic rights varies at the national level. In the following short overview of national-level approaches, we draw heavily on work by Wiktor Osiatynski (included in this volume), Sunstein (2004), and Sachs (2005).

The first sphere in which to institutionalize economic rights within the state itself is through constitutionalization. Constitutions may either include directive principles regarding economic rights (framed similarly to policy goals) or an actual listing of enforceable rights. Sunstein (2004, 140) characterizes constitutions accordingly as either expressive or pragmatic constitutions. The rights expressed in concrete terms in a constitution are rendered enforceable through a constitutional court or through the decisions of the comparable highest court of the land, in the absence of a constitutional court.

South African jurist Albie Sachs (along with Osiatynski in this volume) offers concrete examples of how differing countries have dealt with economic rights constitutionally. For instance, the South African Constitution includes provisions on housing (section 26) and healthcare, food, water, and social security (section 27). As Sachs explains, whereas the Indian Constituent Assembly adopted a post-independence constitution “which included socio-economic rights simply as directives of state policy, making it clear that they were not in themselves to be enforceable by courts” (2005, 84), the South African constitution includes an “equality clause” in its Constitution which prohibits “negative discriminatory conduct” and includes language obliging the state to facilitate “ameliorative action to redress patterns of disadvantage” (2005, 84–85). The cases that Sachs and others on the South African Constitutional Court have

decided show how creatively activists can use the existing provisions to demonstrate the state's culpability for failing to put in place programs and policies to address basic human needs.

A second sphere in which to institutionalize economic rights is through the legislature. Economic rights may be included in the regulatory framework of a country, as originally determined through legislative action. Labor regulations, for example, are enshrined in labor law and enforced through monitoring carried out under the auspices of regulatory agencies (such as the Department of Labor, in the case of the United States) which may, in turn, include specific divisions to monitor particular types of rights (such as the Wage and Hour Divisions of the U.S. Department of Labor, which monitors compliance with regulations on working hours and minimum wage/overtime pay).

The legislature may also exercise its power in carrying out a provisioning role in relation to economic rights. Lawmakers at the national level negotiate annual federal budgets; those at the state and local level carry out parallel processes at these lower levels. Together, they approve the allocation of the funds necessary to provide goods and services directly to people otherwise unable to satisfy their needs independently (i.e., to people who are exercising their rights-based claims to state support, through traditional social welfare programs, for example). Legislatures approve other forms of subsidies as well—such as funds for public universities, or for veterans benefits—along with laws that create incentives (such as tax write-offs) for individuals who will subsidize charitable activity carried out in the non-governmental realm, which also enables people to fulfill their rights to subsistence, etc.

There is considerable debate over what the “correct” role of government is in relation to economic rights—debate considerably more complex than the traditional arguments over “big” or “small” government. Choices over institutional design are influenced by debates over how to insulate key policy

priorities from politicized attack, and how to create safeguards for the weakest while at the same time building in flexibility to ensure that newly vulnerable populations, as well as new priorities and problems, can be addressed in the future (Sachs 2005). This volume includes contributions by scholars who are optimistic about the implementation of economic rights, as well as contributions by scholars who argue that we should proceed with caution.

*d. Contributions to this Volume*

The chapters in this section of the book are diverse in their approaches to the issues. Some challenge conventional wisdom on the “impracticality” of implementing economic rights, while others raise new cautions. In the first group, Sigrun Skogly and Mark Gibney insist on the responsibility of wealthier states for providing multilateral development assistance to those states not able to fulfill the basic economic rights of their own citizens. They argue that such an obligation is well instantiated in international law, and binding. Rather than charity, international development assistance is an obligation of states in the international system. Sakiko Fukuda-Parr’s contribution in this volume, which analyzes Goal 8 of the UN Millennium Development Goals from an economic rights perspective, illustrates the practical challenges of working through this particular framework for implementation.

David Forsythe, in stark contrast to Skogly and Gibney and Fukuda-Parr, argues there are neither international rights to assistance nor corresponding economic rights-related obligations upon states. Moreover, he argues that using an economic rights framework to address the domestic obligations of countries such as the United States can be counterproductive. American citizens, in particular, are not accustomed to thinking of social welfare in terms of rights. Instead, there are core rights (such as the right to education) around which American society has

developed “constitutive commitments” (Sunstein 2004).<sup>45</sup> For the sake of political expediency, Forsythe argues, it makes sense to focus on these rather than to push for the acceptance of economic rights as an overarching normative framework.<sup>46</sup>

Susan Dicklitch and Rhoda Howard-Hassmann analyze the political economy of policy choice through a comparative analysis of development policy in Ghana and Uganda. Counter to much of the prevailing human rights literature, they argue that structural adjustment policies can play a critical role as a catalyst for domestic political and institutional reforms that ultimately enable states to fulfill the basic economic rights of their citizens. Economic growth is a necessary but not sufficient condition for the fulfillment of economic rights, Dicklitch and Howard-Hassmann argue. Distribution with equity is apt to be far better achieved in a comparatively stable economy than one vulnerable to erratic macroeconomic or sectoral policy shifts, or to endemic corruption.

The last two papers make their points by considering the same important topics, worker protection rights and child labor. Kaushik Basu, in a chapter based on his keynote address at the conference, asks if we should be allowed to trade away our rights. For instance, should a miner be allowed to give up his safety rights and work in an unsafe mine, but at a wage that would allow him to feed his family? To answer that kind of question, Basu offers a new framework that includes “maintainable” and “inviolable” preferences. Maintainable preferences

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<sup>45</sup> On page xx of this volume, Osiatynski cites Louis Henkin (1981, 230), who makes a similar point—namely, that the “social contract is a continuing conception” and develops with time to embrace the needs of people.

<sup>46</sup> Forsythe quotes at length Harold Honju Koh (former U.S. Assistant Secretary of State for Democracy, Human Rights and Labor, and now Dean of Yale Law School), who articulates a political rationale for why *not* to press for U.S. ratification of the CRC. According to Koh, it is in the best interests of American children to channel the political and economic resources that otherwise would be spent on a protracted battle for ratification toward concrete programs that serve the same ends.

are those we do not normally consider ethically wrong, while inviolable preferences are those maintainable preferences that we should furthermore not have to pay a price for. We should not have to pay a price (in the form of a lower wage) for wanting to be free from sexual harassment in the workplace, for instance. For Basu, preferences that are inviolable should determine which rights are non-tradable. Unfortunately, the story is not so simple because sometimes non-tradable rights conflict, as in the case where a parent should have the non-tradable rights to both food and also not to send her child to work. Basu urges caution; in our zeal for economic justice we should not unwittingly implement rights in an imperfect world without carefully considering the real life consequences. In this way he is similar to other seasoned human rights scholars in this volume, in particular Wiktor Osiatynski, David Forsythe, and Susan Dicklitch and Rhoda Howard-Hassmann, who urge us to use extreme care in how we would invoke economic rights as against other policies and institutional options.

In the final chapter, Peter Dorman challenges the “developmentalist” school, which holds that implementing occupational safety and health regulations or eliminating child labor are policy choices too costly for developing countries to undertake given their financial limitations. In contrast, Dorman argues that both worker safety issues and child labor are not in and of themselves impediments to economic growth. To the contrary, in the case of worker safety conditions, he argues that unsafe working conditions are a bigger problem for the developing than the developed world, and that that extra burden is hampering economic growth. Similarly, Dorman shows how child labor results from more than just poverty, with cultural factors and gender biases also playing key roles. Moreover, based on some of his previous work, Dorman calculates the net economic benefits of eliminating of child labor, and finds them to be positive and significant for virtually all regions of the world. Contrary to the received wisdom, a lack of

development is not a reason to delay action on child labor; rather, it is a reason to accelerate such efforts.

#### 4. Social Movement Activism on Economic Rights

In the United States more so than in Europe or in developing or transitional countries, there has been a particular reluctance to embrace economic rights *qua rights* for much of the past half century—in large part, a legacy of the Cold War rights divide (Ford Foundation 2004, 8; Sunstein 2004). Yet renewed challenges to the marginalization of economic rights are coming from the “bottom up” within the United States itself. A wide range of traditional social justice organizations and grassroots activists have increasingly embraced the language of human rights in order to justify their work in defense of poor and socially vulnerable groups (Ford Foundation 2004). Not all of these groups frame their work in terms of economic rights; however, those that do have pushed the “traditional” human rights movement and the scholarly community to address economic rights more directly than in the past. For example, the grassroots Kensington Welfare Rights Union has mobilized poor people in defense of their own economic rights, using the UDHR as the central framework for a national Poor People’s Economic Human Rights Campaign. As one organizer explained (Ford Foundation 2004, 53):

[W]e were concerned that the poor would turn against one another over crumbs that trickled down. Our human rights concept helped workers see that none of them are getting what they deserve, and our particular focus on Articles 23, 25, and 26 of the Universal Declaration allowed for a common vision of opportunity and economic well being for all people.

Indeed, poor people themselves have been among the most active in bringing economic rights to the fore in the 1990s through creative social protest, worldwide. There are numerous examples. Indigenous people in Mexico

coalesced as a rebel army—the Zapatistas—and launched a nation-wide guerilla rebellion to protest corporate-led globalization and longstanding grievances against the state on the day the North American Free Trade Agreement (NAFTA) took effect (1 January 2004). Protests have taken place throughout the Andean region against government privatization of essential services, particularly water. People living with HIV/AIDS, together with their advocates throughout the global South, have protested the World Trade Organization’s (WTO) rules on intellectual property, demanding that cheaper, generic alternatives to AIDS drugs be manufactured and distributed without penalty. The richness and complexity of social movement activism on economic rights is obvious from just these few examples.

Although this book does not include a chapter dedicated to the topic, social movements organized by poor people themselves, together with their allies, have played a critical role in pushing economic rights to the fore of contemporary human rights activism. These movements are vital to understanding not only the conceptual evolution of economic rights but also their application in policy.

Social movements are collective challenges to power (Tarrow 1998).<sup>47</sup> They are part of the broader phenomenon of contentious politics. Actors involved in social movements carry out education, organizing, policy advocacy, legal, and scholarly work (Ford Foundation 2004, 7). They protest grievances and make claims on resources by invoking the language of rights, even in the absence of constitutional or statutory protection for particular rights. For example, when protesters demand that governments or international drug companies fulfill the *right* to HIV/AIDS treatment access, they are using one of the key strategies of social movement activism. They are framing expansive claims in “rights”

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<sup>47</sup> The full definition of social movement: “collective challenges, based on common purposes and social solidarities, in sustained interaction with elites, opponents and authorities” (Tarrow 1998, 4).

terms—even if those rights are not guaranteed constitutionally or statutorily yet in their country—in order to enlarge the bargaining arena.

Kaushik Basu argues in this volume that “the mere assertion of a law or a right or a rule at times creates pressures that lead to partial enforcement, even though there may be no formal mechanism for enforcement” (pages 4-5 in drafts, i.e., xx in final text). Social movement-based actors strategically invoke the language of rights in order to “create pressures for . . . enforcement.” By invoking the normative force of human rights in defense of their own needs, such grassroots protesters can change the nature of their interaction with powerful government or private sector representatives. Instead of offering petitions for help, they can demand that rights be fulfilled—explicitly referencing documents such as the UDHR, the ICESCR, or the *Convention on the Rights of the Child*, all of which codify key economic rights. In so doing, they transform their status from that of supplicants to claimants. As Philip Alston explains (cited in Green 2001, 1095):

Needs can be deferred until those in power think it might be timely to address them. Needs can be defined and formulated by experts; they are usually seen to be eminently flexible and relative. . . Rights, on the other hand, belong to individuals, who can and will assert them and strive to give them meaning and substance. They can be neither expropriated, nor defined, nor arbitrarily put on the back burner, by officials.

Empirically, activism on economic rights is as varied as the problems of marginalized people themselves. Francis Fox Piven and Richard Cloward’s (1977) seminal work three decades ago highlighted the dynamics of “poor people’s movements” in the United States, where activists have often married public protest with skilled use of the courts. In countries with a strong tradition of public interest law, such as the United States, nongovernmental organizations have helped poor or other marginalized people bring individual as well as class-

action suits before courts in various jurisdictions for decades. But litigation is time-consuming, expensive, and limited by the scope and interpretation of law itself—including in the United States, where activists are increasingly resorting to international human rights standards to push domestic courts to re-interpret economic rights, in particular.<sup>48</sup>

In countries with a legacy of corruption or inefficiency in the legal system, including many developing and transitional countries, activists have had to opt for strategies other than legally-based ones. Often, they have employed traditional street protest coupled with new forms of contentious action, such as cyber-activism (Arquilla & Ronfeld 2001) to convey their demands, leveraging information and mobilizing supporters in the process. For example, the Johannesburg-based network CIVICUS (which electronically links some 1,000 people in over 100 countries through its webpage and regular email newsletters) has mobilized people in civil society, worldwide, to press for policy change and social awareness of critical issues related to the protection of civil society and the promotion of issues such as economic rights awareness. This network is explicitly global in its focus, whereas other networks are more local in theirs. The Philippines-based group PhilRights, for example, aims to establish an NGO-based monitoring system for economic, social rights and cultural rights in that country. Staff of PhilRights have skillfully used the internet to make people outside the

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<sup>48</sup> Cindy Soohoo, a human rights attorney interviewed for the Ford Foundation's seminal report on grassroots human rights advocacy within the United States, observes: "When you're talking to traditional civil rights lawyers, they are saying our traditional standards aren't working, we need something else." The report notes that the "inadequacy of existing [United States] laws with respect to economic rights such as the right to health and fair wages" has "sounded the alarm for US attorneys" (Ford Foundation 2004, 39).

country aware of their work and to share their innovative approach to economic rights monitoring and analysis.<sup>49</sup>

Tactically, activists involved in advocacy on economic rights employ a variety of approaches. Some use narrow labor rights issues (such as working conditions, wages, or freedom of association) as a wedge into negotiations over broader economic rights issues (such as the right to an adequate standard of living). By putting clear-cut labor rights grievances on the table, they aim to expose the deeper structural forces underlying these problems, which are often rooted in non-fulfillment of economic rights. Others, however, work in the opposite direction—making broad claims around social justice rather than pointed economic rights-specific demands. Actors involved in the anti-corporate globalization “movement,”<sup>50</sup> for example, have made a wide range of claims for global economic justice. They have demanded everything from living wages to changes in global trade rules to write-off of multilateral debt in the context of broader challenges to what they term corporate-led globalization. While some actors have invoked the term “economic rights” explicitly when making such demands, many have only inferred it. The broad focus on global justice has complicated the response to the movement, not only on the part of governments or private sector actors, but also on the part of actors involved in the traditional “human rights” movement, which has been cautionary about claiming as its own such a heterogeneous set of actors (Hertel 2005). Yet as Kumi Naidoo (Director of CIVICUS) and his research collaborator, Indira Ravindran, have written (2002):

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<sup>49</sup> See Human Rights Network on the Web, [http://www.hrnw.org/about/a000218\\_au\\_prights.htm](http://www.hrnw.org/about/a000218_au_prights.htm).

<sup>50</sup> Amory Starr (2000) discusses the breadth of actors involved in anti-corporate-globalization protests. For additional background, see Hertel (2005).

From a substantive perspective, both sets of agenda need each other . . . to explain many of the inconsistencies in international and national politics. Human rights activists have, over the course of four decades, made governments accountable to citizens—inventing and perfecting several advocacy and campaign tactics which benefit other global movements. Anti-globalization activists have thus demonstrated that the focus on governments as the sole violators of human rights and dignity is no longer relevant . . . If it is possible to cast human rights activists and social/economic rights activists into two separate camps, then clearly they have much to offer each other . . . At a very minimum, it is now becoming obvious that in troubled times, civil and political rights are as likely to be violated as social and economic rights.

## 5. Conclusion

The purpose of this introductory chapter was twofold. First, we sought to evaluate the scholarly and policy work on economic rights in an organized, comprehensive fashion. Second, we sought to place the novel contributions of this volume within that framework.

To see all humans as possessing economic rights may prove to be the most effective way yet of addressing world poverty. Of course that would require that we know what economic rights are, so this chapter has provided a coherent definition that focused on the right to an adequate standard of living, the right to work, and basic income guarantees. Yet some would still question the validity of economic rights as not having the same conceptual support as their more familiar human rights counterparts, civil and political rights. We invoked the literature to show that this view is mistaken: the same foundations that justify civil and political human rights also justify economic rights.

What does remain, however, are significant controversies about the features of the obligations associated with economic rights, and their policy implications. For instance, significant disagreement exists about whether or not

economic rights should be constitutionalized, and also about who the obligatory parties should be. Measurement problems arise not only because of the way economic rights fulfillment has been treated in international law, but also because of some inherent difficulties in acquiring adequate data to do the job. We closed this chapter with a discussion of social movement activism, focusing on the role non-governmental organizations and grassroots activists have played in pushing economic rights to the fore of academic and policy discussions—and the ongoing pressure “from below” to translate these concepts meaningfully into action.

The authors in this volume contribute to these debates in novel ways. Some address lingering misconceptions about economic rights. Others offer new justifications. Still others offer new ways of classifying, implementing, and measuring economic rights. In fact, because there have been so few attempts to systematically measure government efforts to implement economic rights, the chapters in that section in particular stand out as crucial new additions to the literature. Taken together, the chapters in this book not only deepen the inquiry into economic rights, but also help to define the terrain for the future.

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