



Social Advantage and Disadvantage

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CHAPTER

3 The Human Rights and Equalities Agenda

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Abstract

The chapter examines the role of human rights in addressing social (dis)advantage. It suggests that human rights can play an important role in framing the claims of the disadvantaged and the corresponding duties of those in a position to help. The discussion addresses foundational debates in ethics; issues of justiciability and legal enforcement; and the broader mechanisms and processes via which human rights can influence social outcomes. It considers the role of human rights within public policy and regulatory frameworks; as drivers of attitudes, behaviour, and social norms; and as sources of 'bottom up' and countervailing power. Illustrations within different countries and contexts are highlighted; and potential limitations of human rights approaches are considered. The chapter concludes that a human rights approach—whilst imperfectly implemented to date and perhaps falling short of a utopian ideal—has an important role to play in achieving incremental improvements towards greater equality.

Keywords: [human rights](#), [economic and social rights](#), [equalities](#), [justiciability](#), [poverty](#)

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The contemporary idea of human rights is embodied in the Universal Declaration of Human Rights (1948). This suggests that all individuals everywhere have basic entitlements to a core set of freedoms—civil, political, economic, social, and cultural—which should be secured on the basis of non-discrimination and equality, regardless of country, nationality, and citizenship, or characteristics such as gender, age, race, and ethnicity, or other characteristics or status. This idea of human rights is widely invoked worldwide in struggles against oppression and campaigns for social justice. Historically speaking, antecedents of the idea of human rights—such as earlier notions of natural rights in the Western tradition—have been axiomatic to challenges against the arbitrary and unjust exercise of power for more than two thousand years.

This chapter considers the role of human rights in addressing social (dis)advantage. It suggests that human rights can play an important role in addressing the social as well as the political dimensions of advantage

and disadvantage and in framing the claims of those who are disadvantaged and the corresponding duties of those in a position to help. Poverty and other aspects of socio-economic deprivation such as hunger, starvation, lack of access to healthcare and education, and exploitative working conditions, were downgraded and neglected as human rights concerns for much of the second half of the twentieth century. However, there is now substantially more international recognition and acceptance of a broader characterization of human rights incorporating social, economic, and cultural rights as well as civil and political rights; and positive as well as negative duties. Economic and social rights are being translated into bills of rights and positive law in many different countries and contexts and are increasingly cited as underpinning policies and strategies that aim to address poverty and multidimensional deprivation at the global, regional, and national levels. Campaigns to combat ↪ social disadvantage increasingly appeal to notions of human rights both internationally and in the British context.

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The chapter examines these developments and explores the potential of a human rights approach to (dis)advantage. The first section discusses the links between human rights and (dis)advantage. The second explores foundational debates in ethics. The third considers issues of legal status and enforcement. The fourth discusses the more general role that human rights can play in influencing social outcomes beyond the Courts—for example, through public policy mechanisms, as instruments of regulation and in broader processes of social change. The concluding section reflects on the possible limitations of a human rights approach.

3.1 Framing the Discussion: Human Rights and (Dis)advantage

For many decades, the international human rights agenda focused almost exclusively on civil and political rights. Poverty and other aspects of multidimensional deprivation such as lack of access to food, water, shelter, housing, education, and/or healthcare were not recognized as ‘legitimate’ elements of the international human rights agenda. Whilst recognition of economic and social rights dates back to the Universal Declaration of Rights (1948), for much of the second half of the twentieth century, these issues were excluded and downgraded. Underlying factors here included the politics of the Cold War and ideological struggles over the concepts of individual freedom and human rights. In the United States, despite early support for the notions of freedom from want, the liberty-focused view of human rights had the ascendancy—with economic rights viewed exclusively as rights of capital rather than as rights of individuals (Alston, 2009; Stiglitz, 2012).

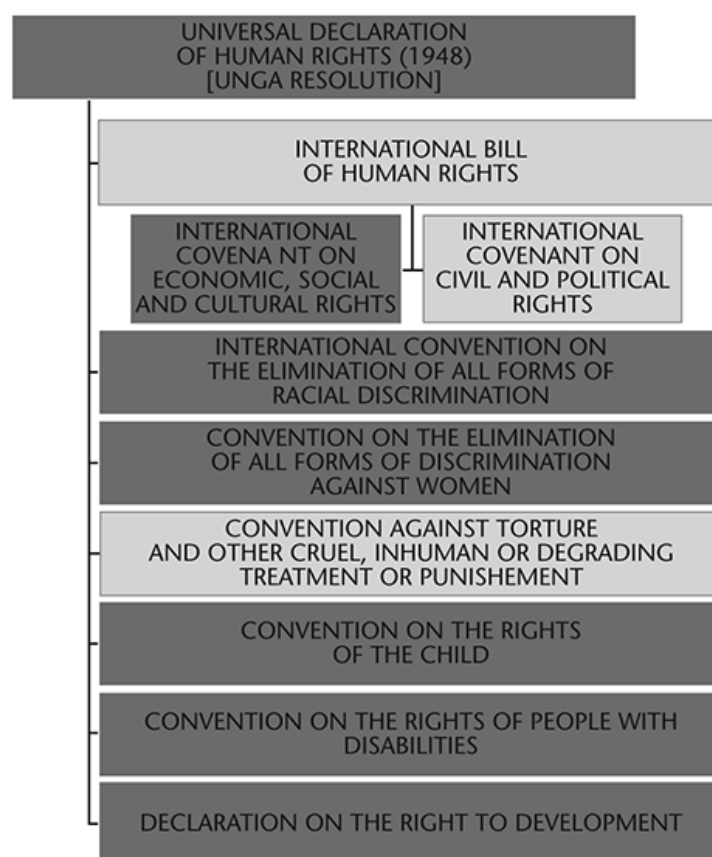
As a result of this downgrading and neglect of poverty and multidimensional deprivation as human rights concerns, the international human rights framework was widely perceived as failing to provide foundations for a broad concept of disadvantage, taking account of the different dimensions (civil, political, economic, social, etc.) that this concept entails. This is not to imply that the non-fulfilment of civil and political rights such as torture, inhuman and degrading treatment or punishment; lack of access to justice (for example, a free and fair trial); and nonparticipation in political and public life (for example, free elections) are not critical elements of the concept social disadvantage. However, as noted in Chapter 1, poverty and deprivation in basic needs such as health and education are central to the concept of disadvantage (see also Dean, 2015). Whilst the international human rights agenda was ↪ dominated by civil and political rights concerns, discussions about social disadvantage and advantage on the one hand, and discussions about human rights on the other, were rarely linked.

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3.1.1 International Recognition of Economic and Social Rights

In contrast, there has been substantial evolution and broadening of the idea of human rights over the past two decades. Economic and social rights are codified in key international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) which, as an international treaty, is legally binding on state parties under international law. There were 161 such state parties by July 2014. The ICESCR is part of the International Bill of Human Rights, which, with its sister treaty the International Convention on Civil and Political Rights, sets out the core human rights that are recognized internationally. The ICESCR recognizes the right to an adequate living and freedom from hunger (article 11); the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (article 12); the right of everyone to education (article 13) and compulsory primary education, free of charge (article 14); the right to work (article 6); and the right to just and fair conditions of work (article 7) and the right to social security (article 9). By signing up to this treaty, states are obliged ‘to take steps, individually and through international assistance and co-operation, to the maximum of its available resources, with a view to achieving progressively the full realisation of these rights’ and to guarantee non-discrimination (article 2). Other key international instruments recognizing economic and social rights are highlighted in Figure 3.1.

Figure 3.1.



The human rights framework in the UK—protection of economic and social rights

3.1.2 International Recognition of ‘Positive Obligation’

The international human rights framework has also undergone a substantial evolution and broadening over the past two decades in the way in which the obligations on states to guarantee human rights are characterized. It has become increasingly accepted that all human rights—civil, political, economic, social, and cultural—give rise to positive duties on states to protect and promote human rights as well as negative duties on states to refrain from undermining human rights. This shift provides an important step in the development of a formal theory of human rights towards a substantive understanding of human rights that takes into account the things that in practice people can *do* and *be* (Vizard, 2006).

p. 45 Fredman (2008) provides a detailed examination of positive obligation in international human rights law. She notes that human rights were long understood only in terms of negative duties and providing protection for ↪ individual negative freedom against an intrusive state. However, the emergence of a positive understanding of duties constitutes an effective ‘transformation’ of the idea of human rights—away from a paradigm which involves being ‘left alone’ towards a richer view which takes into account of a person’s ability to exercise their freedoms in practice (Fredman, 2008).

The evolution and broadening of international standards relating to positive obligation is an ongoing process. The international human rights framework has traditionally put a central emphasis on states as duty holders. However, recent international standards put increasing emphasis on protection from violations by third parties (e.g. private companies) and on collective obligations (e.g. The Maastricht Principles on Extraterritorial Obligations, 2012).

3.1.3 A Human Rights Approach to (Dis)advantage

p. 46 Whilst the idea of human rights remains contested, the international human rights framework can still play an important role as a pragmatic starting point ↪ for characterizing disadvantage in terms of the denial of a broad set of critical freedoms (civil, political, economic, social, and cultural), which are basic entitlements of all individuals everywhere, on the basis of non-discrimination and equality. This includes international recognition of the human rights to an adequate standard of living, health, housing, and education, as well as freedom from torture and inhuman or degrading treatment, and the right to a free trial and fair elections (Vizard, 2006; 2007). This approach has been applied in the context of inequality monitoring by the British Equality and Human Rights Commission (on which, see Burchardt and Vizard, 2011, and Chapter 2).

Human rights can also provide an analytical bridge between the idea of (dis)advantage and the concepts of responsibility, obligation, and accountability. Logically speaking, human rights are not simply descriptive characterizations of critical freedoms, but are linked to normative obligations on the part of others to guarantee the freedoms involved. Consider the following questions. Do those who are advantaged and who are in a position to help have obligations to address social disadvantage? Do governments, international organizations, and private companies have duties to address disadvantage within a domestic context and/or globally? The international human rights framework provides a starting point for addressing these questions and for developing an overall framework of accountability and responsibility for addressing poverty and multidimensional deprivation (Vizard, 2006; 2007).

3.1.4 Challenges for a Human Rights Approach

Yet whilst the human rights approach has considerable pragmatic appeal, the justification, validity, and effectiveness of a human rights approach to the elimination of poverty and multidimensional deprivation raises far-reaching issues across a number of different disciplinary perspectives.

- Foundational debates continue relating to the underlying question of whether the idea of human rights can be justified. Even if the idea of human rights can indeed be justified, its reach extends beyond civil and political rights to cover poverty and the non-fulfilment of basic needs and capabilities remains controversial.
- Human rights standards are increasingly put forward as a basis for legal challenges to poverty and multidimensional deprivation. However, key questions arise in relation to the legal enforcement and justiciability of economic and social rights. Why are international mechanisms for economic and social rights still weaker than for civil and political rights? Should these standards be codified in positive law? Can the corresponding duties be specified and legally enforced?

- p. 47
- ↳ In the social sciences, there is now more recognition of the broader role that human rights can play beyond the courts—in public policy, in overall systems for regulation, in providing ‘bottom-up’ sources of countervailing power, in shaping attitudes, norms and behaviour, and in broader processes of social change. However, important empirical questions remain regarding whether—and the extent to which—these standards can influence social outcomes and result in greater substantive social equality in practice.

These questions are addressed sequentially in the sections that follow. The discussion is necessarily brief and is intended as an introduction and overview to the key issues involved.

3.2 Foundational Debates in Ethics

In many classic theories, concerns with social disadvantage, poverty, and basic needs are classified as beyond the realm of ‘legitimate’ human-rights-based claims. This is the case not only in the tradition of libertarian theories of justice (e.g. Nozick and Hayek) which focus on the concept of negative obligation; but also in some liberal theories such as that proposed by O’Neill, who strongly argues *against* the proposition that deprivation in basic needs (including hunger and starvation) give rise to human rights based claims. According to O’Neill, precisely specified ‘perfect obligations’ (relating to the performance of specific actions) can be adequately reflected in a rights-based ethical framework. However, ‘imperfect obligations’ (relating to the promotion of general goals rather than the performance of precisely specified actions) will be ‘unallocated’ and ‘neglected’ in the absence of institutions and systems of special rights and cannot be effectively ‘claimed’ or ‘enforced’. As a result, general obligations to relieve poverty, hunger, and starvation ‘can at best have subordinate status in an ethical system in which the concept of rights is fundamental’ (O’Neill, 1986; 1996).

3.2.1 Poverty as a Violation of Human Rights

- p. 48
- There have been a number of attempts to develop broader theories of human rights that incorporate poverty and related concerns. Pogge attempts to avoid the complexities raised by notions of positive (imperfect) obligation by focusing on the characterization of global poverty as a violation of *negative* duties. In Pogge’s ethical framework, the more advantaged (specifically, the global rich) are viewed as having stringent negative duties to refrain from supporting socio-economic arrangements that impede the fulfilment of basic social and ↳ economic rights. Socio-economic arrangements such as international trade agreements, property rights, and patent rules relating to essential medicines are characterized as having a *causal* role in generating and perpetuating global poverty (Pogge, 2008).

In the broader literature, Campbell argues in favour of a theory of poverty and human rights based on the universal humanitarian obligation to participate in the relief of extreme suffering (Campbell, 2007). Griffin

rejects the formulation of some social and economic rights in international instruments (including article 12 of the ICESCR). Nevertheless, he contends that human personhood and agency require both liberty and autonomy; and that 'there is a human right to the minimum resources needed to live as a normative agent' (Griffin, 2008: 206). Beitz develops a political account of human rights informed by contemporary human rights practice including 'anti-poverty rights' (Beitz, 2011).

3.2.2 The Capability Approach and Human Rights

The links between the capability approach, discussed in Chapter 2, and the development of a broad theory of human rights are examined in Vizard (2006; 2007). In Sen's conceptual framework, basic capabilities such as being free from hunger and malnutrition, and having access to education and healthcare, are characterized as human freedoms. Deprivation in basic capabilities of this type are viewed as sources of 'unfreedom' and as an important element of a theory of justice (Sen, 2009).

Building on these arguments, the capability approach provides a basis for the development of a broad theory of individual rights that covers aspects of socio-economic deprivation as well as deprivation in basic liberties. Sen has argued that the importance of certain critical freedoms constitutes the grounds of basic claims on others to safeguard these freedoms and on social arrangements (such as the nature of institutions, positive law, and public action). In this way, the subset of capability-freedoms links to a derived class of 'capability rights' and associated obligations with 'minimal demands of well-being (in the form of basic functionings, e.g. not to be hungry), and of well-being freedom (in the form of minimal capabilities, e.g. having the means of avoiding hunger)' conceptualized as rights that 'command attention and call for support' (Sen, 1985).

By extension, Sen contends that the idea of capability is an important 'element' of a theory of human rights. Human rights denials can relate to deprivation in basic capabilities (such as poverty, malnutrition, and lack of access to education and healthcare) as well as to deprivation in basic liberties and 'many human rights that can be seen as rights to particular capabilities'. Sen has also argued (against O'Neill) that human-rights-based claims can be valid in the context of imperfect obligation (with broadly specified duties) as well as perfect obligation (with narrowly/precisely specified duties). He concludes that a theory of human rights can legitimately include economic and social rights (Sen, 2004; 2005; 2009).

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3.3 Human Rights as a Legal Paradigm

Some legal theorists in the positivist tradition have developed their own version of the sceptical philosophical position on economic and social human rights. It has been argued, for example, that the standards set out in international treaties in the field of economic and social rights are too vague and indeterminate to be regarded as 'real' justiciable rights that can be legally enforced. This position has been developed, for example, in the context of Article 2 of the ICESCR. Sceptics argue that the notions of 'maximum available resources' and 'progressive realization' limit the nature and scope of the obligations of states and that the human rights set out in the ICESCR have an aspirational rather than a legal status (e.g. Vierdag, 1978).

The growing body of authoritative international interpretative standards relating to the implementation of economic and social rights challenges this characterization. These are set out in the General Comments of the UN Committee on Economic, Social and Cultural Rights, which oversees the implementation of the ICESCR, and other authoritative international documents. For example, the 'minimum core' obligations approach suggests that the failure to ensure the satisfaction of, at the very least, minimum essential levels

of economic and social rights is taken to provide prima facie evidence of a violation (The Maastricht Guidelines on Violations, 1998).

3.3.1 The South African Model

The sceptical position is also challenged by the trend towards the incorporation of economic and social rights into regional and domestic law and national constitutions and bills of rights. Internationally, there is a growing body of case law that supports the characterization of human rights covering poverty and other aspects of multidimensional deprivation as 'real' justiciable individual rights that can be enforced in the courts.

For example, the economic and social rights given effect in the South African Bill of Rights are summarized in Figure 3.2. The justiciability of these standards has been established by the South African Court in a series of landmark cases. In the Grootboom case (2000), the Court established that economic and social rights are rights that the Courts can, and in appropriate circumstances should, enforce. It found that whilst the South African State is not required to go beyond available resources or to realize economic and social rights immediately, it has nevertheless a positive obligation to take steps to ameliorate deplorable living conditions, including by providing access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants.

Figure 3.2.

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Constitution of South Africa (1996): Chapter 2 (Bill of Rights)

In a second landmark decision (the ‘Treatment Action Campaign’ case), the Court ruled that the absence of a comprehensive and coordinated plan for the roll-out of anti-retroviral drugs could not be regarded as ‘reasonable’ and compatible with section 27 of the South African Bill of Rights. This case is widely cited as establishing an international model for the judicial enforcement of the right to health. At the same time, however, the case also highlights the limited function of the Courts in providing judicial review in the field of public and social policy. The South African Constitutional Court considered but did not apply the ‘minimum core obligations’ approach set out in the Maastricht Principles and the General Comments of the UN Committee on Economic, Social and Cultural Rights. Rather, it emphasized the limited and qualified nature of the obligation on the state to take ‘reasonable’ measures to progressively eliminate deprivation over time.

p. 51 3.3.2 Justiciability and Enforcement in the British Context

The UK has signed and ratified numerous international human rights instruments including the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women, the Convention on Torture and the Convention on Rights of People with Disabilities. Whilst these international treaties impose legally binding obligations on states parties under international treaty law, they are not usually viewed as elements of UK domestic law (or as directly enforceable through the British Courts). In contrast, the Human Rights Act (HRA) (1998) incorporates the rights set out in the European Convention on Human Rights (ECHR) into UK domestic law. Under section 6, public bodies providing services such as education and healthcare—as well as private providers providing public functions, such as private providers of social care—are required to be HRA compliant.

Whilst the focus of the HRA is on civil and political rights, it has also been interpreted as providing an element of protection for economic and social rights. In 2005, it was established that the denial of public assistance to a late asylum seeker could amount to a violation of Article 3 of the ECHR (the prohibition on torture and cruel, unusual treatment or punishment). Whilst the threshold for establishing violations was found to be extremely high, this may be crossed if ‘a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life’. Article 3 of the HRA, together with Article 8 (private and family life), is increasingly invoked to challenge neglect in public services. In the Bernard case, the courts ruled that a local council was not merely under a negative duty to refrain from interference in private and family life but also had a positive duty to take steps to maintain the basic physical and psychological integrity of a disabled woman (including the provision of suitably adapted accommodation). Another recent case concerned an alteration in a social care package by Kensington and Chelsea council. Whilst a legal challenge based on human rights standards ultimately failed, the case helped to establish the role of dignity as a legal principle in public services delivery.

p. 52 The Equality Act (2010) provides a framework of protection against discrimination and establishes a general public sector equality duty (PSED) which requires public authorities to give ‘due regard’ to equality. This duty is binding on all public authorities such as local authorities, central government, health commissioners, health providers, schools, and other bodies (for example, private social care providers) when they are carrying out a public function. The PSED has been characterized as an important step in moving beyond an individual, complaints-based model and in providing legislative recognition of the need for pro-active measures to promote or achieve equality by characteristics such as gender, ethnic group, and disability (Fredman, 2011). However, a duty ‘to have due regard to inequalities of outcome which result from socio-economic disadvantage’ has not been put into force.

3.3.3 Human Rights and Austerity

Human rights and equality standards have been invoked to challenge public decision-making in the context of austerity and fiscal consolidation. A number of cases point towards the necessity of consultation and equality impact assessment as *procedural* requirements. In 2011, in the Rahman case involving Birmingham City Council, the withdrawal of funding from legal advice centres was found to be in breach of the PSED on the grounds that the impact on disadvantaged service users had not been fully assessed. In another case, the High Court considered a council decision to limit social care eligibility criteria to cover critical needs only. It reasoned that the impact of this change on disabled people with substantial care needs had not been fully assessed and the consultation process had been inadequate.

Recent cases establish that the threshold for establishing human rights violations is extremely high and suggest only a minimal, limited role for judicial intervention in public and social policy. In Britain, widely applied principles of administrative law equate lack of ‘reasonableness’ with ‘irrationality’ and result in an extremely stringent test for establishing violations. This test is often justified in terms of the ‘separation of powers’ and the proposition that the judiciary should only rarely interfere with decision-making by the democratically elected executive and legislative branches of government.

This reasoning was reflected in a recent case where the Court of Appeal upheld an earlier decision of the High Court that the Government’s housing benefit regulations (2012) (the so-called benefit cap) did *not* violate human rights. The Court highlighted the primary role of democratically elected institutions in decision-making in public policy; and the limited role of the judiciary in undertaking scrutiny. It reasoned that whilst being potentially harmful, the regulations could not be deemed as ‘manifestly without reasonable foundation’ since they had been subjected to parliamentary scrutiny and could be revised in the future. The Supreme Court similarly ruled that the regulations were not unlawful (although the cap was found to be incompatible with the Government’s obligation to promote the ‘best interests of the child’ under the UN Convention on the Rights of the Child). In another case, the High Court again ruled that new housing benefit rules are *not* ‘manifestly without reasonable foundation’. This case now awaits further adjudication.

3.4 Broader Processes and Mechanisms

Beyond the ethical and legal perspectives, there is now more recognition of the instrumental role of human rights standards beyond the courts. Box 3.1 sets out some of the broad mechanisms and processes—beyond individual justiciability and legal enforcement—whereby human rights and equalities standards can influence social outcomes. These include the role of human rights in public policy and regulation; the role of human rights as sources of ‘bottom-up’ and countervailing power and as a driver of attitudes, behaviour, and social norms; and the role of human rights in overall processes of social struggle and social change.

Box 3.1 Processes and mechanisms through which human rights and equalities standards might influence social outcomes

- Constitutions/bills of rights/statements of basic societal goals
- Justiciability/legal enforcement
- Broader socio-economic arrangements: for example, social legislation, public policy, institutions (e.g. public health systems, welfare states), regulation
- Political influence (e.g. focusing political/media/public attention on a particular issue; helping to precipitate a public policy response; focusing political attention on minority concerns/needs of subordinate groups)
- Accountability and transparency—human rights as source of ‘bottom-up’ pressure, democratic control mechanisms, countervailing power
- Influencing social norms, expectations, attitudes, and behaviour (e.g. attitudes of girls to going to school)
- Contribution to civil and political activism in bringing about social change (e.g. social mobilization/agitation)

Arguably, resource allocations, welfare states, public health systems, and other public and social policy measures—not legal codification and judicial enforcement—are necessary to bring about substantive social change. However, human rights and equalities standards and norms now play an important role in motivating such approaches. They are increasingly cited as a basis for social legislation and broader policy initiatives (e.g. the *Bolsa Familia* programme in Brazil). In India, there has been increasing emphasis on judicial enforcement of economic and social rights. This includes, for example, key legislative decisions enforcing the right to food, based on a broad interpretation of the Right to Life under Article 21 of the Indian Constitution, read in conjunction with Directive Principles. However, judicial enforcement has been combined with broader policies and social legislation such as famine relief measures, a school meals programme, the Right to Education Act, the Right to Information Act, and the Rural Employment Guarantee Scheme (on which see Drèze, 2004 and Drèze and Sen, 2013).

p. 54 International economic and social rights also increasingly underpin measures to address poverty and multidimensional deprivation at the global and regional as well as national levels (e.g. OHCHR, 2003). The need for global welfare mechanisms and other global social policy interventions in implementing economic and social rights is highlighted in the literature (e.g. Deacon, 2007; Townsend and Gordon, 2002). Related proposals include a Global Resources Dividend, a tax on multinationals to support human development and a Health Impact Fund to support the development of essential medicines (Pogge, 2013).

Several analyses point towards a political economy understanding of human rights. Sen has famously argued that famines do not arise in democracies, citing wide-ranging empirical examples from the Indian Famine of 1947 to contemporary food shortages in Rajasthan. Sen and Drèze establish that democratic forms of government and individual rights can be instrumentally important in protecting and promoting capabilities via a range of different mechanisms including: by disseminating information, facilitating public scrutiny and debate, by building up political opposition, increasing pressure on governments, proving for the correction of ‘errors’, and helping to precipitate a more effective public policy response. Human rights campaigns can also impact on broader processes of social change through their effects on expectations,

attitudes, and social norms (for example, in the emergence of new social norms on girls' right to education in India) (Sen, 1999; Drèze and Sen, 1989; 2002; 2013; Drèze, 2004).

Stiglitz highlights the role that individual rights can play in checking power and abuses. Individual rights to information (e.g. in the form of Freedom of Information Acts) can strengthen transparency and counter informational asymmetries that result in capture by special interests and corruption by government officials. Individual rights to redress can strengthen accountability and help to ensure that appropriate 'democratic control mechanisms' are in place. In general, an active civil society functions as a check on abuses of power and influence and concentrations of power in one domain are checked and restrained by countervailing sources of power in another domain. Participatory processes (including individual rights) provide one such source of 'countervailing power' (Stiglitz, 1999; 2002).

Stiglitz also highlights the complex interdependences between social outcomes, public policy, and social norms. Consider the lack of normative support for economic and social rights as human rights in the United States on the one hand, and the lack of universal health coverage and health inequalities on the other. As Stiglitz notes, 'more than a half-century ago, America led the way in advocating for the Universal Declaration of Human Rights...Today, access to health care is among the most universally accepted rights... America, despite the implementation of the Affordable Care Act, is the exception...with great divides in access to health care, life expectancy and health status' (Stiglitz, 2014).

Besley and Burgess (2002) examine the role of individual rights in ensuring responsiveness to citizens' needs in electoral democracies. They highlight the function of individual rights in public policy in preventing 'capture' by elites and dominant social groups and strengthening the influence of subordinate groups in collective decision-making. Amid an increasing consensus that inequality—especially extreme inequality—is bad for growth (Stiglitz, 2012; IMF, 2014), the limits imposed by inequality and discrimination on social opportunity, participation, and growth are examined in The World Bank (2005). The World Bank is also putting increased emphasis on the role of social protection and universal health in overall processes of development and growth (e.g. The World Bank, n.d.).

A recent assessment of the role of justiciable socio-economic rights in achieving social transformation in South Africa puts particular emphasis on the links between human rights standards on the one hand, and civil activism and social mobilization on the other. Arguably, the role of legal enforcement of economic and social rights in South Africa in achieving change on the ground has been limited. Nevertheless, human rights have played an important role as part of a broader social movement and a focus of civil society organization and activism (Langford et al., 2014).

Dean emphasizes the broader terrain of social struggle over the interpretation of social needs and human rights. He presents a dynamic view of human rights whereby human needs are socially interpreted and translated into rights-based claims. This dynamic process in turn reflects broader social relations, the balance of power between different social groups, 'bottom-up' processes of social agitation, and ongoing processes of social struggle. Dean further contends that, understood in this way, the idea of human rights can play an important role in the development of a global 'post-Marshallian' concept of social citizenship in an era of globalization (Dean, 2008; 2014; 2015).

3.4.1 Global Poverty, Human Rights, and Equalities

The Millennium Development Goals (MDG) provide an international agreement on reducing global poverty by 2015. Official evaluations suggest that international public action has been galvanized through the system of outcome-orientated and time-bound targets and indicators. Consider progress against MDG 1 ('eradicating extreme poverty and hunger'). Substantial progress has been made in relation to the \$1.25 a day threshold, with the proportion of those in developing regions living in extreme poverty falling from 47 per cent in 1990 to 14 per cent in 2015. Nevertheless, in 2015 an estimated 863 million people lived in extreme poverty based on this definition (UN, 2015).

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The international human rights framework makes provision for the 'progressive realisation' of economic and social rights. Nevertheless, some have argued that the MDGs have been a betrayal of international standards—with only weak links to international law, minimalist targets specified in terms of *halving* rather than *eliminating* extreme poverty and hunger, and weak mechanisms for accountability and enforcement. The absence of adequate mechanisms for implementing collective obligations under MDG 8 ('building a global partnership for development') has been highlighted. Other critiques concern the (mis)identification of the global poor (Reddy and Pogge, 2005) and lack of focus on inequalities (Doyle and Stiglitz, 2014).

3.4.2 Broader Applications in the British Context

In the British context, equality and human rights have an increasing role beyond the Courts—as the basis for public action, as elements of an overall regulatory framework, and as minimum standards in public policy. Equalities and human rights standards are referred to in a broad range of contexts from child poverty to medical neglect and poor treatment in public services. National institutions (for example, the Children's Commissioners for England) and NGOs increasingly work within a human rights and equalities framework.

The Child Poverty Act (2010) established a legal duty to eradicate child poverty by 2020 (the so-called 'Child Poverty Duty'). The Act establishes both political and legal accountability mechanisms (with a possibility of judicial review) and specifies four time-bound statistical targets for evaluating progress. The legislation has been characterized by the Joint Committee on Human Rights as a 'human rights enhancing measure' that provides a means of implementing Article 27 of the Convention of the Rights of the Child and Article 11 of the ICESCR (Child Poverty Act 2010; JCHR, 2008; Vizard, 2012).

The PSEDs have resulted in a new form of administrative accountability and the publication of equality impact statements is now widespread amongst public authorities such as local and central government, education services and the police. In health the PSEDs cover both health commissioners and providers (e.g. hospital trusts) and are reinforced by new duties to reduce health inequalities (Health and Social Care Act 2012). The revised NHS Constitution also highlights equality and human rights standards.

The Equality and Human Rights Commission (EHRC) is a strategic equality and human rights regulator and undertakes a number of functions in addition to legal enforcement. A recent inquiry on exploitative working conditions in the meat and poultry processing sectors identified evidence of mistreatment and discrimination against migrant and pregnant workers. A further inquiry into home care identified evidence of failure to guarantee respect for the human rights of older people including instances of inhuman or degrading treatment (EHRC, 2010; 2011).

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3.5 Limitations, Critique, and Conclusions

Power-based critiques of human rights have been developed in the literature in relation, for example, to the ideological foundation of human rights; the legal adjudication of human rights; and the functions of human rights within global configurations of power. The social control critique highlights the exercise of bureaucratic power, including in relation to the administration of welfare rights and poverty elimination programmes (Dean, 2015). Further concerns relate to the unequal nature of the legal system and unequal access to justice. Access to legal systems can be highly differentiated by social group. As Stiglitz notes, existing inequalities are reflected in legal as well as political systems, with the ‘rules of the game’ open to manipulation and rent-seeking behaviour (Stiglitz, 2012).

It has been suggested that judicial enforcement of the right to health in some countries and contexts has itself reinforced and resulted in new forms of inequality. For example, in Brazil there has been a rapid increase in right to health litigation over the past decade. Ferraz (2011) contends that the overall effect of such litigation has been to harm rather than benefit the most disadvantaged. Individualistic legal interpretations focusing on individual access to drugs and treatment has favoured litigants (often a privileged minority) over the rest of the population and reallocated resources away from comprehensive programmes aimed at the general population.

Arguably, conventional human rights law puts too much emphasis on resource-constrained states in the global south as duty holders. Under international human rights law, national authorities have traditionally been viewed as being responsible for the implementation and enforcement of human rights. As Stiglitz notes, globalization requires both a *downscaling* of responsibility (for example, to cover non-state actors such as private companies) and an *up-scaling* of responsibility (to the global arena—for example, with more emphasis on collective responsibilities). Multinational private companies, for example, should be held responsible for misuses of power and market manipulation and for human rights abuses under international law. Recent developments here include the Chevron case (involving allegations of responsibility for environmental pollution impacting on health in Ecuador); and the decision of the Indian Supreme Court to reject the patenting of a cancer drug by a private pharmaceutical company. At the other end of the spectrum, there should be more focus on collective responsibility and the duties of the global north and international organizations in the context of global poverty (2013a; 2013b).

The proposition that the elected legislature, rather than the judiciary, should be responsible for public and social policy decisions that have resource implications has been invoked to challenge the legal enforcement of economic and social rights (Gearty, 2011). Another important critique relates to the distinction between formal rights and substantive rights—and whether the formal recognition of economic and social rights within legal instruments can bring about ‘real’ change on the ground. International mechanisms for implementation and enforcement of economic and social rights remain weaker than in the context of civil and political rights; whilst the textual formulation of the ICESCR qualifies and limits the obligations of states. Arguably, this formulation reduces the ‘substantive rights’ in the ICESCR to ‘minimum standards’. Even if economic and social rights were to be universally enforced, their implementation can only be achieved over time and is consistent with the perpetuation of widespread inequalities.

In responding to these critiques, it is important to recognize that a human rights approach is not the same as a full theory of substantive equality. Indeed, the idea of a human rights approach has been proposed by some as a minimum conception of justice—that is, as specifying the minimum core entitlements and obligations that should pertain in a minimally just society. Likewise, international human rights standards provide a potential basis for limiting extreme social disadvantage and curtailing extreme advantage. However, even if perfectly implemented, these standards would be unlikely to address the full range of social disadvantages and advantages examined in this volume.

Sen has persuasively argued that the incremental elimination of injustices can and should proceed in advance of the specification of a full theory of perfect substantive equality. Whilst it is often possible to agree that some changes would reduce injustice, even if all such agreed changes were to be successfully implemented, we would not necessarily have anything that we can call 'perfect justice' (Sen, 2009: xii). The examples highlighted here suggest that the human rights approach—whilst imperfectly implemented to date and perhaps falling short of a utopian ideal—has an important role to play in achieving incremental improvements towards greater equality.

References

Alston, P. (2009). 'Putting Economic, Social, and Cultural Rights Back on the Agenda of the United States'. NYU School of Law, Public Law Research Paper No. 09–35. doi.org/10.2139/ssrn.1397703.

p. 59 Beitz, C. (2011). *The Idea of Human Rights*. Oxford: Oxford University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Besley, T. and Burgess, R. (2002). 'The Political Economy of Government Responsiveness: Theory and Evidence from India'. *Quarterly Journal of Economics*, 117(4): 1415–52.

[Google Scholar](#) [WorldCat](#)

Burchardt, T. and Vizard, P. (2011). 'Operationalizing the Capability Approach as a Basis for Equality and Human Rights Monitoring in Twenty-first-century Britain'. *Journal of Human Development and Capabilities*, 12(1): 91–119.

[Google Scholar](#) [WorldCat](#)

Campbell, T. (2007). 'Poverty as a Violation of Human Rights: Inhumanity or Injustice?' In T. Pogge (ed.) *Freedom from Poverty as a Human Right: Who Owes What to the Very Global Poor?* (pp. 55–74). Oxford: Oxford University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Deacon, B. (2007). *Global Social Policy and Governance*. London: Sage.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Dean, H. (2008). 'Social Policy and Human Rights: Re-thinking the Engagement'. *Social Policy and Society*, 7(1): 1–12.

[Google Scholar](#) [WorldCat](#)

Dean, H. (2014). 'A Post-Marshallian Conception of Global Social Citizenship'. In E. Isin and P. Nyers (eds) *Routledge Handbook of Global Citizenship Studies* (pp. 128–38). Abingdon: Routledge.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Dean, H. (2015). *Social Rights and Human Welfare*. Abingdon: Routledge.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Doyle, M. and Stiglitz, J. (2014). 'Eliminating Extreme Inequality: A Sustainable Development Goal, 2015–2030'. *Ethics and International Affairs*, 28(1): 5–13. Available at <http://www.ethicsandinternationalaffairs.org/2014/eliminating-extreme-inequality-a-sustainable-development-goal-2015-2030/>, accessed April 2015.

[Google Scholar](#) [WorldCat](#)

Drèze, J. (2004). 'Democracy and the Right to Food'. *Economic and Political Weekly*, XXXIX: 17. Available at <http://www.epw.in/special-articles/democracy-and-right-food.html>, accessed 24 August 2015.

[WorldCat](#)

Drèze, J. and Sen, A. K. (1989). *Hunger and Public Action*. Oxford: Clarendon Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Drèze, J. and Sen, A. K. (2002). *India: Development and Participation*. New Delhi: Oxford University Press.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Drèze, J. and Sen, A. K. (2013). *An Uncertain Glory: India and its Contradictions*. London: Penguin.

[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Equality and Human Rights Commission (EHRC). (2010). *Inquiry Into Recruitment and Employment in the Meat And Poultry Processing Sector*. Available at

http://www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_inquiry_report.pdf, accessed 24 August 2015.

WorldCat

Equality and Human Rights Commission (EHRC). (2011). *Close to Home: An Inquiry into older people and care at home*. Available at <http://www.equalityhumanrights.com/publication/close-home-inquiry-older-people-and-human-rights-home-care>, accessed 1 September 2015.

WorldCat

Ferraz, O. (2011). 'Harming the Poor through Social Rights Litigation: Lessons from Brazil'. *South Texas Law Review*, 89: 1643–68.

Google Scholar WorldCat

Fredman, S. (2008). *Human Rights Transformed: Positive Rights and Positive Duties*. Oxford: Oxford University Press.

Google Scholar Google Preview WorldCat COPAC

Fredman, S. (2011). 'The Public Sector Equality Duty'. *Industrial Law Journal*, 40(4): 405–27.

Google Scholar WorldCat

Gearty, C. (2011). 'Against Judicial Enforcement'. In C. Gearty and V. Mantouvalou (eds) *Debating Social Rights*. Oxford: Hart Publishing.

Google Scholar Google Preview WorldCat COPAC

p. 60 Griffin, J. (2008). *On Human Rights*. Oxford: Oxford University Press.

Google Scholar Google Preview WorldCat COPAC

International Monetary Fund (IMF). (2014). *Redistribution, Inequality, and Growth*. Staff Discussion Note SDN/14/02 prepared by J. Ostry, A. Berg, and C. Tsangarides, IMF Research Department C. Available at

<http://www.imf.org/external/pubs/ft/sdn/2014/sdn1402.pdf>, accessed 24 August 2015.

WorldCat

Joint Committee on Human Rights. (2008). *Legislative Scrutiny: Child Poverty Bill*. London: The Stationery Office. Available at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/183/18305.htm>, accessed 24 August 2015.

WorldCat

Langford, M., Cousins, B., Dugard, J., and Madlingozi, T. (2014). *Socio-Economic Rights in South Africa: Symbols or Substance?* Cambridge: Cambridge University Press.

Google Scholar Google Preview WorldCat COPAC

Office of the High Commissioner for Human Rights (OHCHR). (2003). *Human Rights and Poverty Reduction: A Conceptual Framework*. Geneva: United Nations.

Google Scholar Google Preview WorldCat COPAC

O'Neill, O. (1986). *Faces of Hunger: An Essay on Poverty, Justice and Development*. London: Allen and Unwin.

Google Scholar Google Preview WorldCat COPAC

O'Neill, O. (1996). *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press.

Google Scholar Google Preview WorldCat COPAC

Pogge, T. (2008). *World Poverty and Human Rights*. 2nd edn. Cambridge: Polity.

Google Scholar Google Preview WorldCat COPAC

Pogge, T. (2013). Interview with Thomas Pogge. E-International Relations. Available at <http://www.e-ir.info/2013/06/12/interview-thomas-pogge/> accessed 24 August 2015.

WorldCat

Reddy, S. and Pogge, T. (2005). 'How Not to Count the Poor'. Version 6.2. New York: Columbia University. Available at <http://www.columbia.edu/~sr793/count.pdf>, accessed 5 August 2015.

Sen, A. K. (1985). 'Well-being, Agency and Freedom: The Dewey Lectures 1984'. *The Journal of Philosophy*, 82(4): 169–221.
[Google Scholar](#) [WorldCat](#)

Sen, A. K. (1999). *Development as Freedom*. Oxford: Oxford University Press.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Sen, A. K. (2004). 'Elements of a Theory of Human Rights'. *Philosophy and Public Affairs*, 23(4): 315–56.
[Google Scholar](#) [WorldCat](#)

Sen, A. K. (2005). 'Human Rights and Capabilities'. *Journal of Human Development*, 6(2): 151–66.
[Google Scholar](#) [WorldCat](#)

Sen, A. K. (2009). *The Idea of Justice*. Penguin: London.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Stiglitz, J. (1999). 'On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life'. Oxford Amnesty Lecture, University of Oxford, 27 January.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Stiglitz, J. (2002). 'Participation and Development: Perspectives from the Comprehensive Development Paradigm'. *Review of Development Economics*, 6(2): 163–82.
[Google Scholar](#) [WorldCat](#)

Stiglitz, J. (2012). *The Price of Inequality*. Penguin: London.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Stiglitz, J. (2013a). 'Human Rights and Globalization: The Responsibility of States and Private Actors'. *Journal of Catholic Social Thought*, 10(1): 85–90.
[Google Scholar](#) [WorldCat](#)

Stiglitz, J. (2013b). 'India's Patently Wise Decision'. Project Syndicate. Available at <http://www.project-syndicate.org/commentary/the-impact-of-the-indian-supreme-court-s-patent-decision-by-joseph-e--stiglitz-and-arjun-jayadev>, accessed 24 August 2015.
[WorldCat](#)

Stiglitz, J. (2014). 'Inequality Is not Inevitable'. New York: *New York Times*. Available at http://opinionator.blogs.nytimes.com/2014/06/27/inequality-is-not-inevitable/?_r=0, accessed 24 August 2015.
[WorldCat](#)

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1998). *Human Rights Quarterly*, 20: 691–705.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

p. 61 *The Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2012). <http://www.maastrichtuniversity.nl/web/Institutes/MaastrichtCentreForHumanRights/MaastrichtETOPinciples.htm>, final version 29 February 2012, accessed April 2015.
[WorldCat](#)

The World Bank (2005). *World Development Report 2006: Equity and Development*. Washington, DC: The World Bank.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

The World Bank (n.d.). Universal Health Coverage mini-website, <http://www.worldbank.org/en/topic/universalhealthcoverage>, accessed 5 August 2015.

[WorldCat](#)

Townsend, P. and Gordon, D. (eds) (2002). *World Poverty: New Policies to Defeat an Old Enemy*. Bristol: The Policy Press.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

United Nations (2015). *The Millennium Development Goals Report 2015*. Available at
<http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2015/English2015.pdf>, accessed 24 August 2015.
[WorldCat](#)

Vierdag, E. W. (1978). 'The Legal Nature of the Rights Granted by the International Covenant on Economic, Social and Cultural Rights'. *Netherlands Yearbook of International Law*, 9: 69–105.
[Google Scholar](#) [WorldCat](#)

Vizard, P. (2006). *Poverty and Human Rights: Sen's 'Capability Perspective' Examined*. Oxford: Oxford University Press.
[Google Scholar](#) [Google Preview](#) [WorldCat](#) [COPAC](#)

Vizard, P. (2007). 'Selecting and Justifying a Basic Capability Set: Should the International Human Rights Framework Be Given a More Direct Role?'. *Oxford Development Studies*, 35(3): 225–50.
[Google Scholar](#) [WorldCat](#)

Vizard, P. (2012). 'Evaluating Compliance Using Quantitative Methods and Indicators: Lessons from the Human Rights Measurement Framework'. *Nordic Journal of Human Rights Special Issue—Quantifying Human Rights*, 30(3): 12.
[WorldCat](#)