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Winner of *The Philosophical Quarterly* Essay Prize 2004

## POVERTY AND RIGHTS

BY JAMES W. NICKEL

*I defend economic and social rights as human rights, and as a feasible approach to addressing world poverty. I propose a modest conception of economic and social rights that includes rights to subsistence, basic health care and basic education. The second part of the paper defends these three rights. I begin by sketching a pluralistic justificatory framework that starts with abstract norms pertaining to life, leading a life, avoiding severely cruel treatment, and avoiding severe unfairness. I argue that economic and social rights are not excessively burdensome on their addressees and that they are feasible worldwide in the appropriate sense. Severe poverty violates economic and social rights, and accordingly generates high-priority duties of many parties to work towards its elimination.*

During the creation of the United Nations after World War II, it was widely agreed that a concern for economic progress and justice should be part of the UN agenda.<sup>1</sup> Countries that ratified the UN Charter committed themselves to pursuing 'higher standards of living, full employment, and conditions of economic and social progress and development' (United Nations, 1945, article 55). The American Declaration of the Rights of Man (Organization of American States, 1948), the Universal Declaration of Human Rights (United Nations, 1948) and the subsequent International Covenant on Economic and Social Rights (United Nations, 1966) all asserted rights to an adequate standard of living, health services, education, support during disability and old age, employment and protection against unemployment, and limited working hours.

The idea that economic and social rights are justified human rights remains controversial.<sup>2</sup> Economic and social rights are often alleged to be desirable goals but not real rights. The European Convention on Human Rights did not include them, although it was amended in 1952 to include the

<sup>1</sup> M. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), p. 14; J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Univ. of Pennsylvania Press, 1999), pp. 191–222.

<sup>2</sup> See D. Beetham, 'What Future for Economic and Social Rights?', *Political Studies*, 43 (1995), pp. 41–60.

right to education. Instead they were put into a separate treaty, the European Social Charter (Council of Europe, 1961). When the United Nations began the process of putting the rights of the Universal Declaration into international law, it followed the model of the European system by treating economic and social standards in a treaty separate from the one dealing with civil and political rights. This treaty, the International Covenant on Economic, Social and Cultural Rights (United Nations, 1966) treated these standards as rights to be progressively realized. More than 140 countries have ratified this treaty.

### I. THE VANCE CONCEPTION OF ECONOMIC AND SOCIAL RIGHTS

Human rights are not ideals of the good life for humans; rather they are concerned with ensuring the conditions, negative and positive, of a minimally good life.<sup>3</sup> If we apply this idea to economic and social rights, it suggests that these standards should not be much concerned with promoting the highest possible standards of living or with identifying the best or most just form of economic system. Rather they should attempt to address the worst problems and abuses in the economic area. Their focus should be on hunger, malnutrition, preventable disease, ignorance and exclusion from productive opportunities.

Some philosophers have followed this line of thought to the conclusion that the main economic and social right is 'subsistence'. Henry Shue, John Rawls and Brian Orend make subsistence the centrepiece of their concern for economic and social rights. Shue (p. 23) defines subsistence as 'unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventative health care'. Orend's definition is very similar: 'Material subsistence means having secure access to those resources one requires to meet one's biological needs – notably a minimal level of nutritious food, clean water, fresh air, some clothing and shelter, and basic preventative health care'.<sup>4</sup> Rawls includes 'subsistence' on his very short list of human rights, treating it along with security as part of the right to life. He interprets 'subsistence' as including 'minimum economic security' or 'having general all-purpose economic means'.<sup>5</sup>

<sup>3</sup> See H. Shue, *Basic Rights*, 2nd edn (Princeton UP, 1996), p. 18. Shue's idea that human rights provide 'a morality of the depths' was elaborated in terms of protections of a minimally good life in my *Making Sense of Human Rights* (Univ. of California Press, 1987), p. 51.

<sup>4</sup> B. Orend, *Human Rights: Concept and Context* (Peterborough: Broadview, 2002), p. 64.

<sup>5</sup> J. Rawls, *The Law of Peoples* (Harvard UP, 1999), p. 65.

The idea of subsistence alone offers too minimal a conception of economic and social rights. It neglects education, gives an extremely minimal account of health services, and generally gives too little attention to people's ability to be active participants and contributors.<sup>6</sup> It covers the requirements of having a life, but neglects the conditions of being able to lead one's life.

If Shue, Rawls and Orend err by making economic and social rights too minimal, international human rights documents make them excessively grandiose by including desirable goals and ideals. They view economic and social rights as prescriptions for prosperity and an ample welfare state. For example, the European Social Charter, which set the pattern for other treaties in this area, included a human right to vocational guidance, a human right to annual holidays with pay, and a human right to 'protection of health' that aspires 'to remove as far as possible the causes of ill-health' (arts 9, 2, 11 and 26 respectively). I recognize, of course, that these are good things that political movements legitimately promote at the national level. As a resident of a rich country I would vote for them. But these standards go far beyond the conditions of a minimally good life. Further, it would not be plausible to castigate a country as a human rights violator because it fails to fund occupational guidance, to require employers to provide employees with holidays with pay, or to mount an anti-smoking campaign (smoking is surely one of the main causes of ill health). The point is not merely that poorer countries should be excused from these requirements. These formulations do not have a good fit with the idea of human rights as minimal standards even when we are thinking about rich countries.

In the next few paragraphs I advocate a conception of economic and social rights that goes beyond subsistence to include health care and education. I call it the 'Vance conception', because it conforms to the list advocated by former US Secretary of State Cyrus Vance in his Law Day speech at the University of Georgia in 1977.<sup>7</sup> In that speech Vance set out a view of human rights that included 'the right to the fulfilment of such vital needs as food, shelter, health care and education'. Although this list is more expansive than subsistence alone, it adheres to the idea that economic and social rights, like other human rights, are concerned with the conditions of having a minimally good life. It thereby avoids the excesses of contemporary treaties on economic and social rights. This conception suggests that economic and social rights focus on survival, health and education. It requires

<sup>6</sup> See A. Sen, *Commodities and Capabilities* (Oxford UP, 1999); M. Nussbaum, *Women and Human Development: the Capabilities Approach* (Cambridge UP, 2001).

<sup>7</sup> C. Vance, 'Human Rights and Foreign Policy', *Georgia Journal of International and Comparative Law*, 7 (1977), p. 223.

governments to govern in such a way that the following questions can be answered affirmatively:

1. *Subsistence*: Do conditions allow all people to secure safe air, food and water as well as environmentally appropriate shelter and clothing if they engage in work and self-help in so far as they can, practise mutual aid through organizations such as families, neighbourhoods and churches, and procure help from available government assistance programmes? Do people enjoy access to productive opportunities that allow them to contribute to the well-being of themselves, their families and their communities?
2. *Health*: Do environmental conditions, public health measures and available health services give people excellent chances of surviving childhood and childbirth, achieving physical and mental competence and living a normal lifespan?
3. *Education*: Do available educational resources give people a good chance of learning the skills necessary for survival, health, functioning, citizenship and productivity?

The Vance conception of economic and social rights identifies three broad and interlocking rights whose fulfilment is needed for all people to have minimally good lives. The definition of the right to subsistence used in this conception is much like Shue's, except that health is moved to a separate category. Some health-related concerns remain within subsistence, however, since air, food and water must be safe for intake, and shelter and clothing are required to be environmentally appropriate, where that includes protections needed for health from cold, heat and precipitation.

The Vance conception views the right to health services in a broader way than Shue's 'minimal preventative health care'. It covers prevention through public health measures such as sanitation systems and inoculation programmes. But it goes beyond these preventative measures to include emergency reparative services such as help in setting broken bones and dealing with infections. And it covers minimal services related to pregnancy and birth. These health services are costly, but they are necessary to many people's ability to have a minimally good life. Further, addressing major health problems promotes people's ability to pursue education and work in an energetic way.

The right to basic education focuses on literacy, numeracy and preparation for social participation, citizenship and economic activity. It helps to orientate economic and social rights towards action, choice, self-help, mutual aid and social, political and economic participation. The Universal Declaration emphasizes that basic education should be both free and

compulsory. Families do not have the liberty to keep children uneducated and illiterate. But they do have regulated liberties to control the kind of education their children receive (Universal Declaration of Human Rights, art. 26).

The Vance conception has at least two advantages. It views economic and social rights as minimal standards without limiting their requirements to subsistence and while expecting these standards to be exceeded in most countries. Keeping economic and social rights minimal also makes their realization a plausible aspiration for poorer countries and makes it more likely that economic and social rights can pass the test of feasibility.

Several of the articles of the International Covenant on Economic and Social Rights conform to the Vance conception. The treatment of food and of an adequate standard of living in art. 11 mostly fits. That article commits the countries ratifying the International Covenant on Economic and Social Rights to ensure to everyone 'an adequate standard of living for himself and his family, including adequate food, clothing and housing', and to 'the continuous improvement of living conditions'. The Vance conception interprets 'adequate standard of living' as requiring a level adequate for a minimally good life, not for an excellent life. Further, it rejects the demand for 'continuous improvement of living conditions' as a confusion of the desirable with the imperative.

There is also a fairly good fit with the statement of the right to education in the International Covenant on Economic and Social Rights (art. 13). It requires free and compulsory primary education for all children, that secondary education should be generally available, and that higher education should be equally accessible to those equally talented. The idea of giving priority to primary education is a good one. On the Vance conception higher education is not directly a matter of human rights. Protocol 1, art. 2 to the European Convention is a better formulation, although arguably too vague: 'No person shall be denied the right to education'.<sup>8</sup> A still better formulation might describe a right of all persons to basic education, available free to all and compulsory for children, to achieve literacy, numeracy, and the knowledge and skills necessary for health, economic competence, citizenship and social life.

Not all of the articles conform to the Vance conception. For example, art. 12 of the Economic and Social Covenant puts forward a right to health that recognizes 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. This article deviates from the idea of human rights as minimal standards in demanding optimization of health rather than setting a threshold.

<sup>8</sup> Council of Europe, 1950, amended to include the right to education 1952.

## II. THE JUSTIFICATION OF ECONOMIC AND SOCIAL RIGHTS

It is sometimes alleged that economic and social rights do not have the importance that civil and political rights have.<sup>9</sup> If the objection is that some formulations of economic and social rights in international human rights documents are too expansive and go beyond what is necessary to a minimally good life, that point can be conceded and those formulations rejected. But if the objection is that economic and social rights do not protect fundamental interests or are too burdensome to be justifiable, very plausible rebuttals are available.

Theoretical approaches to the justification of human rights typically require one to leave aside many plausible starting-points and arguments in order to have an integrated and parsimonious theoretical structure. If human dignity, for example, is not one of the fundamental norms of the theory it is likely to disappear, never to be seen again. It will not do any work in justifying human rights, even if it is well suited to do so. Although normative theory is a valuable project within philosophy, its pursuit of theoretical simplicity may make human rights seem less justifiable than they actually are. When one pushes good ways of justifying human rights off the stage and puts one's own favoured way in the limelight, the favoured justification is likely to look thin and vulnerable. Alone under the spotlight, its weak spots are likely to be apparent, and it may seem obvious that it cannot possibly justify the full range of human rights. Readers may think that if this is the best justification for human rights, those rights are really shaky.

James Griffin, for example, justifies human rights entirely by reference to the values of 'personhood' (or autonomy) and 'practicalities'. He takes this to be the 'best philosophical account of human rights':

What seems to me the best account of human rights is this. It is centred on the notion of agency. We human beings have the capacity to form pictures of what a good life would be and to try to realize these pictures. We value our status as agents especially highly, often more highly even than our happiness. Human rights can then be seen as protections of our agency – what one might call our personhood.<sup>10</sup>

Autonomy by itself does not seem likely to be able to generate economic and

<sup>9</sup> M. Cranston, *What Are Human Rights?* (New York: Taplinger, 1973), pp. 65–9.

<sup>10</sup> J. Griffin, 'Discrepancies between the Best Philosophical Account of Human Rights and the International Law of Human Rights', *Proceedings of the Aristotelian Society*, 101 (2001), pp. 1–28, at p. 4. For discussion and criticism of Griffin's justification of human rights see J. Tasioulas, 'Human Rights, Universality and the Values of Personhood: Retracing Griffin's Steps', *European Journal of Philosophy*, 10 (2002), pp. 79–100.

social rights, due process rights, or rights to non-discrimination and equality before the law. To compensate, Griffin accordingly relies heavily on ‘practicalities’ in allowing these rights. The result is to make the justification of rights other than liberties appear shaky and derivative. This could have been avoided by introducing some other fundamental values or norms, particularly a requirement of fair treatment when very important interests are at stake (more on this below). A fairness norm would be no more controversial than autonomy as a starting-point for human rights, and it would allow due process rights to be as central and non-derivative as liberty rights.

If we think of an argument for a human right as providing a leg or support, writers who want to provide stable and widely-appealing justifications for human rights have reason to prefer a many-legged approach. If a right has multiple justifications, the failure of one will be less likely to call the right’s justification into doubt. Further, rights with multiple justifications have a better chance of transcending cultural and religious differences. Accordingly, I propose a pluralistic conception of the norms and interests underlying human rights. My starting-point is a framework that suggests that people have secure, but abstract, moral claims on others in four areas:

- A secure claim to have a life
- A secure claim to lead one’s life
- A secure claim against severely cruel or degrading treatment
- A secure claim against severely unfair treatment.

These four abstract rights with associated duties are ‘secure’ in the sense that they do not have to be earned through membership or good behaviour (although claims to liberty can be justifiably suspended upon conviction of a crime). They are also ‘secure’ in the sense that their availability to a person does not depend on that person’s ability to generate utility or other good consequences.

These four principles ascribe abstract obligations, to respect and protect, to everyone – whether individuals, government officials or corporate entities. Some of the duties involved are obviously positive; negative duties are not given a privileged position. Costs matter, but not whether those costs result from trying to fulfil a negative or a positive duty.<sup>11</sup>

Each of the four claims is centred on a fundamental human interest. But the overall theory is deontological in the sense that it starts with abstract rights and associated duties. The basic interests serve to orientate the rights and duties. A unifying idea for these four secure claims is that if perfectly realized, they would make it possible for every person living today to have

<sup>11</sup> Nickel, *Making Sense of Human Rights*, pp. 120–30; S. Holmes and C. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York: Norton, 1999).



and lead a life that is decent or minimally good. This is a substantial but limited commitment to equality. Because these principles prescribe a secure floor of respect, protection and provision for each person, they hold the prospect of grounding the universality of human rights. No person is to be denied respect, protection or provision except on grounds of impossibility or unacceptably high costs to the basic interests of others, or as a reasonable punishment for a serious crime.

This theory of the supporting reasons for human rights is modest. It sets a low standard, namely, a life that is decent or minimally good. Human rights offer a morality of the depths, not of the heights. They are concerned with avoiding misery and ruinous injustice. Secondly, it recognizes that there are many sources of misery in human life that humans do not control such as natural disasters, diseases and genetic misfortunes. Thirdly, it recognizes that the specific human rights to be generated from these abstract rights will mainly address the standard threats in various areas to a decent or minimally good life. Perfect protection is not envisaged. Finally, it does not claim to offer a complete moral or political theory.

*The secure claim to have a life*

A central human interest is security against actions of others that lead to death, destruction of health, or incapacitation. The secure claim to life includes negative duties not to murder, use violence except in self-defence, or harm negligently or maliciously. It includes a claim to freedom and protection from murder, violence and harm. Thus it includes positive duties to assist people when they need help in protecting themselves against threats of murder and violence. In today's world these duties to protect and provide will mostly be discharged through the creation and funding of legal and political institutions at the local, national and international levels.

Having a life, however, requires more than merely being free from violence and harm. One's body must be capable of most normal functions, and to maintain bodily capacities people must satisfy physical needs for food, water, sleep and shelter. People can usually supply these things for themselves through work. But everyone goes through periods when self-supply is impossible – typically, childhood, illness, unemployment, disability and advanced old age. People unable to survive on their own have claims upon others to assistance.

*The secure claim to lead one's life*

Normal adults are agents, and put great value on continuing to be agents. They evaluate, choose, deliberate and plan. They recognize and solve practical problems. They make plans for the future and attempt to realize them.

Evaluation, choice and efforts at reform often extend to a person's own character. When one's life is significantly shaped by one's own choices and evaluations, it becomes one's own.

The development, maintenance and exercise of agency have physical, social and political requirements. Requirements of survival and health are protected by economic and social rights. Social requirements are protected by rights to education and freedom of association. And the political requirements are protected by fundamental freedoms. The claim to lead one's life yields claims to freedoms from slavery, servitude, and the use of one's life, time or body without one's consent. It also yields claims to liberties in the most important areas of choice such as occupation, marriage, association, movement and belief. And it yields claims to the liberties of a moral being – liberties to participate in social relations, to learn, think, discuss, decide, respond, act and accept responsibility. As this suggests, specific freedoms are mainly selected as fundamental, and therefore as protected under the liberty principle, by showing their importance to the realization and use of agency. The claim to lead one's life is strongest in regard to actions that structure or set the direction for one's life, and involve matters that take up much of one's time, such as work, marriage and children. The secure claim to liberty is not just a claim to respect for or non-interference with one's liberty. It is also a claim to assistance in protecting one's liberty, and for the creation and maintenance of social conditions in which the capacity for agency can be developed and exercised.

A system of unqualified respect for liberty would license other people to engage in violence and harm; such a system would set back one's fundamental interests more than it helped them. The solution is to build restrictions into the principle of liberty. Some of these follow, obviously, from the restrictions on violence already discussed. In deciding which liberties to include or exclude, the appropriate questions are whether a particular liberty is essential to our status as persons and agents, and whether the costs of respecting and protecting it are likely to be so high that it is not worth protecting.

Duties of assistance to others carve an exception into the claim to liberty. Within limits that prevent excessive burdens and severe unfairness, people can be called on to expend their time and resources in protecting and provisioning others and in supporting institutions that provide such assistance in systematic and efficient ways.

*The secure claim against severely cruel or degrading treatment*

A simple form of cruelty imposes severe pain on another person thoughtlessly or gleefully. This type of cruelty can degrade a person because it

suggests that he has no feelings or that his suffering does not matter. More complicated forms of cruelty are calculated to degrade a person by suggesting, or bringing it about, that he is a creature whom he and others will think base or low. Slavery is degrading because it treats the slave as if he lacks the agency needed to lead his own life. Rape is degrading because it treats a person as a mere sexual resource to be used without consent, or because in many cultures it destroys one's social standing as a virtuous and pure person. Degradation may deprive a person of the respect of self and others. A secure claim against severe cruelty forbids these sorts of actions and requires individual and collective efforts to protect people against them. The severity of cruelty depends on how degrading it can reasonably be taken to be, the degree of malicious intent, and the amount of harm that it is likely to cause.

*The secure claim against severely unfair treatment*

Humans are keenly attuned to unfairness, particularly when it takes the form of doing less than one's fair share in collective enterprises. Fairness and fair-mindedness are moral virtues, and some degree of fairness in dealing with others is a moral duty. Here, however, severe unfairness is an appropriate test, because being subject to lesser forms of unfairness is probably compatible with having a minimally good life. For present purposes we are concerned with forms of unfairness so severe that they are matters of ruinous injustice. The severity of unfair treatment depends on the degree of unfairness, whether or not malicious intent is present, and the amount of harm or degradation that the unfairness is likely to cause. The claim against severely unfair treatment is a claim to freedom from such treatment and a claim to individual and collective efforts to protect people against it. For example, governments have a duty not to imprison innocent people, and therefore a duty to provide the accused with fair trials.

*All four principles protect aspects of human dignity*

The UDHR speaks of the 'inherent dignity ... of all members of the human family', and declares that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience.' The four grounds of human rights that I have proposed provide an interpretation of these ideas. We respect a person's dignity when we protect his life and agency and when we prevent others from imposing treatment that is severely degrading or unfair.

All four principles should be thought of as requirements of human dignity, of ways to recognize and respond to the value or worth that is found in life as a person. Accordingly, we can speak of dignity with reference to any particular feature of persons that has distinctive value (e.g., their ability

to suffer, their lives, their agency, their consciousness and reflective capacities, their use of complicated languages and symbolic systems, their rationality, their individuality, their social awareness).

### *Linkage arguments*

Before applying this framework to economic and social rights, we should note that linkage arguments reinforce the importance of some human rights, including economic and social rights. Henry Shue (pp. 24–5) pioneered the use of linkage arguments to defend the right to subsistence:

No one can fully ... enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life.... Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought.

Shue's claim that no rights can be fully enjoyed in the absence of an effective right to subsistence may be exaggerated, since it seems to imply the implausible proposition that no countries had adequately implemented systems of property rights prior to having subsistence rights. Further, it is restricted to the full enjoyment of rights, and thus may not provide much guidance in developing countries where full enjoyment or implementation of rights is a distant goal.

Still, understanding the ways in which economic and social rights support other rights is important to understanding their justification and priority. Without protections for subsistence, basic health care and basic education, people in severe poverty will frequently be marginal rightholders. They will be unlikely to know what rights they have or what they can do to protect them, and their extreme need and vulnerability will make them hard to protect through social and political action. If people are to be the kind of rightholders who can effectively exercise, benefit from and protect their rights, the availability of subsistence, basic health care, and basic education must be secure.

### *Do economic and social rights fit the general idea of human rights?*

Another preliminary to constructing a justification for economic and social rights is to consider whether they conform to the general idea of human rights. I believe they do. They provide protections for very important human interests (see below). They can be formulated as rights<sup>12</sup> – norms with rightholders who have claims, powers and immunities; addressees who have duties and liabilities; and scopes or objects specifying a liberty,

<sup>12</sup> J. Feinberg, 'The Nature and Value of Rights', *Journal of Value Inquiry*, 4 (1970), pp. 243–51; T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), pp. 67–70.

protection or benefit that the rightholder is to enjoy. Further, they can be implemented through legislation and adjudication.<sup>13</sup>

It is sometimes objected, however, that we cannot identify the addressees of economic and social rights. I shall discuss this with reference to the right to food. People are often perplexed by the idea of an international right to adequate food because they are not sure what it means for them. Does it mean that they have an obligation to feed some fair share of the world's hungry? As Onora O'Neill says, 'it would be absurd to claim that everyone has an obligation to provide a morsel of food or a fraction of an income to each deprived person'.<sup>14</sup>

O'Neill wrongly assumes that the main way for a person to have a right to adequate food is for everyone else to have duties to that person, when in fact upholding this right requires a division of labour between several parties. In other writings I have proposed a complex view of the addressees of human rights which holds that (1) governments are the primary addressees of the human rights of their residents, with duties both to respect and to uphold their human rights; (2) governments have negative duties to respect the rights of people from other countries; (3) individuals have negative responsibilities to respect the human rights of people at home and abroad; (4) individuals have responsibilities as voters and citizens to promote human rights in their own country; and (5) governments, international organizations and individuals have back-up responsibilities for the fulfilment of human rights around the world.<sup>15</sup> If human rights were widely conceived and implemented in this way, they would contribute far more than they do now to the alleviation of severe poverty.

#### *Applying the justificatory framework to economic and social rights*

The secure claim to life plays a central role in justifying economic and social rights. Without safe food and water, life and health are endangered, and serious illness and death are probable. The connection between the availability of food and basic health care and having a minimally good life is direct and obvious – something that is not always true with other human rights. Education also promotes the fundamental interest in life by teaching health-related knowledge and skills as well as ways of supporting one's life through work.

<sup>13</sup> C. Fabre, *Social Rights Under the Constitution: Government and the Decent Life* (Oxford: Clarendon Press, 2000).

<sup>14</sup> O. O'Neill, 'Hunger, Needs, and Rights', in S. Luper-Foy (ed.), *Problems of International Justice* (Boulder: Westview, 1988), pp. 67–83, at p. 76.

<sup>15</sup> See my 'How Human Rights Generate Duties to Protect and Provide', *Human Rights Quarterly*, 14 (1993), pp. 77–86, and 'A Human Rights Approach to World Hunger', in W. Aiken and H. LaFollette (eds), *World Hunger and Morality*, 2nd edn (Englewood Cliffs: Prentice Hall, 1995), pp. 171–85.

The secure claim to lead a life, to be able to develop and exercise one's agency, also supports the importance of basic economic and social rights. Developing and exercising agency requires a functioning mind and body as well as options and opportunities. The availability of food and basic health care promotes and protects physical and mental functioning. And the availability of basic education promotes knowledge of social, economic and political options. Lack of access to educational opportunities typically limits (both absolutely and comparatively) people's abilities to participate fully and effectively in the political and economic life of their country.<sup>16</sup>

The secure claim against severely unfair treatment supports economic and social rights. It is severely and ruinously unfair to exclude some parts of the population (rural people, women, minorities) from access to education and economic opportunities. Basic economic and social rights protect against that kind of unfairness.

*Would a voluntary assistance scheme be as effective?*

Economic and social rights might be unnecessary if people participated in self-help, assistance to family members and charitable giving to those in need. This proposal suggests that we can recognize that people have moral claims to assistance in regard to subsistence, health care and education, without our having to view these claims as generating rights or as requiring political action.

A harmonious combination of self-help and voluntary mutual assistance is certainly to be encouraged, but offers little prospect of providing adequately for all of the needy and incapacitated if it is viewed as a substitute for, rather than as a supplement to, politically implemented economic and social rights. First, some people are unable to help themselves because they are sick, disabled, very young or very old. Secondly, some people lack families to assist them, and impoverished people often come from low-income families with limited abilities to assist their members. Thirdly, the limits of charitable giving as sources of aid to the needy are obvious. In comparison to the size of the problem they are small in scale; their capacities are limited. There are often too few donors for the needs present. Further, coverage for those in need is likely to be spotty rather than comprehensive. This may be because no capable donor is within call or because the capable donors who are within call have used their discretion and given to other causes. This spottiness was noted by John Stuart Mill. He remarked that 'Charity almost always does too much or too little: it lavishes its bounty in one place, and leaves people to starve in another'.<sup>17</sup>

<sup>16</sup> D. Hodgson, *The Human Right to Education* (Aldershot: Ashgate, 1998).

<sup>17</sup> J.S. Mill, *Principles of Political Economy* (London: Longmans, Green, 1848), V xi 13.

*Are the burdens justifiable?*

A familiar objection to economic and social rights is that they are too burdensome. Frequently the claim that economic and social rights are too burdensome uses other less controversial human rights as a standard of comparison, and suggests that economic and social rights are substantially more burdensome or expensive than liberty rights, for example. Liberty rights, such as freedom of communication, association and movement, require both respect and protection from governments. And people cannot be adequately protected in the enjoyment of liberties such as these unless they also have security and due process rights. The costs of liberty, as it were, include the costs of law and criminal justice. Once this is brought out, liberties start to look a lot more costly. To provide effective liberties to communicate, associate and move, it is not enough for a society to make prohibition of interference with these activities part of its law and accepted morality. An effective system of provision for these liberties will require a legal scheme that defines personal and property rights and protects these rights against invasions while ensuring due process to those accused of crimes. Providing such legal protection in the form of legislatures, police, courts and prisons is very expensive.

Further, we should not think of economic and social rights as simply giving everyone a free supply of the goods these rights protect. Guarantees of subsistence will be intolerably expensive and will undermine productivity if everyone simply receives a free supply. A viable system of economic and social rights will require most people to provide for themselves and their families through work as long as they are given the necessary opportunities, education and infrastructure. Government-implemented economic and social rights provide guarantees of availability (or 'secure access'), but it should not be necessary for governments to supply the requisite goods in more than a small fraction of cases. Basic health care and education may be exceptions to this, since many believe that governments should provide free health services and education irrespective of ability to pay.

Countries that do not accept and implement economic and social rights still have to bear somehow the costs of providing for the needy. If government does not supply food, clothing and shelter to those unable to provide for themselves, then families, friends and communities will have to shoulder much of this burden. It is only in the last century that government-sponsored economic and social rights have taken over a substantial part of the burden of providing for the needy. The taxes associated with economic and social rights are partial replacements for other burdensome duties, namely the duties of families and communities to provide adequate care for

the unemployed, sick, disabled and aged. Deciding whether to implement economic and social rights is not a matter of deciding whether to bear heavy burdens, but rather of deciding whether to continue with total reliance on systems of informal provision which provide insufficient assistance and whose costs fall very unevenly on families, friends and communities.

Once it is recognized that liberty rights also carry high costs, that intelligent systems of provision for economic and social rights need to supply the requisite goods to people in only a small minority of cases, and that these systems are substitutes for other, more local ways of providing for the needy, the difference between the burdensomeness of liberty rights and the burdensomeness of economic and social rights ceases to seem so large. But even if the burdens imposed by economic and social rights are not excessive, they might still be wrong to impose on individuals. Libertarians object to economic and social rights as requiring impermissible taxation. Nozick, for example, says that 'Taxation of earnings from labour is on a par with forced labour'.<sup>18</sup> This view is vulnerable to an attack on two grounds. First, taxation is permissible when used to discharge the moral duties of taxpayers, as when it is used to support government-organized systems of humanitarian assistance that fulfil more effectively than charity duties of assistance that all individuals have.<sup>19</sup> Secondly, property rights are not so weighty that they can never be outweighed by the requirements of meeting other rights.

*Are basic economic and social rights feasible?*

The test of feasibility for an international human right that I propose is that most countries in the world today are able to implement the right in question. Feasibility is a challenging test for basic economic and social rights, because some of the world's countries are too impoverished, troubled and disorganized to respect and implement them effectively. This is particularly true in 'low income' countries (those in the lowest quartile in terms of average individual income). These are countries such as Haiti, India and Nigeria, where the average income is less than US\$500 per year, the average lifespan is slightly under 60 years, childhood immunization is near 60%, and illiteracy rates are more than 40%.

The abilities and resources of the least capable countries are not an appropriate standard of feasibility. The legal duties of parents, for example, are not keyed to the least capable parents. Rather we should ask whether most countries can comply, whether countries in the top two quartiles and some of those in the third have the resources and capabilities to implement basic economic and social rights. Countries in the top quartile clearly can.

<sup>18</sup> R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169.

<sup>19</sup> See Beetham, p. 53.



They include countries such as Canada, Denmark, Greece, Japan and Singapore. So can countries in the second quartile. They include countries such as Chile, Hungary, Mexico and Poland. Average personal income in these countries is around \$5000, the average lifespan is 73 years, infant immunization rates are around 95%, and illiteracy rates are less than 10%.<sup>20</sup> Most of them already have programmes to promote and protect basic economic and social rights, although the quality and efficiency of these programmes is often poor.

But what about countries in the third quartile? If some of them are able to implement basic economic and social rights, the feasibility test will be passed. These are countries such as Brazil, China, Columbia, Fiji, Jordan and Turkey. The average personal income in these countries is \$1350, the average lifespan is 69 years, childhood immunization rates are around 80%, and illiteracy is less than 20%. Many of these countries already have programmes to reduce hunger, promote health and provide education, but those programmes are often underfunded and fail to cover all regions and parts of the population. But it seems likely that at least the top third of them are able to implement basic economic and social rights. Thus if we use the Vance conception of economic and social rights, it seems that the feasibility test can be met.

If all of the appropriate justificatory tests can be met by economic and social rights, this means that these rights are justified for the whole world. Most countries can implement them and have no excuse on grounds of resources for not doing so as quickly as possible. In countries that are genuinely unable to implement them, these rights exist as justified international norms, but their governments and peoples are excused on grounds of inability for their failure to make them available. This does not render the rights irrelevant, however. They stand as norms to be realized as far as and as soon as possible, whose lack of realization is an appropriate matter of regret. Further, those rights call upon secondary and back-up addressees to come forward and provide meaningful assistance.

The International Covenant on Economic and Social Rights only commits its signatories to progressive implementation of economic and social rights. Its commitment clause (art. 2.1) requires ratifying countries 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 realization of the rights recognized in the present Covenant'. It defines the duties associated with economic and social rights as duties to try – to make a good-faith effort progressively over time to

<sup>20</sup> World Bank, 2003. Data and statistics: <http://www.worldbank.org/data/countryclass/classgroups.htm>.

implement these rights for all of the population in all parts of the country. This allows countries to be in compliance with their legal duties even though subsistence, minimal health care and basic education are not available to all of their people.

A better approach would have been to use the same commitment clause found in art. 2 of the Civil and Political Covenant, namely, to 'respect and to ensure to all individuals within its territory ... the rights recognized in the present Covenant'. A supplementary statement could have said that countries genuinely unable to implement economic and social rights are temporarily excused, but have duties to implement these rights as soon as and as far as they can. Beyond this, duties of richer countries to assist low-income countries in realizing basic economic and social rights should have been specified abstractly but explicitly.<sup>21</sup>

Although the economic and social treaties call for progressive implementation, the committees administering these treaties have tried to deal with the deficiencies of this approach by introducing the supplemental ideas of making a good faith and measurable effort and of meeting minimum standards.<sup>22</sup>

The duties to try, associated with the idea of progressive implementation, allow countries that are doing little or nothing to implement economic and social rights to say that they are engaging in hopeful waiting, to say that they have done all that they can and that they are simply waiting for more resources to appear. That makes generally available a rationalization for inaction. One possible response to this, of course, is to challenge the truthfulness of the claim about inability, in the light of expenditure on things that seem to have lower priority. Another approach is to require countries to be doing something, to be taking measurable steps. Economic and social rights can be further strengthened by adding duties to satisfy feasible minimal standards without delay, while making efforts to realize the right fully over a longer term. This is often described as a 'minimum core'. A right of this sort might be thought of as having two objects. One, the minimal object, is set at a level that almost all countries can meet, and requires nearly immediate compliance. In regard to food, the minimum core might be a duty to prevent massive famines, while the outer core is secure access to adequate food for all. It sets a more demanding goal which provides a broader focus for the right and which is supported by a duty to try.

<sup>21</sup> An example of such a principle is found in Rawls, *The Law of Peoples*, p. 37; see also Pogge, pp. 196–215.

<sup>22</sup> Committee on Economic, Social, and Cultural Rights, General Comment No. 3 UN Doc. E/1991/23.

### III. CONCLUSION

Rights to subsistence, basic health care and basic education can be plausibly defended within a pluralistic framework that starts with abstract norms pertaining to life, leading a life, avoiding severely cruel treatment and avoiding severe unfairness. Economic and social rights are not excessively burdensome, and are feasible in the appropriate sense. Severe poverty violates economic and social rights, and accordingly generates high-priority duties of many parties to work towards its elimination. Energetic action to realize economic and social rights worldwide is in order.

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