

Instantiating Economic Rights: A Workshop

April 21, 2007

University of Connecticut

8- 8:30am	Breakfast
8:30--9	Introduction (Minkler)
9-10:30	Constitutions, Legal, and Political Institutions (Chapman; Kimenyi)
10:30-11	Coffee Break
11-12:30	Discretionary Economic and Social Welfare Policy Options (Scruggs; Harvey)
12:30-2	Lunch
2-3:30	International Obligations (Fukuda-Parr; Gibney)
3:30-4	Coffee Break
4-5:30	Obligations of Non-State Actors (e.g., NGOs, business, and civil society organizations) (Hertel; Libal)
6	Dinner

This workshop is the first in an annual series of Economic Rights “Affiliates” workshops aimed at exploring key debates in this area of the human rights field, to be hosted by the Economic Rights program at the University of Connecticut’s Human Rights Institute. The 2007 workshop will focus on the challenge of instantiating economic rights – or translating these rights into practice.

The morning sessions will address the institutions and policies within any given state that relate to economic rights. One way to think of institutions is as formal constraints on behavior that facilitate purposeful action. (This is the conceptualization developed by Nobel laureate Douglas North.) At the top of the pyramid, theoretically if not always in practice, is the Constitution. Constitutions create other institutions of governance in a given polity: a congress or parliament, ministries, and departments, etc. A constitution specifies rules, constraints, legal rights and obligations, which may (or may not) include economic rights and obligations. Similarly, the mandates of individual institutions of governance may or may not specify economic rights explicitly.

By contrast, policies refer to the discretionary choices of lawmakers and policymakers. Policies have a more transitory nature than do either constitutions or principal institutions

of governance. The design of governance institutions necessarily constrains the menu of policy choices available -- but for any given set of institutions, there exist a range of policy options, some of which will emphasize economic rights more than others. So while they are inextricably linked, it does make some sense to analyze institutions and policies separately (hence, the distinct and consecutive sessions in the morning).

Some favor incorporating economic rights and obligations directly into constitutions, while others do not. The broadest question here is: what institutions and policies most effectively instantiate economic rights? Of course a state's economic, social, political, cultural conditions and its history will factor into how this question might be best answered. But what are some effective real-life institutions and policies?

In most cases the realization of economic rights will require more than just a state fulfilling (or claiming to fulfill) its own obligations. So the workshop's afternoon sessions will consider additional obligations on the part of two different sources: the international community, and non-state actors. Some, like Thomas Pogge, argue that rich countries have the moral obligation to fulfill the economic rights of poorer countries. Others, like Sigrun Skogly and Mark Gibney, argue that international law already provides for such obligations. The challenge is to specify what is required of the international community: moral and legal obligations might help to define the set of available choices -- but what policies would be best? What trends in the international legal and/or financial realm either aid or obstruct the adoption of policies designed to protect economic rights? Further, what kinds of obligations do NGO's, business, and civil society have for instantiating economic rights? How would those obligations best complement those of states and the international community?

Instantiating Economic Rights: Questions and Readings

1. Constitutions, Legal, and Political Institutions

(Discussion leaders: Audrey Chapman; Samson Kimenyi)

Questions: (a) Economic rights may be included in constitutions as either "directive principles" or "expressive/aspirant goals." What are the costs and benefits of instantiating economic rights as directive principles? (b) What kinds of political and legal institutions are necessary to support this type of instantiation? (c) What have been the experiences of those countries that have attempted to instantiate economic rights in this manner?

Readings:

Donnelly, Jack, 2006. "The Virtues of Legalization," In *Legalization and Human Rights*, ed. B. Cali and S. Meckled-Garcia. London: Routledge.

Development Cooperation Directorate, DAC Network on Governance, 2006. "The Challenge of Capacity Development: Working Towards Good Practice."

2. *Discretionary Economic and Social Welfare Policy Options*

(Discussion leaders: Lyle Scruggs; Philip Harvey)

Questions: (a) What are the costs and benefits of placing the responsibility for economic rights fulfillment on policy-makers, via “expressive” constitutional principles, or statutory law, or discretionary budgetary allocations? (b) What kinds of political and legal institutions are necessary to implement economic rights in the above ways? (c) What lessons have we learned from countries that have attempted to fulfill economic rights through discretionary policy making?

Readings:

Harvey, Philip, 2004. “Aspirational Law,” *Buffalo Law Review* 52, 701-726.

3. *International Obligations*

(Discussion leaders: Sakiko Fukuda-Parr; Mark Gibney)

Questions: (a) What are the moral and legal arguments for and against the notion of a binding legal obligation upon developed states to provide assistance to developing countries? (b) Assuming some minimum obligation to provide such assistance, what policies would be most effective (e.g., Millennium Development Goals, regional compacts, etc.)? (c) What trends in the international legal and/or financial realm either foster or obstruct the adoption of policies designed to protect economic rights?

Readings:

Hunt, Paul, 2004. “The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health,” Commission on Human Rights, Report of the Special Rapporteur.

Ziegler, Jean, 2005. “The Right to Food,” Commission on Human Rights, Report of the Special Rapporteur on the Right to Food.

4. *Obligations of Non-State Actors* (e.g., NGOs, business, and civil society groups)

(Discussion leaders: Shareen Hertel; Kathy Libal)

Questions: (a) What kinds of obligations do non-state actors have for instantiating economic rights? (b) Is it more useful to think of voluntary forms of cooperation (rather than obligations) in the interest of promoting economic rights? (c) How would either obligations or voluntary initiatives best complement the efforts of states and the international community in this area?

Readings:

Goering, Curt. 2006. Amnesty International and Economic, Social and Cultural Rights. In *Ethics in Action: The Ethical Challenges of International Human Rights and Humanitarian Nongovernmental Organizations*, ed. Daniel A. Bell and Jean-Marc Coicaud. Cambridge, UK: Cambridge University Press.

Weissbrodt, David and Muria Kruger, "Current Developments: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights," *American Journal of International Law* 97: 901-922.