

**A Hierarchy of Human Rights:
An Analysis of the Challenges Facing the Right to Food**

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Abstract

Since their introduction into the human rights discourse, social and economic rights have been highly controversial and have generated contention. While civil and political rights are normatively embraced universally, social and economic rights remain difficult to uphold. Food rights, in particular, have been cited as the one most widely violated human right. Today the Food and Agriculture Organization of the United Nations estimates that 925 million people globally suffer from chronic hunger. This paper focuses on debates surrounding social and economic rights and considers international legal frameworks pertaining to the right to food. My primary concern is to understand how the framing and institutionalization of social and economic rights, such as in the 1966 Covenants, impact whether the right to food is fulfilled.

In response to the horrors of World War II and the subsequent limitations of the UN Charter, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948 (Moyn, 2010). The Declaration was the first international legal instrument to identify and make claims for human rights, which maintains that humans are endowed with a set of inherent, inalienable, and equal rights that *ought* to be applied universally to ensure people will maintain “a minimally good life” (Nickel, 2005, p. 36). The Declaration encompasses political, civil, economic, social, and cultural rights; however, social and economic rights are often contested and are commonly viewed as “second class” rights. That

is, they are sometimes regarded as if inferior to political and civil rights (Beetham, 1995; Donnelly, 2003; Nickel, 2005; Sen, 2004). In their comments to the Vienna World Conference in 1993, the UN Committee on Economic, Social and Cultural Rights stated that “the shocking reality....is that states and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and action” (as cited in Beetham, 1995, p. 41). To grapple with these inconsistencies in rights protection, I will first focus on how social and economic rights have been framed and institutionalized by the United Nations (such as through the 1966 Covenants) in comparison to political and civil rights. Then, a case study on the right to food will be presented as a widely violated human right in order to examine how this issue is approached globally. Finally, malnourishment levels suggest the current limitations of this right.

A Hierarchy of Rights

A prominent position opponents take towards social and economic rights is that they are “desirable goals but not real rights” (Nickel, 2005, p. 385). Here, pertinent to understanding the point of departure between political/civil and economic/social human rights are the 1966 International Covenants. During the Cold War period, the world was in a state of “ideological rivalry over the status of economic and social rights” (Donnelly, 1998, p. 7). That is, “the communist bloc wanted them included as human rights; the capitalist West did not” (Cole, 2005, p. 473). This ideological contestation consequently resulted in the United Nations General Assembly adopting two frameworks, the International Covenant for Economic, Social and Cultural Rights (ICESCR) and the International Covenant for Civil and Political Rights (ICCPR). As Maurice Cranston (1962) indicates, “one conspicuous difference between the Universal Declaration of Human Rights and the United Nations draft covenants is that the

latter attempt to name the limitations to which human rights are subject” (p. 71). These treaties were adopted and opened for signatures in 1966. However, they were not brought into international law until 1976 (Keith, 1999). In an attempt to oversee the implementation of stated rights, the ICCPR formed the Human Rights Committee while the ICESCR formed the Committee on Economic, Social and Cultural Rights. It is important to simply point out the names by which these committees chose to identify themselves by, which suggests and even purports a primary (political & civil) and secondary (economic, social & cultural) status regarding the classification of human rights. This perhaps even reinforces an idea that social and economic rights hold less precedence than civil and political rights.

The Committee on Economic, Social and Cultural Rights claims that social and economic rights are often misconceived as “unenforceable, non-justifiable, [and] only to be fulfilled ‘progressively’ over time” (1993, p. 2), but this misconception may be shaped by the monitoring methods employed by this committee. That is, the ICESCR “generally requires only that the states parties takes steps *towards* achieving the rights recognized in the covenant” (Keith, 1999, p. 97). The concept of moving “towards” a desired goal simply implies that “states are only required to make some effort (relative to their available resources)” (Keith, 1999, p. 97) to achieve these rights, yet provides the duty-bearer with no time frame or sense of urgency of when to do so. When it comes to enforcing social and economic rights, there are clear obstacles. It is as Amy Howlett aptly points out, “it is more difficult to assess whether an ESC right has been violated” and when a government has done enough to protect that right (2004, p. 1205). Some states don’t even make a relative effort to provide ESCR; the World Food Programme (2012) asserts there is enough food in the world to meet the nutritional needs of everyone, yet nearly a billion people remain malnourished.

The Human Rights Committee gives priority to civil and political rights, and its stringent enforcement policies suggest that the international community perceives civil and political rights as

deserving a higher level of treatment than social and economic rights. The Committee asserts that all states party to the ICCPR must submit regular reports to the Committee on how the rights are being implemented, as well as respond to Committee requests and concerns (Office of the United Nations High Commissioner for Human Rights). This is not to say that all signatories abide by such rules and submit progress reports, because this certainly is not the case (Keith, 1999). However, the strict requirements that the Human Rights Committee has in relation to these rights – particularly in comparison to the process for protecting ESCR – is symbolic of the perceived importance of these rights. Stringent enforcement policies imposed by the Human Rights Committee suggest that the UN body perceives civil and political rights as foremost and deserving a higher level of treatment than social and economic rights. If such urgency were displayed in enforcing social and economic rights as well, then arguably their status would be equivalent to that enjoyed by the civil and political rights.

Some critics of social and economic rights argue that ESCR are too expensive for many obliged governments to provide. Economist and Nobel prize winner Amartya Sen (2004) describes this as “the feasibility critique,” which proceeds from the argument that “even with the best of efforts, it may not be feasible to arrange the realization of many of the alleged economic and social rights for all” (p. 347). The premise is that social and economic rights simply are not practical for some governments to provide, and therefore they cannot possibly be human rights (Cranston, 1962, p. 71). Cranston (1962) supports civil and political rights, as he explains they do not necessarily need to be provided, and cites unindustrialized countries as his basis for opposing social and economic rights. He claims that some countries do not currently support the institutional framework necessary to realize these rights, so therefore how can they be rights? Ultimately, Sen (2004) rejects this claim with the explanation that “the understanding that some rights are not fully realized, and may not even be fully realizable under present circumstances, does not, in itself, entail anything like the conclusion that these are, therefore, not rights at all” (p. 348). Clearly, a state’s inability to create a social and economic system conducive to

these rights does not nullify the normative validity of the claim and therefore, does not void people's entitlement to them.

Ultimately, human rights are ethical claims founded on principles that maintain "all human beings are born free and equal in dignity and in rights" (United Nations, 1948). As Neil Stammers (1995) aptly points out, in any discussion of human rights "the way in which the duties correlative to those rights are constructed and understood is of crucial importance: 'What are they?' and 'Who has them?' are key questions" (p. 494). The next section we will address these questions as we move on to explore the human right to food.

Food Rights

The Committee on Economic, Social and Cultural Rights contends that "the right to live a dignified life can never be attained unless all basic necessities of life – work, food, housing, health-care, education and culture – are adequately and equitably available to everyone" (1993, p. 1). The Food and Agriculture Organization (FAO) of the United Nations estimates that there were 878 million people globally suffering from chronic hunger between the years 1969-1971, yet today the number is estimated at around 925 million (Food and Agriculture Association, Hunger). While the proportion of hungry people relative to the total population has declined (due to an overall population increase), the total number of chronically hungry people in the world has increased. Thus, if universal rights are provided to all human beings in order to have a "minimally good life," then how much suffering must take place in order for a social and/or economic right to become widely accepted? In this section, I consider two international human rights frameworks that outline a right to food, the UDHR and the ICSECR, in order to fully understand what is implied by a "right to food" and what obstacles may challenge that right.

Human rights have two distinct features: rectitude and entitlement (Jack Donnelly, 2003). Rectitude is based on an idea of moral righteousness. Hence, we have established a universal right to food because we believe accessibility, availability, and adequacy of food is necessary to live a dignified life (United Nations Economic and Social Council, 1999). Entitlement, on the other hand, is a prerogative of those enjoying such right(s), which gives the right-holders the ability to claim access to their right(s). Consequently, a right “is of most value precisely when one does not ‘have’ (the object of) the right” (Donnelly, 2003, p. 9). A particularly tragic example of the inverse of this possession paradox is the case of those who are malnourished and are in need of food. In principle, they have a universal right to food, but due to the national confines, are unable to receive access to it. Essentially, this terminates the right holder’s value of having the right to food in the first place.

When food rights were initially described in the UDHR, they were grounded in the principles of universality. According to UDHR Article 25(1), “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing” (United Nations, 1948). However, the ICESCR is the international instrument most often cited as the main legal source of the right to food (Windfuhr, 1998). A key difference between the UDHR and the United Nations’ draft covenants is that the latter attempt to name the limitations facing human rights (Cranston, 1962); when the ICESCR recognized a right to food, it was wedged between the idea that such rights are the responsibility of the state, thus promoting a concept of particularism and contradicting the universalism of human rights claims. Senior Fellow and former Director at Norwegian Institute of Human Rights, Asbjorn Eide (1998), asserts that this emphasis on state responsibility is a “basic misconception, which has had a negative effect on the implementation of economic and social rights” (p. 3). The fact that food rights outlined in the ICESCR are posed as each individual state’s responsibility simply conceals any notion of global accountability to realize this right.

Referring back to the possession paradox, a right is most valuable when one is able to claim access to it. Thus everyone theoretically has a right to food, but in practice that right may be worthless if people cannot access food because the state is unable or unwilling to uphold food rights. According to the World Food Programme, “most of the world’s hungry live in developing countries,” so presumably they reside in countries unable to provide this right economically. Yet the parameters outlined in the 1966 Covenant likely exclude the very people who need to claim food rights the most. As long as the state has taken the “appropriate steps to ensure the realization of this right,” (United Nations, 1966) essentially it does not matter if people remain malnourished or if, indeed, entire populations starve to death; this right is nonetheless considered fulfilled. In recent years, “millions of people have crossed international borders and tried to reach developed countries to escape pervasive hunger, especially people living in sub-Saharan Africa” (United Nations General Assembly, 2011, p. 10). The stark reality is that “most people fleeing from hunger are refused entry and protection in other countries because they do not qualify as refugees in the traditional and legal sense. Most of them are detained and held in processing or detention centers, before being forcibly repatriated to their own countries” (United Nations General Assembly, 2011, p. 11). The point that needs to be conveyed here is that the right to food is very much a particular right and this right has no value if your state, for whatever reason, is unable to provide it.

Conversely, if a person experiences the violation of civil and political rights (for instance, religious or political persecution), they have an available and widely-utilized option to claim asylum. While the state is posed as the primary duty-bearer of rights, other states will provide the victim with the opportunity to claim asylum if the home state infringes on a civil or political right. Upon a successful asylum application, states will open their borders and in effect ensure fulfillment of these rights; these rights have universal properties which warrant global accountability. This is not to say that people do not experience civil or political rights violations, or even that those who are faced with civil and political

rights violations have successful asylum outcomes, but it does show that civil and political rights possess universal characteristics not always applied to economic and social rights.

It would be misleading to discuss human rights without recognizing the impact nongovernmental organizations (NGOs) have on this regime (Hafner-Burton & Tsutsui, 2005), especially when it comes to food rights. Michael Windfuhr (1998) at FoodFirst Information and Action Network (FIAN) points out that ESC rights “were not given adequate attention at the national and international levels for several decades,” despite their recognition in the UDHR and the ICESCR (p. 6). He claims that one of the most important reasons for heightened global awareness of food issues is “the increasing emphasis that non-governmental organizations (NGOs) are putting on economic, social and cultural rights, at both national and international levels” (Windfuhr, 1998, p. 6). Violations of food rights ensue from a system of deeply-rooted political, social, and economic inequalities, as evidenced by the fact that “nearly a billion people remain hungry even after the recent food and financial crises have largely passed indicates a deeper structural problem that gravely threatens the ability to achieve internationally agreed goals on hunger reduction” (United Nations General Assembly, 2011, p. 14). While the role NGOs play in the human rights sphere is an undoubtedly critical one, there remains a need to analyze the framework from which human rights have been derived. NGOs must consider the ways in which the parameters of rights shifts governmental duty-bearing responsibility and accountability of upholding rights, as well as emphasize a need to place greater international responsibility on states to ensure food rights both at home and abroad. National borders should not be the determining factor for whether or not a human right is fulfilled.

An inadequate supply of food is not the reason for the continuing rampage of world hunger. The United Nations World Food Programme asserts “there is enough food in the world today for everyone to have the nourishment necessary for a healthy and productive life.” If limitations to the food supply are

not the determining factors for upholding this right, then the location and ownership of food supply might be. An October 2010 report to the UN General Assembly noted that hunger, like poverty, is still predominantly a “rural problem” that affects “peasant farmers, small landholders, landless workers, fisherfolk, hunters and gatherers”; these are the people who suffer disproportionately, with eighty percent of the world’s hungry living in rural areas” (United Nations General Assembly, 2011, p. 8). The four regions of the world that saw percentage increases in undernourishment in 2004-2006 were sub-Saharan Africa, Oceania, Southern Asia (India excluded) and Eastern Asia (United Nations General Assembly, 2011). It is likely that large-scale processes, such as global economic and political structures, perpetuate human right violations related to the right to food and lead to the malnourishment of people living in the Global South. A restructuring of duty-bearing responsibility of food rights is, therefore, fundamentally necessary. If the current approach to providing food rights was effective, after all, nearly a billion people would not be suffering from malnourishment and this overall number would not be increasing.

Discussion

This paper focuses on understanding the dichotomy of human rights norms. Civil and political rights, in general, are positioned and prioritized ahead of social and economic rights. The 1966 Covenants play a crucial role in contributing to this dichotomy, made apparent by the enforcement mechanisms employed by the two committees. The names by which the committees chose to identify by, and even the strategic use of terms within the Covenants (such as the emphasis on state responsibility in relation to ESCR) restricts supposedly universal rights to particular rights. In effect, this has created the framework for an unequal distribution of human rights.

While social and economic rights are portrayed as universal rights, in the political sphere they are played out as particular rights. Within the current framework, impecunious states are freed from the duty-bearing obligation to provide the right to food. This ultimately holds vast implications for the individual right holder, as evidenced by current malnourishment levels. In accordance with the idea of entitlement, a benefit of having an institutionalized legal code of rights is having a voice to assert when one has been wronged. Entitlement, therefore, gives the right-holder the ability to claim access to their right(s). Rights, then, are only of value if they are enforceable. Accordingly, fulfillment of rights is dependent on the duty-bearer's capacity to yield the terms of the agreement. Very simply, if an impoverished state cannot afford to provide the right to food, then other states need to step up and fill that rights gap. Able-bodied states need to be held accountable for the protection of social and economic human rights, not just for their citizens but for all humans. They must provide for the malnourished (in terms of accessibility, availability, and adequacy of food), just like they would have to do for their own citizens.

Consequently, the current approach to social and economic rights has created a dynamic where an enormous amount of human suffering is justified and perpetuated. Economic rights are contested because they are perceived as impractical for impoverished governments to provide. Perhaps they are impractical for developing or undeveloped governments, but does that mean people from these states deserve social and economic rights any less than people from developed countries? One out of seven people suffer from malnourishment (World Food Programme). If the statistic applied to individuals suffering under religious persecution, we very well might see the third World War on the horizon. There is enough food in this world to feed everyone well, so why is malnourishment not perceived to be the systematic mistreatment of a group of people (Global South) by another group of people (Global North)? Human rights are posed as inherent and inalienable, with equal rights afforded to all human

beings in order to protect one's dignity from assault. Is not malnourishment an assault on human dignity?

References

- Beetham, D. (1995). What future for economic and social rights? *Political Studies*, 43, 41-60.
- Cole, W. (2005). Sovereignty relinquished? Explaining commitment to international human rights covenants, 1966-1999. *American Sociological Review*, 70(3), 472-495.
- Committee on Economic, Social and Cultural Rights (1993, June 25). Fact sheet no.16 (rev.1), World Conference on Human Rights. Retrieved from <http://www.ohchr.org/Documents/Publications/FactSheet16rev.1en.pdf>.
- Cranston, M. (1962). *What are human rights?* New York: Basic Books.
- Donnelly, J. (2003). *Universal human rights in theory and practice*, 2nd Edition. Ithaca, N.Y.: Cornell University Press.
- Eide, A. (1998). The historical significance of the universal declaration. *International Social Science Journal*, 50(158), 475-497.
- Food and Agriculture Organization of the United Nations. Hunger. Retrieved from <http://www.fao.org/hunger/en/>.
- Hafner-Burton, M, & Tsutsui, K. (2005). Human Rights in a Globalizing World: the Paradox of Empty Promises. *American Journal of Sociology*, 110(5), 1373-1411.
- Howlett, A. (2004). Getting "Smart": Crafting Economic Sanctions That Respect All Human Rights. *Fordham Law Review*, 73(3), 1199-1237.
- Keith, L. (1999). The United Nations International Covenant on Civil and Political Rights: Does it make a difference in human rights behavior? *Journal of Peace Research*, 36(1), 95-118.
- Moyn, S. (2010). *The last utopia: human rights in history*. Cambridge, M.A.: Harvard University Press.
- Nickel, J. (2005). Poverty and rights. *Philosophical Quarterly*, 55(220), 385-402.
- Office of the United Nations High Commissioner for Human Rights. Human Rights Committee: Monitoring civil and political rights. Retrieved from <http://www2.ohchr.org/english/bodies/hrc/>.
- Sen, A. (2004). Elements of a Theory of Human Rights. *Philosophy and Public Affairs*, 32(4), 315-56.

Stammers, N. (1995). Critique of social approaches to human rights. *Human Rights Quarterly*, 17(3), 488-508.

United Nations (1948). The Universal Declaration of Human Rights. Retrieved from <http://www.un.org/en/documents/udhr/>

United Nations (1966). International Covenant on Economic, Social and Cultural Rights. Retrieved from <http://www.un.org/millennium/law/iv-3.htm>.

United Nations Economic and Social Council (1999, May 12). General Comment 12, Right to adequate food. E/C.12/1999/5. Retrieved from <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>.

United Nations General Assembly (2011, February 16). Study of the Human Rights Council Advisory Committee on discrimination in the context of the right to food. (A/HRC/16/40). Retrieved from <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-40.pdf>.

Windfuhr, M. (1998). *The right to food in theory and in practice*. Retrieved from <http://www.fao.org/Legal/rtf/booklet.pdf>.

World Food Programme. Hunger: Hunger Stats. Retrieved from <http://www.wfp.org/hunger/stats>.

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