CARNEGIE COUNCIL
The Voice for Ethics in International Affairs

Global Economic Policy and Human Rights: Three Sites of Disconnection

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March 25, 2010

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A number of serious disconnections are exposed by an appraisal of the global economy when set against the requirements of human rights. This article draws out three of these disconnects in an effort to underscore—in this critical post-crisis period—the demands that international human rights law place on a more ethical form of economic globalization than that which we have seen in the past few decades. By way of introduction, when I speak of "human rights" I am referring to socio-economic rights, such as those found in the United Nations (UN) International Covenant on Economic, Social and Cultural Rights. Second, I am preoccupied here primarily with the international dimensions of giving those rights effect, that is, the human rights obligations that one state has to the people of another state. This article considers the obligations of industrialized states that are both responsible for the crisis and most able to address it, to the poor people in low-income countries. That human rights have something to say about the ways in which the structure of the international political economy impacts on their exercise in poor countries in no way implies that the governments of those developing countries are relieved of their particular human rights obligations; but nor do the existence of domestic duties preclude extraterritorial ones. As I have addressed elsewhere, in the area of international human rights law concerned with the rights to an adequate standard of living, to food and health, obligations cross borders.[1]

Disconnect One: The "Value" of Inequality

The respective approaches of orthodox economics and human rights on the issue—indeed "value"—of income inequality highlight a notable disconnect. A sharp increase in global income inequality has accompanied the dominant model of economic neoliberalism of the past decades.[2] Of the increase in world consumption over the 1990s, the majority accrued to those already in the top 10 percent.[3] The following figures also offer a way to communicate the extent of global income inequality: 5 percent of individuals in the world receive about one-third of total world income with the top 10 percent receiving half. The ratio between the average income received by the richest 5 percent and the poorest 5 percent of the world is 165:1.[4] Measured at the extremes, the gap between the world's richest country and the world's poorest increased from 3:1 in 1820 to 70:1 in 2000.[5] The overall pattern of distribution for the world at present is more unequal than for any country except Namibia.[6] Growth in global income inequality characterizes the most recent wave of economic globalization, and even if extreme poverty has in fact decreased over the same period (a contested assertion)[7] those claims do not speak to a generalised trend but to the impact on global figures that comes from factoring in China.[8]

That efficiency and distribution should be considered separately may no longer represent conventional economic wisdom, nonetheless the dominant view remains that economics should focus on efficiency and growth alone and that distribution should be left to actors within the political domain.[9] Provided that markets are free, many economists are likely to support income inequality because they endorse the idea that inequality provides incentives for effort and risk-taking entrepreneurship and thereby spurs efficiency and productivity, the gains from which will trickle down and will be helpful for the living standards of the poor over time. In fact, there are no definitive conclusions as to whether rising levels of income inequality cause faster growth[10] and as Joseph Stiglitz reminds us "the evidence against trickle-down economics is now overwhelming."[11]

On a human rights account, the argument that the poor will benefit "over time" is difficult to defend. Human rights are not to be postponed for pronounced greater objectives, such as an increase in national or global wealth, or for benefits anticipated at some indeterminate time in the future. From the perspective of human rights theory, the argument made for sacrificing distributional equity in favour of rapid accumulation is, *prima facie*, rejected.[12] At the level of international law (rather than theory), socio-economic rights that are met over time might be consistent with the principle of progressive realization if they meet certain criteria (the obligation to move as expeditiously as possible towards fulfilling the rights; steps taken that are deliberate, concrete, and targeted; and are consistent with the principle of non-retrogression of rights) but might not comply with the immediate obligation to secure the minimum essential levels of rights for people suffering from extreme poverty.

This disconnect between positions on efficiency and distribution begs the question whether we got the trade-offs right. What price has been paid for the (allegedly beneficial) inequality globally, and who has had to pay for it? Is average income an appropriate measure of successful development domestically or a suitable measure of well-being globally? Or might the preference be for a society in which the vast *majority* of people are doing better, where there is a role for redistribution and not only efficiency and growth, even if a countries' total gross domestic product (GDP) or the global economy as a whole grow more slowly as a result?[13] Equality might be upheld as one value among others and there might be justifications for it to be traded off. Indeed, economic performance may well be favoured in a trade-off with equality when choosing among a plurality of possible goods. Yet while the question as to whether we should be concerned with reducing not only poverty but also global inequality will remain a matter of ongoing debate for a number of disciplines, there are enough reasons to conclude that global inequality is not a neutral or indeed a constructive force in the world when it comes to alleviating poverty or honouring an ethic premised on justice and inclusion. In the absence of overwhelming evidence demonstrating the advantages of inequality, the burden of proof should shift to those governments, policy-makers, and international institutions charged with reform of the global economy to close the gap, or to show that continuing along the path of obscene material inequality globally is consistent with the demands of human rights.

Disconnect Two: The Private and the Public

The second disconnect is between the private and the public realms, illustrated through a variety of tensions. That which is public—the commonweal, shared benefits, general welfare—has been sidelined for a global economic policy that has routinely privileged the private. There is the primacy of corporate property rights that has concentrated ownership in the hands of the few while restricting access to everything from productive resources indispensable to livelihood to essential medicine. Alongside the free market, this interpretation of a right to property is a central feature of global economic policy.[14] There is the focus on private (minority) accumulation of wealth which results in massive disparities in income and influence of a particular class of actors and set of interests. Of course, the privatization of public goods is often part of the economic policy packages advanced by development agencies, which can have grave repercussions for access by the poor to water, food and healthcare.[15] Global economic policy of the past decades has also facilitated the inordinate rise of a transnational private sector—transnational corporations (TNCs) and international finance—that rival states in their wealth and power[16] and, in the case of the latter, spur global crises that decimate low-income countries, in particular the poor within them.[17]

The spaces where the private and the public coalesce offer only dubious reassurances. The rise of "philanthrocapitalism" has been made possible through social and legal constructs that facilitate personal enrichment and gross inequality. Further, it is a means by which the influence of business and wealthy individuals enters into the social and political realms. And while we can celebrate some of the successes of global public-private partnerships (e.g.: since 2000 the GAVI Alliance has immunised 256.7 million additional children against a variety of preventable diseases in the world's poorest countries),[18] these arrangements possess an inherent weakness, premised as they are on the soft offerings of charity and not the hard requirements of duty.

The private-public disconnect highlights the need for a comprehensive re-evaluation of orthodox global economic policy post-financial crisis. But the gains of the powerful should herald a stark warning in this regard: U.S. financial sector share of total corporate profits rose from 16 percent between 1973-1985 to 41 percent through the new millennium; the share of U.S. income accruing to the top 1 percent of the population rose from 9 percent to more than 22 percent between 1980 and 2006.[19] All indications point to the beneficiaries of Anglo-Saxon capitalism using the weight of their influence to defend their existing private privileges. Fierce lobbying by banking executives is sure to accompany President Obama's drive for new rules that seek to protect American taxpayers (and the wider world) from banks too big to fail.

Human rights for their part are meant to be publicly available. They are underpinned by ideas of inalienability, universality and non-discrimination. In contradistinction to a creed that favours private access to the fundaments of life, to goods, services and productive resources, human rights are intended to leave no one behind.

However, the classical basis of human rights is to protect people against abuse of the *public* power exercised by their *own* state and to secure minimum standards of dignity—as such, it is not at present a legal regime fully fit for purpose, so here we come across another private-public tension. The extraterritorial reach of international human rights law does not directly bind transnational business. It holds states to account and relies on these public actors to regulate adequately the activities of potent private actors and to be accountable for the human rights violations that occur as that sector advances its private interests and seeks its personal gains abroad.[20] Moreover, conflicts of interest can arise in that states are often keen to support the business interests of their corporate nationals elsewhere. While a state's jurisdiction may apply beyond its borders (understood both as its authority to legislate and try activities of its nationals conducted abroad, and jurisdiction meaning to whom the protections of a human rights convention can be extended), in an era of unbridled transnational capitalism, international human rights law remains to date primarily a territorial legal regime, based on the responsibility of states.

A final tension is that the emphasis of global economic policy on private property is at odds with popular expectations for standards premised on notions of equity and stewardship. An array of interests at the interface of human well-being and environmental protection suggest that a far greater degree of shared title globally is necessary, due to the implications of climate change and concerns over water scarcity, energy scarcity, and the fair and sustainable use of diminishing global resources generally. A just response to these developments poses challenges to a system premised on proprietary use and gain.

Of course these two realms are deeply intertwined, like so much else in our interconnected and co-affected world. The recent financial crisis highlights the extent of the links between the private and the public. Not least, it has exposed the "channel of influence between Wall Street and Washington,"[21] just as it quickly turned from a problem of private finance to one of public finance, and from private indulgence to public sacrifice.

Disconnect Three: Actions, Omissions, and Responsibility

The third disconnect is between the breach by relevant states of their human rights obligations and taking responsibility for the effects of the crisis on the exercise of rights in poor countries. Responsibility in international law is determined on the basis of whether a state, through its actions or omissions, breached an international obligation in force for it.[22] In relation to socio-economic rights, there are obligations of international cooperation on state parties to the relevant treaties to see secured, for example, rights to an adequate standard of living, to food, including freedom from hunger, to the highest attainable standard of health, to education, and to social security. The scope of the obligation entails: a negative duty to respect these human rights elsewhere, that is, to do no harm to people abroad; a positive duty to protect against violations by other actors; and a duty to cooperate internationally in achieving the rights enshrined. All industrialized states, as well as China but bar the United States, have ratified the UN's International Covenant on Economic, Social and Cultural Rights and the UN's Convention on the Rights of the Child (CRC), both of which entrench this obligation to cooperate in advancing basic human rights. The U.S. has signed both treaties, requiring that it refrains from doing anything that would defeat their objects and purposes—which include, as per the CRC, that "particular account be taken of the needs of developing countries" in order to see the rights achieved.

The impacts of the economic crisis, but also the food and fuel crises, on the exercise of socio-economic rights in poor countries are grave. The UN Food and Agricultural Organization projections are that the number of undernourished in the world will now have risen to 1.02 billion during 2009, the highest level of chronically hungry people since 1970[23] and reflecting an increase of 100 million victims of hunger in 2009 alone.[24] Higher levels of food insecurity are also expected beyond the increase anticipated even before the economic crisis.[25] In early 2009 the World Bank estimated that the crisis had already pushed 100 million people back into poverty.[26] These circumstances may well constitute a breach of the obligation of international cooperation—so what might that imply?

It is a basic tenet of international law that victims of human rights violations and the injured state are entitled to adequate reparation, including restitution, compensation, and satisfaction, but also guarantees of non-repetition. Guarantees of non-repetition might require overhauling the banking sector in the U.S. and other lead economies as a necessary measure to prevent future crises, but this still falls short of repairing the material and moral damage to those worst affected. Nor can re-regulation be said to satisfy wider ethical, if not legal, demands of just distribution.[27] Financial reform is important but tells us little about redressing the losses incurred for what the UN and World Bank fear is a "lost generation."[28]

There is real concern that the best that we can do as a global community will not be harnessed but rather that deep-rooted interests and ideologies will shape our common future. The likelihood is high that the progressive ideas and solutions tabled during this critical time of inquiry into creating a new international economic order will not be those that are eventually adopted. The Stiglitz Commission submitted a report to the General Assembly on the crisis late last year calling for an independent body within the UN to analyze the global economy including social and environmental aspects, and recommended the establishment of a principal organ of the UN—a Global Economic Coordination Council (on par with Security Council and General Assembly)—to provide high-level leadership at the interface of economic, social, and environmental issues.[29] As is their practice, the lead industrialized states are making sure that no meaningful action is taken that would give the UN a role as coordinator on issues that involve the Bretton Woods Institutions and WTO.[30] The recent Stiglitz-Sen-Fitoussi Report calls for a more comprehensive measure of living standards and well-being than GDP.[31] The Report provides a plan towards more "encompassing" measures of well-being such as health, education, security, and social connectedness, all important to quality of life but not adequately reflected in GDP.[32] The recent report by the U.K.'s Sustainable Development Commission entitled "Prosperity without Growth" addresses whether GDP—a measure of economic activity—is a sufficient measure of "prosperity" and whether it remains feasible as a basis of prosperity in a world of finite resources.[33] Given the rights of the 1.2 billion people living in extreme poverty in developing countries, economic development will have to remain a focus in poor countries—but the Commission's report questions whether the same logic holds for richer nations, where needs, and more, have been met. Is it time to move beyond an international poverty line to include an international "plenty line" drawn at the place where one could live both well and sustainably?[34] A proper consideration of what might constitute reparations for injury borne of a series of crises that unleashed its most devastating blow on the poorest among us would have to engage fully with alternative models of economic globalization.

Conclusion: A Disconnect between Human Rights Requirements and Human Rights Enforcement

A final example turns from identifying conflicts between global capitalism on the one side and human rights on the other, to the fundamental disconnect between what human rights represent as a philosophy—as a global ethical meta-narrative—and their enforcement. The human rights paradigm doesn't provide all the answers, but it guides policy, reigns in our greediest tendencies, and demands that the disenfranchised are at the forefront of policy-making, both domestically and globally. Human rights as enshrined in international law are also there to provide a moral compass when things go wrong, so that we might find our way towards what is just and fair. There is far too little evidence that post-crisis reform is taking the human rights of the world's poor seriously. The greatest disconnect then may best be characterized, not as between two divergent sets of values, visions, and priorities, but between the promise of human rights and their effective enforcement in the face of dominant influences seemingly denuded of decency.

An earlier version of this paper was presented at the Colloquium on Human Rights in the Global Economy organized by the International Council on Human Rights Policy, Geneva, 11-13 January 2010. I am grateful to the participants for their rich insights provided over the course of the meeting.

NOTES

1 Margot E. Salomon, *Global Responsibility for Human Rights: World Poverty and the Development of International Law* (Oxford: Oxford University Press, 2007); Sakiko Fukuda-Parr and Margot E. Salomon, "A Human Rights Analysis of the G20 Communiqué," *Carnegie Council for Ethics in International Affairs Online*, May 4, 2009.
2 The choice of measurements favoured by proponents of globalization indicate a slight decline in international income inequality around 1980 but these figures still "depend entirely on one giant case—China. Take China out and inter-country income inequality continued to rise after 1980." Robert Hunter Wade, "Globalization, Growth, Poverty, Inequality, Resentment, and Imperialism", in John Ravenhill (ed), *Global Political Economy* (Oxford: Oxford University Press, 2nd edn, 2008) 373, at 387. Debates over the most appropriate methods of measurement notwithstanding, "on average poor countries are not catching-up with rich countries." Susan M. Collins and Carol Graham, "Editor's Summary," in Susan M. Collins and Carol Graham (eds), *Globalization, Poverty and Inequality* (Washington: Brookings Trade Forum, 2004) ix, at xi. Birdsall highlights that even if there are similar rates of income growth across countries, absolute differences in income between the rich and the poor continue to increase. Significantly then, even if growth is just as good for the poor as the rich in terms of the growth rate, the absolute gap in their incomes can have a range of pernicious effects. Nancy Birdsall, "Why Global Inequality Matters," in Susan M. Collins and Carol Graham (eds), *Globalization, Poverty and Inequality* (Washington: Brookings Trade Forum, 2004) 297, at 298-300.
3 Wade, "Globalization," 373, at 378.
4 Branko Milanovic, "Global Income Inequality," in Dag Ehrenpreis (ed), *The Challenge of Inequality* (Brasilia: UNDP International Poverty Centre, 2007) 6, at 6.
5 Richard Jolly, "Global Inequalities" in David Alexander Clark (ed), *The Elgar Companion to Development Studies* (Cheltenham: Edward Elgar, 2006) 196, at 197.
6 United Nations Development Programme (UNDP), *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World* (New York: UNDP, 2005) 38.
7 Sanjay G. Reddy and Camelia Minoiu, "Has World Poverty *Really* Fallen?," *Review of Income and Wealth* 3 (2007) 484, at 500. ("In this paper we have scrutinized the claim that the proportion of poor (headcount ratio) and number of poor (aggregate headcount) in the world have fallen during the 1990s. … We found that under various assumptions, the proportion and the number of poor in the developing world has decreased in the 1990s. However, under other assumptions, the proportion and the number of poor in the developing world may have increased in the period.")

8 Among other sources, Wade, "Globalization," 373, at 387; Collins and Graham, "Editor's Summary", ix, at xi.
9 Joseph E. Stiglitz, "Is there a Post-Washington Consensus Consensus?," in Narcis Serra and Joseph E. Stiglitz (eds), *The Washington Consensus Reconsidered: Towards a New Global Governance* (Oxford: Oxford University Press, 2008) 41, at 47; Susan Prowse (DFID), "Trade and Poverty Panel," Does International Law Mean Business?: A Partnership for Progress, International Law Association, British Branch Annual Conference, London, May 2008.
10 Wade, "Globalization" 401, and Wade remarks further that "even if strong relationships between inequality and subsequent growth were found, the causality is questionable."
11 "The evidence against trickle-down economics is now overwhelming, at least in the sense that an increase in average incomes is not sufficient to raise the incomes of the poor for prolonged periods." Stiglitz, "Is there a Post-Washington Consensus Consensus?" 41, at 47.
12 Donnelly refers to this as the "equity trade-off. " Jack Donnelly, "Human Rights, Democracy and Development," *Human Rights Quarterly* 3 (1999) 608, at 626-7.
13 See, Stiglitz, "Is there a Post-Washington Consensus Consensus?" 41, at 46-7.
14 Human rights provide for a right to property but it has quite a different ontology, and aims and objectives. See, generally, Philip Alston, "Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann," *European Journal of International Law* 4 (2002) 815; Jean du Plessis and Scott Leckie, "Property Rights and the Need for More Inclusive Concepts, Laws, Policies, and Practices" in Hernando de Soto and Francis Cheneval (eds), *Realizing Property Rights* (Zurich: Rüffer & Rub, 2006) 194; UN Committee on Economic, Social and Cultural Rights, General Comment no. 17, *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author* (art. 15.1(c)), (35th session, 2005) UN Doc. E/C.12/GC/17.
15 "The IFIs exert considerable influence through providing policy advice and have not generally elaborated alternative policies to those involving privatization and liberalization." Benedicte Bull, Alf Morten Jerve, Erlend Sigvaldsen, *The World Bank's and the IMF's use of Conditionality to Encourage Privatization and Liberalization: Current Issues and Practices*, Report Prepared for the Norwegian Ministry of Foreign Affairs, Background Document for the Oslo Conditionality Conference (2006) vii and 30. A policy paper by the U.K. government recognizes the general concern around the "social impact of privatization policies in the area of public services" and notes that there are "examples where privatization has not benefited the poor." In deciding to cease imposing privatization as a condition of aid in 2005, the government publicly acknowledged that "in the 1980s and 1990s donors pushed for the introduction of [privatization and trade] reforms, regardless of whether they were in the [developing] countries' best interests." *Partnerships for Poverty Reduction: Rethinking Conditionality*, U.K. Policy Paper (March 2005) paras. 4.5-4.6.
16 Powerful firms with subsidiaries in several countries went from 7,000 in 1970 to 50,000 in 2000. The 200 largest TNCs account for over half the world's industrial output and are all headquartered in industrialized countries. These corporations control much of the world's investment capital, technology, and access to international markets and account for over 70 percent of world trade. Manfred B. Steger, *Globalization: A Very Short Introduction* (Oxford: Oxford University Press, 2003) 48-9. On international investment law and private arbitration Tabb writes, for example, that: "… transnational capital and international finance[...]establish precedents and then restructure laws within countries imposing their privately agreed preferences for transborder adjudication procedures." William K. Tabb, *Economic Governance in the Age of Globalization* (New York: Columbia University Press, 2004) 162.
17 While the economic crisis will affect large segments of the population in developing countries, those who are hurt most by higher food prices are the rural landless, female-headed households, and the urban poor. *The State of Food Insecurity in the World: Economic Crisis.: Impacts and Lesson Learned* (Rome: FAO, 2009) 10.
18 www.gavialliance.org (indicators).
19 Robert Hunter Wade, "Today's Financial Caretakers take Cure from Ancient Rome," *The New Zealand Herald*, October 29, 2009.
20 For an overview of developments and debates in this area, see, John Ruggie, "Corporate Responsibility under International Law and Issues in Extraterritorial Regulation: Summary of Legal Workshops," *Report of the Special Representative of the Secretary General on the issue of human rights and transnational*

corporations and other business enterprises, UN Doc A/HRC/4/35/Add.2 (February 15, 2007).
21 Simon Johnson, "The Quiet Coup," *The Atlantic Online*, May 2009. Johnson indicates that the flow of individuals from Wall Street to Washington, "not only placed people with Wall Street's worldview in the halls of power; it also helped create an image of Goldman [Sachs] […] as an institution that was itself almost a form of public service."
22 International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts," *Yearbook of the International Law Commission*. vol. II, part two (2001).
23 *The State of Food Insecurity in the World: Economic Crisis*, 11.
24 *Voices of the Vulnerable: The Economic Crisis from the Ground Up* (New York: UN, 2009) 17. This figure is drawn from the FAO's *Global Information and Early Warning System on Food and Agriculture*.
25 *The State of Food Insecurity in the World: Economic Crisis*, 22.
26 Robert B. Zoellick, "A Stimulus Package for the World," *The New York Times*, January 23, 2009.
27 On this point, and for drawing my attention to the relevant literature, I thank Michael Windfuhr.
28 *Voices of the Vulnerable*, 18.
29 *Commission of Experts of the President of the General Assembly on Reforms of the International Monetary and Financial Systems*, March 19, 2009, UN Doc A/63/XXX.
30 Robert Hunter Wade, *From Global Imbalances to Global Reorganizations: Steps towards a more Stable and Equitable International Financial System*, Conference on Reforming the Bretton Woods Institutions, Danish Institute for International Studies, Copenhagen, September 16-17, 2009.
31 Joseph E. Stiglitz, Amartya Sen, Jean-Paul Fitoussi, *Report by the Commission on the Measurement of Economic Performance and Social Progress* (2009): "The report advocates a shift of emphasis from a 'production-oriented' measurement system to one focused on the well-being of current and future generations, i.e. toward broader measures of social progress."
32 See, Joseph E. Stiglitz, "Towards a Better Measure of Well-Being", *Financial Times*, September 14, 2009; Joseph E. Stiglitz, "GDP Fetishism," Carnegie Council for Ethics in International Affairs (*Policy Innovations Online* and Project Syndicate), September 17, 2009.
33 "Prosperity without Growth?: Transition to a Sustainable Economy," *U.K. Sustainable Development Commission* (2009).
34 Andrew Simms, *New Economics*, London School of Economics, January 28, 2010. See also, Margot E. Salomon, "Poverty, Privilege and International Law: The Millennium Development Goals and the Guise of Humanitarianism," Special Issue on Poverty as a Challenge to International Law, 51 *German Yearbook of International Law* (2008) 39.