

7-2001

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Linda M. Keller
University of Miami

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Recommended Citation

Keller, Linda M. (2001) "The Indivisibility of Economic and Political Rights," *Human Rights & Human Welfare*: Vol. 1: Iss. 3, Article 3.

Available at: <https://digitalcommons.du.edu/hrhw/vol1/iss3/3>



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Abstract

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Keywords

Development, Poverty, Economic and social rights, Indivisibility, Freedom, Social justice

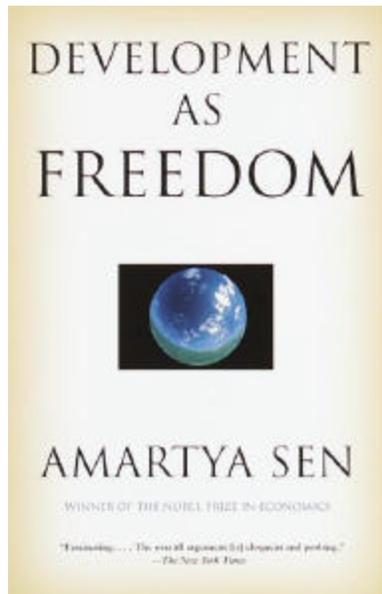
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The Indivisibility of Economic and Political Rights

By Linda M. Keller

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In Development as Freedom, Nobel Prize-winning economist Amartya Sen rejects the typical gulf between individual freedoms and economic development. In an engaging and accessible manner, Sen argues development cannot be thought of as fulfillment of basic needs alone. Development is necessary for overcoming violations of elementary freedoms, a “process of expanding substantive freedoms that people have” (p. 297). Choice and the freedom to choose are crucial. As Sen puts it, an affluent person who chooses to fast is in a very different position from an individual who is forced to starve; the two have very different “capability sets,” different levels of freedom to achieve (p. 75). Freedom to achieve must be integrated with the external factors that influence it. Sen emphasizes the interconnectedness between individual capabilities and social arrangements, the market and the democratic system, the media and the public distribution system, and—most significantly—between political freedoms and the understanding and fulfillment of economic needs.

The connection between political freedoms and economic development has been recognized in theory, but largely neglected in practice, within the United Nations system and individual countries.¹ The 1948 Universal Declaration of Human Rights² proclaimed both political and economic rights, but the subsequent drafting of two separate protocols divided rights into civil and political rights (hereinafter, “CP rights”) and economic, social, and cultural rights (hereinafter, “ESC rights”). Although the preambles to the International Covenant on Civil and Political Rights (ICCPR)³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴ refer to the

¹ See Philip Alston, *Economic and Social Rights* in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 137, 147-51 (Louis Henkin & John Lawrence Hargrove eds., 1994) (hereinafter, Alston, *Economic and Social Rights*).

² Adopted 10 Dec. 1948, G.A. Res. 217A (III), UN Doc. A/810, at 71 (1948).

³ Entered into force 23 March 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 UNTS 171.

⁴ Entered into force 3 January 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 993 UNTS 3.

enjoyment of both classes of rights, many countries have advocated and/or practiced a division of rights.

The reasons behind the division are many. Political and other conflicts played a major role in the drafting of two separate covenants. Cold War rivalries and North-South divisions fostered suspicion, especially with respect to the relative importance of different rights.⁵ In particular, the U.S. and the Soviet Union and their allies differed on the importance of certain rights. The Western states typically favored two separate covenants, fearing that putting ESC rights on the same level as CP rights would undermine individual rights. They also embraced the view that ESC rights were non-justiciable and therefore so different from CP rights that they must be separated.⁶ Those with “a strong faith in full economic liberalism and a severely constrained role for the State in matters of welfare” resisted ESC rights.⁷

The Soviet Union and those aligned with it contended that ESC rights were of equal or greater importance. This view emphasized collective rights and asserted that CP rights were “purely theoretical in character” without ESC rights.⁸ Communist and socialist countries emphasized that all rights must be equal because all rights derived from being citizens of the state.⁹ Other countries such as the Latin American states argued that because rights are derived from human nature and man’s reason and conscience, all such rights must be equal.¹⁰

Disputes over the conception of rights and the role of government provoked other objections to ESC rights. Under a negative rights conception, the government must refrain from infringing upon rights; under a positive rights conception, government must do more to provide individual entitlements, particularly economic conditions.¹¹ CP rights were seen as negative rights because they merely limited government action; as a result, CP rights were thought of as “free.” By contrast, ESC rights were seen as enormously costly, requiring massive state-provided welfare.¹² The implementation of rights also proved problematic. CP rights were widely seen as capable of, and requiring, immediate application, while ESC rights would be progressively realized. Similarly, the provisions related to CP rights were thought to be precise enough for ready application, while ESC provisions were seen as vague and unenforceable.¹³

⁵ See HENKIN ET AL, HUMAN RIGHTS 1106 (1999). See also Barbara Stark, *Urban Despair and Nietzsche’s ‘Eternal Return:’ From the Municipal Rhetoric of Economic Justice to the International Law of Economic Rights*, 28 Vand. J. Transnat’l L. 185, 220 (1995) (“Most scholars agree that the two covenants evolved from the Declaration of Human Rights ‘because of the East/West split and a disagreement over the value of socioeconomic rights.’”).

⁶ KITTY ARAMBULO, STRENGTHENING THE SUPERVISION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THEORETICAL AND PROCEDURAL ASPECTS 17 (1999). For a discussion of various arguments on nonjusticiability, see *id.* at 67-88. See also Asbjorn Eide, *Economic, Social and Cultural Rights as Human Rights* in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK 21, 22 (Eide et al. eds., 1995) (discussing justiciability and state obligations).

⁷ Eide, *supra* note 6 at 23.

⁸ ARAMBULO, *supra* note 6 at 17.

⁹ *Id.* at 103.

¹⁰ *Id.*

¹¹ HENKIN ET AL, *supra* note 5 at 82.

¹² Eide, *supra* note 6 at 22.

¹³ ARAMBULO, *supra* note 6 at 21. This is not to say that this characterization is accurate. See *id.*

Despite such objections, most Western countries have now accepted ESC rights. By contrast, the United States refuses to recognize that “economic, social and cultural rights” *are* rights.¹⁴ The U.S. typically deems such “so-called rights” to be a Soviet invention,¹⁵ and instead labels them as mere “goals” or “aspirations.”¹⁶ Nevertheless, the U.S. did sign both the ICCPR and the ICESCR in 1977. It ratified the ICCPR (with significant reservations) in 1992. However, there is no likelihood of, or even much effort toward, Senate ratification of the ICESCR.¹⁷ The U.S. refuses to recognize that ESC rights are crucial to CP rights. But common sense dictates that the meaningful exercise of political freedoms is impossible if minimum economic needs are not met; the right to participate in government is limited if not nonexistent for a starving, homeless person.

The U.S. not only gives primacy to CP rights over ESC rights, it refuses to recognize the latter as rights. Nonetheless, the U.S. has been an insistent voice in denouncing other countries for choosing one class of rights (ESC rights) over another (CP rights). Sen refers to this preference as the “Asian values” view,¹⁸ which gives primacy to economic development over political freedoms. Individual rights are seen as luxuries that developing countries cannot afford (pp. 147, 231-40). The U.S. has used violations of CP rights committed by “Asian values” countries to justify the U.S. rejection of ESC rights. According to the U.S., authoritarian governments invented ESC rights to excuse their indefinite delay in protecting political freedoms.

The Asian values view also posits that individual human rights are Western values imposed by hegemonic nations, an interpretation which the U.S., of course, rejects. The U.S. contends that CP rights are universal and that the need for economic advancement cannot justify their repression. The U.S. supports universalism, so long as universal human rights do not include ESC rights. But as Sen demonstrates, economic development and freedoms are inseparable. No country can legitimately prioritize economic conditions over political freedoms—or *vice versa*.

Sen’s argument illustrates that CP freedoms go hand in hand with economic and social development. The United Nations has consistently re-affirmed this principle, first expressed in the Universal Declaration’s preamble: people should enjoy “freedom of speech and belief *and* freedom from fear and want. . . .”¹⁹ Various international bodies have proclaimed ESC and CP rights to be

¹⁴ Alston, *Economic and Social Rights*, *supra* note 1, at 148. As Alston points out, the American rejection of economic rights betrays an ignorance of history, particularly President Roosevelt’s calls for an Economic Bill of Rights including the freedom from want. *Id.* at 142. It is interesting to note that the U.S. was a proponent of a strong supervisory (enforcement) mechanism for ESC rights during the drafting stage of the ICESCR, although by 1953 it had announced its opposition to ESC rights. See ARAMBULO, *supra* note 6 at 28.

¹⁵ Stark, *supra* note 5, at 220 (economic rights as socialist propaganda).

¹⁶ Alston, *Economic and Social Rights*, *supra* note 1, at 148 (State Department attitude toward economic “rights” 1981-1993). For a discussion of foreign policy and ICESCR, see Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy*, 84 Am. J. Int’l L. 365, 372-77 (1990).

¹⁷ See Stephanie Grant, *The United States and the International Human Rights Treaty System: For Export Only?* in THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 317, 326 & n. 29 (Philip Alston & James Crawford eds., 2000).

¹⁸ Although Sen uses the term “Asian values” to refer to this position, he stresses that this view is not representative of the diverse population found in Asia. He emphasizes the great variety of values that have been advocated by Asian countries, some very similar to those traditionally seen as Western (p. 148). He is referring to the so-called “Asian values” which have been invoked by governments in Asia, particularly in East Asia, to justify authoritarian rule (p. 231). He notes that the primacy of ESC rights was advocated at the 1993 Vienna Conference on Human Rights by China, Singapore and other East Asian countries, but not opposed by India, other Asian countries or African countries (p. 147).

¹⁹ Universal Declaration, *supra* note 2 (emphasis added).

“interconnected and interdependent,” “indivisible and interdependent” and “interrelated” or “indivisible.”²⁰ Similarly, Sen emphasizes the “extensive interconnections between political freedoms and the understanding and fulfillment of economic needs” (p. 147).

While criticizing the Asian values view, Sen refutes the argument that human rights are Western, not universal.²¹ Sen effectively makes the point that Western culture was not exclusively freedom-oriented and shows a similar diversity of views in Asian culture. Sen makes a persuasive case for finding non-Western foundations for human rights by drawing on Asian political theory and religions (pp. 234-240). He also rejects the argument that the poor (in Asia or elsewhere) agree with the preference for economic development over freedom, that they would rather have food than rights. According to Sen, the empirical evidence to support this claim is sorely lacking. On the very rare occasions when ordinary citizens are given a voice on this issue, the poor have expressed equal interest in achieving basic freedoms and eliminating poverty (pp. 151-52).

The empirical studies regarding economic development under authoritarian governments are also persuasive. Sen demonstrates that there is no real support for the claim that suppression of freedoms yields significant benefits in terms of economic performance (pp. 149-151). Indeed, he shows that the opposite is true: countries with authoritarian governments are the only nations to have suffered famines. Sen shows how democratic systems—including multi-party elections and a free press—have prevented famines. Even when the conditions in democratic countries were worse than those preceding famines in authoritarian nations, democracies avoided famine because governments faced electoral repercussions for failure to act. People do not suffer famines due to economic conditions or natural disasters. Famines happen because governments allow them to occur (pp. 182-188).

As the famine example shows, political freedoms have an instrumental importance in addition to an intrinsic value. Multiparty elections and free speech are important in and of themselves, particularly in terms of capabilities (p. 152). They also can have “a major role in providing incentives and information in the solution of acute economic needs” such as famine (p. 147). Government response to peoples’ needs is in large part based on the public pressure brought to bear upon the government; the existence and exercise of political freedoms can therefore “make a real difference” (p. 151). The exercise of political freedoms also shapes how peoples’ needs are defined. Thus, “[p]olitical rights, including the freedom of expression and discussion, are not only pivotal in inducing social responses to economic needs, they are also central to the *conceptualization* of economic needs themselves” (p. 154, emphasis added). Political freedoms inherent in democracy therefore

²⁰ See Alston, *Economic and Social Rights*, *supra* note 1 at 148 and citations therein. This is not to say that economic, social, and cultural rights are given equal protection in the UN system. Although the U.S. is the only country denying that these are “rights,” enforcement of such rights is lacking. See *id.* at 149-54.

²¹ The tensions surrounding universalism often come into play over another significant issue in human rights—“women’s rights.” Discrimination against women and girls is often justified on cultural and religious grounds by governments that reject universalism. Sen illustrates the many ways in which females lack the freedoms and choices of males, particularly in terms of limited political, social and economic roles. Sen shows how freedom in one area, such as economic participation or education of women, fosters freedom in other areas like the freedom from gender bias in child survival (pp. 193-97). He also demonstrates the effect of gender preference on the number of female births and the life span of females. Using population statistics, he shows how societal anti-female bias (expressed by men and women) explains the “missing women” (pp. 104-07).

have three important roles: intrinsic, instrumental, and constructive (p. 157). Political freedoms, however, are not a cure-all. Much depends on the effectiveness of their exercise and on the complexity of the problem (p. 154-55).

For instance, the link between democracy and famine avoidance at first glance implies that there should be no hunger in the U.S., a relatively strong multiparty democracy with an open media. There are important distinctions, however. Famine is a widespread, acute phenomenon affecting a broad range of people. Hunger in the U.S. is hidden, suffered by the most marginalized groups in society. The political incentives to stop “a fresh explosion of extreme deprivation that suddenly engulfs a portion of the people” (p. 161) do not arise from the chronic hunger of disenfranchised individuals. Similarly, while India has had success in eradicating famines, it has not been able to tackle more complex problems such as chronic under-nutrition (p. 154). Moreover, marginalized groups affected by hunger in the U.S., such as children or the homeless, cannot effectively exercise the political freedoms necessary to spur the government to action. The same alienation that explains the inaction of authoritarian governments in the face of famine also explains the apathy of the U.S. government in response to hunger and homelessness.²²

That alienation also explains the “poverty” of African Americans in terms of mortality. By income level, even poor African Americans are richer than poor people in much of the rest of the world. But quality of life is influenced by non-economic factors such as social and institutional priorities (e.g. health care and insurance). As a result, African Americans are poorer in terms of the ability to live a long life than many men and women in the developing world (pp. 21-24). Thus, the sole measure of development cannot be income levels, but rather capabilities, i.e., the ability to live life as one values it. Similarly, CP rights should not be measured by the existence of laws protecting democratic principles, but by a citizen’s capability to exercise these rights. The paper right to participate in a democratic system does not guarantee inclusion in practice. While the government cannot remove all barriers to ability, it should eradicate the most basic impediments like hunger -- particularly in the richest nation in the world.

The U.S. sees ESC “rights” as mere aspirations to be met someday in the distant future when they are feasible.²³ Feasible, it seems, means affordable without raising taxes or cutting benefits to more politically powerful constituencies than the hungry or homeless. The U.S. has sufficient resources to fulfill everyone’s minimum needs; it is the political will that is lacking. The U.S. needs to recognize that CP rights and ESC rights are inextricably intertwined. The U.S. should act to ensure that the lack of basic necessities of life does not impede the ability to exercise the political freedoms so cherished in America.

Ratification of the ICESCR might be the first step, even if it is burdened by the restrictive U.S. reservations, understandings, and declarations (RUDs) typically attached to international human rights treaties. At a minimum, ratification would obligate the U.S. to report to the U.N. Committee on Economic, Social and Cultural Rights “on measures which [it] has adopted and the progress

²² See generally, AMERICAN NEEDS HUMAN RIGHTS (Anuradha Mittal & Peter Rosset eds., 1999) (discussing American poverty, governmental policy, and human rights).

²³ See Alston, *Economic and Social Rights*, *supra* note 1 at 148.

made in achieving the observance of the rights recognized [in the ICESCR].”²⁴ The ratification of the ICESCR, however, will not create legally enforceable ESC rights. The U.S. RUDs will likely deem the treaty to be non-self-executing, meaning that individuals cannot claim ESC rights in U.S. courts unless and until Congress passes implementing legislation.²⁵ Ratification would therefore provide a normative basis for advocating ESC rights without creating legally enforceable obligations.

A similar weakness is inherent in Sen’s focus on “freedoms” rather than “rights.” Sen briefly refutes the “coherence critique” of universal rights by asserting that people can have rights without corresponding duties, i.e., that individuals can make claims against society at large even if no person, agency or government is responsible to fulfill the rights. He admits that these rights might “sometimes” end up unfulfilled. While he suggests that “[t]he language of rights can supplement that of freedom,” it is not clear how this is done or how useful the language of freedom will be to those attempting to implement Sen’s vision of the freedom of development (p. 230-31). Nevertheless, the re-conception of development as freedom provides a powerful moral and philosophical basis for integration of CP and ESC rights and a framework for development programs based on improving human capabilities, not just economic statistics.

In the same way that authoritarian governments cannot value economic development over freedoms, wealthy countries cannot trumpet civil and political rights to the exclusion of protecting basic economic, social and cultural rights. Under Sen’s conception, it is impossible to conceive of development without freedoms. It is similarly impossible to exercise civil and political rights when basic needs are not met.

Linda M. Keller is a Visiting Assistant Professor of Law at the University of Miami School of Law.

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²⁴ ICESCR, Art. 16, *supra* note 4. For a discussion of the supervisory role of the Committee and proposed changes thereto, see ARAMBULO, *supra* note 6, at Part C.

²⁵ See generally William A. Schabas, *Spare the RUD or Spoil the Treaty: The United States Challenges the Human Rights Committee on Reservations*, in THE UNITED STATES AND HUMAN RIGHTS: LOOKING INWARD AND OUTWARD 110, 112 and citations therein (David P. Forsythe ed., 2000).