

Poverty Stops Equality/Equality Stops Poverty

The Case for Social and Economic Rights

BY HAVI ECHENBERG AND BRUCE PORTER

The Segregation of Social and Economic Rights

Social and economic rights are often distinguished from civil and political rights through a classical liberal dichotomy between a “positive” and “negative” obligation placed on the state. Social and economic rights are held to oblige the state to “provide” health care, education or an adequate standard of living to those in need or at least, in western countries, to step in to perform a redistributive function, protecting those in need with the least possible interference with the marketplace. Civil and political rights, on the other hand, are held to impose a negative obligation on the state to refrain from unreasonably or arbitrarily infringing on the individual’s autonomy, liberty and freedom of choice and to submit to democratic control. It is understood as legitimate for the judiciary to check the power of the state over the individual but it will exercise “judicial restraint” when it comes to policy matters regarding what and how the state is to provide for its citizens, these being viewed as political decisions properly made by an elected body. As a result, social and economic rights have been generally exempted from judicial consideration. Civil and political rights are thus viewed as inherent, universal and justifiable, while social and economic rights are viewed as evolving gradually in the political sphere, more a matter of social policy than of fundamental justice.

Such distinctions, however, are generally misleading. Civil and political rights, too, oblige the state to provide. The provision of a judiciary to protect criminal process rights, administrative tribunals, a democratic structure of representation and opportunity for minority groups to “enjoy their own culture,” to name a few of the state’s responsibilities under the International Covenant on Civil and Political Rights, is surely as onerous as ensuring an adequate standard of living in a relatively affluent society. Indeed, the state is often more directly the “provider” of criminal process and other civil rights through the judiciary than it is the provider of an adequate standard of living, which may be accomplished more through

redistributive and regulatory activities than through the direct provision of goods and services.

Moreover, the requirement of food, clothing, housing, education and medical care is surely no less universal or inherent to a life of freedom of choice and autonomy than the requisite civil and political rights. Safeguarding social and economic rights also requires putting a “check” on the power and tendency of the state to marginalize particular groups, and to limit the extent to which these groups share the collective wealth.

The Disenfranchised Constituency

Perhaps the most distressing aspect of the classical dichotomy of rights, however, is the resulting exclusion of one class of rights claimants — the class that might claim economic and social rights. The claimant of civil and political rights remains, essentially, Locke’s rational propertied individual who enters the social contract not out of need but out of choice and seeks by the entrenchment of rights to preserve autonomous choice from the power of the collectivity. Rights claims in this sphere are viewed as restorative, in the sense that they restore to the individual any property or individual freedom which may have been lost or in-

fringed by abuse of collective power or through violations of one’s personal rights by other members of the collectivity.

Claimants of social and economic rights, on the other hand, are propertyless, in the full sense of the term. They have no claim to any particular property or individual freedom which has been lost through the infringement of a right. They participate in the social structure not through contractual choice but through need, which is to say that there is no “social contract” and they have no standing from which to establish any claim to rights as they are traditionally conceived within a civil structure. Thus the guarantee in the International Covenant on Civil and Political Rights to freedom from interference with one’s privacy and home is widely recognized and enforced as a right but the right to be adequately housed in the first place,



guaranteed in the International Covenant on Economic, Social and Cultural Rights, is not.

When poor people claim rights, the effects of this traditional conception of rights on modern practice become clear. Poor people approach the notion of human rights and discrimination from the starting point of injustice, assuming quite naturally that homelessness or hunger is inflicted through the decisions or indecision of others and establishes a human rights claim. They will energetically present to a human rights officer what they consider to be evidence of "discrimination," describing an interconnected and enveloping web of unfairness, hardship, abuse and deprivation that may involve simultaneously a landlord, an ex-husband, the Social Service Department and a Housing Authority on one side and on the other a sister, a friend who has the same landlord, various children and another single mother down the hall. They describe, in other words, a "system" that has inflicted injustice on a collection or "family" of people, making little distinction between the public and private (household) spheres. What poor people rarely describe as discrimination is a particular infringement of one person's right by an individual respondent causing a distinct loss that can be remedied.

Human Rights Officers, even patient ones, will eventually be obliged to interrupt the description of this intricate and apparently endless web of "discrimination" to explain that human rights legislation prohibits only particular grounds of discrimination, that it is "restorative" only, and that only if a given right has been infringed is the complainant entitled to a "remedy."

Potential claimants of social and economic rights are deflated by this imposed order of individuality, in which rights adhere to the singular person, almost as a piece of personal property protected from trespass. Prevalent human rights discourse is a thoroughly foreign language to poor people, who will readily identify it as a language of the "system," the unnamed respondent of their complaint, a language of the marketplace, the welfare office and the family courts, a language of contractual relationships and individual prop-

erty, describing rules of "fair play" within the very game that has already excluded them. To demand that a complaint evolving from such a fundamental exclusion and deprivation as hunger, homelessness or poverty be framed in such terms is rather as if Justine Blainey had been required to file her complaint of exclusion from boys' hockey as an infraction of the rules of the league that would not let her play. The reality of a human rights system which privileges civil and political rights at the expense of social and economic rights is that it is reduced to refereeing the major and minor infractions among those who, however tenuously, have made it into the league, but it is quite incapable of hearing the complaints of those who have been altogether excluded from participation.



The State "Provider"

Social and economic rights, even where they are recognized, are damaged if they are segregated from civil and political rights by a theoretical distinction based on the role of the state. To promote the idea that the state "provides" adequate health care, education, housing, clothing and food out of an enlightened respect for the social and economic rights of its neediest citizens risks obscuring the gender, class, race and power relations contained in such "provision."

Significantly, all of the areas of entitlement in social and economic rights relate to activities that, in a pre-industrial economy were situated within the household economy, where women at least occupied a relatively autonomous economic position, growing and gathering food, weaving textiles, educating children as co-workers, caring for the sick and maintaining the home. In the earliest days of urbanization and industrialization in Canada, it was women who recognized the value of meeting some of these needs in a collectivized and social way; they established Canada's first hospitals, schools, and libraries. It is only as these activities were removed from the home and from the voluntary sector, when they began to offer wages to the providers, and became part of the marketplace or the network of state-provided services, that they were placed under the control of

male-dominated businesses and professions utilizing a devalued women's and children's labour, and subject to state regulation.¹ Social and economic rights simply abet this appropriation of women's work if they promote the state as provider rather than effecting a transfer of power to those whose work as providers has been devalued. The true providers of life's basic necessities — whether single mothers in their homes tending to their own needs and those of their children, women working in the textile and food industries, or women working in services provided by the state that were previously performed by women in the home — are usually the very people who are themselves deprived of an adequate standard of living, in part by the removal of their functions from the home to the market place or the state. To relegate these people to the position of passive "recipients" of state provision or "beneficiaries" of minimum wage "protection" only perpetuates the injustice by legitimating it.

The notion of the state as provider often serves to conceal the controlling and regulating function of providers "for" those in need. State-run programs delivering goods, services and entitlements are often as marginalizing of those they are designed to assist as the private market that created the impoverishment in the first place. Public and non-profit housing, for example, may provide adequate housing to those whom the private market refuses to house, but at the same time it may serve to control where poor people live and bring with it new regulations and invasion of privacy and autonomy. A resident may be obliged to report to a property manager or committee (that might include neighbours) such personal information as that a man has moved in and is contributing to rent, that she has found a part-time job on the side but is not reporting it to Social Services or that a daughter has left home and no one knows if she will come back.

The "social safety net" is a net which entraps as it catches. As French sociologist Jean Jacques Depeyroux suggested, social services function as much to protect society from the destitute as to protect the destitute themselves. "Thus it is sometimes hard to distinguish between the orphanage and the correctional institution, or between the shelter and the prison, that is to say between the measure of social protection and the penal sanction."²

Shelters and hostels regulate a lifestyle similar to that of prisons or other "protective" institutions. There is a rigid schedule governing when you sleep, eat and go out. Medication and personal effects, often including tampons, are administered by staff. One shelter for young women "runaways" and ex-prostitutes in Toronto has residents wear pajamas 24 hours a day to discourage them from leaving. The distinction between civil rights and social and economic rights is thus largely irrelevant to poor people, who can be incarcerated and institutionalized by poverty rather than by an infringement of civil rights.

Poor people cannot begin to meet their basic needs unless the deprivation of fundamental freedom and choice that often results from the provision of services by the state is challenged. Poverty is described by poor people as an absence of choice, dignity and autonomy as often as it is described as material need. Administering to needs, however, is what "helping" professions are all about; as what poor people call the "poverty industry" continues to anoint its own professional class of social service workers, housing providers, health care providers and literacy experts, it becomes increasingly tempting for a growing number of us to define poor people not as they define themselves, but rather by the needs to which we administer. Instead of challenging this disenfranchisement of poor people, the human rights movement has promoted it by polarizing the issues of material need and freedom of choice, overemphasizing the distinction between economic rights and civil rights.

The Claiming of Rights in a Different Voice

The challenge, then, is not to recognize social and economic rights as they have been traditionally defined and segregated, but rather to enable their claimants to redefine these rights so that they are incorporated into the work of the human rights movement, in such a way as to give full voice to a previously excluded constituency. That voice may very well be "a different voice," as Carol Gilligan describes women's articulation of rights, finding among the women in her study an emphasis on the complex "web" of human relationships as opposed to the indi-

viduation and autonomy emphasized by the men, a recognition of the importance of care and responsibility entailed in rights rather than the idea of fairness in the rules of a competitive game.³ Others have suggested that what Gilligan finds in women may be characteristic of the voice of suppressed and powerless groups in general.⁴ Certainly claimants of social and economic rights will be served only by a politicized human rights advocacy which in turn serves political struggles in what Elizabeth Schneider describes as a "dialectic of rights and politics."⁵ The point is not to have human rights lawyers take over poor peoples' movements or to impart more authority to the courts in social and political matters but to develop routes of access to any sources of power and legitimation that will enable poor people to be heard, and to meet their own needs.

One organization which has articulated this approach, the Ottawa Council for Low-Income Support Services, a few years ago produced a button which read: "POVERTY STOPS EQUALITY. EQUALITY STOPS POVERTY." Their words point the way to a reintegrated approach to social and economic rights within human rights advocacy and to an appropriate "dialectic of rights and politics." The goal, of course, is to eliminate poverty, but approaching poverty from the starting point of equality rights thwarts the prevailing, more comfortable discourse that defines poverty as a condition to be remedied or treated. As Miller and Roby wrote in *The Future of Inequality* in 1970, "Poverty has become the acceptable way of discussing the more disturbing issue of inequality."⁶ Understanding poverty as inequality repoliticizes it, taking the remedy out of the hands of the administering professionals and returning it to the hands of the victims of the injustice. A repoliticized approach such as this confronts human rights jurisprudence with the deprivations of poverty and economic inequality as issues of fundamental injustice, as discrimination — precisely as poor people have always understood them.

Human rights claims, of course, are themselves administered within a professionalized and appropriating bureaucratic structure, with intake procedures that are almost entirely inaccessible to anyone

lacking literacy skills and personal resources. The system has an individualistic basis that is isolating at best and frequently quite abusive of poor people. The value of reclaiming the complaint process is great enough, however, to warrant making every effort to overcome the barriers imposed by the current processes. A human rights complaint can be a politicizing and collectivizing document rather than a bureaucratic and legalistic appropriation of rights which, even in the classical notion of rights, belong to the claimant. There is a powerful narrative movement in a human rights complaint, starting with a personal story of discrimination which can be documented in accessible language, in the words of the rights claimants themselves, and culminating with the claiming of equality rights belonging to *all* the members of the group to which the claimant belongs.

A single mother on social assistance forced to live with her parents because landlords insist on deciding for her that she can not afford to rent an apartment on her own, or a battered woman living in a shelter with her children who has been trying for weeks to find a landlord who will rent to someone without an estab-

lished credit rating, is affirmed and politicized by signing and submitting a document that describes in her own words how she and her children have been denied access to ade-

quate accommodation. When the complaint cites her belief that her rights as a woman and as a single mother to equal treatment without discrimination because of her sex, marital status or family status have been infringed, she may be articulating for the first time in a public manner her very private burden of homelessness. When the complaint cites the adverse effect of rental policies on women and single mothers, it lists common characteristics she shares with other women and single mothers. Thus, in filing her claim, she challenges her isolation and affirms her membership in a collectivity made up of others who are similarly oppressed. Frequently, the claimant's copy of the complaint will be passed around a shelter or shared among neighbours or informal "family" members who will sometimes decide to file similar complaints. A network of support emerges and there are



friends and family to accompany her to hearings as she stakes a claim in a public domain that has in the past largely excluded her. The human rights system will insist on calling her a "complainant" whose rights are alleged to have been "infringed," but she and her supporters know that she is a "claimant" of rights she's never had.

Assessing Canada's Compliance

There is, of course, no universal measure which can be applied equally to Canada and to developing countries of an adequate standard of living or adequate food, clothing and housing. There is ample recognition, both in the International Covenant on Economic Social and Cultural Rights, and in the general approach of the United Nations committee monitoring state compliance, of dramatic differences in levels of resources available to various countries. The notion that states should be granted a "margin of appreciation" allowing for diverse cultural and economic circumstances has been well accepted in international cases in civil and political rights and this will be fundamental in the developing approaches to social and economic rights as well. No one expects the same of a country with widespread famine and sixty per cent of the population homeless as of Canada. Here we have enough food to export and enough existing housing to house everyone who is alive and who will be born until the end of this century, yet we have seen growing numbers of foodbanks supplying food to an increasing number of hungry people and emergency shelters and hostels becoming overcrowded as soon as they are opened. The exclusion of certain groups from a prosperous economy is as much the issue as their level of need. Social and economic rights are inseparable from equality rights in that compliance can be judged only in terms of an obligation to ensure a reasonably equitable *distribution* of available resources and not in terms of some international minimum standard of *provision*.

The increasing number of homeless and hungry people in the midst of economic prosperity in Canada are living witness to the serious violation of social and economic rights, since they demonstrate our

failure to achieve "progressively the full realization of the rights recognized in the... International Covenant" "to the maximum of [our] available resources." For a government of so wealthy a country to renege on its binding international commitment to honour "the fundamental right of everyone to be free from hunger," particularly when this problem could be solved so much more easily here than in other countries, is a national disgrace. In the area of housing as well, the conspicuous failure to guarantee access to adequate housing, especially for mothers and their children, to Native people, disabled people and other groups facing widespread discrimination, results in part from legislative and regulatory inaction by the government that is quite remarkable by international standards.

In Canada, 96 per cent of housing is provided by the private sector, so that ensuring equitable distribution necessarily involves regulating how the private sector allocates units. That job has fallen primarily on the provinces, which have the responsibility of ensuring, predominantly through human rights legislation, a non-discriminatory allocation of housing. Yet the provinces have failed to stop widespread discriminatory practices that are unheard of in most parts of the world. The majority of provinces still allow restrictions preventing families with children from acquiring accommodation, despite the strong protections for mothers and families with children in international human rights law.⁸ Only Quebec, where discrimination on the ground of "social condition" is prohibited, has legislated any protection

from discrimination on the basis of level of income. People are routinely denied access to adequate housing in Canada simply because they have a lower income, no credit rating or would be sharing accommodation with others. We have accepted a housing delivery system that excludes families and poor people for no other reason than that landlords consider them "undesirable tenants," a system which forces over 100,000 people a year to sleep in hostels, bus shelters or in parks while there are 32 unused bedrooms for each one of them in underutilized existing housing stock, often held for investment purposes. This would be totally unaccept-

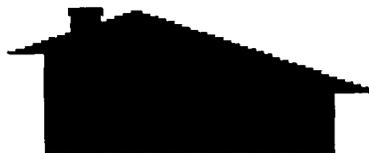
able in most other countries in the world, yet here we remain relatively complacent about it.

Claiming Place

One of the more important roles of social and economic rights is to disrupt complacency about forms of exclusion and marginalization that gain acceptance simply by virtue of their familiarity. Advocacy must work with existing legislation, but the existing framework must be challenged at the same time, by asking the questions the system tries to silence. A homeless family refused housing by every landlord in town because of their low income will ask: "So where are we supposed to live?" Claiming social and economic rights gives voice to that question at a hearing, challenging a more complacent approach to assessing whether a policy is "reasonable and bona fide in the circumstances."

Recently, some poor people in Canada have been seeking remedies to inadequate standards of living by challenging discrimination within social assistance and other income transfer programs. A single father seeks the same benefits from Unemployment Insurance as a single mother would receive to provide at-home care to a newborn; a young single employable man in British Columbia seeks the same social assistance rate as someone older; a single disabled man in Saskatchewan seeks the same benefit level as a disabled individual living within a couple: each has turned to the equality provisions of human rights codes and the Charter, citing sex, age and marital status discrimination to make his case. In each case, he has been successful through the courts. It is not surprising, of course, that all of the plaintiffs were male. Equality rights are rarely themselves equally accessible to all. Nevertheless, equality rights approaches such as these, to which we are often limited by articulated and specific prohibited grounds in human rights legislation, have an implicit social and economic rights aspect. They take the economic rights accorded to one group and extend them to others, using equality rights to attempt to universalize social and economic rights which are not themselves written into the Charter.

Claimants of social and economic rights must begin to constitute a movement,



both national and international, that incorporates political, social and judicial activity. The idea of movement is built into the legal definition of such rights as being "progressively realized." The legal rights are validated only as they are sustained by a social and political movement that articulates their meaning and enforces them through public consensus. Because no higher authority will step in and force us to eliminate poverty, hunger and homelessness in Canada, these rights are legally binding by good faith only. There are no police or courts to enforce them unilaterally.

A movement, of course, is based in its constituents; the constituency of social and economic rights consists of those who have been excluded from the enjoyment of any meaningful participation in the community's social, economic and cultural life. The movement is a claiming of place by those groups and peoples. Thus, social and economic rights rest in a concept of place, not in a notion of property. Having a rightful place in one's community requires a sense of belonging, of being affirmed by the community in an inclusive way. Property, on the other hand, has to do with the ability to keep other people out. When rights are articulated in terms of property, they become exclusive rather than inclusive in both their application and their effect.

Rights should have as their starting point a claiming of place within a community, and it is the essence of human rights to oppose the tendency to exclude. But the claiming of place can be distorted. When it is translated into the language of a legal system which privileges exclusion over inclusion, property over place, rights are articulated as their opposite, tied to higher authority rather than social movements, and protecting property from encroachment rather than marginalized people from exclusion. A claiming of place by excluded constituencies brings rights back to where they belong.

The social and economic rights movement, now in its nascency, may appear in a few years — in retrospect — to be reminiscent of earlier political and civil rights movements. Those movements crystallized when rights merged with social and political movements, when segregation was challenged by women

entering the voting place that had been declared the property of men, or black people marching together or sometimes walking alone into places that were restricted to whites only. Social and economic rights are relatively recent in law but there is really nothing so new about them. They have a similar constituency advancing a not unfamiliar claim — but they are being claimed in a vital and different voice.



¹ Provincial regulation of the use of women's and children's labour was first legislated in Canada at the beginning of the century. Although the aim was to protect

women and children from economic exploitation, "we should not overlook the fact that such legislation did recognize child labour and sanctioned the inferiority of women's labour." See R. Bureau, K. Lippel and L. Lamarche, "Development and Trends in Canadian Social Law, 1940 to 1984" in *Family Law and Social Welfare Legislation in Canada*, ed. Ivan Bernier and Andrée Lajoie (Toronto: University of Toronto Press, 1986), p. 77.

² Quoted and translated in R. Bureau, K. Lippel and L. Lamarche, *op.cit.*, p. 121. Brenda Doyle Farge, a feminist Canadian sociologist who interviewed staff and homeless women in hostels and shelters, confirms this view in "Hostels for Single Women: Subjectivity, Discourse, and Social Regulation" (Ph.D thesis, Department of Education, University of Toronto, 1988).

³ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982).

For an excellent discussion of the implication of Gilligan's analysis in rights advocacy see Elizabeth M. Schneider, "The Dialectic of Rights and Politics: Perspectives from the Women's Movement," *New York University Law Review* Vol. 61, No. 589 (1986).

⁴ Elizabeth Schneider provides a useful summary of the responses to and elaboration of Gilligan's work in "Dialectics of Rights and Politics," *op.cit.*, pp. 616-617.

⁵ Schneider, *op.cit.*, pp. 616-617.

⁶ S.M. Miller and P.A. Roby, *The future of Inequality* (New York: Basic Books, 1970), p. 3, quoted in Hilda Scott, *Work-*

ing Your Way to the Bottom: The Feminization of Poverty (London: Pandora Press, 1984), p. 11.

⁷ *International Covenant on Economic, Social and Cultural Rights*, Article 2 (1).

⁸ Article 10 of the *International Covenant on Economic, Social and Cultural Rights* states that:

The States Parties to the present Covenant recognize that:

1. *The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.*

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