BOOK REVIEW

Being Bold about Rights in a Neoliberal World

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Economic and Social Rights in a Neoliberal World, edited by Gillian MacNaughton and Diane F. Frey, Cambridge University Press, 2018

Neoliberalism, the dominant political ideology and economic and political policy during the past 40 years, poses significant challenges for human rights, particularly economic, social, and cultural rights. Also referred to as market fundamentalism, neoliberalism maintains that human well-being can best be advanced within an institutional framework characterized by free markets, a minimal state, free trade, the absence of economic regulation, and strong individual property rights. Neoliberal doctrine seeks to reduce the role of the state on which human rights depend for protection and implementation, including to diminish or even eliminate its social and welfare responsibilities. A goal of neoliberalism is to cut public expenditures for social services such as health and education, including reducing welfare programs and the safety net for the poor, with policy makers often arguing that generous entitlements are unaffordable while enacting tax cuts benefiting the wealthy. Neoliberalism also advocates for privatizing infrastructure, utilities, and social services through selling them to private investors or transferring their management to the private sector. Moreover, the neoliberal outlook does not acknowledge social and economic rights as being legitimate human rights or even genuine entitlements because in their market-based framework no one has a claim on the resources from society necessary to provide adequate food, education, housing, and health care.

Nevertheless, despite the challenge that neoliberalism poses, there is not much human rights literature examining the impact of neoliberalism on specific social and economic rights and in different national contexts. Gillian MacNaughton and Diane Frey's recently published edited volume *Economic and Social Rights in a Neoliberal World* is therefore a welcome addition to the literature. The volume is the product of the International Research Collaborative on Economic and Social Rights in a Neoliberal World, an initiative supported by the Law and Society Association. This volume is truly an international effort. The authors who contributed chapters to the volume come from eight countries, and their chapters examine economic and social rights in the context of neoliberalism in eleven countries: Brazil, Colombia, Ecuador, Egypt, Israel, Mexico, New Zealand, Peru, South Africa, South Korea, and the United States. In addition, there are chapters addressing the role and policies of the International Labour Organization (ILO) and the United Nations Committee on Economic, Social and Cultural Rights, the oversight body for the International Covenant on Economic, Social and Cultural Rights. None of the chapters, however, focuses on the right to health. The volume also has an introduction setting out the issues and providing an overview of the content of the chapters along with a conclusion drawing together the findings from the various chapters.

The volume seeks to address three major issues. The first is to identify the specific ways in which the requirements of economic and social rights conflict with neoliberalism. The second is to assess whether economic and social rights are effective, or at least have the potential to be effective, in countering neoliberal ideology and policy. The third is to evaluate the extent to which neoliberalism affects the interpretation and implementation of economic and social rights. The introductory chapter sets forth these issues, and then the final chapter draws on the contributions to the volume to seek to provide answers. The conclusion

also considers a fourth question: How can we engage economic and social rights most effectively to challenge neoliberalism?

The volume contains 15 chapters divided into four thematic sections. The editors' introduction provides a good overview of neoliberalism, its impact on human welfare, and the issues it raises for economic and social rights, as well as setting forth the organization of the volume and describing the content of the chapters. Chapters in the first section establish a foundation for understanding the interaction of neoliberalism with economic and social rights using a variety of multidisciplinary lenses. Several of the chapters in this section are particularly notable.

The two chapters in this section exploring the relationship between neoliberalism, human rights, and economic inequality address an important and too often neglected topic in the discourse on economic and social rights. Under neoliberalism, economic inequalities have grown markedly both within and between countries as a consequence of the dynamics of capital accumulation under advanced capitalism and the neoliberal economic and political policies adopted that favor corporations and the affluent. Inequality has spiked in both developing and developed countries. So an important question is whether human rights can make a difference. James Heintz's chapter contrasts how neoliberal economics and the human rights framework engage with questions of inequality and the extent to which human rights practice challenges neoliberal and neoclassical approaches to inequality. He concludes that the human rights framework provides some guidance on the implications of widening inequalities and its implications for the fullest realization of human rights but that it does not identify a particular distribution of wealth as just.

Gillian MacNaughton's chapter goes further in addressing the potential of human rights to promote equality. In contrast with human rights analysts that do not believe that there is a human right to equality, MacNaughton proposes that it is time to recognize the possibility that the right to equality in the Universal Declaration of Human Rights and international human rights treaties

extends to economic and social rights as well as to civil and political rights. She urges scholars and practitioners to move beyond neoliberal constraints to consider ways in which rights to equality and nondiscrimination could be reinterpreted to achieve this goal. Doing so would then enable the international rights to equality and nondiscrimination to address economic and social inequalities and in the process make "equal in dignity and rights" meaningful to all. Another advantage is that it would also enable human rights to more effectively challenge neoliberal policies.

Several other chapters in the first section deal with empirical issues or specific rights in particular countries. Felipe Ford Cole details the path that neoliberalism's proponents took to embed neoliberal ideology into law in Peru. Asa Maron's chapter documents how neoliberal governance prescriptions and the growing primacy of economic modeling have subordinated social goals to administrative goals geared toward the efficient management of scarce resources focusing on the situation of at-risk children in Israel. A chapter written by James Murphy argues that neoliberal thinking has been detrimental to the socializing function of education by fostering an ethic of hyperindividuality, cynicism toward collective action, and acquiescence to the social order.

Section two of the volume addresses conflicts of neoliberalism with economic and social rights in times of crisis. The diverse crises examined include the financial crisis of 2008, the situation in Egypt following the 2011 uprising, efforts to deal with violence against women in Mexico, and post-conflict peacebuilding mechanisms. Some of the chapters in this section do not comfortably fit the focus of the volume other than documenting the lack of attention to social and economic rights. In some of these contexts, the failure to address economic and social rights could be for a variety of reasons other than neoliberal ideology.

Ben T. C. Warwick's chapter in this section assesses the response of the Committee on Economic, Social and Cultural Rights (CESCR) before, during, and after the 2008 financial crisis. Reviewing the committee's output, Warwick maps the CESCR's

greater level of comfort in dealing with obligations related to nondiscrimination, immediate obligations, and progressive realization and its reluctance to cite violations related to retrogression and the nonimplementation of the minimum core of rights. Without a clear explanation, he claims that this order of preference has a degree of correlation with the values of neoliberalism rather than challenging neoliberal priorities. He also raises the question of whether the CESCR's conciliatory approach and its praise for the progress made by states might reflect a subtle ingestion of neoliberal ideology. However, as a veteran CESCR watcher, I think he discounts the CESCR's consistently overly diplomatic approach to reviewing country reports and its reluctance to use violations language. CESCR has generally been more progressive and forthcoming in its general comments and statements than in its analyses of state parties' reports. For example, a 2012 letter of the chairperson of the committee to state parties of the International Covenant on Economic, Social and Cultural Rights about austerity programs emphasizes that any proposed policy change or adjustment must meet a number of requirements. The requirements include that the policy must be a temporary measure; the policy must ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected; and the policy must ensure the protection of the minimum core content of rights.2 The committee also issued a statement on the requirements of maintaining social protection floors in 2015 and a statement on public debt, austerity measures, and the International Covenant on Economic, Social and Cultural Rights in 2016.3 The 2016 statement imposes obligations on both borrowing and lending states to carry out a human rights impact assessment in order to ensure that the conditionalities do not lead to violations of the rights in the covenant.4

Chapters in part three grapple with the tension between economic and social rights and the tenets of neoliberalism in the context of development and the provision of development aid. The goals of development—namely growing the economy and widely distributing the benefits of this growth—are constrained by the global neoliberal policy envi-

ronment, particularly its stipulations against direct government intervention in favor of market-oriented solutions.

Sakiko Fukuda-Parr has an insightful chapter that contrasts how Brazil and South Africa have implemented a commitment to a right to food while pursuing free market economic policies. The chapter compares Brazil's national policy for food and nutritional security, which is comprehensive in scope and seeks to address the long-term structural causes of food insecurity, with South Africa's strategy that focuses on relief measures that provide a short-term safety net. She attributes this difference to Brazil's willingness to proactively intervene in the market while South Africa, more wedded to traditional neoliberalism, has been reluctant to do so.

Carmel Williams and Alison Blaiklock scrutinize the impact of neoliberalism on New Zealand's development aid to test the hypothesis that the socioeconomic rights informing the Sustainable Development Goals (SDGs) are in practice being undermined by neoliberal values, contracts, and trade arrangements. Their chapter shows that while the New Zealand Aid Programme identifies sustainable economic development as the overarching framework for its activities, in reality its own priorities, particularly the importance given to private-sector-led growth, shape aid activities. Williams and Blaiklock attribute the ease of this cooptation to the weak and voluntary accountability framework for the SDGs and the failure of the framers to embed legal human rights. To compensate for these omissions, they recommend that United Nations human rights treaty monitoring bodies incorporate SDG monitoring into their reviews of states' implementation of their human rights obligations.

In the last chapter in this section, Joo-Young Lee studies how South Korea's combination of neoliberalism and a developmental state has constrained implementation of the economic and social rights enshrined in the South Korean Constitution. She attributes the failure of economic and social rights to play a role in countering or ameliorating the worsening social inequalities in recent decades to the historic dedication of the South Korean state

to a growth-first ideology and the reluctance of the Korean Constitutional Court to give normative force to economic and social rights. In contrast with human rights values, both Korean developmentalism and neoliberalism place a priority on capital accumulation and perceive labor and social security as costs that undermine growth and competitiveness. According to her analysis, economic and social rights also suffer from very weak mechanisms of accountability. However, she notes that the increasing disillusionment of a large segment of South Korean society with the growth-first and trickle-down effects may change the calculus in the future.

The chapters in the final section ostensibly focus on how neoliberal pressures affect accountability mechanisms for economic and social rights. However, not all of the chapters in this section do so. Jean Carmalt's chapter uses geographical analysis to show how the implementation of neoliberal policy is characterized by spatial practices with results that violate international human rights standards. LaDawn Haglund's chapter explores water and sanitation rulings of courts in in São Paulo, Brazil, to identify conflicts between economic and social rights and neoliberal economic rationality. Neoliberal economic principles, such as full-cost recovery and market-based allocation, block the provision of essential water to people who cannot afford to pay for it. She finds that working with the judiciary and explicitly articulating human rights standards can be beneficial for progressive social change in cases dealing with water and sanitation access.

Diane Frey's chapter in the fourth section explores the contradictions and active conflicts between neoliberal and social justice advocates at the ILO through a presentation of three case studies. The ILO uniquely among international bodies has a tripartite structure representing workers, employers, and governments. As might be expected, she finds that the workers as a group have most faithfully protected the inherited justice values and purposes of the ILO's mandate. To date, their commitment has been sufficient to maintain the integrity of many social justice labor rights against efforts to neoliberalize them, but she cautions that this may not necessarily be the case in the future.

The concluding chapter draws on the book's 15 chapters to assess what they reveal about the questions posed in the introductory chapter. The first question concerned the ways in which economic and social rights conflict with neoliberalism. Virtually all of the chapters demonstrate facets of this conflict. To avoid repetition, the review will not reiterate the ways in which they do so.

The second question concerned the extent to which economic and social rights are effective in countering neoliberal ideology and policy. Frey and MacNaughton's assessment is that several of the chapters show that economic and social rights have made a difference on specific issues in specific places at specific times or currently are in play to do so. They cite case studies in Frey's chapter on the ILO; the instance described in Cole's chapter on Peru in which activists successfully stopped a neoliberal law reform that would have created a youth underclass of workers; and the way that litigants in Haglund's chapter on Brazil successfully utilized human rights in their claims for basic water and sanitation services. On the other hand, they acknowledge that other chapters—in fact most of the chapters in the volume—describe cases in which economic and social rights have not been effective in protecting vulnerable people in the face of pervasive neoliberal policies.

The third issue is the extent to which economic and social rights are interpreted or implemented in a way that is consistent with neoliberalism. This review has already taken issue with one of their key cases, Warwick's interpretation of the response of the CESCR to economic crisis. MacNaughton's chapter on inequality questions the narrow interpretation of equality rights by treaty bodies and by human rights scholars. While this narrow view of equality rights in international human rights law coincidentally agrees closely with the neoliberal policy framework, she does not claim it has resulted from a conscious effort to align the two. Lee's chapter on South Korea also illustrates that the interpretation of economic and social rights related to a wide range of social policies in that country is consistent with neoliberalism. As a consequence, the CESCR reported its concerns over these detrimental policies on the enjoyment of economic and social rights in its review of South Korea in 2001 and again in its review in 2009. However, as MacNaughton and Frey acknowledge, the CESCR's observations, like South Korean constitutional rights, are likely to remain ineffective.

So where does that leave those of us committed to economic and social rights? Several chapters in this volume provide a range of concrete ideas for an agenda to strengthen the role of economic and social rights and to improve accountability at the level of human rights treaty bodies. Recognizing a right to economic equality as MacNaughton proposes would likely make a considerable difference. Frey and MacNaughton also point out that some of the contributions, particularly Fukuda-Parr's chapter describing Brazil's implementation of the right to food, show that countries can make substantial progress in realizing economic and social rights when there is political will to do so. Supervisory mechanisms as described in Frey's chapter on the ILO can also play an important role in supporting economic and social rights in situations where they are threatened by neoliberal orthodoxy. Frey and MacNaughton's concluding advice is that "we must persist in making economic and social rights more visible to more people everywhere, and be bold and creative in asserting these rights in the era of neoliberalism."5

References

- 1. A. R. Chapman, *Global health, human rights and the challenge of neoliberal policies* (Cambridge: Cambridge University Press, 2016).
- 2. A. G. Pillay, Chairperson Committee on Economic, Social and Cultural Rights, letter dated 16 May 2012 addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights to States parties to the International Covenant on Economic, Social and Cultural Rights.
- 3. Committee on Economic, Social and Cultural Rights, Statement on social protection floors: An essential element of the right to social security and of the sustainable development goals, UN Doc. E/C.12/2015/1 (2015).
- 4. Committee on Economic, Social and Cultural Rights, Statement on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2016/1 (2016).
 - 5. D. F. Frey and G. MacNaughton, "Conclusion," in G.

MacNaughton and D. F. Frey (eds), *Economic and social rights in a neoliberal world* (Cambridge: Cambridge University Press, 2018), p. 353.