HHR
Health and Human Rights Journal

VIEWPOINT

The Maturing Right to Health: Deeper, Broader and More Complex but Still Unequal

Gillian MacNaughton

Looking back over the past 25 years, the right to health has matured in healthy ways. It is deeper, broader and considerably more complex. From a narrow focus on freedoms, such as nondiscrimination and privacy, the right to health has grown to encompass a broad range of entitlements, including universal health care and the underlying or social determinants of health.[1] From a siloed right of interest to a few lawyers, the right to health has come to be understood as requiring an interdisciplinary approach, involving experts in many disciplines—most notably health professionals—to fully realize the right for all.[2] This broad and complex understanding of the right to health is also reflected in the United Nations Sustainable Development Agenda 2030 as Goal 3: "Ensure healthy lives and promote well-being for all at all ages."[3] All of these advancements are worthy of celebration.

This maturing is reflected in *Health and Human Rights*. In the first issue of the journal, Lawrence Gostin and Jonathan Mann published an article proposing human rights impact assessment as a tool to evaluate the potential effects of proposed health policies on human rights.[4] Interestingly, their article invokes the right to health only twice, once in the introduction and once in the conclusion, but does not use the right to health in the proposed human rights impact assessment process. As the authors state in their introduction, at that time, the right to health had "not been operationally defined, and no organized body of jurisprudence exist[ed] to describe the parameters of that right."[5] Further, at that time, economic and social rights in general were extremely marginalized, despite the 1993 World Conference on Human Rights, which reinforced the indivisibility and interdependency of all human rights.[6] As a result, Gostin and Mann's proposed human rights impact assessment tool relies on civil and political rights—the rights to security of the person, nondiscrimination, privacy, and informed consent, as well as the rights to information and participation.

In contrast, today, there is a large body of jurisprudence on the right to health, and many dimensions of the right to health have been elaborated in the work of the Committee on Economic, Social and Cultural Rights, as well as other treaty bodies, and in the reports of the UN Special Rapporteur on the right to health. Further, numerous scholarly books have been published on the right to health.[7] Moreover, the International Covenant on Economic, Social and Cultural Rights has been ratified by 170 countries (compared to 135 in 1994). These rights are appearing in the agendas of mainstream human rights organizations, like Amnesty International; are the core mission of more recently established organizations, such as the

Gillian MacNaughton is Associate Professor of Human Rights, School for Global Inclusion and Social Development, University of Massachusetts Boston, USA. Email: gillian.macnaughton@umb.edu.

This Viewpoint was originally published on the Journal website on 16 December 2019 and can be viewed here: https://www.hhrjournal.org/2019/12/the-maturing-right-to-health-deeper-broader-and-more-complex-but-still-unequal/.

Center for Economic and Social Rights, ESCR-Net, and the Global Initiative for Economic, Social and Cultural Rights; and are the inspiration for social justice movements around the world, such as the Treatment Action Campaign in South Africa and the Healthcare is a Human Right campaigns in Vermont and Massachusetts, USA.[8] The American Public Health Association has recently recognized a new interest section, the Human Rights Forum. Public health programs in universities now teach about the right to health.[9] The Office of the High Commissioner for Human Rights has signed a Framework of Cooperation with the World Health Organization to deepen their collaboration to (1) advance norms and standards for realization of the right to health, (2) advance national implementation of human rights standards, (3) advance national-level capacity to monitor health and human rights, and (4) cooperate in research and development on health and human rights. And notably, health and human rights impact assessment (1) is now grounded in the complex right to health, including availability, accessibility, acceptability and quality (AAAQ) and the tripartite obligations (respect, protect and fulfill), (2) is the subject of many scholarly publications, and (3) has been put into practice in many locales from the clinical to the national policy level.[10]

Health and Human Rights has published articles on all these topics and many more. Nonetheless, one issue that is both alarming and yet still largely ignored is the relationship between economic inequality and the right to health. In his 2005 book "The Impact of Inequality: How to Make Sick Societies Healthier," Richard Wilkinson provides considerable evidence to show that (1) health, as measured by life expectancy, correlates directly to one's economic status in a society, and (2) more unequal societies have lower life expectancy (and other poor social outcomes) for all economic groups in comparison to more equal societies.[11] Wilkinson presents these large disparities in life expectancy as social injustices and human rights violations.[12] Since 2005, researchers have also documented numerous other negative impacts of gross economic inequality, such as heightened violence, lower levels of voter participation, and political and economic instability, which all negatively impact on the right to health.[13]

And economic inequality continues to grow every year in almost every country in the world. Yet, few human rights scholars and practitioners have addressed the issue, and fewer still have examined the relationship of economic inequality to the right to health specifically.[14] The human rights bodies have, with few exceptions, largely avoided the topic as well, preferring to focus on well-accepted human rights norms such as nondiscrimination and the minimum core of economic and social rights.[15] The issue of economic inequality and human rights, particularly economic inequality and the right to health, however, requires urgent attention from the human rights community, just as it has gained attention from economists, politicians, and voters. Despite amazing advances in conceptualizing and implementing the right to health over the past 25 years, economic inequality remains a crucial barrier to the full realization of the right to health.

References

1. See *Health and Human Rights Journal* Special Section on Social Determinants of Health 20/2 (2018); *Health and Human Rights Journal* Special Section on Universal Health Coverage 18/2 (2016).
2. G. MacNaughton and D. F. Frey, "Challenging Neoliberalism: ILO, Human Rights and Public Health Approaches to Decent Work," *Health and Human Rights Journal* 20/2 (2018), pp. 43-55; G. MacNaughton and M. McGill, "The Challenge of Interdisciplinarity in Operationalizing the Right to Health," *Health and Human Rights Journal* 21/2 (2019), pp. 251-262.
3. United Nations General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (October 21, 2015), p. 16.
4. L. Gostin and J. M. Mann, "Towards the development of a human rights impact assessment for the formulation and evaluation of public health policies," *Health and Human Rights Journal* 1/1 (1994), pp. 59-80.
5. Ibid., p.60.
6. World Conference on Human Rights, Vienna Declaration and Programme of Action, Un Doc. A/CONF.157/23 (July 12, 1993), para. 5.
7. See, for example, Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to Health, UN Doc. E/C.12/200/4 (August 11, 2000); Committee on

Economic, Social and Cultural Rights, General Comment 22: The Right to Sexual and Reproductive Health, UN Doc. E/C.12/GC/22 (May 2, 2016); Office of the High Commissioner for Human Rights, Special Rapporteur on the right of everyone to the highest attainable standard of health, https://www.ohchr.org/en/issues/health/pages/srrighthealthindex.aspx; A.R. Chapman, *Global Health, Human Rights and the Challenge of Neoliberal Policies* (Cambridge, UK: Cambridge University Press, 2016; A. E. Yamin and S. Gloppen (eds), *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Cambridge, MA: Harvard University Press, 2011); B. M. Meier and L. O. Gostin, *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* (Oxford, UK: Oxford University Press, 2018).

8. See for example, Amnesty International, *Deadly Delivery: The Maternal Healthcare Crisis in the USA* (2011). Available at https://www.amnestyusa.org/wp-content/uploads/2017/04/deadlydeliveryoneyear.pdf; G. MacNaughton, F. Haigh, M. McGill, K. Koutsioumpas, and C. Sprague, "The Impact of Human Rights on Universalizing Health Care in Vermont, USA," *Health and Human Rights Journal* 17/2 (2015), pp. 83-95; G. MacNaughton, M. McGill, A. Jakubec, and A. Kaur, "Engaging Human Rights Norms to Realize Universal Health Care in Massachusetts, USA," 20(2) *Health and Human Rights Journal* 20/2 (2018), pp. 93-104.

9. B. M. Meier, D. P. Evans, M. M. Kavanagh, J. M. Keralis, and G. Armas-Cadona, "Human Rights in Public Health: Deepening Engagement at a Critical Time," *Health and Human Rights Journal* 20/2 (2018), p. 88.

10. G. MacNaughton, "Human Rights Impact Assessment – A Method for Healthy Policy Making," *Health and Human Rights Journal* 17/1 (2015), pp. 63-75.

11. R. Wilkinson, *The Impact of Inequality: How to Make Sick Societies Healthier* (Abington, UK: Routledge, 2005).

12. Ibid, p.18.

13. Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights to the Human Rights Council, UN Doc. A/HRC/29/31 (May 27, 2015), para. 29.

14. But see Alston (see note 13); S. Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard University Press, 2018); Center for Economic and Social Rights, *From Disparity to Dignity: Tackling Economic Inequality through the Sustainable Development Goals* (2016). Available at http://cesr.org/sites/default/files/disparity_to_dignity_SDG10.pdf; G. MacNaughton, "Untangling Equality and Nondiscrimination to Promote the Right to Health Care for All," *Health and Human Rights Journal* 11/2 (2009), pp. 47-63.

15. B. Warwick, "A Hierarchy of Comfort? The CESCR's Approach to the 2008 Economic Crisis," in G. MacNaughton and D. F. Frey (eds), *Economic and Social Rights in a Neoliberal World* (Cambridge, UK: Cambridge University Press, 2018).