



INTRODUCTION

‘Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised’.¹

‘In just seventeen years since the end of the Cold War, over 300 million human beings have died prematurely from poverty related causes, with some 18 million more added each year. Much larger numbers of human beings live in conditions of life-threatening poverty ... This catastrophe was and is happening, foreseeably, under a global economic order designed for the benefit of the affluent countries’ governments [and] corporations’.²

The philosopher Thomas Pogge has identified a contradiction that lies at the heart of contemporary global affairs: international law simultaneously recognises and violates the human rights of the global poor.³ It recognises the global poor’s rights to the degree that rights closely related to poverty elimination – such as rights to health, education, housing, food, water, social security and employment – are enunciated in numerous international treaties. Yet international law also systematically violates these rights by establishing and maintaining institutional structures designed to contribute to the persistence of severe poverty. Pogge argues that core international institutions such as the World Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank all

¹ Universal Declaration of Human Rights 1948 GA Res 217A(III), 10 December 1948, A/810, arts. 22 & 28.

² Thomas Pogge, ‘Severe Poverty as a Human Rights Violation’ in Thomas Pogge (ed.), *Freedom from Poverty as a Human Rights* (Oxford University Press, 2007) 51–52.

³ Thomas Pogge, ‘Recognized and Violated by International Law: The Human Rights of the Global Poor’ (2005) 18(4) *Leiden Journal of International Law* 717.

significantly contribute towards ‘a collective human rights violation of enormous proportion’.⁴

This book examines how global justice movements have engaged the language of socioeconomic rights to contest global institutional structures and rules responsible for contributing to the persistence of severe poverty. Drawing upon a range of perspectives from critical international studies and critical political economy – most notably the neo-Gramscian perspective – the book will evaluate the ‘counter-hegemonic’ potential of socioeconomic rights discourse, which is to say, its capacity to contribute towards an alternative to the prevailing neo-liberal ‘common sense’ of contemporary global governance. This introduction will provide the backdrop against which this issue will be examined.

PATHOLOGIES OF POWER

The fall of the Berlin Wall in 1989 and the collapse of the Soviet Union in 1991 were hailed by many as the beginning of a new era of increased prosperity and respect for human rights.⁵ In spite of such optimism, the ensuing ten years were described by the United Nations Development Programme (UNDP) as ‘a decade of despair’ for many.⁶ By the new millennium some fifty-four countries were poorer than they were in 1990.⁷ During that same period inequality rose exorbitantly, both between and within countries, with the richest 1 percent of the world’s population receiving as much as the poorest 57 percent.⁸ Within that decade the number of people living on less than \$1 a day increased in the Arab States, Central and Eastern Europe, Sub-Saharan Africa, Latin America and the Caribbean.⁹ By 2003 it was estimated that 10 million children were dying of preventable

⁴ *ibid.*

⁵ For the most infamous expression of this idea see Francis Fukuyama, *The End of History and the Last Man* (Penguin, 1992).

⁶ United Nations Development Programme (UNDP), *Summary: Human Development Report 2003: Millennium Development Goals: A Compact among Nations to End Human Poverty* (Oxford University Press, 2003) 2 (hereafter ‘UN Human Development Report’).

⁷ *ibid.*

⁸ UNDP, *Human Development Report 2003: Millennium Development Goals: A Compact among Nations to End Human Poverty* (Oxford University Press, 2003) 39. Such inequality was only the tip of the iceberg. A recent report from Oxfam suggests that the bottom half of the globe’s population now owns the same as the world’s richest eight people. Oxfam, ‘An Economy For the 99%’ (16 January 2017) https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-economy-for-99-percent-160117-en.pdf accessed 30 January 2017.

⁹ *ibid.*, 5.

illnesses every year¹⁰ and some 115 million were not attending primary school.¹¹ On average more than 500,000 women died in pregnancy and childbirth every year.¹²

Further shocking developments unfolded after the turn of the millennium. In 2006 rapid and sharp increases in staple food prices placed basic grains beyond the reach of millions of the World's poor.¹³ According to the United Nations (UN) Food and Agriculture Organization (FAO) in 2009 more than one billion became undernourished worldwide, the largest number in recorded history.¹⁴ The on-going economic and financial crisis that began in 2008 has also generated 'bleak prospects for social development'.¹⁵ Global unemployment rose sharply from 178 million people in 2007 to 205 million in 2009, triggering increased levels of vulnerability, particularly in countries without comprehensive social protection.¹⁶ The growing pressure for austerity measures, ostensibly for reasons of fiscal consolidation, is putting pressure on social protection, public health and education programmes, as well as economic recovery measures.¹⁷ The joint IMF and World Bank Global Monitoring 2010 report estimated that an additional 64 million people fell into extreme poverty as a result of the economic crisis alone.¹⁸

As Paul Farmer has pointed out, the persistence of poverty is neither an 'accident' nor 'random in distribution and effect', but is rather the symptom of 'deeper pathologies of power' that are intimately connected to social conditions that determine who will suffer, and who will benefit, from particular arrangements.¹⁹ It is no secret who has benefited the most from the post-cold-war 'Washington Consensus' of the globalisation era. In a 2014 Report entitled *Working for the Few: Political Capture and Economic*

¹⁰ *ibid.*, 8. This is perhaps understandable when one considers that only 10 percent of global spending on medical research and development is directed at the diseases of the poorest 90 percent of the world's people. See *ibid.*, 12.

¹¹ *ibid.*, 6. ¹² *ibid.*

¹³ Food and Agriculture Organization of the United Nations (FOA), 'More People than Ever Are Victims of Hunger: Background Document' (2009). www.unmalawi.org/newsroom/press_release/press_release_june_en.pdf accessed 17 January 2012.

¹⁴ *ibid.*

¹⁵ United Nations Department of Economic and Social Affairs, *The Global Social Crisis: Report on the World Social Situation 2011* (15 June 2011) UN Doc. ST/ESA/334 24.

¹⁶ *ibid.*, iii. ¹⁷ *ibid.*, 6.

¹⁸ World Bank and International Monetary Fund, *Global Monitoring Report 2010: The MDGs after the Crisis* (World Bank, 2010) viii.

¹⁹ Paul Farmer, *Pathologies of Power: Health, Human Rights and the New War on the Poor* (University of California Press, 2005) 7.

Inequality, the anti-poverty global confederation Oxfam International affirmed what many ‘anti-globalisation’ activists had been arguing for decades: that over the course of the last thirty years the arena of policy making has been progressively colonised by the very wealthy.²⁰ As a result of ‘political and regulatory capture’, policies and laws have increasingly been skewed in favour of the rich, entrenching and enhancing their privileged status whilst further marginalising the poor.²¹

This phenomenon is perhaps nowhere more pronounced than in relation to the formulation of international trade rules. To illustrate, in the run up to the negotiations for the proposed European Union-United States trade deal known as the ‘Transatlantic Trade and Investment Partnership’ (or ‘TTIP’) in 2012 and early 2013, 92 percent of the ‘stakeholders’ in consultations with the European Commission’s trade department were business lobbyists. By contrast, a mere 4 percent of consultations were with public interest groups.²² Corporate and financial power has been both the driving force and the principle beneficiary of the neo-liberal economic policies advanced by the WTO, IMF and World Bank since the early 1990s. Policies and laws requiring public spending reduction, the removal of price controls, trade liberalisation, financial deregulation and the privatisation of public utilities and services have facilitated unprecedented capital accumulation on a world scale by removing trade barriers, creating new markets and reducing the taxation and regulation of corporate and financial activity.²³

At the same time, these policies are implicated in undermining socio-economic rights. Many commentators have documented how trends such as the increased reliance upon the market, the diminution in the role of State provision of social services and the deregulation of financial and labour markets have exposed workers, poor people and vulnerable groups to the vicissitudes of the market and made the objects of their socioeconomic rights less secure.²⁴ This book takes as its starting point

²⁰ Oxfam, ‘Working for the Few’ 187 Oxfam Briefing Paper (20 January 2014) www.oxfam.org/sites/www.oxfam.org/files/bp-working-for-few-political-capture-economic-inequality-200114-sum-en.pdf accessed 28 January 2014.

²¹ *ibid.*

²² Corporate Europe Observatory, ‘Who Lobbies Most for TTIP’ (*Corporate Europe Observatory* 8 July 2014) <http://corporateeurope.org/international-trade/2014/07/who-lobbies-most-ttip> accessed 25 June 2015.

²³ Gerard Dumenil and Dominique Levy, ‘The Neoliberal (Counter-) Revolution’ in Alfredo Saad-Fiho and Deborah Johnson (eds.) *Neoliberalism: A Critical Reader* (Pluto Press, 2005) 13–19.

²⁴ See discussion in Chapter 2, Section 2.2.3.

the belief that the ‘neo-liberal turn’ in global governance has engendered widespread, profound and intolerable injustices for the world’s poor. It therefore follows Conor Gearty in arguing that human rights must be ‘subversive rather than supportive of such a brutal *status quo*’ in order to survive as a meaningful language of emancipation.²⁵

ACCUMULATION AND ITS DISPOSSESSED

Neo-liberal globalisation has undoubtedly served vested corporate and financial interests but in so doing it has also adversely impacted the lives of millions of the world’s poor. Global rules and agreements have in many instances had the effect of eroding social protection and expropriating local communities and primary producers of the means of subsistence. These processes, which the Marxist geographer David Harvey has termed ‘accumulation by dispossession’²⁶ form an integral and on-going dimension of the capitalist mode of production and have intensified in nature and scope in the contemporary era of neo-liberal globalisation.

Accumulation by dispossession is a multifaceted process that has involved, *inter alia*, the commodification and privatisation of land and the forceful expulsion of peasant populations, the conversion of various forms of property rights (common, collective, state, etc.) into exclusively private property rights, the expansion of the domain of intellectual property rights (IPRs) and the suppression of the rights of the commons.²⁷ These processes are evidenced in, for example, the WTO’s agreement on Trade-Related Intellectual Property Rights (TRIPs) requiring extensive protection of IPRs in the areas of medicine and agriculture, and IMF and World Bank loan conditionalities mandating the privatisation of state owned or commonly held property.

In response to these trends towards the enclosure of the global ‘commons’ (i.e. those shared spaces and forms of property relations that are not privatised or commodified) a number of what Karl Polanyi called ‘counter-movements’ have developed. Such movements, Polanyi argued, emerge spontaneously in response to the chaos and poverty caused by marketisation and seek to restrain the market through political and

²⁵ Conor Gearty, *Can Human Rights Survive?* (Cambridge University Press, 2006) 141.

²⁶ David Harvey, ‘Neoliberalism as Creative Destruction’ (2007) 610 *The Annals of the American Academy of Political and Social Science* 21, 34–35.

²⁷ *ibid*; David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005) 160.

institutional change.²⁸ In the era of neo-liberal globalisation such movements have increasingly become *transnational* or even ‘global’, both in terms of their composition and their aims and objectives.²⁹ The globalisation of communication systems has enabled the sharing of strategies and the development of alliances between geographically dispersed movements, facilitating the formation of a vast global ‘set of networks, initiatives, organisations and movements that fight against the economic, social, and political outcomes of hegemonic globalisation, challenge the conceptions of world development underlying the latter, and propose alternative conceptions’.³⁰

‘NEW RIGHTS ADVOCACY’

The last three decades have also witnessed ‘an increasingly expansive array of international instances’ that have generated socioeconomic rights jurisprudence.³¹ UN human rights bodies, agencies and special rapporteurs have steadily taken more steps to assist the development of more rigorous awareness, monitoring and implementation of socioeconomic rights.³² The UN Committee on Economic, Social and Cultural Rights (CESCR) was formed in 1987 to monitor States Parties’ compliance with their obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has subsequently developed an international jurisprudence attempting to clarify the content of these rights. The UN Commission on Human Rights has appointed special rapporteurs on education, food, housing and highest attainable standard of health. UN agencies such as the UNDP, the World Health Organization (WHO) and the FAO have

²⁸ Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 1944) 130.

²⁹ Barry K Gills, ‘Introduction: Globalization and the Politics of Resistance’ in Barry K Gills (ed.), *Globalization and the Politics of Resistance* (Macmillan, 2000) 3–11.

³⁰ Boaventura de Sousa Santos, ‘Beyond Neoliberal Governance: The World Social Forum as Subaltern Politics and Legality’ in Boaventura de Sousa Santos and Cesar A Rodriguez-Garivito (eds.), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005) 29.

³¹ Philip Alston, ‘Foreword’ in Malcolm Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge University Press, 2008) 3.

³² Paul J Nelson and Ellen Dorsey, *New Rights Advocacy: Changing Strategies of Development and Human Rights NGOs* (Georgetown University Press, 2008) 45–46.

also developed rights-based approaches that incorporate concern for socioeconomic rights.³³

The combination of growing forms of transnational resistance to neoliberal globalisation and efforts by international bodies to clarify the normative content of socioeconomic rights has created the material and ideational conditions for a global 'new rights advocacy' based around the protection and promotion of socioeconomic rights. Since the 1960s, international human rights advocacy had been devoted almost exclusively to civil and political rights and such advocacy still remains the predominant focus of Western human rights NGOs.³⁴ However, from the mid-1990s advocacy work around socioeconomic rights has become visible within human rights NGOs which have 'joined in human rights-driven social movements for food, health, education, water and other rights'.³⁵ This movement gained momentum towards the end of the 1990s as the global justice movement began to form and it 'became common to hear human rights language associated with criticism of neoliberal globalization'.³⁶

Over the past two decades, new human rights NGOs have been founded to focus on specific socioeconomic rights, such as the Food First Information and Action Network (FIAN) and the Centre on Housing Rights and Evictions (COHRE).³⁷ National advocacy organisations for socioeconomic rights have also emerged in Nigeria, Ecuador, New Zealand, Canada and many other locations.³⁸ Western Human Rights NGOs such as Amnesty International, Human Rights Watch and Human Rights First, which for decades worked exclusively on civil and political rights, also began to expand their mandates to encompass a range of socioeconomic rights.³⁹ UN-Sponsored conferences have brought diverse NGOs and civil society organisations together on the global stage.⁴⁰ The reaffirmation of the interdependence of all human rights at the Vienna World Conference in 1993 and subsequent world conferences in Copenhagen, Johannesburg and elsewhere provided further opportunities to discuss and support socioeconomic rights.⁴¹ A number of these

³³ *ibid.*, 46. ³⁴ *ibid.*, 13. ³⁵ *ibid.*, 14.

³⁶ Andrew Lang, *World Trade Law after Neoliberalism: Re-Imagining the Global Economic Order* (Oxford University Press, 2011) 81.

³⁷ See www.fian.org/ accessed 21 September 2013; www.cohre.org/ accessed 21 September 2013.

³⁸ Nelson and Dorsey (n 32) 70–71. ³⁹ *ibid.*, 31. ⁴⁰ *ibid.*

⁴¹ Daniel PL Chong, *Freedom from Poverty: NGOs and Human Rights Praxis* (University of Pennsylvania Press, 2010) 159.

actors have also converged at other international gatherings such as the annual World Social Forum (WSF) events, where they raised similar concerns in relation to globalisation and socioeconomic rights.⁴²

This book examines the role that this ‘new rights advocacy’ can play in relation to global justice movements that contest the ideologies, institutions and outcomes of neo-liberal transnational governance. As a number of scholars and NGO activists have noted, the language of socioeconomic rights is, in a number of respects, useful for contesting neo-liberalism. It is argued, for example, that socioeconomic rights imply certain forms of wealth and resource distribution, place limits on privatisation and commodification and challenge the logic of unfettered economic rationality.⁴³

Nevertheless, human rights have also come under attack from a number of sources, and notably from scholars and activists on the political left. It is argued that human rights, particularly in their legal form, seek only to ensure minimum levels of protection to the most marginalised and fail to address structural factors (political, social, cultural, economic, etc.) that produce and sustain injustice and inequality.⁴⁴ Thus, Samuel Moyn has described human rights discourse as ‘a powerless companion in the age of neoliberalism’, ill-suited and unable to deliver substantive socioeconomic equality.⁴⁵

Other critics have gone further and argued that human rights discourse is not only an ineffective tool for contesting neo-liberalism but itself constitutes part of neo-liberal hegemony.⁴⁶ Such critics stress the historic

⁴² Maria Luisa Mendonca, ‘Human Rights: Conference Synthesis on Economic, Social and Cultural Rights’ in William F Fisher and Thomas Ponniah (eds.), *Another World Is Possible: Popular Alternatives to Globalization at the World Social Forum* (Fernwood, 2003) 309–316.

⁴³ See, e.g., Shareen Hertel and Lanse Minkler, ‘Economic Rights: The Terrain’ in Shareen Hertel and Lanse Minkler (eds.), *Economic Rights: Conceptual, Measurement, and Policy Issues* (Cambridge University Press, 2007) 1; Oriol Miroso and Leila M Harris, ‘Human Right to Water: Contemporary Challenges and Contours of a Global Debate’ (2011) 44(3) *Antipode* 932, 933; Priscilla Claeys, ‘From Food Sovereignty to Peasants’ Rights: An Overview of Via Campesina’s Struggle for New Human Rights’ (*La Via Campesina*, 15 May 2013) 2. <http://viacampesina.org/downloads/pdf/openbooks/EN-02.pdf> accessed 3 January 2014.

⁴⁴ Alicia Ely Yamin, ‘The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda’ (2005) 27 *Human Rights Quarterly* 1200, 1221.

⁴⁵ Samuel Moyn, ‘A Powerless Companion: Human Rights in the Age of Neoliberalism’ (2014) 77(4) *Law and Contemporary Problems* 147.

⁴⁶ Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Penguin, 2007) 118–128.

role of economic liberalism in human rights discourse and its emphasis on individual appropriation and exclusive ownership of resources at the expense of equitable redistributive goals.⁴⁷ Furthermore, the form of rights discourse – which emphasises the formal equality and abstract freedom of juridical individuals – not only masks social inequalities but also makes those inequalities appear natural and legitimate.⁴⁸

This book adopts neither an uncritical nor a dismissive account of the potential of human rights discourse for challenging neo-liberal globalisation. Rather, following Alan Hunt, it will argue that while socioeconomic rights are neither perfect nor exclusive vehicles for emancipation, they can nevertheless operate as constituents of a strategy of social transformation when ‘they become part of an emergent “common sense” and are articulated within social practices’.⁴⁹

GLOBAL JUSTICE MOVEMENTS

This book bases its assessment of socioeconomic rights upon three case studies of global justice movements that have engaged the discourse of socioeconomic rights in their campaigning activity. These movements, discussed below, are *the food sovereignty movement*, *the access to medicines movement* and *the water justice movement*.

Whilst a number of different case studies could have been chosen, these three were selected on the basis that they share a number of key features that make them appropriate for this enquiry. First, all of these movements can be understood as truly *global* in nature, spanning every continent and involving actors and movements ranging from more formally structured Non-Government Organisations (NGOs) to grass-roots collectives.

Second, these movements challenge particular regimes associated with neo-liberal global governance, as well as the values that inform them. In particular, each of these movements seeks to contest the logic of commodification, privatisation or liberalisation in relation to resources that are essential to human dignity and indeed basic survival.

⁴⁷ John Charvet and Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order* (Cambridge University Press, 2008) 11–12.

⁴⁸ Karl Marx, ‘On the Jewish Question’, reproduced in Joseph O’Malley (ed.), *Marx: Early Political Writings* (Cambridge University Press, 1993) 28.

⁴⁹ Alan Hunt, ‘Rights and Social Movements: Counter-Hegemonic Strategies’ (1990) 17(3) *Journal of Law and Society* 309, 325.

Third, these movements engage substantially with the discourse of socioeconomic rights, often drawing on standards recognised under international law.

And finally, all of these movements contain at least significant components that are engaged in *transformative politics*, by which I mean they are concerned not only with winning piecemeal reforms within the existing global political-economic structures, but rather seek to fundamentally transform and transcend those structures. It is in that sense that these movements can be understood as potentially counter-hegemonic.

A NEO-GRAMSCIAN FRAMEWORK

In assessing the counter-hegemonic potential of socioeconomic rights discourse this book will draw theoretical insights from the neo-Gramscian approach to international relations. The neo-Gramscian framework will be more fully explained in Chapter 1, but for now it will suffice to note that, for neo-Gramscians, a hegemonic world order is understood more broadly than the economic or military preponderance of a powerful state or states and instead involves ‘a coherent . . . fit between a configuration of material power, the prevalent collective image of world order (including certain norms) and a set of institutions which administer the order with a certain semblance of universality’.⁵⁰ In other words, hegemony requires ideological legitimisation and at least a degree of consent from some sections of the subaltern classes.

For neo-Gramscians, the ideological legitimisation of neo-liberal globalisation takes place in the sphere of ‘global civil society’, understood roughly as the global domain of uncoerced human association and the sets of relational transnational networks that fill that space.⁵¹ Whilst global civil society is a discursive space that helps to reproduce global hegemony, it is also viewed as a platform to contest dominant models of globalisation.⁵² Human rights remain ubiquitous within global civil society today.⁵³ As already noted, there is disagreement over the counter-hegemonic potential

⁵⁰ Robert W Cox, ‘Social Forces, States and World Orders: Beyond International Relations’ (1981) 10(2) *Millennium: Journal of International Studies* 126, 139.

⁵¹ Michael Walzer, ‘The Civil Society Argument’ in Chantal Mouffe (ed.) *Dimensions of Radical Democracy: Pluralism, Citizenship, Community* (Phronesis, 1992) 89.

⁵² Lucy Ford, ‘Challenging Global Environmental Governance: Social Movement Agency and Global Civil Society’ (2003) 3(2) *Global Environmental Politics* 120, 129.

⁵³ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism* (Routledge, 2007) 33.