The future of economic and social rights is unlikely to resemble its past. Neglected within the human rights movement, avoided by courts and subsumed within a single-minded conception of development as economic growth, economic and social rights enjoyed an uncertain status in international human rights law and in the public laws of most countries. However, today, under conditions of immense poverty, insecurity and political instability, the rights to education, health care, housing, social security, food, water and sanitation are central components of the human rights agenda. The Future of Economic and Social Rights captures the significant transformations occurring in the theory and practice of economic and social rights in constitutional and human rights law. Professor Katharine Young brings together a group of distinguished scholars from diverse disciplines to examine and advance the broad research field of economic and social rights that incorporates law, political science, economics, philosophy and anthropology.

Katharine G. Young is Associate Professor of Law at Boston College Law School. She has published widely in the fields of public law, human rights and constitutionalism and is the author of Constituting Economic and Social Rights (2012) and editor of The Public Law of Gender (2016) with Kim Rubenstein. She completed her doctorate in law at Harvard University and was a fellow at Harvard’s Justice, Welfare and Economics program.
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Edited by
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Boston College
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ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CCC</td>
<td>Constitutional Court of Colombia</td>
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<tr>
<td>CCSA</td>
<td>Constitutional Court of South Africa</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<tr>
<td>CESC</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CSO</td>
<td>community-based organization</td>
</tr>
<tr>
<td>ESR</td>
<td>economic and social right</td>
</tr>
<tr>
<td>GHE</td>
<td>Government Health Expenditure</td>
</tr>
<tr>
<td>GNP</td>
<td>Gross National Product</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>MDG</td>
<td>Millennium Development Goal</td>
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<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OP-ICESCR</td>
<td>Optional Protocol</td>
</tr>
<tr>
<td>PIL</td>
<td>public interest litigation</td>
</tr>
<tr>
<td>SCI</td>
<td>Supreme Court of India</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
</tr>
<tr>
<td>SFT</td>
<td>Supreme Federal Tribunal of Brazil</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
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<tr>
<td>VAT</td>
<td>value-added tax</td>
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<tr>
<td>WHO</td>
<td>World Health Organization</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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FOREWORD

AMARTYA SEN

The acceptance of economic and social rights as legitimate categories of claims has emerged through a process of slow progress. The challenges have come from the tendency to dismiss pre-legalized rights as “imaginary rights” (as Jeremy Bentham insisted in 1791–92), and also from refusing to include economic and social claims within the corpus of legitimate human rights (as continued to happen up to the twentieth century). Both the battles were ultimately won - the first much aided by the clarification (provided by Herbert Hart) that people “speak of their moral rights mainly when advocating their incorporation in a legal system” and the second with the growing understanding that economic and social rights are not really dissimilar to claims of liberty, which too require state support for universal fulfilment (an understanding that slowly consolidated John Stuart Mill’s extensive analysis of the demands of liberty).

Even though this has been a hard-fought process with slow vindication, the basic ideas and identifications involved were already present in rudimentary form in the writings of Thomas Paine, Mary Wollstonecraft and the Marquis de Condorcet, who were contemporaries of Jeremy Bentham and of other sceptics, such as Edmund Burke. The history of economic and social rights in winning the space they are now able to occupy has been one of long arguments and resistance to strong counter-arguments. The progress of inclusion and use of further aspects of economic and social rights will undoubtedly continue, but it would be wrong to expect that the process will be uncharacteristically easy, or particularly speedy.

While the editor of this volume of essays – Katharine Young – is right to argue that “the future of economic and social rights is unlikely to resemble its past” (for one thing, as Young points out, “the rights to education, health care, housing, social security, food, water and sanitation” are already “increasingly at the top of the human rights agenda”), there are other concerns and other claims yet to be fully scrutinized that
would demand attention in a similar way that the now-accepted claims have historically secured their place. The challenging subject of human rights legislation is not ideally suited for the impatient.

In this thoroughly researched and highly illuminating collection of articles, the authors, led by Katharine Young, have addressed a wide variety of problems that would have to be faced for an adequate understanding and satisfactory use of ideas of economic and social rights in the future. This is a world of claims, disputations and their assessment, including necessary speculations. People interested in this important area of study cannot but be impressed by the power and reach of the contributions that Katie Young has helped to generate for this wonderful collection. We have excellent reason to be grateful.
ACKNOWLEDGEMENTS

This book’s examination of economic and social rights comes at the end of a series of long-standing conversations with a wide range of participants. These conversations became very focused during the conference The Future of Economic and Social Rights held at Boston College in April 2016. I thank the Clough Center for the Study of Constitutional Democracy, and Boston College, for supporting this event. My special thanks also go to Amartya Sen, who delivered the conference keynote to a massive – and massively enthusiastic – gathering of listeners. His presentation, ‘Rights in a Global World’, addressed in one speech a series of pressing and consistent challenges to human rights in our contemporary global context. Through the force of deep analytical insight, Sen pointed out the cogency of an ethics of rights, fully inclusive of economic and social rights. Addressing several dogged puzzles – of the processes of public reason, of the grasp of imperfect obligations and of the advantage of accepting the inevitability of an incomplete as opposed to perfect justice – he provided a series of clear-sighted answers. As his previous contributions have done, Amartya Sen’s insistence upon an ethics that can make room for the basic importance of human freedom, alongside corresponding social responsibilities, casts a hopeful and much clarified light on the future of economic and social rights as a discourse and ethics of justice.

Indeed, each of the following chapters examines economic and social rights as discourses and demands of social justice (mirroring Sen’s emphasis), or as the institutions or norms of constitutional and international human rights law (which are related, but raise their own distinct concerns). With respect to each of these categories, economic and social rights have been beset by many new challenges since that first conference, not least by the abrupt change in leadership in the United States after November 2016. I thank the participants for engaging in such in-depth and long-term inquiry, and for anticipating many of the changes to come. We don’t yet know what the future holds, but this book’s ambition

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serves both to prepare us for, and remind us of, different possible outcomes.

I am grateful for the many participants of this conference in other ways. Scholars came from multiple disciplines, ready to translate and to explain some of their basic assumptions. Participants also came from various countries, and from different professional contexts, in order to share their insights. The conference was thus an extraordinary opportunity to develop a new perspective on this growing field of study. I thank several members of the UN Committee on Economic, Social and Cultural Rights, including Mohamed Ezzeldin Abdel-Moneim, Olivier De Schutter, Zdzislaw Kedzia, Heisoo Shin and Rodrigo Uprimny, as well as UN Human Rights Committee member Gerald L. Neuman. I also thank other participants, who provided vital commentary on the presented chapters, including Tiago Fidalgo de Freitas, William Forbath, Sandra Fredman, Aeyal Gross, Karl Klare, Tara Melish, Frank Michelman, Sharmila Murthy, Aoife Nolan, Bruce Porter, Mark Tushnet and Lucy Williams. From Boston College, I thank the contributions of Hugh Ault, Paulo Barrozo, Frank J. Garcia, David Hollenbach, Daniel Kanstroom, M. Brinton Lykes, Vlad Perju, Diane Ring and the support of Dean Vincent D. Rougeau.

It is, of course, impossible to mention the many others who have influenced this book, but I thank the opportunity for conversations structured by the Center for Human Rights and International Justice at Boston College, the international Social and Economic Rights Project (iSERP) at Northeastern University and the Economic and Social Rights Group (ESRG) at the University of Connecticut.

The editorial assistance of John Berger of Cambridge University Press has been very helpful, as has the research support provided by Boston College JD students Kelsey Rae Brattin, Erica Coray, Jonathan Girard, Rebecca Gobeil and Sarah Mulrean. And lastly, I must acknowledge the support of my extensive and extended family, including two patient little people with very strong opinions about rights and their future.