Our place in the world: conceptualizing obligations beyond borders in human rights-based approaches to health

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OUR PLACE IN THE WORLD: CONCEPTUALIZING OBLIGATIONS BEYOND BORDERS IN HUMAN RIGHTS-BASED APPROACHES TO HEALTH*

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

— Universal Declaration of Human Rights, Article 28

"Developing countries" is the name that experts use to designate countries trampled by someone else's development.

— Eduardo Galeano[1]

ABSTRACT

The case of Haiti's devastating earthquake and the reactions it has elicited sharply illustrate an array of seemingly dichotomous ways of understanding obligations of "international assistance and cooperation," which are taken up by authors in this issue. First, there is a tension between dealing with immediate humanitarian needs and addressing underlying structural causes. Second, there is the related dichotomy between compassion/charity and the accountability for legal obligations that a human rights approach to health and development demands. Third, within a framework for accountability, there is a tension between an ahistorical understanding of international responsibility — based purely on the self-evident need of fellow human beings — and a contextually-rooted accountability. Finally, the situation of Haiti begs the question of whether we can address immense human suffering in the world through a strongly statist model or whether we require a more cosmopolitan understanding of ethical and legal obligations across borders. Drawing on the Critical Concepts articles in this issue, this essay briefly explores some of these tensions, and the potential contributions and limitations of applying a human rights framework to advance global health.

INTRODUCTION

On January 12, 2010, Haiti suffered a devastating earthquake. Over 230,000 people were killed, nearly 200,000 more were injured, and up to 1.7 million have been displaced.[2] In the immediate aftermath of the quake, Port-au-Prince seemed to resemble a modern version of Dante's *Inferno*, with people trapped and crushed to death beneath mangled structures, bodies piled beside survivors, and hungry dogs picking at human cadavers. The constant stream of televised images of this unimaginable suffering no doubt contributed to the enormous outpouring of

*This issue marks the last *Health and Human Rights* issue with this editorial team, as well as the last issue in the thematic series setting out cross-cutting concepts in human rights-based approaches to health. I have begun this final synthesis essay with the example of Haiti as a tribute to my colleagues, Paul Farmer and Evan Lyon, because I have been so moved by their work there. I am deeply grateful to them both for sharing their inspiration and reflections on this situation of immense tragedy and injustice.

assistance from ordinary people around the world. Innovations in philanthropy, including the technology that enabled people in the United States to charge a US$10 donation to their cell phone accounts via text message, were questioned with regard to their effectiveness, but certainly encouraged contributions from people who might not have donated through traditional means.[3] Despite economic hard times, people in wealthy countries, including the United States, were very generous. On the other hand, the total amount of contributions paled in comparison to the over US$20 billion handed out in bonuses the week of the quake to the same community of top Wall Street executives responsible for precipitating the recent financial crisis in the United States, and, in turn, much of the world.[4]

A far more powerful earthquake in Chile just weeks later, which exacted a much smaller human toll, demonstrated yet again that so-called "natural disasters" are not natural at all.[5] The devastating impact of Haiti's quake was due not only to a lack of building codes and housing policy in Haiti, but also a lack of development and environmental policy. Haiti's fallow lands and unsustainable urban migration follow decades of deforestation and concomitant erosion.[6] Haiti illustrates dramatically the intimate links between environmental degradation and poverty.

What is perhaps most striking about the response to the earthquake in Haiti is that it was based entirely on charity — charity by wealthy countries and their citizens. Assistance to Haiti was not seen as a matter of legal obligation.[7] This treatment of Haiti as an empty black space for the infusion of foreign generosity is curious, particularly given the roles of France and the United States in Haiti's history. Under France's brutal colonial rule, slaves were continuously brought from Africa to labor on plantations in order to satisfy much of Europe's consumer demand for coffee and sugar consumption.[8] The United States not only occupied Haiti for its own economic interests between 1915 and 1934, but subsequently propped up multiple dictators who plundered the country for decades.[9]

The case of Haiti sharply illustrates an array of seemingly dichotomous ways of understanding international obligations, which are taken up by authors in this issue. First, there is a tension between dealing with immediate humanitarian needs and addressing underlying structural causes. For example, in Haiti, the organization ONE International quickly began to stir up support for debt forgiveness in the aftermath of the quake, and there was some discussion about "governance"; the overwhelming majority of initiatives, however, focused on meeting the immediate needs of desperate people.[10] Second, there is the related dichotomy between "compassion" in the form of charity versus the accountability for legal obligations that a human rights approach to health and development demands. Third, within a framework of accountability, there is a tension between an ahistorical understanding of international responsibility — based purely on the self-evident need of fellow human beings — and accountability that is rooted in context. Finally, the situation of Haiti begs the question of whether we can address immense human suffering in the world through a strongly statist model or whether we require a more cosmopolitan understanding of ethical and legal obligations across borders. Drawing on the Critical Concepts articles in this issue, this essay briefly explores some of these tensions, and the potential contributions and limitations of applying a human rights framework to advance global health.

CHARITY VS. ACCOUNTABILITY: RELIEF VS. STRUCTURAL REFORM

As all of the Critical Concepts pieces in this issue point out, under international human rights law, wealthy governments have not only moral but also legal obligations to provide "international assistance and cooperation."[11] Yet efforts to advance global health and development, as well as to address humanitarian emergencies, are generally treated as issues of beneficence. Benjamin Mason Meier and Ashley Fox write of the "fleeting political initiatives [aimed at advancing global health] funneled largely through foreign assistance programs" and assert that "such policies have been crafted through rhetorical pleas for charity rather than binding obligations of law."

On the one hand, it is unquestionably true that development assistance for improving health in the global South has expanded markedly in the past 20 years. Resources quadrupled between 1990 and 2007, and the rate of growth increased substantially after 2002.[12] However, much of the influx of resources has not been from governments but from private philanthropy. Moreover, according to a comprehensive review published in the *Lancet* in 2009, "Although the scale-up of global health resources from the Bill & Melinda Gates Foundation is striking, the magnitude

of resources that US NGOs mobilised from other private philanthropy was greater. In particular, corporate drug and equipment donations have expanded substantially."[13] Philanthropy is of course subject to the vicissitudes of people's largesse, which has been severely strained since the economic crisis that emerged after the period under review in the *Lancet*.

Further, even when governments increase aid commitments, they tend to eschew language that would imply legal accountability. In arguing for the importance of conceptualizing health as a right in foreign policy, Flavia Bustreo and Curtis Doebbler note elsewhere in this issue that

> [w]hen Norwegian Prime Minister Jens Stoltenberg pledged US$1 billion for global maternal and child health during the High Level Segment of the 62nd UN General Assembly and when global leaders announced a series of new financing measures worth US$5.3 billion, neither referred to the existing obligations of states to cooperate to achieve greater respect for the right to health. … As a result, even these financial contributions, however laudable, appear to be voluntary contributions rather than the fulfillment of a legal obligation.

Yet, as most of these efforts were directed at elements that constitute core or basic obligations relating to the right to health, Bustreo and Doebbler suggest that such efforts could have been framed as fulfilling obligations of international assistance and cooperation. The ESC Rights Committee has been absolutely clear: "For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties and other actors in a position to assist, to provide 'international assistance and cooperation, especially economic and technical' which enable developing countries to fulfill their core and other obligations."[14]

The selection of a charity or humanitarian assistance model as opposed to a rights-based model has implications beyond the avoidance of legal obligation. For example, in the case of Haiti, a charity-based model tends to focus on immediate needs rather than underlying causes. The more pitiable — and in many ways dehumanized — the people in front of us or on our television screens, the greater the pull of charity. Addressing the underlying structural causes of the devastation of Haiti's quake — or of a similar situation — requires a different relationship with fellow human beings that recognizes their agency to address the political, economic, and social policies that lead to violations of their rights, including their rights to health. The Center for Economic and Social Rights (CESR) asserted in a briefing paper a month after the Haiti quake:

> It is precisely the long-standing failure to tackle Haiti's chronic levels of economic and social rights deprivation that made the impact of the earthquake so devastating. Precarious housing conditions in the capital, where almost nine in 10 people lived in slums, directly contributed to the staggering death toll and to the displacement of more than one million people with even scarcer access to food, water and shelter than before. The devastation wrought by the earthquake, and the faltering responses to it, should make the international community question the effectiveness of development policy in Haiti, and the extent to which it has tackled the structural factors which have made economic and social rights such an elusive promise for most Haitians.[15]

A human rights framework would call for holding the government — and other actors — accountable for the deficits in governance and institutions within Haiti that created the "perfect storm" that caused this earthquake to be so devastating.[16]

In debates about development and humanitarian assistance to Haiti and elsewhere, much is made of the corruption of local governments and the ineffectiveness of aid — both clearly issues of human rights. Haiti is indeed a prime example of how development aid was diverted by and fueled the Duvalier dictatorship.[17] In a human rights framework, corruption represents "leakage" of available resources for economic and social rights, including the right to health.[18] However, donors also bear responsibility for aid ineffectiveness, as the Paris Principles acknowledge.[19] The World Bank's own review of its health assistance between 1997 and 2008 showed that progress had been poor despite increased spending from US$6.7 billion in 1997 to US$16 billion in 2006.[20]

However, as Farmer and Bertrand argued about Haiti in the 1970s:

> Graft and thievery were only part of the story. Several studies suggested that the effects of international largesse as has actually reached its intended beneficiaries has been deleterious to the local economy. For example, cereals donated under USAID's Food for Peace program were sold in virtually every Haitian marketplace, undermining local farmers' ability to sell their own grains.[21]

In a human rights framework aimed at addressing structural causes, aid must support rights to food security, rather than undermining it through charity-based handouts.

Addressing underlying causes also demands a greater emphasis on how governments of more powerful countries in the North shape the possibilities for realizing human rights, including health, in the global South. As Emily Mok observes, obligations of wealthy countries include not just duties to *fulfill* human rights in relevant international human rights treaties by providing funding; they also include obligations to *respect* rights by refraining from certain actions, and to *protect* rights from interference by third parties, including private actors such as pharmaceutical companies. Mok cites specific policy examples that can be construed to violate obligations to respect the right to access essential medicines. One example is that of the US placing on its US Trade Representative Watch List (known as the Special 301) countries that attempt to exercise compulsory licensing; this practice, Mok notes, "would effectively pressure US trading partners, especially developing countries, into acting in accordance with US preferences in order to gain or maintain a favorable trading position with the US." Mok points out that US preferences favor intellectual property protections that often create barriers to access to essential and other medicines.

Meier and Fox also elaborate in this issue on the tripartite framework of respect, protect, fulfill, that is set out under international law, noting:

> This [need to respect] would place legal responsibility on developed states and international financial institutions to refrain from such actions as enforcing trade regimes with inequitable subsidies, preventing parallel importation of essential medicines, and privatizing services in ways detrimental to sustainable health systems.

Such detrimental effects, they note, currently occur in neoliberal health sector reforms. They cite a report by Paul Hunt, the first UN Special Rapporteur on the Right to the Highest Attainable Standard of Health, who asserted:

> States are obliged to respect the enjoyment of the right to health in other jurisdictions, *to ensure that no international agreement or policy adversely impacts upon the right to health*, and that their representatives in international organizations take due account of the right to health, as well as the obligation of international assistance and cooperation, in all policy-making matters.[22]

If we are concerned about impacts on health, we must contemplate a broad array of donor state obligations to "do no harm" that go far beyond the health sector. For example, neoliberal tenets affect labor, trade and fiscal policy, among other things, which in turn have enormous impacts upon health, including but not limited to primary care.

Other examples abound. For instance, illicit financial flows, including commercial tax evasion, lead to an estimated tax loss of US$160 billion each year, which is approximately twice the total amount of annual development aid. Moreover, illicit flows often cripple the ability of poor countries to provide health and other services to the poor, and lead to more aid dependency because they create shortfalls between resources for development and the incoming revenues. According to Raymond Baker, the director of Global Financial Integrity, illicit financial flows "may be [the] most damaging condition affecting global poor."[23] It is corporations in the North that benefit from mispricing of trade, secrecy jurisdictions and the like, and governments in the North that fail to *protect* health and other rights through the domestic laws and global financial regulations they establish.[24]

Obligations to respect and protect human rights, including the right to health, require addressing these gaping holes in accountability that affect the ability of poor countries to uphold the right to health, as well as other human rights.

AHISTORICAL VS. CONTEXTUALIZED ACCOUNTABILITY

The UN Committee on Economic, Social and Cultural Rights (ESC Rights Committee) has made clear that "the maximum extent of available resources" applies not just to the resources within a state, but also to "those available from the international community through international cooperation and assistance."[25] But, as authors in this issue note, both the extent of international obligations to provide resources and the standards to which donor states should be held have not been adequately developed in international law.

For example, evidence suggests that although "there is much discussion among donors about increasing funds transferred to developing countries through general health-sector support," it remains a very small part of development and health assistance.[26] Thus, as all of the authors rightly assert in their articles in this issue, the current development assistance framework cannot meet the essential health needs of people living in the global South. But how far do resource-support obligations extend?

For the most part, aid figures emerge from political negotiations and have little connection to the historical relations among states. In practice, this ahistorical notion of international responsibility lends itself to target setting in a vacuum. For example, Bustreo and Doebbler cite what they call "the most important resource pledges that states have made in recent years and their commitment to increase development resources" as the consensus document that emerged from the 2002 Financing for Development Conference held in Monterrey, Mexico. This commitment called for an increase in official development assistance to 0.7% of states' gross national income by 2015. Bustreo and Doebbler note that states are not on track to meet these commitments.[27]

Nor has the so-called "partnership for development" that is the focus of Millennium Development Goal (MDG) 8 produced the anticipated increases in global resources for critical development needs, including maternal-child health and water and sanitation. Although MDG 8 was notably not tied to any specific targets and therefore has been called an "accountability-free zone," the other MDGs that correspond to development goals for the global South did set targets and establish indicators. Thus, theoretically — because in practice we do not have the data necessary to estimate financing gaps with any precision — the resources required under MDG 8 might be those necessary to reduce child mortality by two-thirds, reduce maternal mortality by three quarters, etc. For example, Women Deliver calculates that an additional US$12 billion of international assistance is required just to meet MDG 5, relating to maternal health.[28] Similarly, the requirements of what might be needed to support what is identified as "primary health care systems" by Meier and Fox, "basic health needs" by Bustreo and Doebbler, or "core content of the right to health" by Gorik Ooms and Rachel Hammonds, might take practical shape, at least theoretically, through costing exercises and algorithms, as Ooms and Hammonds suggest.

However, even if this were feasible in practice, these figures do not include consideration of the historical debt that donor countries owe to many countries in the global South. For example, looking just within the health sector, wealthy countries continue to decimate public health systems in the global South by attracting health care workers away from low-paying poor conditions to meet health care personnel shortages in their own countries. Although health care workers often send back significant remittances, these do not sufficiently take into account the devastation of public health as what Meier and Fox identify as "public good." When there is evidence that a northern government — or private entities sanctioned by a northern government — targeted health care workers in specific countries, an accountability that considers historical impacts might require some form of restitution; it might also require adopting codes of conduct that will increase the likelihood that policies are consistent with the promotion of the right to health.[29] Calculating the amount of restitution would of course be complex, although Norway is already considering adopting a system of payments to offset ongoing losses derived from migration of health personnel. In short, we could certainly imagine a framework of account-

ability where such restitution was incorporated into ongoing international assistance and cooperation regarding health.

Stacey Boyd Lee's proposal in this issue regarding use of the Alien Tort Statute (ATS), which grants foreign trial participants the right to pursue claims of human rights violations in US courts, exemplifies a notion of accountability for restitution. As Lee describes, given a holding by the Second Circuit Court of Appeals, the ATS presents a mechanism to enforce substantive "informed consent" as a universally recognized human rights norm. Boyd's article only addresses the possibility of holding US-based pharmaceutical companies accountable for violations of informed consent in clinical trials conducted abroad. However, she notes that this case builds on the Second Circuit's application of the ATS to other human rights-related claims, including against US corporations who allegedly actively collaborated with the South African government to perpetuate the repressive system of apartheid.

In assigning accountability for providing resources, it seems appropriate to consider past relationships between and among states, not just the actions of corporations. Yet aside from precedents that require countries that have unlawfully invaded other countries to give compensation for damage to lives, property, and infrastructure (including water, sanitation, and health infrastructure), foreign obligations for underwriting economic and social rights have been divorced from historically-rooted accountability.[30] I do not want to minimize important questions of causality, which are real and complex; yet, there is also a basic conceptual barrier to defining historical accountability in today's neoliberal discourse on development.

Poverty, in international development these days, is a matter of state failure rather than international injustice. The Uruguayan author Eduardo Galeano puts the importance of historicizing accountability forcefully:

> [P]ower recalls the past not to remember but to sanctify; to justify the perpetuation of privilege… [e]xoneration requires unremembering. … To turn infamies into feats, the memory of the North is divorced from the memory of the South, accumulation is detached from despoliation, opulence has nothing to do with plunder. Broken memory leads us to believe that wealth is innocent of poverty.[31]

In determining accountability for civil rights atrocities within and between countries, the human rights community has insisted upon historical truth as a precondition to peace and justice, even when that historical truth is messy and complex. In economic and social rights, we are too often ready to accept a justice that is detached from history.

Contextualizing accountability carries implications for the duration as well as the amount of international assistance. Ooms and Hammonds note in their article that "sustainability" in international heath has generally meant achieving financial self-reliance as quickly as possible, and thereby limiting the scope of interventions that are considered feasible. However, historically situating accountability denaturalizes these assumptions, which are held by international experts, policymakers and lenders alike. That is, if the decimating impact of neoliberal policies foisted on health sectors and societies in general were taken into account — to say nothing of calculating the historical impact of colonial exploitation, dependent development, and conflict fueled by international forces — expectations of rapid progress on self-reliance immediately would appear untenable as well as wholly unreasonable.[32]

Although it does not *per se* tether responsibility to historical roles, Ooms and Hammonds suggest that the Global Fund has changed the development paradigm in this regard in that it contemplates an ongoing international assistance. Arguing for the Global Fund as a model for global health governance, they cite Dr. Kazatchkine, the Executive Director of the Global Fund, asserting that the Global Fund has introduced "a new concept of sustainability. One that is not based solely on achieving domestic self-reliance but on sustained international support as well."

STATIST VS. COSMOPOLITIAN VIEWS OF JUSTICE: STATE-CENTERED ACCOUNTABILITY VS. CHANGING THE GLOBAL ARCHITECTURE

The utilitarian philosopher, Peter Singer, writes passionately about the ethical obligations of wealthy individuals in the North to donate to poor individuals in the South. In his most recent book, *The Life you Can Save*, Singer poses this example: You are walking past a shallow pond and notice that a small child has fallen

into the water and is about to drown. Should you wade in and rescue the child even though it will mean ruining your shoes and getting your clothes wet? Singer argues that the moral intuition, that it is unethical not to save the child, stems from the principle that "if it is in your power to prevent something bad from happening without sacrificing anything nearly as important, it is wrong not to do so."[33] He then asserts that suffering and death caused by lack of essentials such as health care and food, for example, are bad, and that aid is an effective way to alleviate that suffering. Setting aside empirical arguments about the effectiveness of aid, Singer's proposal might lead to the conclusion that many middle-class people in the United States or other industrialized countries could give away most of their incomes without sacrificing anything nearly as important as food or healthcare for destitute people in the global South. Singer recognizes that this is unrealistic; he settles on 5% of annual income for the middle class and considerably more for the very wealthy, in order to prevent people from failing to act simply because the scope of their obligation appears too daunting.

The basis of Singer's argument is that morality requires impartiality. That is, utilitarianism adds up the satisfaction of preferences — there is a strong preference not to be sick and suffering — and it is not morally relevant whether the utility corresponds to a child in front of you or that of a child halfway across the globe. Thus, Singer writes, parents are not justified in providing luxuries for their children ahead of the basic needs of others.[34]

Let us imagine this theory extrapolated from individuals to governments. Is it ethically, if not legally, intolerable for countries to subsidize luxuries for their citizens when destitute people in the global South are suffering and dying? Since subsidies are a factor of political choices about what to tax and at what rate, we might imagine luxury taxes on items such as yachts or cars that cost over a certain threshold being raised to 90% or more, and the proceeds given to support basic needs of people in the global South. Similarly, tax subsidies for Christmas tree production in the United States could be eliminated and the gains used to support agricultural production in resource-poor settings.

However, rights theory is not impartial. Despite the intuitive appeal of slogans proclaiming we are all "citizens of the world," rights are generally conceived in political philosophy and constitutional theory in terms of social contracts between individuals and their governments. Under international law, the primary duty-bearer is the state and, conversely, the state bears a primary duty under international law to the subjects within its own territories.

Norman Daniels, a Rawlsian philosopher whose "challenge" Ooms and Hammonds take up in their article, argues for navigating a fine line between "the pull of cosmopolitan intuition" and "strongly statist versions of relational justice" to advance global health justice, but is skeptical that human rights can offer an adequate response.[35] Ooms and Hammonds assert that international human rights law does indeed provide for such a balance because, to be meaningful at all, obligations of international assistance and cooperation must be understood to require aid that meets the minimum core content of the right to health.

The question, of course, is whether it will be meaningful at all. It is no coincidence that international declarations regarding donor state obligations of international assistance and cooperation are extraordinarily weak. The Paris Principles on Aid Effectiveness, for example, emphasize "harmonization" and "alignment" without binding commitments based on rights.[36] The Accra Agenda for Action is somewhat stronger than the Paris Principles, calling for assistance to be done "in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability."[37] However, this wording is not followed by the elaboration of specific obligations of support.

In addition to creating duties to use resources to provide international assistance, there are other challenges to balancing domestic and extra-territorial obligations. For example, if a country provides agricultural subsidies or tariff protections, does respect for human rights require that the benefits that domestic farmers and manufacturers enjoy through such protections be weighed against the detrimental impact they effect on food, health, and other economic and social rights in another country or in multiple other countries? Although it is not binding, a recent report of the United Nations High Level Task Force of the Working Group on the Right to Development (RTD Task Force) indeed seems to suggest that there should be some form of balance between domestic and extra-territorial concerns, as they "implement policies that affect persons not strictly within their jurisdiction."[38]

The most recent RTD Task Force report also explores the question of collective obligations for development, i.e. when "states act collectively in global and regional partnerships."[39] Several authors in this issue also argue that wealthy countries in the North are collectively responsible for creating environments that affect patterns of health and ill-health in the global South. For example, Ooms and Hammonds note that studies done by World Bank economist Branko Milanovic find that wealth inequalities between countries — expressed as an inter-country Gini Coefficient — are steadily growing. Ooms and Hammonds argue in this issue that

> [w]ealth inequalities between nations have a direct impact on their respective health inequalities. What governments can spend on the distribution of health-related goods depends on their revenue, which is affected by their wealth. The increase in wealth inequality between nations, with its direct effect on health inequity is, we argue, a matter of global responsibility.

In his writings, Thomas Pogge has proposed an argument to explain why wealthy countries might be held responsible for these growing inequalities and for the poverty and its consequences suffered by millions in the global South.

Unlike Singer, Pogge does not focus on moral obligations of aid. Rather he argues that powerful northern governments are responsible for establishing global rules and a global international order, which are egregiously unfair. This international order influences not just structural adjustment but also labor standards as well as environmental and protectionism rules throughout the global South, which in turn disproportionately affects the health and rights of poor and vulnerable populations in those countries.[40] Pogge argues that because extreme poverty represents flagrant violations of human rights, including health, Northern governments should be held collectively responsible for "doing no harm" through their policies and institutions.

Given that under the Universal Declaration of Human Rights, "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized," Pogge argues that it is incumbent upon such Northern governments to restructure the grievously unjust global institutional order they have put in place.[41] He also notes that 1% of the national incomes of the high-income countries — which would require a modest readjustment of institutional arrangements — would suffice to end severe poverty and all of its attendant health consequences worldwide.[42] For example, stemming 10% of illicit financial flows from the global South would easily free up the US$50–60 billion/year required to meet the MDGs, according to estimates from the World Bank.[43]

Indeed, the closest that Northern governments have ever come to assuming some form of collective responsibility to end poverty was in 2000, when 189 countries affirmed in the Millennium Declaration that "[w]e recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level."[44] As noted above, this promise is far from being fulfilled.

However, there is a separate question raised in this issue of how compliance with such a collective obligation of "international assistance and cooperation" could be measured. Ooms and Hammonds suggest a Global Fund-type pooled mechanism to meet core right to health obligations whereby individual states' fulfillment of their obligations could be measured through contributions. Meier and Fox, in contrast, argue that the international community has "collective international legal obligations commensurate with a public health-centered approach to primary health care." To measure compliance with these collective obligations of the international community, it is presumably necessary to examine outcomes of collective decisions rather than just the conduct of individual states.

The RTD Task Force Report proposes criteria, subcriteria, and indicators to measure such collective decisions and rules. For example, collective responsibility for international arrangements includes the obligation "to maintain stable national and economic financial systems." Among the indicators proposed for measuring this criterion are international macroeconomic policy coordination, international commodity prices for food staples, and "equity, non-discrimination and right to development objectives in IMF, World Bank and WTO programmes and policies."[45] Such indicators, if they were given teeth, could represent

an important effort to make tangible and concrete obligations that challenge the real exercises of power that systematically determine possibilities for health and well-being across much of the world. However, the status of the right to development has long been unclear in international law, in part because the very concept is subversive of a global architecture that perpetuates inequalities and dependency.

CONCLUSIONS

The authors in this issue share a common view that not enough is being done by wealthy countries to ensure that their policies and laws respect, protect, and fulfill the health rights of poor people living in the global South, including their oversight of multinational corporations and international institutions. However, they come to very different conclusions about what needs to be done, and about the potential limitations of an international human rights framework to address the problems that they identify. Bustreo and Doebbler simply call for educating diplomats and policymakers regarding existing human rights obligations which should be taken into account in foreign policymaking. Mok implicitly regards international human rights law as a promising framework for access to medicines. Ooms and Hammonds also consider that existing human right law provides a "compass" by which to assess states' obligations, arguing for the Global Fund-type mechanism of global health governance. Meier and Fox assert that obligations need to be re-conceptualized in terms of collective rights in order to define appropriate global governance policies. For her part, Lee views international solutions as untenable and believes the ATS will prove more fruitful in addressing at least a small portion of violations regarding the right to health involving clinical trials.

Increasingly, advocates are articulating arguments based on extra-territorial obligations, and treaty-monitoring committees are recognizing such obligations in relation to health as well as other rights.[46] The RTD Task Force and other efforts to articulate collective obligations also show an important evolution in human rights thinking and practice. Nevertheless, it is also true that historically the construction of public international law has been aimed at limiting states' accountability. Further, despite important recent initiatives, human rights law continues to be peripheral in promoting the accountability of multinational corporations and international financial institutions. Both conceptually and historically, the international human rights framework has sat quite comfortably with global capitalism. How effectively that framework can be transformed to address the glaring imbalances in power in our global architecture remains to be seen.

What is clear — and what the current global financial crisis and growing climate justice questions reinforce — is that for human rights to remain a powerful mobilizing and insurrectional discourse, both normative obligations as well as the institutions and procedures through which wealthy states are held individually and collectively accountable, will have to be adapted. Rights are useful tools insofar as they impose restrictions on the use of power — whether to torture or to pay people sub-human wages — and we need a human rights framework that can impose meaningful restrictions on the horrific abuses of power that occur across as well as within borders.

However, such a transformation needs to go beyond normative legal structures and transform those shared ideals that animate action. In her recent book *Inventing human rights*, Lynne Hunt argues that it was through reading novels that Westerners in the 18th century were able to empathize with the sufferings of others and that this, in turn, gave rise to the notion that everyone should have rights that include, for example, the right to be free from torture.[47] Whether or not one agrees with Hunt's analysis of the origins of human rights, it is unquestionably true that Amnesty International began the modern-day global non-governmental human rights movement, fifty years ago, based on a similar idea of eliciting empathy from people who lived largely in the North for the abuses suffered largely by people who lived in the global South. Both Amnesty International and the international human rights movement in general have evolved enormously since then. However, we are still far short of what Paul Farmer calls the "pragmatic solidarity" necessary to ensure that all human rights are truly universal.[48]

To reach this goal, we must stop viewing international assistance as charity. Charity allows people in the industrialized North, including governmental leaders, to feel good about themselves, as compassionate human beings whose hearts bleed for the people Farmer refers to as the "destitute poor," without facing the long shadow of suffering that comes with their privilege. We require a conception of

rights and obligations that locates us all on the same political map and connects the dots. Only then can we hope to puncture the indifference people in the North have to the facts that their clothes are often made by exploited laborers in sweatshops, that their artificially low food prices are devastating farmers in Africa and Latin America, and that their addiction to carbon burning will likely lead to massive displacement and deaths of people in low-lying countries such as Bangladesh, unless dramatic measures are taken soon. For human rights to be a relevant framework for addressing the most pressing challenges of the 21st century, including climate justice, what we take for granted in the North needs to be denaturalized, just as rights have been used to challenge the false sense of inevitability around domestic institutions and laws. If the language of human rights is to remain a common language of human emancipation, it must not only incorporate an account of the myriad international forces that produce and perpetuate poverty, inequality, and suffering in the global South. It must also mobilize collective action, in the North and South, to remove such manifest injustice.[49]

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