

Analysis of the Challenges and Dilemmas in the Categorization of Economic, Social and Cultural Rights

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Abstract:

This paper discusses the limitations associated with the basic classification of human rights into several categories. The topic of whether international trends have an impact on the view of the State regarding the significance of implementing rights through the acceptance of individual complaint procedures is complex. Starting with an acknowledgment of the infinite extent of the issue, this paper displays a belief in the fallacious conceptions of differences in human rights. It investigates and assesses the institutional contribution to the advancement of human rights through a chronological analysis of historical processes that give rise to changes in the 20th century. To address this particular distinction, this paper examines the 1993 Vienna Declaration and Program of Action and the new Optional Protocol for validation and endorsement. By highlighting many similarities in the language and nature of State responsibilities, it challenges the reader to consider whether non-justiciability provides a basis in the first place. The purpose of this paper is to investigate the function of dispute resolution mechanisms during the implementation phase. From a practical standpoint, it compels the reader to contemplate if the committee procedures outlined in international conventions serve just as symbolic representations of non-cooperation by States or are put into effect. This paper ultimately presents the reader with some thought-provoking material in the dichotomy between enforcement and justiciability.

Keywords: Civil and Political Rights , Dispute Resolution , Economic , Human Rights, Social and Cultural Rights,

***The authors has signed the consent form and ethical approval**

Introduction

Human rights are presently fully embraced by international law and politics. By the year 2000, most countries in the world had ratified the major human rights agreements. According to Ann Bayefsky, every state that is a member of the UN has ratified one or more of the six major human rights accords. Eighty percent of countries have approved at least four (Bayefsky, 2021). Naturally, this does not mean that every state follows these accords to the letter. The rights to material goods and services, often known as "economic, social, and cultural rights," are among the rights that have a strong foundation in international law.

The American Declaration of the Rights of Man (Organization of American States, 1948) and the Universal Declaration of Human Rights (United Nations, 1948) both upheld the right to a decent standard of living, health care, and education. To incorporate these rights into international law, the United Nations created the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Over 140 countries have ratified this accord. The International Covenant on Economic, Social, and Cultural Rights enumerates several rights, such as the freedom from discrimination in the workplace (Articles 2 and 3), the freedom to work and the opportunity to do so (Article 4), social security (Article 9), fair compensation and decent working conditions (Article 7), housing, food, and clothing sufficiency (Article 11), access to basic health care (Articles 13 and 16), education, and participation in cultural life (Article 15). There are more rights than those in this list.

Despite being well established in international law, the claim that economic, social, and cultural rights are fully justified human rights is still up for debate among legal scholars and political thinkers. It is frequently argued that economic, social, and cultural rights are not real rights but rather only ideals (Bayefsky, 2021).

On December 10, 2008, the United Nations General Assembly overwhelmingly adopted the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights, paving the way for individual claims of economic, social, and cultural rights against States Parties. It is appropriate to think about why it has taken so long for these events to happen. On September 24, 2009, the Protocol became available for ratification by States Parties. It is important to keep expectations in check in light of specific historical circumstances before placing undue faith in the Optional Protocol to strengthen the implementation of economic, social, and cultural rights. Simultaneously, there is great hope that many States will no longer be

able to disregard or wish away their commitments for economic, social, and cultural rights.

This contribution is made because the study of economic, social, and cultural rights is currently very broad and heavily focused on several substantive areas that have been left out due to space constraints, with the modest goal of merely providing an introduction to the topic of international human rights law. In this subject, research and study have increased dramatically. The aforementioned objective targets these rights from the past as well as the future. An important component of this paper is the historical background of the evolution of human rights law, which clarifies the reluctance or hesitancy in the policies of many States in the hopes that international precedent and practice will spark an interest in domestic legal reform. The core principles underlying economic, social, and cultural rights are succinctly and thoroughly described. This donation would have been needlessly delayed by any more indulgence. For similar reasons, the one circumstance in which there is no distinction between civil and political rights and these other rights has been the focus of regional systems of protection of economic, social, and cultural rights. There is a prejudice in the discussion of domestic enforcement through justiciability that gives preference to cases coming from states that have begun to protect social, cultural, and economic rights. Although the range is not very wide, it does include the experiences of two different countries.

To illustrate how an initial erroneous classification has been used to create levels of human rights protection, a historical approach is basically used from the international to the local level. Persistent reliance on this classification has detrimental effects on the majority of people's rights globally (Steiner, Alston & Goodman, 2018; Adebimpe, 2022).

The Economic, Social, and Cultural Rights Conception of Vance

Human rights do not aim to create ideals of the ideal human life; rather, they seek to ensure both the good and the terrible parts of a minimally respectable existence. This suggests that standards for economic, social, and cultural rights shouldn't be based on improving the highest standard of living or choosing the best or most just kind of economic structure. Rather, they should try to address the biggest problems and maltreatment in the business world. Their primary concerns should be hunger, malnourishment, preventable sickness, ignorance, and exclusion from opportunities for meaningful employment.

According to some academics, "subsistence" constitutes the fundamental economic, social, and cultural right. The major concern of economists Henry Shue, John Rawls, and Brian Orend about economic, social, and cultural rights is sustenance. Subsistence is defined by Shue (1996) as "unpolluted air, unpolluted water, adequate food, clothing, and shelter, as well as minimal preventive health care." According to Orend (2011), "material subsistence" refers to having safe access to the things one needs to fulfill their biological needs, such as a little quantity of food high in nutrients, clean water, fresh air, some clothing and shelter, and limited preventive medical treatment. Rawls regards "subsistence" as part of the right to life, along with security, in his succinct list of human rights. According to Rawls (1999), "subsistence" includes "having general all-purpose economic means" and "minimum economic security."

The notion of subsistence alone does not provide a proper understanding of economic and social rights. It describes health care in a deplorable way, undervalues education, and overall gives people's ability to engage in active participation in society little consideration (Sen, 1999b: 27; Nussbaum, 2011). It talks about the needs to survive, but it leaves out important material requirements for leading a happy life.

If Shue, Rawls, and Orend are wrong to make economic, social, and cultural rights too small, then international human rights treaties embrace aims and goals that make them unnecessarily extravagant. Economic, social, and cultural rights are viewed by them as prerequisites for prosperity and a substantial welfare state. A human right to annual paid holidays, for example, and a human right to "protection of health," which seeks "to remove as far as possible the causes of ill-health," are all part of the European Social Charter, which set the standard for other treaties in this area (Articles 9, 2, 11, and 26). The fact that federal political parties genuinely care about achieving these constructive objectives is, of course, well known. Someone in a wealthy nation would cast their ballot for them. However, these requirements go much beyond what makes a life at least somewhat decent. Moreover, it is implausible to denounce a nation as a human rights offender for not providing funding for career counseling, mandating that companies offer paid holidays to their staff, or initiating an anti-smoking initiative (as smoking is undoubtedly a major contributor to poor health). It is not enough to say that less developed nations should be exempt from these obligations. The issue is that, even when considering wealthy nations,

these formulations do not align well with the notion of human rights as basic criteria.

It is encouraged to embrace the idea of economic, social, and cultural rights, which extend beyond providing for one's basic needs and include access to healthcare and education. This is called the "Vance Conception" (Vance, 1977) because it follows the list that former US Secretary of State Cyrus Vance supported on Law Day at the University of Georgia. Vance articulated his definition of human rights in the speech, defining it as "the right to the fulfillment of such vital needs as food, shelter, health care, and education." This list bolsters the argument that economic, social, and cultural rights, like other human rights, are concerned with the means of leading a minimally acceptable life, even when they go beyond just survival. By doing thus, it avoids the excesses of contemporary agreements about cultural, social, and economic rights. These rights prioritize education, well-being, and nourishment among other economic, social, and cultural rights. Governments must take action, create, and implement laws and regulations that allow for affirmative responses to the following queries:

1. *Subsistence*. Do circumstances permit everyone to have access to hygienic air, food, and water, as well as environmentally friendly clothing and housing, on the condition that they work and help themselves to the greatest extent possible, engage in mutual aid through organizations such as families, neighborhoods, and churches, and receive assistance from government assistance programs? Do people who have access to productive possibilities manage to improve the well-being of themselves, their families, and their communities?
2. *Health*. Are people who live in environments that are conducive to health, who take proactive steps to promote public health, and who have easy access to healthcare services more likely to survive childhood, develop into adults, and live a normal lifespan?
3. *Education*. Do individuals have a decent chance of gaining the skills required for functioning, citizenship, survival, and health using the educational resources that are now available?

The Vance Conception of economic, social, and cultural rights designates three broad, interconnected rights that must be realized in order for everyone to live at least somewhat decent lives. With the exception of moving health to a different category, this conception's definition of the right to sustenance is quite similar to Shue's. Subsistence still involves certain health issues, though, as clothing and shelter must be ecologically suitable and must provide the necessary protection from heat, cold, and precipitation, as well as safe air, food,

and water to consume. Additionally, it encompasses a portion of the right to work as it grants access to economic possibilities (Arneson, 1990; Adebimpe, 2022).

Compared to Shue's "minimum preventive health care," the Vance Conception takes a more expansive stance on the entitlement to health services. It addresses prevention via public health initiatives including immunization campaigns and hygienic systems. However, it extends beyond these precautions to encompass emergency reparative treatments like assistance in treating infections and setting broken bones. Additionally, it only includes bare minimum prenatal and postpartum treatments. Although these medical treatments are expensive, many individuals depend on them to even have passably decent lives. Furthermore, treating serious health issues encourages people to work hard and seek their education.

Preparing students for economic, civic, and social involvement, along with reading and numeracy skills, are the main objectives of the right to a basic education. It helps to orient economic, social, and cultural rights in terms of action, choice, self-help, mutual aid, and social, political, and economic engagement. The importance and free character of elementary education are strongly emphasized in the Universal Declaration. It is forbidden for families to raise illiterate and uneducated children. They do, however, have limited authority to choose the type of education and upbringing their children receive (Article 26).

Because it sees economic, social, and cultural rights as fundamental criteria without limiting people's demands to subsistence, the Vance Conception is appealing. It anticipates that most countries will surpass economic, social, and cultural rights. Limiting the extent of economic, social, and cultural rights also makes it more likely that these rights will pass a fair feasibility test and makes less developed countries' adoption of these rights a feasible objective.

The Vance Conception is supported by a number of Articles of the International Covenant on Economic, Social, and Cultural Rights. Much of what is said in Article 11 about food and a decent standard of living is relevant. In that Article, the ratifying nations pledge to provide "the continuous improvement of living conditions" and "an adequate standard of living for himself and his family, including adequate food, clothing, and housing" for every individual. According to the Vance Conception, an "adequate standard of living" is one that is sufficient for a life that is at least passably decent rather than one that is exceptionally good. It would be rejected on the grounds that the

demand for "continuous improvement of living conditions" conflates the necessary with the desirable.

The statement of the right to education found in the International Covenant on Economic, Social, and Cultural Rights also fits in rather nicely. Article 13 states that all children must get a free and required basic education, that secondary education must be widely available, and that all gifted people must have equitable access to further education. Setting basic education as a top priority is a great idea. The Vance Conception holds that there is no clear connection between human rights and higher education. Protocol 1, Article 2 of the European Convention states, "No person shall be denied the right to education," which is a better but perhaps excessively generic expression. A more accurate description would be that everyone has the right to free basic education that is required for children to gain reading and numeracy as well as the knowledge and skills needed for social interaction, economic competence, citizenship, and good health.

Not all Articles adhere to the Vance Conception. The International Covenant on Economic, Social, and Cultural Rights, for example, recognizes the right to health with the following clause: "Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health." This Article rejects the idea that human rights should be the barest minimum by mandating the maximizing of health rather than setting a threshold.

Historical Developments

Some States see the rights contained in the International Covenant on Economic, Social, and Cultural Rights as prospective rights rather than real human rights, even if they have ratified it (Adebimpe, 2022). Some clues as to why there is a disdain for this obligation and a devaluation of these rights may be found by examining the historical development of human rights. The evolution of social, economic, and cultural rights was impacted by the Cold War, although Franklin D. Roosevelt is recognized for having first articulated the Four Freedoms in 1941. "Economic understandings which will secure to every nation a healthy peacetime life for its inhabitants-everywhere in the world" (Adebimpe, 2022) is one of them, and it is the freedom from want.

Freedom certainly found its way into the 1947 United Nations Commission on Human Rights, which was entrusted with creating the international Covenant in tandem with the writing of the Universal Declaration of Human Rights (UDHR). The Declaration and this Covenant were to be presented simultaneously to the UN General Assembly (Baderin & McCorquodale, 2007). Still, the world that

broke apart during the Cold War made a big difference. The United Nations Commission on Human Rights produced a text that was comparable to the UDHR, which made drafting the Covenant more difficult. Under pressure from the liberal western Member States of the UN, the General Assembly ordered the Commission on Human Rights to draft two covenants in 1952 (Baderin & McCorquodale, 2007; Eide & Rosas, 2011). The two human rights covenants that came from the original plan to establish a single covenant are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The UDHR and these two Covenants are often referred to as the "International Bill of Rights."

The drawn-out establishment and ratification processes show how unwilling States are to cede their sovereign power in response to obligations made on human rights. The UN General Assembly was shown both draft Covenants in 1954 by the Human Rights Commission. Before the General Assembly approved the final drafts in 1966, nineteen years after the drafting process began, the Third Committee reviewed these materials for more than 10 years. Before the Covenants came into effect in 1976, ten more years had gone. The International Bill of Rights took over thirty years to complete. Furthermore, State Parties were not given the chance to ratify an optional protocol that allows individual complaints to be presented for international adjudication until another thirty-three years (Bayefsky, 2021).

Aside from the length of time required to develop the International Bill of Rights, the two Covenants' similarities have resulted in a steady decline in awareness of the full protection of all human rights over time (Leckie, 2008). Regretfully, economic, social, and cultural rights are considered the "second generation" of human rights, whereas civil and political rights are considered the "first generation." "Third generation" rights are a group of rights that include the right to development. All human rights suffer from this terminology's regrettable inclination to assign certain rights more weight than others. Although Karel Vasak is credited with coining the word, two experts who looked into the origins and progression of human rights have questioned these conclusions:

It is challenging to categorize the emergence of various human rights into distinct eras given the history of the development of human rights at the national level. Political rights were acknowledged as human rights far later than some civil rights and, in certain cases, even after social and economic rights. However, these measures would also

have to make a distinction between political and civil rights (Eide & Rosas, 2011).

The Vasak classification is helpful for academic categorization in an abstract sense, but it also presents an erroneous picture of the historical evolution of international human rights because, as early as 1947, the initial objective was for one Covenant to support one global Declaration. To give some credit to Karel Vasak, the term "generations" was created by the States to excuse their denial of protection for the human rights of every individual, thereby prolonging a needless debate over a conflict that was long ago lost. The initial objective—that "all human rights are universal, indivisible, interdependent, and interrelated"—was restated in the Vienna Declaration and Programme of Action in 1993 in an attempt to dispel this misconception (Scott, 2009). In order to show where economic, social, and cultural rights belong, every discussion of human rights inevitably leads to parallels between the ICCPR and ICESCR (Scott, 2009; Bayefsky, 2021).

Similarities and Dissimilarities in Content of ICCPR and ICESCR

There are certain parallels and contrasts between the two international treaties' seemingly protective wording. The first Article's introductory paragraph, which affirms the right to self-determination, is the identical in every case (Adebimpe, 2022). According to Article 2, paragraph 1 of the ICESCR, State Parties may "take steps... to the maximum of its available resources... to achieve progressively... the full realization of the rights" (Adebimpe, 2022). Nonetheless, the ICCPR requires each State Party "to respect and to ensure... the rights" in the Covenant. With government cooperation, the ICESCR allows for gradual realization, while the ICCPR offers very clear-cut protection. It is difficult to apply the ICESCR regulations as legal precepts because of their vast normative phrasing (Adebimpe, 2022). Although most States take the stance that these rights are not rights since they are not subject to justiciability, the Committee on Economic, Social, and Cultural Rights has made it plain that State Parties may not cite a lack of money as an excuse for failing to take action to maintain these rights. This supports the idea that these rights belong to the so-called "second generation." The justiciability issue will be dilated upon below.

The theory of the separation of powers in a democratic society, which holds that the courts have no jurisdiction to intrude on the legislative branch, which sets national policy, is one argument in favor of non-justiciability. According to this line of reasoning, a court cannot determine which policy is better or how much more funding

should be allocated to a state program without going against the notion of the separation of powers (Hopkins, 2002; Scott & Macklem, 2012). This logic suggests that the court might not be competent or able to carry out this duty (Scott & Macklem, 2012). This logic suggests that the court might not be competent or able to carry out this duty (Scott & Macklem, 2012). The argument goes on to claim that courts are more suited to protect civil and political rights in circumstances where States have a negative responsibility, such as permitting the freedom of expression or the right to demonstrate. Supporters contend that democratically elected legislators, not appointed judges, should be in charge of state policy in any case. Even though it will undoubtedly be costly, the State has a positive responsibility to step in and protect economic, social, and cultural rights.

In responding to these points of contention, it is crucial to remember that, in some civil and political situations—such as when defending the rights of someone who is detained—the State is obligated to act constructively rather than always negatively. In some situations, the court may order the State to pay for the guilty party to have access to books or newspapers while she is incarcerated. All expenses related to the administration of justice are indeed incurred because they are considered essential components of a democratic state. The 101st Airborne Division from Fort Campbell, Kentucky was transferred to Arkansas in response to the Supreme Court's directive to uphold its ruling in *Brown v. Board of Education of Topeka* (Adebimpe, 2022). Is the court "meddling" in the internal operations of another government entity with this expense?

Regarding the judges' competency, the use of expert witnesses addresses the judges' ignorance of key substantive issues in a variety of situations, ranging from finance to space technology, and this has no detrimental effects on the administration of justice (Adebimpe, 2022). Since courts exist to settle conflicts, disagreements pertaining to economic, social, and cultural rights should not be barred from settlement because they are not covered in a judge's training curriculum.

As we do when we exercise our political right to vote out a government we do not like after a four or five year term, leaving economic, social, and cultural disputes to democratic self-correction is to minimize and disregard the suffering of the weak, marginalized, and disadvantaged. Additionally, these rights have exigencies that necessitate prompt attention. Lastly, regarding elections and representative democracy, it is true that many States have a fixed

appointment process rather than having their judges elected. Judges become more credible when the appointment process is completed, regardless of the intricacies involved. Although the judge and the political representative have distinct areas of expertise, they are both public servants—even though the former is more independent than the latter. Regardless of appointment, everyone has a distinct duty, and if those in power don't behave appropriately, the courts' planned dispute resolution process might be utilized to break the impasse.

Active economic, social, and cultural rights protection will inevitably cost more because comparatively few State Parties to the ICESCR are already investing in them. In certain cases, giving this kind of privilege can be required for a sizable number of people. It's possible that there isn't enough importance or urgency at the moment to handle the issue in the public interest. For example, the possibility of higher taxes is discussed when civil society organizations in these States propose them. However, recent instances of tax payer money being used to support financially irresponsible private companies suggest that, given enough political will, State Parties will use all available resources to support the public interest while continuing to disregard fundamental economic, social, and cultural rights (Baoku & Uche, 2022). It is outside the scope of this paper's brief to describe these kinds of actions in detail.

This is yet another way that the international accords' assurances of rights vary from one another. Article 4 of the ICCPR allows for exceptions from obligation in some situations, such as emergencies that might endanger the life of the State. This expressly acknowledges that the State Party may need to suspend some privileges under certain conditions. It is never permissible to depart from the responsibilities of the ICESCR because it does not have an equivalent provision. Stated differently, all rights—economic, social, and cultural—are safeguarded in any situation. One may argue that this implies an even higher duty on the part of the ICESCR to protect rights.

A cursory review of the ICESCR's substantive rights is necessary. Similar clauses can be found in both the ICESCR and the ICCPR. Both the ICESCR Article 7 and the ICCPR Article 22 cover trade union rights. The International Labour Organization also ensures that numerous labor-related rights and working conditions are preserved under cultural rights; these requirements apply to schools that serve ethnic minorities (ICCPR Article 18, paragraph 4 and 27 and ICESCR Article 26). A more comprehensive interpretation of Article 6 of the ICCPR holds that the right to a basic standard of living is a part of the right to life and therefore exercising rights guaranteed

by the ICESCR is necessary. It is crucial to keep in mind that the Convention on the Rights of the Child (CRC), which now has 193 States Parties, has a single article that provides protection for civil and political rights as well as economic, social, and cultural rights. The 186 State Parties to the International Convention on the Elimination of All Forms of Discrimination Against Women contribute to the protection of economic, social, and cultural rights.

One summary of the primary distinctions between the two Covenants' provisions is that the ICCPR's tenets are asserted to defend these rights, typically with ramifications for the law. They are referred to be "absolute" or "immediate" at times. It is stated that they are explicit rights that are inexpensive because they are negotiable in the courts of State Parties. The Optional Protocol, which allows States Parties to file individual complaints, is a key component of the ICCPR. It became enforceable 46 years ago after being made available for signature around 56 years prior.

There are, nonetheless, certain differences between the covenants, such as the need that the ICESCR's rights be realized progressively over time. The argument continues by claiming that they are not legally enforceable since they are societal or political objectives rather than rights. Since these are likely to be more costly as positive responsibilities on the side of the State, it is best to leave them to welfare or philanthropic organizations, which are professionals in managing these concerns. In this instance, it would be extremely easy for the State to provide financial assistance to these organizations in order to enable the provision of that service; they may even claim that this is a charitable act.

Justifying Economic, Social and Cultural Rights

Making a compelling case for economic, social, and cultural rights will be helpful because they are still debatable in some circles. The Vance Conception of economic, social, and cultural rights is assumed in the case sketch. We might begin by summarizing a connection argument that seeks to show that the effective implementation of economic, social, and cultural rights is a prerequisite for the successful application of other human rights. Next, a rationale framework is published and used to safeguard rights related to the economy, society, and culture.

Linkage Arguments

Linkage arguments in support of the right to sustenance were initially used by Henry Shue. By demonstrating how a contentious right is necessary for the successful execution of a less contentious and widely recognized right, linkage arguments serve to legitimize the problematic one. According to Shue, the creation of the right to subsistence is necessary for the successful exercise of all other rights. Shue (1996) explained that "no one can fully... enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life." Shue goes beyond just restating the point that Marxists have made from time to time—namely, that promises of political or security participation are hollow if people always have to worry about where their next meal is coming from. Shue is standing up for her right to food. Instead, he is making the far stronger case that if a person's right to subsistence is not sufficiently exercised, then that person has no rights at all. Shue argues that a person cannot really "enjoy" (or, on the other hand, a right cannot be properly exercised) until societal safeguards are in place to protect the fundamental elements of the right from common hazards.

It is critical to avoid making overstatements claiming that the enjoyment of subsistence rights is a prerequisite for the enjoyment of any other rights. Shue's reasoning has a significant flaw in that the means to enforce due process rights, for example, for others, may come at the expense of other people's right to sustenance. Shue therefore fails to show that a society in which certain people are not granted the right to universal sustenance cannot provide them other rights that are really exercised. They show, at most, that no new rights can be effectively conferred upon every individual inside such a community. Shue's claim that the implementation of subsistence rights is necessary for the successful implementation of any other rights also implies—contrary to fact—that property rights were not successfully implemented in nineteenth-century America, given that subsistence rights were obviously not implemented in the United States during that time.

Shue's main contention, however, may be put more succinctly: those living in extreme poverty will often be marginal right-holders in the absence of guarantees for basic healthcare, basic education, and food. Because of their acute need and fragility, it will be difficult to defend them through social and political activity, and it is doubtful that they will know their rights or self-defense mechanisms. If you want people to be the kind of right-holders who can successfully

exercise, enjoy, and protect their rights, you must ensure that they have access to essential economic and social rights.

Direct Justifications

The suggested justificatory framework states that a human right must: (1) be consistent with the overarching human rights concept; (2) matter enough; (3) address persistent threats; (4) require the modality of rights rather than some lesser norm; (5) impose reasonable burdens on those who bear them; and (6) be practicable in the majority of the world's nations at present.

1. Are Economic, Social, and Cultural Rights Consistent with the Overarching Human Rights Concept?

Economic and social claims are easily articulated as rights: regulations with assignable responsibilities and liabilities to addressees, rights, powers, and immunities to right-holders, and scopes or objects that specify a benefit, protection, or liberty to be enjoyed by the right-holder. Moreover, legislation and adjudication may use them (Fabre 2010).

However, occasionally someone would contend that it is difficult to decide who is entitled to economic and social rights. Now let us discuss this in terms of eating freedom. People sometimes become confused over the idea of a universal right to enough food because they do not know what it means. Does this mean that they have to feed a fair share of the world's starving population? A more nuanced interpretation of who is entitled to human rights is put out, contending that: (1) governments ought to be the principal recipients of their people's rights; (2) governments ought to defend the rights of non-citizens; (3) people have a civic and voting duty to advance human rights in their own country; (4) People have a backup responsibility to ensure that human rights are upheld worldwide; and (5) People, governments, and international organizations have a negative responsibility to uphold the human rights of others both domestically and internationally. It is easy to apply this perspective to cultural, social, and economic rights.

2. Are Economic, Social and Cultural Rights Matter Enough?

Some scholars (Beetham, 1995; Cranston, 1973; Baoku & Uche, 2022) contend that civil and political rights are more significant than economic, social, and cultural rights. It is possible to agree and even reject the claim that the definitions of economic, social, and cultural rights included in certain international human rights instruments are unduly expansive and exceed the requirements for a minimal standard of life. Nonetheless, the claim that basic economic, social, and cultural

rights do not uphold important moral requirements is wholly implausible.

These are the connecting arguments that were previously given as a means of illustrating the importance of fundamental economic, social, and cultural rights. They show that it is hard or impossible to effectively implement other human rights for everyone when a significant percentage of people's basic economic, social, and cultural rights are in jeopardy or insecure.

To have an integrated and economical theoretical framework, theoretical approaches to the justification of human rights usually need one to set aside a large number of tenable beginning points and arguments. For instance, human dignity is likely to vanish from view if it is not one of the core principles of the system. Even while it is well-equipped to defend human rights, it won't do anything in that regard. Normative theory is an important philosophical endeavor, but its quest for theoretical brevity might give the impression that human rights are not as important as they truly are. When one places a single, preferred ground in the spotlight and drives other, stronger arguments for human rights off the stage, the preferred argument is likely to appear weak and fragile. When examined in isolation, its shortcomings are likely to become clear and it could appear indisputable that it is unable to adequately defend the entire spectrum of human rights. If this is the strongest defense of human rights, readers could conclude that those rights are very questionable.

James Griffin, for instance, bases his whole defense of human rights on the principles of "personhood," or autonomy, and "practicalities." The "best philosophical account of human rights," in his opinion, is this:

This, in my opinion, is the finest explanation of human rights. The idea of agency is at its core. Humans are capable of creating mental images of ideal lives and making efforts to bring these images to reality. In particular, we place a great value on our agent status—sometimes even more than our pleasure. Then, human rights might be understood as defenses of our agency, or what is sometimes referred to as our personhood (Griffin, 2001a: 4; Tasioulas, 2012).

It appears that autonomy will only be able to provide rights related to due process, equality before the law, and economic, social, and cultural rights. Griffin thus mostly depends on "practicalities" in granting these rights to make up for it. As a result, the defense of rights other than liberty is seen as flimsy and derived. Other basic principles or standards, such as the need for fair treatment when significant interests are involved, may have prevented this (more on

this below). As a foundation for human rights, a fairness standard would not be any more contentious than autonomy; it would let due process rights to be just as fundamental and non-derivative as liberty rights.

If we consider a human rights argument to be a leg or support, then authors who wish to offer dependable and broadly palatable defenses of human rights have good reason to choose a many-legged strategy. When a right includes several reasons, it is less probable that the failure of one would cast doubt on the other grounds. Furthermore, there is a greater likelihood that rights with diverse reasons may transcend cultural and theological divides. Consequently, a diversified understanding of the principles and goals that underpin human rights is put out. The foundation is a theory that contends that individuals have four distinct, safe, and abstract moral rights on other people:

- a safe claim to life;
- a safe claim to live one's life;
- a safe claim against treatment that is very cruel or humiliating;
- a safe claim against treatment that is extremely unjust.

These four abstract rights, which come with corresponding obligations, are "secure" in the sense that they don't require membership or good behavior to be obtained (although claims to liberty may be lawfully terminated following a criminal conviction). They are also "secure" in the sense that an individual's access to them is independent of that individual's capacity to provide benefit or other positive outcomes.

These four guiding principles assign everyone, including private citizens, public servants, and corporate organizations, abstract duties of respect and protection. Negative tasks are not given preference; certain responsibilities are undoubtedly beneficial. Expenses are important, but whether they are incurred while attempting to carry out a positive or negative responsibility is irrelevant (Nickel, 1987; Holmes & Sunstein, 2009).

Every one of the four assertions is based on an essential human want. However, the theory as a whole is deontological in that it begins with impersonal rights and related obligations. The rights and obligations are oriented by the fundamental interests. These four solid assertions are united by the notion that, if fully accomplished, they would enable every individual alive now to own and enjoy a life that is respectable or at least minimally excellent. This dedication to equality is significant yet constrained. These principles have the potential to underlie the universality of human rights because they provide a safe foundation of respect, protection, and provision for

every individual. Respect, protection, or provisions should not be refused to any individual unless it is impossible, would incur unjustifiably large costs to the fundamental interests of others, or would be a justifiable penalty for a major offense.

This is a basic understanding of the arguments supporting human rights. It sets a low standard for leading a decent life, or at the very least, an exceptional one. As Shue noted, human rights offer a morality of the depths as opposed to the heights (Shue, 1996: 18). Preventing extreme injustice and suffering are their top priorities. Second, it recognizes that human suffering can come from a range of uncontrolled factors, such as diseases, calamities caused by nature, and bad hereditary traits. Third, it recognizes that the concrete human rights arising from these abstract rights will primarily focus on the usual threats to a decent or at least minimally good existence in varied sectors. Achieving total safety is not the aim. Lastly, it makes no claims to provide a comprehensive political or moral framework.

The Safe Claim to Life

Protection from acts of others that result in demise, impairment of health, or incapacitation is a fundamental human right. Negligent and malicious harm, as well as the use of violence other than in self-defense, are included in the secure claim to life. It encompasses a claim to liberty as well as defense against damage, violence, and murder. Positive obligations are those that assist people in defending themselves against violent crimes and murder (see Rawls, 1999: 65 for further details on the positive and negative components of the right to life). In the modern world, the development and upkeep of political and legal institutions at the local, national, and international levels primarily serves to fulfill these obligations to protect and provide.

But to have a life is not enough to simply be safe from damage and violence. A person's body must be able to do the majority of its regular tasks, and in order to preserve physical capabilities, a person must meet their demands for food, drink, shelter, and sleep. Usually, people may provide these items for themselves through their jobs. However, everyone experiences times when they are unable to provide for themselves, such as infancy, sickness, unemployment, handicap, and late age. Individuals who are unable to support themselves have a claim to help from others.

The Safe Claim to Live One's Life

Regular adults cherish remaining agents highly and consider themselves to be so. They assess, decide, consider, and arrange. They identify real-world issues and provide solutions. They try to carry out

the plans they create for the future. A person's personal character is frequently evaluated, chosen, and the subject of reform initiatives.

For agency to arise, persist, and be exercised, there are necessary political, social, and physical conditions. Health and life essentials are protected by economic and social rights. The rights to association and education provide protection for social requirements. Moreover, the political requirements are protected by the rights to fundamental freedoms and political involvement. The freedom from servitude, slavery, and the illegal use of one's body, time, or life arises from the right to live one's life. In the most important decision-making sectors, such as employment, marriage, affiliation, travel, and belief, it also leads to claims to liberty. It also asserts the rights to the liberties that a moral person has, such as the ability to communicate with others, learn, ponder, argue, make decisions, respond, act, and accept responsibility. This suggests that some rights are selected solely because they are deemed necessary and, thus, protected by the liberty principle by highlighting their importance for the exercise and realization of agency. When it comes to choices that structure or direct one's life and include time-consuming activities, such as marriage, parenthood, and work, the strongest case for taking charge of one's own destiny is presented. A strong claim to liberty goes beyond just pledging to uphold or refrain from violating the rights of others. It is also a claim to support for the defense of one's freedom and for the establishment and upkeep of social environments that foster and enable the development and exercise of agency.

Unrestricted respect for liberty would encourage aggression and injury from others; in other words, it would do more harm than good to people's basic interests. Integrating limitations within the notion of liberty is the answer. Naturally, some of these flow from the previously mentioned limitations on violence. The right considerations to ask when choosing which rights to include or omit are whether they are necessary for us to function as agents and as people, and whether or not the costs of upholding and defending them will likely be so great that they are not worth the trouble.

Obedience to aid others creates an exception to the right to liberty. People can be called upon to devote their time and resources to safeguarding and providing for others, as well as to supporting institutions that carry out these tasks in a methodical and effective manner, as long as this is done within bounds that avoid undue hardship and grave injustice.

The Safe Claim Against Treatment that is Very Cruel or Humiliating

A basic act of cruelty is when someone intentionally or carelessly causes great harm to another person. A person may be degraded by this kind of cruelty since it implies that he is heartless or that his pain is unimportant. More complex types of cruelty are designed to make a person feel less valuable by implying or really creating the impression that she is a creature that both she and others would find base or low. Because it treats the slave as though he lacked the agency necessary to live a free life, slavery is demeaning. Rape is demeaning because, in many cultures, it damages a victim's social position as a morally upright person or considers the victim as merely a sexual resource to be utilized without permission. One may lose their respect for oneself and other people as a result of degradation. Such acts are prohibited by a valid claim against extreme cruelty, and safeguarding individuals from them necessitates both individual and group efforts. The degree of malicious purpose, the likelihood of causing injury, and the degree of degrading effect are the factors that determine the severity of cruelty.

The Safe Claim Against Treatment that is Extremely Unjust

People are very sensitive to injustice, especially when it manifests itself as not contributing one's fair share to group endeavors. Being fair and fair-minded are moral qualities; it is also morally required to treat others fairly to some extent. However, in this case, extreme unfairness is a suitable criterion, as experiencing less severe types of injustice is likely consistent with living a mediocre life. The injustices we are discussing here are severe enough to qualify as catastrophic injustices for the time being. The severity of treatment depends on a number of factors, including the degree of injustice, the presence or absence of malice, and the possible pain or degradation that the injustice would cause. Two facets of the claim against extremely unfair treatment are the right to be free from highly unfair treatment and the right to take individual and collective actions to protect others from it. For example, governments have a duty to guarantee fair trials for persons facing criminal charges and to abstain from locking up innocent people.

Each of the four principles safeguards a component of human dignity. The Universal Declaration defines the "inherent dignity... of all members of the human family" and declares that "all human beings are born free and equal in dignity and rights." They are rational and moral beings. The four proposed bases of human rights provide an explanation of these ideas. When we defend someone's life and agency and stop others from subjecting them to cruel or dehumanizing

treatment, we are upholding their dignity (Schachter, 1983; Nussbaum, 2011).

Each of these four principles should be understood as a necessary condition for human dignity, representing ways to recognize and respond to the value or worth that each individual brings to the world. Therefore, a person's dignity can be discussed in relation to any quality that makes them unique, such as their ability to suffer, their lives, their agency, their consciousness and reflective abilities, their use of intricate language and symbolic systems, their rationality, their individuality, or their social awareness.

Economic and social rights are largely predicated on the solid claim to life. There is a risk to life and health, as well as a high chance of serious disease and death, without safe food and water. Having access to food and basic healthcare is obviously and instantly linked to living a minimum decent existence; this is not necessarily the case with other human rights. Education not only imparts health information and skills but also teaches students how to sustain themselves via work and develops a basic interest about life.

It is safe to argue that the rights to a life, to development, and to the exercise of one's agency are important social and economic rights. To develop and exercise agency, one needs a healthy body and mind in addition to possibilities and choices. Food and basic medical care are essential for preserving and improving one's bodily and mental well-being. Furthermore, gaining access to a foundational education promotes comprehension of political, social, and economic options. In the modern world, a lack of educational opportunities typically limits people's ability to fully and effectively participate in the political and economic life of their country, both absolutely and relatively (Hodgson, 2008; Adebimpe, 2022).

Legal protection against gravely unjust treatment upholds social and economic rights. Restricting education and economic possibilities from some segments of the population (women, minorities, and rural residents) is a grave and destructive injustice. Fundamental social and economic rights guard against this sort of injustice.

3. Recurrent Threats?

Many have maintained that our understanding of human rights and the Constitution is shaped by our encounters with injustice (Shue, 1996: 17, 32–3; Donnelly, 2003 [1985]: 46, 92; Dershowitz, 2014: 9; Baoku & Uche, 2022). One can encounter injustice directly by going through it themselves, or one can encounter it indirectly by hearing about it from journalists, historians, or other people who have experienced it. Social learning involves compiling lists of rights that

require political action to protect. People eventually come to understand the worst wrongs and injustices that human psychology and institutions can create, and they also learn how to defend themselves and other people from these injustices.

Currently, about 200 countries use similar political and legal systems, including centralized government power, a legal system made up of legislatures, courts, and prisons, military and law enforcement, large bureaucracies, mass media, monetary systems, a combination of public and private property, and taxation schemes (Morris, 2008). These multinational organizations provide nations problems to tackle in common and promote the acceptance of similar solutions. If many nations use the same basic institutions and if these institutions provide some special hazards to values that most people share, then human rights will often float independently of cultural variances.

According to Donnelly, international human rights are socially acquired remedies for the inherent risks of the contemporary state, which is now used everywhere (Donnelly, 2003 [1985]: 46, 92). For this reason, Donnelly argues that human rights are necessary in all nations. From "the concrete experiences, especially the sufferings, of real human beings and their political struggles to defend or realize their dignity," one progressively learns the shapes these dangers take and how to deal with them (Donnelly, 2003 [1985]: 58). All users should be made aware of the risks and how to avoid them after learning the lessons. The European colonial powers have some responsibility for addressing the risks associated with the modern state, having both established and encouraged its growth. It is not feasible to get the product recalled, but it is possible to spread the word about its risks and solutions. According to Donnelly, dangers that need special rights are "widespread, systematic, and egregious" (Donnelly, 2003 [1985]: 226).

Nonetheless, overemphasizing the contemporary state is a mistake. It is impossible to argue that none of the hazards associated with the modern state existed in the antecedent forms of governance, law, and property that gave rise to contemporary political institutions. More than 2,000 years have passed since the perils of unbridled democracy, the misuse of political authority for corrupt and irresponsible purposes, and the shortage of food brought on by private agricultural property systems were first recognized and addressed.

In many nations today, inadequate access to basic healthcare, basic education, and nutrition is a serious issue. Hunger, illness, and illiteracy are prevalent in nations lacking governmental initiatives to guarantee that these items are accessible to all segments of the populace (Pogge, 2012; Adetutu, 2023). Even those who acknowledge that they have a duty to support their family and themselves may nonetheless discover that their limited resources, unfavorable external conditions, or a combination of these prevent them from being able to obtain enough food for survival. For example, a serious disease may prevent someone from working, a drought may make it hard to cultivate food, or the pay for labor may not be enough to meet basic necessities. Furthermore, when it comes to serious sickness, infectious illnesses, and public health issues like sewage and water systems, individuals' or families' response is frequently insufficient.

4. Would Some Weaker Norm Be As Effective?

Perhaps people would not need economic, social, and cultural rights if they assisted one another, their families, and those in need. This theory holds that in order to recognize people moral claims to assistance in the fields of healthcare, education, and subsistence, we do not need to regard them as establishing rights or requiring political action.

A well-balanced blend of self-help and voluntary mutual aid is certainly desirable, but it cannot adequately sustain all the impoverished and disabled if it is viewed as a substitute for politically enforced economic, social, and cultural rights, rather than as a supplement to them. First, there are people who are unable of helping themselves, too young, too old, or too ill. Second, many impoverished individuals originate from low-income families that are unable to provide for their members, and other people have no family to assist them. Third, there is no mistaking the limitations of charitable contributions as a way to help the underprivileged. Oftentimes, gifts are insufficient to cover the needs at hand. Moreover, coverage for the poor is likely to be uneven rather than comprehensive. This might be the result of a lack of qualified contributors or the discretionary use of the qualified donors who are available to contribute to other causes. This patchiness was noted by John Stuart Mill. Chapter xi, section 13 of Mill's Book V published in 1848 states that "charity almost always does too much or too little: it lavishes its bounty in one place, and leaves people to starve in another."

5. Are the Burdens Justifiable?

It is a prevalent argument that rights to culture, economics, and society are unduly burdensome. When someone argues that certain human rights, such as liberty rights, are significantly less expensive or burdensome than economic, social, and cultural rights, they are sometimes comparing these rights to other, less disputed human rights. The freedoms of expression, association, and mobility must all be respected and upheld by governments. Furthermore, individuals cannot be adequately protected when taking use of such benefits without security and the right to due process. Costs associated with the criminal justice system and the legal system are included in the "costs of liberty." As soon as we realize this, freedoms seem much more expensive. It is insufficient for a society to just include a legal and socially acceptable ban on interfering with speech, association, and movement in order to effectively grant freedoms of speech, movement, and association. For these liberties to be effectively provided for, a legal framework that both defines and safeguards property and personal rights against infringement and guarantees due process for individuals accused of crimes is necessary. It costs a lot of money to provide such legal protection through lawmakers, law enforcement, courts, and prisons.

Furthermore, we should not consider that economic, social, and cultural rights only grant unrestricted access to the commodities they defend for all people. If everyone just gets a free supply, guarantees of sustenance will be unaffordable and will reduce productivity. In a working system of economic, social, and cultural rights, the majority of people will need to work in order to sustain themselves and their families, provided they are provided with the necessary opportunity, resources, and education. Government-enacted economic, social, and cultural rights guarantee availability (sometimes referred to as "secure access"); but, governments ought not to be required to supply the necessities in most circumstances. Since many people think that governments should give free health services and education to everyone, regardless of capacity to pay, basic healthcare and education may be an exception to this rule.

Even in countries that reject and disregard economic, social, and cultural rights, there is still a need to find a means of funding the basics of providing for the poor. In the event that government does nothing, families, friends, and communities will bear the majority of the responsibility for providing food, clothing, and lodging to those who are unable to sustain themselves. In the past century, government-sponsored economic, social, and cultural rights have

borne only a large share of the burden of providing for the impoverished. Taxes associated with economic, social, and cultural rights act as a partial replacement for other burdensome duties, such as the care of the elderly, ill, disabled, and unemployed, which fall on families and communities. The question of whether to implement economic, social, and cultural rights is not one of accepting heavy burdens, but rather of continuing to rely entirely on unofficial systems of provision that offer little help and impose disproportionate costs on friends, family, and communities.

Both the burdensomeness of economic, social, and cultural rights and the burdensomeness of liberty rights become less significant when we recognize that these rights have significant costs associated with them, that intelligent systems of provision for economic, social, and cultural rights need only sporadically supply people with the goods they require, and that these systems are merely substitutes for other, more localized methods of helping the less fortunate.

It may not be ethical to force economic, social, and cultural rights on persons even if the constraints they entail are not unduly onerous. Libertarians argue that economic, social, and cultural rights should not be subject to unlawful taxes. It is emphasized that this viewpoint is open to criticism on two fronts, without attempting to offer a critique of libertarianism here. First, taxes are legal as long as they are utilized to help taxpayers meet their moral obligations, such as supporting government-run humanitarian aid programs that perform better than the altruistic obligations of all people to help one another (Beetham, 1995: 53). Second, the demands of upholding other rights do not always supersede the importance of property rights.

6. Feasibility

The ability of the majority of nations in the globe to execute the in question right serves as the ultimate litmus test for an international human right. Basic economic and social rights face a difficult feasibility test since some of the world's nations are too poor, unstable, or disjointed to uphold and successfully execute them. This is particularly true in "low-income" countries, defined as those where the average personal income is in the lowest quartile. They comprise countries such as Haiti, India, and Nigeria, where the average annual income is less than \$500, the average life expectancy is a little under 60 years old, the proportion of vaccinated children is over 60%, and the number of illiterates is higher than 40%.

It is not reasonable to gauge viability using the assets and capacities of the least capable countries. For example, parents are required by law to do more than even the most unable person could do. Instead, we set a high standard that most parents would not be able to reach. Likewise, the majority of countries ought to be able to satisfy the requirements for the viability of human rights. That is the relevant question to ask if countries in the top two quartiles and some of those in the third have the resources and ability to carry out their fundamental rights to progress in the economy, society, and culture. Clearly, the top quartile of countries can. Among them are nations like Greece, Singapore, Japan, Canada, Denmark, and Denmark. Additionally, nations in the second quartile can. These comprise nations like Poland, Mexico, Chile, and Hungary. These nations have 73-year average lifespans, average personal incomes of around \$5,000, approximately 95% baby vaccination rates, and fewer than 10% illiteracy rates (World Bank Development Report, 2020). Although the effectiveness and quality of these initiatives can occasionally be lacking, the majority of them currently have programs in place to support and defend fundamental economic, social, and cultural rights.

However, what about countries that are in the third quartile? If some of them are effective in putting basic economic, social, and cultural rights into practice, then the viability test will pass. Countries like Brazil, China, Fiji, Jordan, Turkey, and Columbia are among them. These nations have 69-year average lifespans, childhood vaccination rates of about 80%, illiteracy rates of less than 20%, and average personal incomes of \$1350 USD. Numerous of these nations already have initiatives in place to combat hunger, advance health, and offer education; nevertheless, these initiatives are frequently underfunded and do not reach all areas and segments of the populace. However, it is likely that at least the most successful third of them can execute fundamental rights related to economics, society, and culture. The viability requirement appears to be satisfied if we use the Vance Conception of economic, social, and cultural rights.

When economic, social, and cultural rights satisfy all relevant justification criteria, then these rights may be justified globally. Most countries can carry them out, and not doing so as quickly as possible is not an excuse due to a lack of resources. In countries that are really unable to implement these rights, they continue to exist as valid international norms, but their governments and peoples are released from accountability for their inability to do so. However, this does not imply that the rights are inconsequential. They act as guidelines that

ought to be adhered to as much as is practical, and their absence ought to be lamented. Additionally, these rights encourage backup and secondary addressees to come forward and provide a great deal of assistance.

The only thing required of parties to the International Covenant on Economic, Social, and Cultural Rights is the gradual implementation of economic, social, and cultural rights. "Take steps, individually and through international assistance and co-operation... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant," according to Article 2.1 of the Covenant for ratifying States. The duties relevant to these rights are defined by the International Covenant on Economic, Social, and Cultural Rights as the need to try, or to make a serious effort gradually over time, to implement these rights for every person in every part of the country. This enables nations to uphold their legal obligations even in situations when not all of its citizens have access to basic healthcare, basic education, and food.

It would have been better to use the same commitment wording as in Article 2 of the Civil and Political Covenant, which states that all citizens within its territory should "respect and to ensure to all individuals the rights recognized in the present Covenant." Although an addition may have said that countries temporarily liberated from their commitments to uphold economic, social, and cultural rights must do so as soon as practicable, they are still obligated to do so. Beyond this, the duties of affluent countries to assist low-income countries in achieving their basic economic, social, and cultural rights need to have been articulated explicitly and in an abstract form (Rawls, 1999: 37).

The economic, social, and cultural treaty implementation committees have included the concepts of fulfilling minimal requirements and making a real and quantified effort in an attempt to rectify the faults of this method. This is true even if the accords call for gradual adoption. Progressive implementation is a concept that involves responsibilities to attempt. This allows nations that do not implement economic, social, or cultural rights to argue that they are optimistic waiters—that is, that they have exhausted all options and are just waiting for more funding to become available. This provides a widely accepted justification for doing nothing. Of course, one way to respond to this would be to argue that the claim of incapacity is not true given the amount of money spent on seemingly less important items. Another approach would be to require countries to implement

specific, measurable measures. Promoting the right to economic, social, and cultural progress can involve imposing obligations to meet immediate, realistic minimum standards and working toward the full fulfillment of these rights over an extended period of time. This is frequently referred to as a "minimum core." A privilege such as this might be said to have two purposes. The first, known as the minimal object, has a standard that almost any nation can meet and calls for almost instantaneous compliance. Regarding food, the outer core may be responsible for ensuring that everyone has safe access to enough food, while the minimal core may be tasked with averting catastrophic famines. It creates a more difficult goal with a duty to try, granting the right a greater range of application.

Implementing Economic, Social and Cultural Rights

This section addresses the claim that because courts cannot or should not protect economic, social, and cultural rights alone, they are insufficient as rights. One may argue, for instance, that while courts should and are able to uphold the rights to a fair trial and religious freedom, they cannot uphold the right to a minimal degree of education. After all, in a democracy, judges have no business founding or subsidizing an educational system.

Judges may apply judicial review to enforce the right to freedom of religion when a nation ratifies an international human rights treaty or integrates the right into its constitution. When the legislature passes a law that outlaws the beliefs and practices of Jehovah's Witnesses, and if an appeal is filed, the courts have the authority to overturn the conviction and declare the law unconstitutional or incompatible with the nation's international obligations. It is true that judges play a significant role in ensuring the preservation of religious freedom.

On the other hand, let us imagine that a nation has acknowledged the right to basic education by incorporating it into its constitution or by acceding to a global human rights agreement. It is possible to formulate the right as follows:

Youngsters are entitled to an education. As a result, the Legislature must establish and provide funding for a nationwide network of free public schools that are accessible to all students. There must be free public education for 10 years or more of formal education.

Assume further that, according to this order, the legislature neither creates nor funds schools. A group of parents suing for universal free public education wants the judge to order the legislature to uphold its constitutional duties. Such an order may be made by a court, but the judge cannot carry it out by nullifying the law.

Judges are unable to carry out the right until a public education system has been established and is adequately supported by the legislation. Furthermore, it would be improper for a judge to assume the position of a legislator in a democracy and declare that the court would create and run the educational system and appropriate the necessary funding if the legislature declined to carry out its mandate. It is not the place of a judge to shift funds intended for prisons or bridge building to schools.

These disparate instances may lead one to conclude that judicial implementation is only effective when judges have the authority to overturn laws or rulings, and that the only rights that truly exist are those that are purely negative and prohibit governments from repressing any religion or restricting the free speech of its citizens.

This argument is nonsensical because it implies—a falsehood—that due process rights are not real rights. Consider an example that perfectly embodies the person's right to an education in order to comprehend this. Assume for the moment that a country has ratified a global human rights pact or placed the right to a fair trial in its constitution. The right might be expressed as follows:

Every defendant in a criminal case is entitled to a public, impartial jury trial that is fair and unbiased. Every accused individual has the right to legal representation throughout the trial, which may be paid for by the public coffers if needed.

Assume further that the legislature continues to violate this freedom by imprisoning people whom the police believe to have committed crimes without filing charges or holding a trial. There is no criminal justice system in place, no statute pertaining to them, and no mechanism for offering free legal counsel. Judges are therefore unable to punish offenders. Imagine that someone was taken into custody without being charged or had the opportunity to present their defense. They sue the police, requesting that the court order their release or grant them a chance to defend themselves. A judge may issue such an order, but they cannot be carried out by overturning the legislation. Until the government creates and funds a criminal justice system that encompasses both prosecution and trial, judges are unable to exercise their constitutional rights. Courts have the authority to order the police to cease holding individuals without a court appearance; yet, the police may laugh at this authority and make jokes about how powerless courts are. Furthermore, it would be improper for a judge to assume the position of a legislator in a democracy and declare that the court would create and administer a criminal justice system and appropriate the necessary funding if the legislature declined to carry

out its mandate. It is not the place of a judge to take money intended for schools or bridge development and use it to pay attorneys and courts.

Because due process rights had a significant place in past bills of rights, it is ludicrous to argue that they are not real rights. Due process rights could seem to be negative rights, meaning that all they ask for is the government to stop doing certain things. They are really more similar to positive rights because their addressees are required to provide a service to the right-holders. They are best categorized, in my opinion, as *conditionally positive*. According to them, if the government intends to punish someone, it must provide them with a trial chance, legal representation, and a number of procedural safeguards. Because governments must threaten and impose punishment in order to rule, the antecedent of this conditional will almost certainly always be met. As a result, governments will frequently be required to give due process protections. Practically speaking, due process rights, like the right to education, require obligations to deliver. They compel governments to offer pricey legal services, necessitating the establishment of big, costly bureaucracies and infrastructure.

Claims about the scope of judges' authority to uphold rights are contingent upon the history of established institutions and customs. Because of customs and legislation that we believe give judges considerable authority over criminal prosecutions, we believe judges are capable of upholding due process rights. However, without that context, courts cannot enforce the right to due process any more than they can enforce the right to education in cases when the government refuses to take action. Legislatures and courts must work together to effectively implement rights in practically all circumstances.

Using the right to education as an example, judges have a big say in making sure that this right is carried out after an educational system has been established and approved. If a few parents sue to ensure that their kids' education rights are upheld, a judge can order the Commissioner of Education to establish a school in a vast area without public education. Judges have the authority to consider complaints regarding unethical expulsion of kids from schools or concerning inadequate 10 years of education. A minimal standard of life and access to healthcare are equal rights. If these rights are supported by legislation and specified in it, courts are empowered to carry them out. However, it is arguably more effective to leave the execution of economic, social, and cultural rights to specialized

bureaucrats, with judges handling appeals of those officials' judgments.

The Common Recognition of Economic, Social and Cultural Rights

The Vance Conception of social, cultural, and economic rights is widely accepted. As mentioned before, the International Covenant on Economic, Social, and Cultural Rights has been ratified by over 75% of all countries in the globe. Most proponents of hierarchy, communitarians, capitalists, socialists, and authoritarians concur that governments have a key responsibility to ensure that people can meet their basic needs. Radical libertarians are the people who reject things.

The Vance Conception's definition of economic, social, and cultural rights is assumed to be broadly accepted already. The idea that a human right is globally acceptable is based on the assumption that most people who have an opinion in most countries would favor the right. You might assess this notion by conducting opinion polls on the following subjects: (1) universality; (2) high priority; and (3) related duties. Asking participants to indicate strong disagreement, disagreement, agreement, strong agreement, or lack of opinion about statements such as the following might be one method to test for universality:

- Everybody should have access to chances for earning a livelihood through employment.
- Programs financed by the government should be open to all persons who are actually unable to cover their basic necessities through employment or savings.

Propositions like the following might be used to evaluate the notion that economic, social, and cultural rights are obligatory or duty-generating:

- When possible, governments ought to guarantee that children have access to education.
- Governments are obligated to safeguard public health by guaranteeing the accessibility of clean water.

Propositions about particular rights, or families of rights, might be formulated as important questions to evaluate belief in the high value of human rights. One may inquire about the following propositions:

- It is critical that individuals have access to famine prevention measures.
- It is crucial that children have access to educational opportunities.

If my theory on the universal acceptance of economic, social, and cultural rights turns out to be true, it would explain why these rights are politically stable in democracies. The United States of America

possesses politically inviolable policies that safeguard a number of economic, social, and cultural rights, most notably social security and public education, even if it is not known for being a strong advocate for these rights. If politicians openly opposed these initiatives, they would be defeated in the next election.

If the middle classes receive benefits or assurances from the welfare rights programs, it might make the politics of those rights more stable by giving them political justification for caution. This adds to the programs' cost but helps guarantee that the benefits will be of a sufficient caliber.

The Vance Conception of economic, social, and cultural rights, which recognizes the most urgent demands of both the rich and the poor, may support a sound political balance. It recognizes the aspirations of the impoverished to live in at least decent conditions, to be granted full citizenship and political rights, and to have access to opportunities for participation in the economy and educational system. It also recognizes the aspiration of the wealthier class to preserve their political and economic independence rather than be forced into a dictatorship by the proletariat. The Vance Conception, of course, provides a minimum as opposed to a maximum. In nations with the required resources and public backing, even more equal systems are feasible.

The Norms and Enforcement

The following is a synopsis of the International Bill of Rights, which safeguards economic, social, and cultural rights. Each item is presented using the international instrument's acronym (Eide, 2011; Baoku & Uche, 2022):

Economic Rights

- Right to Work: UDHR 23, ICESCR 6;
- Right to Property: protected under UDHR 17; not by the ICESCR or ICCPR;
- Right to Social Security: ICESCR 9, CRC 26, UDHR 23.3 & 25

Social Rights

- A Sufficient Standard of Living: CRC 27, UDHR 25, ICESCR 11;
- The Right of Families to Support: ICESCR 10, CRC 27

Cultural Rights

- Right to Education: ICESCR 13 and 16, CRC 28 and 29, UDHR 26;
- Minority Communities' Right to maintain their Cultural Identities: CRC 30; ICCPR 27;
- The Right to Participate in Cultural Activities: UDHR 27 and ICESCR 15.1a;
- The Right to Benefit from Scientific Progress: ICESCR 15.1b;

- The Right to Material and Moral Interest Advantage: ICESCR 15.1c
ICESCR and ICCPR regulations are handled by committees. Every five years, States Parties to the ICESCR provide reports to a monitoring body (Craven, 2011). States Parties to the ICESCR were supposed to report to the UN Economic and Social Council rather than this committee prior to a change in policy. Numerous Soviet nations that participated in the creation of the ICESCR believed that little outside intervention would be necessary to implement the rights (Craven, 2011; Bayefsky, 2021). The ICESCR and ICCPR committees utilize the tactic of "naming and shaming" in their State reports to highlight shortcomings in state policy. Together with site inspections, productive discussions with States Parties, and final reports, the Committee on Economic, Social, and Cultural Rights has mandated that States comply with reporting obligations. By May 2015, there were 97 late reports from 88 States, and 17 States had not made a report in ten years, as a result of several States Parties' reluctance to participate in fruitful conversation with the Committee (Bayefsky, 2021; Adebimpe, 2022: 143). When States Parties report their progress to the ICESCR monitoring body, their articulations on larger concerns affecting all States parties are regarded as authoritative interpretations of the Covenant (Rosas & Scheinin, 2011).

For instance, General Comment 3, which addressed the applicability of rights under Article 2 of the ICESCR, addressed the nature of State Parties' duties. Furthermore, the State Party has a behavioral obligation to ensure that the rights are administered fairly. In addition, the State Party must carry out a result duty, which comprises acting promptly, reasonably, with the intention of achieving the goal and fulfilling the promise. It is anticipated that all necessary actions—including legislative actions—will be done in order to fulfill the duty to act. The Committee emphasized to the States Parties that their responsibilities under the Covenant go beyond defending human rights; they also promised to ensure that everyone residing under their jurisdiction is free to enjoy their rights.

Regarding Justiciability: An Illustration of Safeguarding Economic, Social, and Cultural Rights within a Region

The African Charter on Human and Peoples' Rights, the most recent regional system that came into force in 1986, is the best example of how regional protection of economic, social, and cultural rights with civil and political rights can be accomplished in a single convention (Gomez, 2007; Churchill & Khaliq, 2015; Warbrick, 2016; Adebimpe, 2022). Economic, social, and cultural rights are not

distinguished from civil and political rights under this treaty. According to Baderin (2007), the right to dignity is a transversal right that connects and unites all other rights. Not only are individual rights protected, but collective rights such as family and "all peoples" are safeguarded as well. The African Commission on Human Rights has made it clear that it aims to protect all of the rights mentioned in the African Charter, including economic, social, and cultural rights, in the course of performing its interpretative duty with respect to the constitution. This was mentioned in the *Center for Economic and Social Rights v. Nigeria and the Social and Economic Rights Action Center* lawsuits (Baderin, 2007: 139-166; Odinkalu, 2013: 327-369). The case started when Ogoniland was given to the oil industry by President Abacha, causing environmental degradation. The Commission stated as much:

Due to the unique characteristics of the African environment and the African Charter on Human and Peoples' Rights, the African Commission has a big task ahead of it. Human rights and international law must take African situations into account. It is clear that economic and social rights, environmental rights, and collective rights are the cornerstones of human rights in Africa. The African Commission will carry out any of the numerous rights specified in the African Charter. It seizes the opportunity to underline that no right outlined in the African Charter cannot be implemented. But as was evident from the preceding paragraphs, the Nigerian government did not meet the minimum requirements outlined in the African Charter.

Because the African Charter protects a wide variety of rights, it is possible that the African Court on Human and Peoples' Rights may make groundbreaking rulings when it convenes to hear cases in the not too distant future.

Regarding Justiciability: Domestic Enforcement

Proponents of the justiciability of these rights have an effective mechanism when a nation's constitution incorporates the normative principles of the international protection of all human rights, including economic, social, and cultural rights (Woods, 2013). The major focus of this paper is on two countries' instances, one with constitutional space and the other with purposefully established potential for litigation. The South African experience will be mentioned first.

Since ratifying its constitution, South Africa has protected economic, social, and cultural rights in addition to civil and political rights. South Africa is not now a member of the 160 State Parties, although having signed the International Covenant on Economic, Social, and Cultural Rights (Heyns & Viljoen, 2022).

The opinions of the Constitutional Court regarding economic, social, and cultural rights can be divided into three main groups, according to one observer (Liebenberg, 2011). First, there would be "basic" rights, which would not be identified with ideas such as progressive manifestation or resource scarcity. These would include children's socioeconomic rights, the right to a minimum education, and the rights of the incarcerated, which would include the offenders' socioeconomic rights, according to Liebenberg (2011). The second category includes "access rights," which are the basic rights to adequate housing, medical care, food, water, and social security. It is the exclusive duty of the state to "achieve the progressive realization of each of these rights by reasonable legislative and other measures within its available resources." Since emergency medical treatment is a right that cannot be denied and no one may be evicted without a court order, the third category forbids the State from infringing the right to shelter (Liebenberg, 2015).

The court's jurisprudence regarding social and economic rights was established by the three well-known "reasonableness review" cases: *Government of the Republic of South Africa v. Grootboom*, 2001 SA 46; *Soobramoney v. Minister of Health, KwaZulu-Natal*, 1998 (1) SA 765 (CC); and *Minister of Health v. Treatment Action Campaign*, 2002 (5) SA 721 (CC) (Liebenberg, 2015). Whether the policy selected by the state's organs may fairly be anticipated to supply the rights in question seems to be the main concern of the Constitutional Court in these kinds of instances.

In *Soobramoney*, the Constitutional Court first shown reluctance and considerable deference to the legislative and executive branches. It did, however, quickly come to terms with the limitations of its analysis of the logic of state policy. Due to a lack of funding, Mr. Soobramoney was denied access to dialysis therapy, which the Constitutional Court said did not fall under the definition of the "right to emergency treatment." It said:

A court will use caution when interfering with reasonable judgments made in good faith by the governmental and medical authorities who are responsible for handling these kinds of cases (Liebenberg, 2015).

After their house flooded during the winter rains, the homeowner in the *Grootboom* case, along with her children and several other neighbors who had also experienced similar floods, moved to a parcel of land set aside for cheap housing. They were compelled to vacate this land after their victory in the lawsuit made it all the way to the High Court. The boundaries of the Constitutional Court's examination

were clarified in relation to the logic of the state policy and the concept of separation of powers after the State filed an appeal with the Court (Liebenberg, 2015):

The primary responsibility for ascertaining the precise structure and content of laws that must be implemented lies with the legislative and executive departments. However, they also need to ensure that the policies they put into place are reasonable. A court will not consider whether there were better choices or if public money might have been spent more prudently when determining reasonableness. Whether the actions performed make sense is the question. It is important to understand that the state has several options for fulfilling its obligations. Many of these would satisfy the criterion of reasonableness. This need is satisfied if it has been determined that the measures are working.

The highest court in the country reiterated that it was constitutionally empowered to decide cases involving socio-economic rights. It went on to say that it was permitted to investigate this issue within the framework of the debate over separation of powers, even if doing so would have financial consequences (Liebenberg, 2015). It emphasized that there would be financial ramifications if it granted accused parties legal aid as a civil right. That seems to be a sufficient response to those who argue that, as was previously noted, there are no financial consequences to the State's enforcement of civil and political rights.

The Constitutional Court declared in *Grootboom* that reasonableness may be assessed at the stage of legislative planning and execution:

It is unlikely that legislative actions by themselves will result in constitutional conformity. Legislation alone is insufficient. To accomplish the desired outcome, the state must take action, and the executive branch's implementation of suitable, well-directed policies and programs will inevitably be required to support the legislative measures. Additionally, the program needs to be executed rationally. If a program is otherwise reasonable but not conducted appropriately, it will not be considered a governmental duty (Liebenberg, 2015).

The South African Constitutional Court further clarified the definition of reasonableness by relating it to the three democratic ideals of equality, freedom, and human dignity:

Furthermore, reasonableness must be construed in light of the Bill of Rights as a whole. The right to adequate housing is engrained in our culture because we value individuals and want to ensure that they have access to basic requirements. A society must seek to ensure

that everyone has access to the necessities of life if it is to be built on the principles of equality, freedom, and human dignity. To be reasonable, measures must consider the nature and degree of the denial of the right they are meant to accomplish. Individuals whose needs are the greatest and whose ability to exercise their rights is, thus, most threatened should not be disregarded in the course of efforts meant to bring about right fulfillment. Demonstrating that the measures can lead to a statistical advancement in the realization of rights may not be enough to pass the reasonableness test. In addition, the Constitution mandates that everyone be given considerate treatment. The measures may not pass the test even if they are statistically successful if they are not able to meet the requirements of the most destitute people (Mureinik 2004; Jaichand 2004; Liebenberg, 2015).

When it comes to social policy matters, the general consensus is that the legislative and executive departments should handle them all and that the courts have little to no role to play. The Constitutional Court declared in the *Treatment Action Campaign* case that:

Even while it is impossible to properly define the borders between the activities of the legislative, executive branch, and judicial, there are some matters that are clearly within the purview of one or more parts of government and outside of them. This division should be respected and acknowledged by all branches of the government. Nonetheless, this does not imply that judges cannot or ought not to issue directives that affect public policy (Davis, 2004).

It is correct to state that the Constitutional Court considered questions more pertinent to the implementation of social and economic rights than to the justiciability of such rights. In the *Treatment Action Campaign* complaint brought under the Right of Children to Medical Care, the government's policy of not providing Nevaripine, an anti-retroviral medication that reduces mother-to-child transmission of HIV/AIDS, at any state health institutions was investigated. The ruling of the High Court was challenged by the administration. The *Treatment Action Campaign* won its challenge when the Constitutional Court ruled that the government's effort to forbid mother-to-child transmission was irrational.

With regard to the separation of powers concept, the Constitutional Court considered its role in deciding cases involving socio-economic rights when it made the following ruling:

Courts are not the appropriate venue to make decisions when those outcomes might have a wide range of social and economic effects on the community. According to the Constitution, the court's

duty is restricted to requiring the state to take action in order to carry out its constitutional obligations and determining the legitimacy of such measures. These reasonableness evaluations may affect budgets even when their goal is not to reorganize them. In this approach, the judicial, legislative, and executive branches achieve the right balance (Liebenberg, 2015).

Under the provisions for the Examinations of Communications, the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights specifies the following, which represents the development of South African domestic jurisprudence centered on the evaluation of the rationality of state policy:

The Committee shall take into account the appropriateness of the State Party's conduct when reviewing communications under the current Protocol. The Committee will take into consideration that the State Party has the option to implement the rights outlined in the Covenant through a variety of potential legislative measures (Liebenberg, 2015).

The Constitution's incorporated Directive Principles of Governmental Policy appeared to bar Indian courts from closely examining government acts pertaining to economic, social, and cultural rights. On the other hand, the Indian Supreme Court has decided that these Principles are essential to comprehending the provisions of fundamental rights. The civic right to life has been used as a framework for interpreting economic, social, and cultural rights (Scheinin 2011). In *Keshavananda Bharati v. State of Kerala*, the Supreme Court declared:

Since most fundamental rights are essentially empty vessels into which each generation must pour its own essence within the constraints of its experiences, they lack predefined meaning. In situations not anticipated by the constitution's authors, it could be necessary to restrict, abridge, reduce, or even eliminate certain rights; at some points in the country's history, the moral demands mentioned in Part IV may take precedence over them [which include the Directive Principles of State Policy].

The right to a livelihood was recognized as a part of the right not to be deprived of life in the pavement dwellers case of *Tellis v. Bombay Municipal Corporation* (Scheinin, 2011). In a similar vein, the case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, covered the right to essentials of life, such as enough food, clothes, and reading materials (Scheinin, 2011). The right to shelter was recognized as a part of the right to life in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*

(Scheinin, 2011). In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, the right to shelter was acknowledged as a component of the right to life (Scheinin, 2011). In the cases of *Mohini Jain v. State of Karnataka* and *Paschim Banga Khet Mazdoor Samity v. State of Bengal*, the rights to health and education were acknowledged (Scheinin, 2011).

Conclusion

If theories about the universal validity of economic, social, and cultural rights are supported by actual data, this would explain why these rights have remained politically resilient in democracies. The United States of America possesses politically inviolable policies that safeguard a number of economic, social, and cultural rights, most notably social security and public education, even if it is not known for being a strong advocate for these rights. If politicians openly opposed these initiatives, they would be defeated in the next election. Politics around welfare rights may be stronger if the programs implementing them also help or support the middle class, providing them with politically viable explanations. This makes the programs more expensive, but helps ensure that the quality of benefits will be adequate.

The Vance Conception of economic, social, and cultural rights, which recognizes the most urgent demands of both the rich and the poor, may support a sound political balance. It recognizes the aspirations of the impoverished to live in at least decent conditions, to be granted full citizenship and political rights, and to have access to opportunities for participation in the economy and educational system. It also recognizes the aspiration of the wealthier class to preserve their political and economic independence rather than be forced into a dictatorship by the proletariat. The Vance Conception, of course, provides a minimum as opposed to a maximum. Even more equitable systems are possible in countries with the necessary funding and support from the general people.

It would be absurd and fruitless for governments to continue on this approach, even while historical study does demonstrate a clear ideological divergence between socialist and western liberal states on the nature and defense of human rights. The growing awareness of the consequences of not enforcing economic, social, and cultural rights has spurred further research in this area. The UN has responded to the extent that its member nations have permitted it. The International Covenant on Civil and Political Rights (ICESCR), which mandates that States parties have ratified and must fulfill international human rights obligations, holds States Parties less accountable than the

Millennium Development Goals, notwithstanding the Goals' noble intentions. It is unacceptable to overlook certain States' inability to fulfill their commitments in the pursuit of achieving the Millennium Development Goals.

The necessity for an interdisciplinary approach to the study of economic, social, and cultural rights—of which law is only one facet—is another element driving the expansion. There are other branches that make substantial contributions even now outside the legal one. Thus, the whole justiciability debate needs to be viewed as one, but not the only, means of achieving human rights. A thorough grasp of economic concepts is required in order to fully comprehend how these rights should be handled. Better means to promote these rights through legislation change must be taught to our legislators. Civil society must be watchful over matters of state accountability, such as the methods used to create and rank budgets, in order to uphold the democratic process.

As was said in the introduction, under the Optional Protocol, the Committee on Economic, Social, and Cultural Rights will eventually be authorized to take petitions from both individuals and groups. It will operate similarly to the approximately 33-year-old Optional Protocol to the International Covenant on Civil and Political Rights when it comes into force. This begs the question of whether aligning economic, social, and cultural rights with civil and political rights is the primary goal of efforts to develop them. Or is the realization of all human rights still the central concern of the matter? It could be time for rights related to the economy, society, and culture to move past their historical status and reclaim their rightful place in international legal frameworks as human rights. Taking a different position would mean defending an outmoded and worthless government policy.

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