Human Rights and the World Bank: Practice, Politics, and Law

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This article is about the plurality of international human rights law; it explores the political, policy, and practical dimensions of human rights law as they relate to the work of the World Bank. It is situated within the broad debate of the role of human rights in aid and development policy, and also within the more particular discussion of the place of human rights in the strategic thinking and operational practices of the World Bank.

Introduction

This article argues for greater engagement with human rights by the World Bank at all levels of operation, that is, for a broad-based acculturation or politicization of human rights in the Bank’s thinking and its practice. Stressing the need for this “political” embrace, however, does not mean undercutting the fundamental principles (whether moral or legal) on which human rights are founded. Nor does it suggest that such an attempt is, or might be, cynically pursued by elements within the Bank who might bend human rights language to suit their political ends. To be sure, one can detect within the Bank’s policy statements and public comments, resistance to the notion of institutional engagement with human rights, albeit alongside substantial rhetoric that appears to embrace this very notion. This ambiguous position arises

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out of a combination of factors that range from the marginalization of human rights thinking generally, and of rights-based approaches to development specifically, to the practical difficulties of implementing “in the field” what little commitment there is to human rights protection. Underlying the spectrum of attitudes exhibited by the Bank is the perception that beyond a coincidence of the objectives of human rights and certain development initiatives, such as building social welfare capacity and supporting good governance and the rule of law, human rights matters are irrelevant to the Bank’s policy endeavors.

What is patently lacking at present is a World Bank Group-wide integrated understanding of the essentially plural nature of human rights and how that relates to the work of the World Bank. Official pronouncements of the Bank on the question of human rights often attest to a half-hearted or superficial engagement with the nature, functions, and operations of human rights law. It has been this lack of sufficient comprehension, above all, that has led directly to the rejection of the Bank that it has any obligation (most certainly, any legal kind of obligation) to protect and promote human rights.

The argument for a deeper engagement with human rights within both the policy-making and operational nerve centers of the Bank focuses on an engagement that opens up international human rights law and shows what choices are being and can be made about human rights, as well as within human rights. The nature of these choices is fundamentally politicized. While it is acknowledged that such a perspective could leave human rights language open to possible abuse, it is more likely—and certainly hoped—that it will better equip the Bank to recognize the relevance and, indeed, utility of human rights to the Bank at all levels of its functioning.

There are five parts to this article: the first part considers the relationship between development and human rights generally. The second looks at the changing nature of international law and its implications for the role that the World Bank might play in human rights. The third part examines the particular relationship between the World Bank and human rights. The fourth part reflects on the plural and, to an extent, pragmatic nature of human rights law; and the final part considers the practical problems of implementing human rights within development programs and how a better understanding and acceptance of the wider political dimensions of human rights may assist in overcoming such obstacles.

Development and Human Rights

The architectural debate about the place of human rights within aid and development discourses is of obvious importance, not least because the World Bank is so often
a key player in (or object of) this discussion. The parameters of debate, as well as its implications, can be categorized as follows.

At its base, the concern is to investigate the links between poverty and rights; or to be more precise, the links between the alleviation of poverty and the enhancement of human rights protection. Thus, it is argued that without basic nutrition, shelter, consistent and adequate income, health care, and education services, few human rights (even civil and political ones) can, in any meaningful way, be protected. It is equally held that the active promotion and protection of human rights, such as access to adequate health care, nutrition, housing, and education (as well as the liberty to both receive and impart information, to associate, to found families), together with the right to privacy, and religious, cultural, political, and philosophical freedoms, are fundamental to successfully breaking the cause and effect cycle of poverty.²

Rights-based approaches to development also feature prominently in this debate. The plural here is important, for this “genre” has reached such a stage that it now behooves commentators to disentangle the various rights–based approaches propositions in order to make their own views clear.³ Darrow and Tomas stress what are (or should be) the core features of this approach—namely, that viewing development through the prism of human rights allows (or insists upon) the empowerment of those toward whom development ought properly be directed and raises the prospect of the enforcement of the rights that flow to them therefrom.⁴ This means facilitation of empowerment and enforcement, not just in narrow legal terms but in wider political terms as well. The normative framework provided by adopting human rights in this way may help “orient development cooperation,”⁵ although equally,


³ See, for example, Andrea Cornwall and Celestine Nyamu-Musembi, “Putting the ‘Rights-Based Approach’ to Development into Perspective,” *Third World Quarterly* 25, no. 8 (2004):1415–37.


⁵ Cornwall and Nyamu-Musembi, 2004, “‘Rights-Based Approach’ to Development,” 1416.
and more controversially, it might serve to elevate the rights approach above any others, or spawn what the U.K. Department of International Development (DFID) recently referred to disapprovingly as “old style [i.e., didactic] conditionality.”

The 2006 World Development Report’s analysis of the developmental problems of inequity is a variation on this theme, despite its entertainment of human rights more broadly, nevertheless boils down the particular concern of protecting rights to equal opportunity. 

The perceived, as well as actual, relationship between economic and social rights, and between civil and political rights, has considerable implications for the debate—that is, whether one sees the two sets of rights as interrelated and interdependent (as does the United Nations and most human rights advocates) or as separate or separable (as do some development agencies and many nation states). Depending on which perspective one takes—and the rhetoric of the Bank

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9 Ibid., 7, 79, 206.


11 See, for example, USAID (United States Agency for International Development), “U.S.
points to accepting interconnection—hangs the answer to the question of how far development can and should support human rights and how far it can and should be supported by human rights. With the two sets of rights seen as inextricably linked, the inter-reliance of human rights and development is easier to establish, as many development outcomes accord very closely with the goals of economic and social rights. But, even accepting that for some (in the West), human rights proper are restricted to civil and political rights, their relevance to development practice is no less vital.

The emergence of systemic, capacity-building development projects driven by such normative constructs as the “rule of law” and “good governance” has also proved to be central in both the legal and political realms, as such programs are seen as potential vehicles for the delivery of human rights. This approach flows directly from the last, in that justification of such rule-of-law and good governance-based projects in aid programs today promotes the goals of economic and social development by making the civil and political mechanisms that affect its delivery more accountable. And this means that the goal of protecting both civil and political rights and economic, social, and cultural rights necessarily forms part of the development process, whether stated explicitly or implicitly.


The Changing Landscape of International Law

A key feature of the wider context within which the World Bank is being urged to take its relationship with, and impact on, human rights more seriously, concerns the changing nature of the landscape of international law. A central question in this respect is whether the failings and limitations of the post-modern, privatizing state in protecting human rights provide both the space and need for supranational entities, such as the Bank, to fill in the gaps. The matter has arisen as a consequence of a number of interrelated factors. The first factor is the changing parameters of international law, resulting from the greater intertwining of the international and domestic spheres such that, as Bradlow and Grossman pointed out more than ten years ago, "problems have become transnationalized … [their] proper resolution … require[ing] action on both the local and the global level."17 This should be considered together with the extension of the cast of players, beyond states alone, to include inter-governmental organizations, individuals, non-governmental organizations (NGOs), and transnational corporations. While it is argued that responsibility for human rights promotion and protection still sits squarely on the shoulders of the state (albeit increasingly so in its capacity as regulator, rather than as direct service provider), the state is now (or should be) aided in its task because ever more responsibilities are held by, or are being foisted on, these other international actors.18

Over the last 60 years, human rights have emerged as a significant feature of both international relations and international law. This has occurred despite human rights' inherent potential to be used to breach the walls of state sovereignty. International human-rights law obligations necessarily precipitate "interference" in intra-state affairs. That this potential has increasingly been born out in practice has been characterized as "surprising,"19 or further, "conceptually irreconcilable with

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18 This trend is giving rise to what Anne-Marie Slaughter labels the "disaggregated state" and “disaggregated world order” (Slaughter, A New World Order [Princeton: Princeton University Press, 2004], 13 and 158ff, respectively).

19 Richard Falk, Predatory Globalisation: A Critique (Cambridge: Polity Press, 1999). As Louis Henkin puts it, making the promotion of human rights an express object of the UN was done “perhaps without full appreciation of the extent of the penetration of
the Westphalian logic of world order.”

One result of this growth in stature and prominence has been that the wider cast of international actors mentioned above are now being pressed into serving the objectives of human rights.

The simultaneous liberalization and globalization of trade and commerce as vehicles of both the potential promotion and abuse of human rights has become a significant aspect of the international legal landscape. The debate over the extent to which trade advances economically sustainable and socially equitable results is especially Byzantine, as it forges all kinds of alliances, not all of them predictable, across such entities as governments, north and south; globalist and anti-globalist NGOs (local and international); corporations (both local and transnational); intergovernmental organizations, such as the United Nations Development Program (UNDP), United Nations Conference on Trade and Development (UNCTAD), the United Nations High Commissioner for Human Rights (UNHCHR), the World Trade Organization (WTO), the European Union (EU), the International Monetary Fund (IMF), the World Bank, and the International Labour Organization (ILO); and development economists, international trade specialists, and human rights lawyers. The parallelism of economic globalization with human rights “globalization” (or universalization)—that is, the fact that they are playing on the same global field and essentially with the same state players—has inevitably drawn calls for their closer interaction and alliance.

The World Bank and Human Rights

From the debates on development and human rights generally, and on the remodeling of certain features of international law specifically, there has emerged over the past decade or so a sizeable body of commentary and critique on the particulars of what

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the World Bank can and should do—and already does—in terms of protecting and promoting human rights in its work.22

Notwithstanding this voluminous literature, it is no easy task to establish even what it is that the World Bank already does in terms of human rights protection. Quite apart from the fact that Bank initiatives and activities seldom make explicit reference to human rights—even when they clearly have a human rights impact—there are other complicating factors. In particular, there is a recurring dissonance between what the Bank purports to be doing with respect to human rights and what it actually does (or is able to do).23 Not least is the institutional dysfunction that hampers all large international organizations (especially ones with such a high public profile and with such a politically charged agenda as the Bank). This, of course, reflects the fact that the Bank works on different levels and, to some degree, according to different agendas.24 It is through the perspectives of these different levels that we now view the Bank’s interactions with human rights.

**The Political Perspective: From Presidents Wolfensohn to Wolfowitz**

With a new helmsman in place, there is a tendency to focus on how he will steer the ship in terms of human rights, as in all else. Certainly, President Wolfowitz’s interventions in the matter will be crucial. But, in fact, it will be the intent and actions of the World Bank more broadly that will determine both what course is set (by the Boards of Directors), and how closely the ship will follow the course set by the operational arms of the Bank. There are, in any case, few clear indications of how President Wolfowitz might address this issue. In his foreword to the 2006 World Development Report, for example, although he demonstrates an awareness of the issue in his identification of the links between equity, equality of opportunity, and “respect for individual freedoms,” he provides no hint as to how he might see

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the ways in which human rights more generally might be supported by the Bank, beyond demonstrating an unabashed faith in the role that the market can play in allocating resources more equitably.25

President Wolfensohn was, of course, adamant that the World Bank “is already engaged in human rights” and that it is, in fact, “one of the major protectors and developers of programs which … give rights to people, starting with reducing poverty and the desire to give people the chance for a better life.”26 However, such rhetoric, as many have argued, constitutes neither a Bank policy on human rights (let alone an accurate representation of how the Executive Directors, or still less, the Board of Governors necessarily see it), nor necessarily an accurate reflection of how the Bank staff, who implement such projects and programs, see the Bank’s position.27 Whatever might be the role of human rights thinking within the Bank in the future, there will have to be a closer alignment of the attitudes toward, and understanding of, the relevance of human rights between the Boards, president and staff if there is to be any meaningful impact at all.

**The Legal Perspective: From General Counsels Shihata to Daniño**

An especially important role within the upper levels of World Bank management is played by the office of the General Counsel. Irrespective of any political aspirations and the operational capacity to carry them out, the interpretation of the legal authority to act will ultimately decide the issue. Indeed, the question of the scope of the Bank’s mandate has dominated the legal debate for more than a decade. The International Bank for Reconstruction and Development’s (IBRD)


Articles of Agreement (specifically article IV, section 10) are famously opaque. At one and the same time, they prohibit “interference in the political affairs of any member [state],” and insist that “only economic considerations shall be relevant” in the Bank’s deliberations. That said, however, the provisions are apparently sufficiently robust to have allowed General Counsel Shihata in the early 1990s to accept political considerations in respect, at least, of the Bank’s “functions,” even if not its “purposes.” More recently, General Counsel Dañino has felt comfortable with posing the question of what constitutes “economic considerations,” and answering that, in the end, “there is no stark distinction between economic and political considerations,” and therefore “it is consistent with the Articles that the decision-making processes of the Bank [should] incorporate social, political, and any other relevant factors which may have an impact on its economic decisions.”

At least on the face of it, therefore, there does seem to be adequate legal authority for the Bank to address human rights issues on a more formal and regularized basis than at present; in other words, there is room for the formulation of a systemic policy on human rights.

**The Policy Perspective: From Structural Adjustment Programs to Poverty Reduction Strategy Papers, “Rule of Law” and “Good Governance” Initiatives**

The economic (as well as political and social) “shock therapy” of the old-style, crudely conditional Structural Adjustment Programs (SAPs) has given way to the apparently more nuanced, participatory, partnership-oriented Poverty Reduction

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28 IBRD (International Bank for Reconstruction and Development/The World Bank), *Articles of Agreement*, 2 UNTS 134, July 22, 1944, in force December 27, 1945, amended December 17, 1965, 16 UNTS 1942. In a similar vein, see also article III, section 5, paragraph b, which insists that the Bank ensure that its loans are used only for the purposes for which they were granted, and that in so doing, it gives “due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.” This situation of open-ended interpretation is not helped, according to Anghie (2004, “International Financial Institutions,” 221–2), by the absence of any mechanism for independent judicial review of the Bank’s compliance with its own Articles of Agreement.


Strategy Papers (PRSPs). It has been the latter initiative’s stressing of the “multi-dimensional nature of poverty and the scope of actions needed to effectively reduce poverty,” together with the need for broad-based participation in such action, that has facilitated the growth of systemic programs centering on good governance and the rule of law. On the face of it, this emphasis provides one road by which human rights have found a place in World Bank programs, although it has to be said this is apparent less in name than by inference, since little has changed in the way of policy formulation or project implementation. Such appropriation of rights-based language in the rhetoric overlaying these initiatives may be driven by opportunistic concerns to deflect external criticism of the Bank’s insensitivity towards human rights. Alternatively, it may simply be the result of the Bank’s ignorance of, or indifference to, the human rights connotations of the notions of good governance and the rule of law.

In any event, the rights at the center of good governance and rule-of-law initiatives are nearly always civil and political—primarily fair trial and equality, and secondarily, privacy and freedom of speech, thought, and religion. Another road to


the Bank’s operational activities for human rights has been through the addressing of specific sectorial interests, such as programs focusing on criminal justice, children, women, indigenous peoples, and HIV/AIDS. Each of these sectors has added some coverage of economic and social rights to the Bank’s portfolio (especially the rights to health, environmental protection, housing and education, as well as access to food and water). The Bank’s core commitment to aiding countries in meeting the Millennium Development Goals (MDGs) has also advanced this process to some degree, although there is an erroneous tendency within development agencies to view the MDGs and human rights as existing in largely separate worlds.

The Private Sector Development Perspective: IFC and MIGA

During the late 1980s and early 1990s, the World Bank began pushing the role that the private sector (autochthonous and foreign) could play in development, through both a sharp increase in the “business” of its private sector arm—the International Finance Corporation (IFC)—and the establishment of the Multinational Investments Guarantee Agency (MIGA) in 1988. This direction presented a new set of problems, as well as opportunities, in terms of human rights protection. In part, this has been due to the fact that these two private-sector development arms of the World Bank Group have not only been exposed to the usual pressures put on the Bank as a whole to address human rights issues, but also to the separate human rights and corporate social responsibility pressures being brought to bear on their corporate partners and/or clients.


The IFC especially has been active in seeking to raise the profile of human rights in its work—it was the chief broker of the Equator Principles (2004) on social and environmental standards for private sector banks financing development projects. The IFC has itself re-configured its safeguard policies as “performance standards.” The new standards were originally intended to expressly address human rights issues (in contrast to the prevailing focus on environmental matters), but have not turned out to do so. Criticism of the IFC’s involvement in projects that allegedly violate multiple human rights continues unabated. MIGA, on the other hand, has not yet addressed the question of the relevance of human rights to its core business of providing political risk insurance, being instead preoccupied, in the eyes of some, with deflecting criticism of the competitive advantage it appears to have over insurers, offering clients the opportunity not only to buy insurance, but also to pay protection money.


44 Friends of the Earth, Risky Business: How the World Bank’s Insurance Arm Fails the Poor and Harms the Environment (Washington, DC: Friends of the Earth, 2001), 5. Consider, too, the report by the Compliance Advisor/Ombudsman (CAO) on MIGA’s underwriting of Anvil Mining’s operations in the Democratic Republic of Congo: CAO, “Democratic
The Overall Picture

What the above review amounts to in terms of the aggregate of the World Bank’s awareness of, and commitment to, human rights is patchy at best. Essentially, it comprises some rhetorical statements from the top; some specific, targeted programs at the operational level; and very little in the middle. It is fair to say that there is some limited evidence of acceptance of the Bank’s human rights footprint—at times, maybe even an acknowledgment that it is significant in terms of HIV/AIDS, gender-related, criminal justice, child-focused and indigenous projects (and possibly others that focus on enhancing access to basic health, housing and education services, for example, where some familiarity with, and acceptance of, economic and social rights is evident). What is more, this stance has even been interpreted as evidence that the Bank accepts some role in ensuring that its activities at least do no harm to the protection of human rights in the areas that it works. But all in all, the evidence in aggregate falls far short of a recognition of the breadth and relevance of human rights to the Bank’s functions, let alone any recognition of the existence of a legal responsibility for any standard levels of respect for or protection, promotion or fulfillment of human rights on the part of the Bank.


46 See, for example, World Bank Operations Evaluation Department, “Cultural Properties in Policy and Practice,” 2001, which analyzes the “do no harm principle” with respect to the protection of cultural rights and cultural heritage.

47 This is especially true with respect to civil and political rights, which appear to be seen as incidental concerns; see World Bank, 1998, World Development Report 1998/99, 3.

48 The argument for the legal responsibility of the Bank to respect standard levels of human rights was first articulated by Henry Shue, Basic Rights: Subsistence, Affluence,
The Political Dimensions of Human Rights Law

There are, as indicated, many reasons for this cautious approach: ignorance or misunderstanding of the nature of international human rights law, misplaced concern that it would require the Bank to take on the mantle of a global human rights policeman,⁴⁹ skepticism or antagonism towards human rights as understood by the Bank, and questions about their relevance to the Bank in terms both of its mandate and practicability, and the ever-present political pressures that shape the Bank’s behavior from top to bottom. These reasons interact in such a complex way that unraveling which ones are the key reasons, and from there, constructing an approach that might explain and seek to address them, is manifestly challenging. Still, an enduring theme that is discernable is how human rights law comes into the equation. In so far as appeals are made from outside or even inside the Bank to the normative framework provided by a rights-based approach to development, the framework in question is invariably provided by international human rights law, specifically, the International Bill of Rights (which encompasses the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).⁵⁰

However, with the invocation of legal instruments, there also necessarily come questions of interpretation, implementation, and enforcement. For the Bank’s predominantly economically trained and oriented staff, it seems, the standard reception given to the introduction of international human rights law into discussions of the role and responsibilities of the Bank is one of suspicion and distrust (and, sometimes, disdain). Human rights, as with many sociopolitical phenomena, are not easily accommodated by orthodox econometric calculus. These “externalities,” as economists are prone to rendering them are, at best, peculiarities that often challenge rational (i.e., welfare-maximizing) economic analysis⁵¹ or, at worst,  

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efficiency-distorting irrelevancies. Such perspectives are born of misconceptions around what human rights do bring and can bring to the debate, and lead directly to the marginalization of human rights concerns within the Bank.

It appears to be the combination of the moral force of human rights qua rights and the fact of their encasement within international law that is particularly troubling for economists and Bank officials alike. Thus arises the desire to uncouple the two dimensions and instead, treat human rights as “high priority goals” (accepting their moral force), rather than legally binding obligations. But that not only necessarily and obviously denies the sine qua non of international human rights law, it also does so on the basis of a fundamental misunderstanding of what international human rights law actually entails. In fact, this misunderstanding of the consequences of the legal characteristics of human rights comprises two steps. These are: (i) at the level of authority (or concept)—that rights are seen as trumps, subordinating all else; and (ii) at the level of application (or practice)—that they are seen as being both clear and unqualified in form, and directly and immediately enforceable.

In all law—but especially international human rights law—the promotion of such a rigidly doctrinal view is false and misleading. In the present case, however, it is also strategically damaging (a big “turn-off” factor for the Bank and other international financial institutions). Moreover, the perceptions relating to both of these levels of the impact of human rights law are eminently rebuttable at two levels of argument. First, at the level of principle, one must stress the utility of laws outside their promise of enforcement, what Yasuaki Onuma calls the broad

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52 Of course, not all economists aver the relevancy of human rights. See, for example, Sen, 1999, Development as Freedom (drawing on Adam Smith for support), and Sengupta’s “efficiency model” analysis of the economic impact of human rights (Arjun Sengupta, “On the Theory and Practice of the Right to Development,” Human Rights Quarterly 24, no. 4 [November 2002]: 888).

“societal functions” of international law, which may envelope the core legal concern of enforceability but are not co-terminus with enforceability. This is a view that finds its roots in H.L.A. Hart’s reasoning that curial enforceability represents a “vital but ancillary” feature of law as a means of social control, given that law’s principal functional impact “is to be seen in the diverse ways in which law is used to control, to guide, and to plan life out of court” (emphasis added). At the second level of practice, international human rights law is “open-textured;” it is replete with qualifications to otherwise simply and starkly stated human rights. Indeed, the vast body of international human rights jurisprudence centers on the permissible extents to which rights may be limited. This, it must be stressed, is not a weakness but a (necessary) strength of international human rights law, in that it permits legitimately variable enforcement, albeit dependent on the precise line between legitimacy and illegitimacy.

It is, therefore, a fundamental mistake to assume that human rights laws are monolithic in meaning and immediately binding and enforceable on the duty holder (whether the state or any other entity). International human rights laws can be and are correctly viewed as “duties for governments, international agencies, and other actors,” and yet remain laws, with their attendant qualities of universal standard-setting, backed, ultimately, by sanction. It is neither necessary nor jurisprudentially

58 Swaminathan underscores the role that international human rights play as normative standards against which the actions of states and international organizations (such as the Bank) are measured, while recognizing the frustratingly elusive dimensions of those standards as typically expressed in international human rights law. See R. Swaminathan, “Regulating Development: Structural Adjustment and the Case for National Enforcement of Economic and Social Rights,” Colombia Journal of Transnational Law 37(1998–99):161–214.
sustainable to separate human rights from their international law moorings in order to make them practicable for such organs to implement. 60

How these arguments are conveyed, of course, is as much part of the problem as the misapprehensions themselves. And there is as much a need for the storytellers (lawyers and human rights advocates) to tell a good story as there is a need for the audiences (World Bank officials) to sit up and listen. The nature and nuances of international human rights law must be promoted in a meaningful and accessible format, with as much attention paid to the language and presentation of argument as to the nature and content of the law itself. In fact, the endeavor falls within the broader context of the quest to mainstream human rights within the general discourse of economic globalization, wherein the Bank has a conspicuous role. In this regard, we might be able to avoid the pitfalls of what Michael Ignatieff refers to as “human rights imperialism” 61 (where human rights purport to colonize other societal constructs) and what David Kennedy sees as the human rights community’s tendency to “insult the economy” 62 (where the economic implications of human rights are ignored or scanty regarded).

Human rights and human rights laws are not above politics, 63 but rather immersed in it; they are, indeed, the very stuff of politics in the broadest sense, concerned with how and on what basis states treat those within their jurisdiction. What human rights bring to political discourse, however, is a means by which the boundaries of political compromise are marked—both the maximum (the aspirational, ideal state) and the minimum (base standards, dipping towards unacceptable). They can—according to Ignatieff—provide “a discourse for the adjudication of conflict,” 64 rather than a manifesto of non-negotiable and trumping demands.

60 Ibid. Gauri tries to make this case by arguing that economic and social rights in particular are merely “high-priority goals” rather than “legal binding constraints,” at the same time insisting that these “goals” impose duties on states and international agencies that are almost identical to the way in which human rights laws are described above.


The implication for the World Bank of disaggregating the notion of international human rights in this way is that it provides the opportunity, if not a requirement, to rethink its attitude towards human rights. The Bank can and must engage with human rights on a footing that requires greater internalization and politicization of human rights. Certainly, prompting and goading from without will help the process, but human rights will only have any real leverage once they are broadly accepted within the Bank, and frankly, at least initially, that will be largely on the Bank’s own terms. As such, the likely key matters of concern will be: the question of how to monitor and evaluate human rights impacts, their fit with the “economic” outputs of the Bank, and balancing the competing political and economic interests on the Bank’s Boards of Northern financier states and the Southern recipient states (points that are expanded below). But it is surely the case that the Bank (and others) no longer ought to be able to labor under the misconception of the purported rigidity of human rights laws, and no longer thereby excuse its rejection of a systematic and comprehensive incorporation of human rights into its operations.

Understanding the plurality of both the idea and practice of human rights, and the role that law plays therein, will certainly help recover human rights from the “distrust and suspicion” part of Bank thinking. It will also provide for a more ready recognition and acceptance of the fact that the Bank is already knee-deep in human rights, albeit without fully understanding what that implies. Through various programs and activities, the Bank certainly does promote women’s and children’s rights, the rights of indigenous peoples, access to health and education rights, rights to fair trial and to participation, and the right to an adequate standard of living—although it also at times impacts on those same rights adversely. Typically, however, these effects are not expressly recognized in human rights terms, despite the ubiquitous appropriation by the Bank of language akin to “rights talk,” in its use of terminology such as pro-poor, empowerment, transparency and accountability, capacity building, and the promotion of good governance and the rule of law. Fundamentally, there is no systematic incorporation of human rights in policy formulation and analysis.

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The Practicalities of Implementing Human Rights Goals

If we are to accept therefore, the above case that the Bank’s fears of international human rights law generally, and a rights-based approach to development in particular, are essentially groundless, we can now ask what the Bank should do to be more supportive of human rights. The remainder of this article addresses these questions by examining some of the obstacles to implementation that exist at present and offering some suggestions as to how these might be overcome. First and foremost (as indicated at the end of the previous section), the Bank has no integrated, global policy that directly and explicitly incorporates human rights into its development agenda. Certainly, it has a raft of initiatives that address human rights issues in a piecemeal fashion— including a number of operational policies and directives (of which ten have been labeled “safeguard policies”), covering mostly environmental and some social concerns; Poverty Reduction Strategy Papers, which include such matters as women’s empowerment, job creation, health and education in their terms; and the Inspection Panel, whose complaint-handling mandate incorporates both procedural and substantive protection of rights to participation, fair trial, non-discrimination, health and environmental protection. But, none of these amount to anything like the comprehensive policy pronouncements on human rights of the United Nations Development Programme (UNDP) or of such bilateral development agencies as the U.K. Department for International Development (DFID) and Swedish International Development Agency (SIDA). Therefore, obviously the clearest and

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68 See generally, ibid., 12–13.


most effective way in which to promote a human rights approach within the Bank would be to have a fully-fledged policy on the subject. Much would flow from such an initiative, which would otherwise have to be dealt with on an ad hoc basis. For instance, such a global policy—while itself being a product of what Davis calls “policy entrepreneurship”72—would certainly encourage further policy innovation in this regard at various levels of the Bank. These policies would need to address such issues as finding ways to make Structural Adjustment Programs more accountable, as the existing safeguard policies are clearly unsuited for the task,73 and to recognize and incorporate in a coordinated manner the obligations of client states under international human rights laws and to assist in their fulfilment.74 These policies would also have to devise effective responses to the difficulties posed by “deficiencies in local institutional capacity, as well as the preparedness of local governments to dedicate resources to them,”75 if the Bank is to provide any meaningful assistance in this regard.

A key test of any attempt to operationalize a rights-based policy will be the effectiveness of the devices used to measure the impact of the resultant programs and projects. The key performance indicators, impact analyses, and other accountability mechanisms must be sufficiently nuanced to pick up qualitative and as well as simple quantitative changes; they must embrace a wide stakeholder base, and they must be instituted over long periods of time, especially after the implementation phase of the project has been completed. Such pro formas are being trialed at the moment, notably by the UNDP and HURIST, and also by some large private aid providers such as Oxfam.76 The Halifax Foundation, in a 2004 discussion paper, chartered a

74 See DFID, 2000, 13.
range of best practice “human rights impact analyses.”

What emerges from these various models are certain common characteristics. First, the “standards” enunciated in relevant international human rights laws (principally those within the International Bill of Rights) are actively promoted as gauges against which to measure donor and recipient state performances regarding (typically) levels of inclusion and participation in decision making, recompense for losses, non-discrimination, dispute settlement, and equitable distribution of benefits. Secondly, measurement against these standards is employed throughout the complete project cycle, that is, from initial feasibility and design stages, through the approval process, to the implementation and review and impact analysis phases.

The development of such new policy directions will require a fundamental shift in the Bank’s attitude towards human rights. In terms of how this might be done, this article offers at least one important step forward by “exploding the myth” of what deleterious consequences might flow from the adoption of more systematic rights thinking within the Bank. In terms, however, of whether such a policy shift will occur, the decision lies within the power and authority of the upper echelons of the Bank’s management-ownership structure. The various and at times competing political agendas of individual states and blocs of states at the levels of both the Executive and Governors’ Boards, as well as the agendas of the offices of the president and vice-presidents combine to raise serious questions about whether, in its current institutional form, the Bank would be capable of agreeing to such a proposition.

The situation may require, as some argue, democratizing the Bank’s Board of Governors and abandoning the weighted voting system currently in place. In any

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78 Namely the UDHR (Universal Declaration of Human Rights), ICCPR (International Covenant on Civil and Political Rights), and ICESCR (International Covenant on Economic, Social, and Cultural Rights).


event, it will certainly require changes to the incentive schemes that determine the way in which meso-level bureaucrats currently make decisions, which begat the much-maligned “approvals culture.”82 A refocusing on outcomes and questions of the redistribution of social and economic gains (rather than merely evaluations based on their aggregate increase),83 clearly will facilitate, and be facilitated by, the adoption by the Bank of a rights-based approach to development.

Conclusion

Whatever the precise level of acceptance and incorporation of international human rights law into the strategic and operational mandates of the Bank may be, either now or in future, the questions regarding whether it is or ought to be so engaged are today non-questions. The inquiry now must focus on how best to ensure, on the one hand, that engagement remains viable for the Bank while, on the other, that it yields an increase in the effectiveness of the promotion and protection of human rights. All this will depend—like all grand regulatory designs—on a synthesis of principle, pragmatism, practice and, above all, politics across all levels of management of the Bank’s operations and activities.

Works Cited


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