

# **Disrespect Today, Conflict Tomorrow**

## **The Politics of Economic, Social and Cultural Rights**

Edited by David Fraser and Graça Almeida Rodrigues



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*Disrespect Today, Conflict Tomorrow:  
the Politics of Economic, Social and Cultural Rights*  
edited by David Fraser and Graça Almeida Rodrigues

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**Introduction**  
**Disrespect Today, Conflict Tomorrow**

**David Fraser and Graça Almeida Rodrigues**

It's coming from the sorrow on the street,  
The holy places where the races meet,

...

From the wells of disappointment  
Where the women kneel and pray  
for the grace of God in the desert here  
and the desert far away  
Democracy is coming...

Leonard Cohen

This volume, the fifth in the series of Studies in Post-Conflict Cultures, continues a common thematic of investigating and interrogating key theoretical, political, and ideological issues and dilemmas which arise out of "the post-conflict". In this collection, this focus is more specifically on the roles played by rights and law in the prevention of conflict and in the transformation towards a post-conflict state. The volume also evidences the ongoing and synergistic collaboration between the two institutions whose work lies at the heart of the contributions, the International Centre on Economic, Social and Cultural Rights, Lisbon (CIDESC) and the Centre for the Study of Post-Conflict Cultures, Nottingham. CIDESC came into being as a result of the experiences of its founders in the then newly independent East Timor. As with many post-conflict situations, Timor demonstrated, and continues to demonstrate, that the conflict is never really "post". More significantly for the present project, and for the interests of the Centre for the Study of Post-Conflict Cultures, the situation there confirms that formal guarantees of traditional political freedoms and human rights, such as free speech and the operation of constitutional, electoral democratic institutions, are never enough on their own to allow for the creation of public, social, and political spaces which allow the true flourishing and dignity of the citizenry. Poverty and deprivation can and do all too obviously continue in the daily lives of citizens while democratically elected officials deliberate. Dominant political groups and ideologies can control access to the organs and discourses which permit the creation of an authentic and/or critical post-conflict cultural space. Only if these social, economic, and cultural dimensions of political life in civil society are given their due, can the democracy, which is always to come, always "post", but ever in our aspirations, have any real meaning.

More specifically, the volume attempts a set of examinations of the role to be played by the poor relation of human rights practice and discourse, "economic, social and cultural rights", in addressing at their

core, questions of poverty and deprivation which almost universally underlie the tragic and deadly transformation from unrest to violent conflict. These are also the concerns, issues, and political realities which prevent the realization of a stable post-conflict society. If, or more precisely when, they are not properly addressed, we encounter a post-conflict culture which is, in its most important aspects, hardly distinguishable from that which it has attempted to replace.

As with the previously published *Hors de Combat*, this volume attempts to traverse these difficult and sensitive issues by bringing together the perspectives of active participants, in this case, human rights professionals and public officials, and those of academic experts who seek to tease out both the difficulties and the positive potentialities of what has come to be called rights discourse.

Costas Douzinas opens the debate and offers a critical legal, political, and ethical frame into which many of the fundamental concerns about humanitarianism, human rights, and economic, social, and cultural rights which follow throughout ought to be placed. As Douzinas points out, a core intellectual and practical dilemma stems from our (mis)apprehensions about the "human" as the subject/object of our concern. Human rights violations are perpetrated not by monsters, despite the best efforts of propagandizing constructions of the "evil other", but by humans, by us. At the same time, international rights discourse is deployed in a context in which the victims of abuse and suffering are despite their "human" qualities, nonetheless understood and constructed as "Other". The poor of Darfur and Timor need "us" because they are not "us". Douzinas offers a vital warning about the colonizing epistemology at the heart of most human rights discourses and practices while at the same time offering or making available the possibility of a form of saving "grace", an ethically informed and aware practice, which might serve to guide an ethically aware politics. Martti Koskeniemi frames the opening section and enforces this analysis by establishing the contingency of all rights talk while arguing at the same time that the fact that justice is always to come can not prevent the invocation of this very rights talk in the pursuit of the political ideals embodied in such discourses.

Donald Donato and Aye Aye Win, offer the more traditional point of view of human rights practitioners by arguing that the "post" of conflict can only be achieved within a frame of respect for the content of human rights norms. Graça Almeida Rodrigues, Joana Varão, and Jorge Tiago Martins offer a different but consistent perspective by pointing out the ways in which international norms in relation to economic, social, and cultural rights embody and enshrine the basic set of human needs and the promise of individual and social contentment. They argue that, at an important level, money, at least alone, cannot buy happiness. The preconditions for human flourishing lie elsewhere. This point is contested or, more accurately, nuanced, in a subtle, but not fully contradictory, way by Luisa Brunori's essay on microcredit. She argues that the microcredit system, developed in Bangladesh, in the post-conflict and post-natural disaster era, and aimed primarily at helping disadvantaged women, offers a model of inclusion. This micro-level of

inclusionary economic and social activity can serve, she argues, as a model for a concrete framework of bettering the position of the worse off. The development of individual and social cohesion and associated well-being, through microcredit practices, for Brunori, offer not just a practical way out of the most severe consequences of conflict, but a mechanism for political, social and cultural empowerment which might inform broader post-conflict social structures. Paula Escarameia situates the social solidarity which must inform all rights discourse in the norms of an evolving international law regime. Escarameia shows how international legal structures (norms, procedures, institutions) designed from the seventeenth century on for relationships among States, are nowadays progressively being transformed into channels that allow for a direct link between the individual and the world. This transformation is seen as one of the most relevant aspects of a time of transition between models of world order.

Korinna Horta's essay situates a series of interventions by human rights professionals and officials on the role and practices of key institutional actors in the international arena of economic, social and cultural rights. Her chapter on the World Bank highlights the intimate and necessary connection between economic development in its basic sense and the opening up of broader goals of empowerment, for example, of indigenous peoples and women. Alvaro Gil-Robles offers his insider's account of the trials and tribulations of the Council of Europe and its role as a trans-national human rights body. The troubling presence of Russia with its political, economic and cultural influence plays a key role in his analysis. More mundane, but equally significant, concerns over bureaucratic infighting, lethargy and politicking also highlight the "real" context in which our dedication to the "universal" principles of rights confront less noble practices.

Catarina de Albuquerque offers a detailed and intimate story of the international politics of economic, social and cultural rights. Her analysis, like that of many other contributors, highlights the fundamental tensions which are to be found at the heart of our legal and political understandings of economic, social and cultural rights. Are they to be understood as mere aspirations, embodied textually in various international legal instruments, but lacking a concrete legal enforceability? The underlying principles of economic, social and cultural rights are universally accepted by governments throughout the world. The process of giving them concrete form, either through international and/or national governmental programmatic efforts or through litigation, is less universally practiced. She underlines, in the context of lengthy international political debates, the vexed question of the justiciability of these rights, an issue to which several other contributors return.

Jamie Shea's chapter raises what for many remains the most difficult question of international "humanitarianism". Is armed force, violence, an acceptable tool in the international human rights armory? Can violence to end violence lead to a "post-conflict" situation in which we might catch a glimpse, however fleeting, of the democracy to come? Shea's analysis of the intervention by NATO in the Balkans does not

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answer these questions, but it does have the merit of putting the issue of “good” versus “bad” violence at the heart of any debate about post-conflict, democracy and the creation of a sovereignty which might give rise to a concretized form of the enjoyment of economic, social and cultural rights.

The next set of essays offers concrete examples of economic, social and cultural rights in action. Paul Hunt explores the international legal and political context of the right to health and offers a careful study of the practical difficulties and potential benefits which lie at the core of this issue, linking them to the Millennium Development Goals. He emphasizes the crucial importance of encouraging a global partnership for development (goal 8). Tammy Hervey explores a similar issue in the European context but she seeks to further problematize the context. She engages in a speculative study of what effect the rhetorical deployment of “rights discourse” might have for our understandings of existing general and specific legal norms. Her chapter underscores the key role to be played in future interventions about core social values by a politically attuned hermeneutic around and about law and human rights. Christophe Golay changes perspective both in relation to the normative issues at stake and the geographic area under review. His focus is on food and its connection with broader claims to the right to life. His study of India and the ways in which that country’s courts have addressed, or failed to address, these issues presents a new area of substantive and geographical inquiry which serves to highlight the truly universal character of the questions examined in this volume.

The final section of the book offers a series of more legal, but not necessarily legalistic, studies of the practical issues surrounding attempts to implement various concrete economic, social and cultural rights. Sandra Liebenberg introduces the South African context with her study of that country’s unique Constitution. As she points out, the South African Constitution is a specifically and self-consciously post-conflict document, intended to heal the nation and to transform the country into a post-apartheid state. Her essay highlights not just the transformative potential of the realization of economic, social and cultural rights, but the institutional tensions and difficulties which arise when issues such as the provision of housing and medical care are, in part at least, left to the courts. Important concerns about the sovereign power of the nation and the state, about legislatures versus courts, about “politics” versus “law” in a post-conflict transformative stage, or within a democratic system troubled by inequality, inform all the essays in this section of the volume. Christian Courtis therefore highlights many of these same institutional issues in his study of various South American jurisdictions. As he points out, there is often a distinct tension between a desire to realize and concretize these rights, and fears about the legitimacy of the decisions of various actors within a system of democratic governance based on the separation of powers. As both Liebenberg and Courtis assert, in different contexts, institutional and national histories can and do play key roles in struggles over the implementation of rights in real and practical political and social contexts. The essays in this section raise basic issues about the

epistemological and pragmatic content of the taxonomies of “law” and “politics”, and indeed of “rights”.

Likewise, Bruce Porter’s examination of the use of general principles of equality under the Canadian Charter of Rights and Freedoms to enshrine economic, social and cultural rights in that country’s legal practice, also demonstrates the ways in which local context, history and legal practice can and do inform attempts to give life to general, universal principles. In addition, Porter emphasises the role of politics and ideology more generally as they inform governmental attitudes towards claims that such rights should be recognized. Seemingly predominant, if not hegemonic, free-market ideals and notions of individual responsibility, familiar to readers in any number of countries, serve as important, and often fatal, counter-weights to any assertion about “the social”, and the legal recognition of a governmental duty to its least powerful citizens.

Geróid Ó’Cuinn’s study of the use and misuse of planning law in the occupied Golan highlights another aspect of the political and ideological reality of economic, social, and cultural rights. His exploration of the complexities of life under occupation and the ways in which a very basic and simple area of law, land use planning, is deployed to the real and ongoing detriment of the citizens and inhabitants of this troubled part of the world, underscores the idea that rights are never easily obtained. Nor, as his chapter illustrates, do governments, for a variety of reasons, hesitate to violate the rights of the least powerful members of the body politic. Nonetheless, he remains optimistic and offers a human rights-centred analysis as a way out of the worst abuses of the Golan situation, and out of other instances of disenfranchisement through and by law.

Finally, Kathryn McMahon studies another area of general application in law, competition and regulation, to offer a new perspective on some of the issues broadly falling under the trope of “the digital divide”. Questions of access to information technologies — mobile phones, laptop computers, the www, etc., will play a key role in the furtherance of economic, social, and cultural rights and the struggle for equality in the twenty-first century. Her study of communication technology, like Tammy Hervey’s exploration of health law, attempts to offer a speculative and positive reading of rights which will allow for their practical implementation through rhetorical development and semiotic renewal in a political and legal context which again, *pace* Porter, is often hostile to the rhetoric of equality and of the social.

Just as the “post” is never “post”, the “final” is never “final”. In conclusion, we urge readers to remember Douzinas’ invocation to the ethical which begins this volume. The struggle for “rights” can only be the ongoing, continuing, never-ending attempt to find the “right”. The struggle for economic, social and cultural rights is one which focuses by definition on issues of the social, the collective, the community. It engages its participants in a search for the creation and maintaining of a body politic, which is enabled through the concretization of these rights, to participate in the fullest possible degree, in the construction (and the deconstruction) of society, its values, norms, and ideologies.

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We hope that this volume is one small step in the realization of these rights and more importantly, that it both a step in the right direction and a step in the direction of right.

A word of appreciation is due to the Honorable Mary Robinson, whose insightful words — “today’s human rights violations are the causes of tomorrow’s conflicts” — inspired the title of this book.

The editors wish also to acknowledge the contribution of Mike Harland in the translation of Paul Escarameia’s essay.

Last, but by no means least, the editors would like to express their thanks to Jorge Tiago Martins and Beverly Tribbick, who offered invaluable editorial assistance in bringing this project to fruition.

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