The Pyramid Question

This issue of The Equal Rights Review focuses on the relationship between equality and socio-economic rights. This relationship, it has been said, is complex, multi-dimensional, multi-faceted, requiring a holistic approach, etc. But I must admit that I am approaching it with some suspicion. The relationship of two very rich and broad notions, each of which having different and even opposite meanings for different people at different times and in different contexts, does not commend itself as a clear and honest member of the conceptual universe. I have therefore been concerned that a focus on this relationship might, to my horror, add to the widespread tautological hubris, confuse students of human rights law, and fail to illuminate anything on the subject.

Once I read the materials in this edition addressing the relationship between equality and socio-economic rights, I remained concerned about all of the above, but found one reason to be delighted. Each of the materials has managed to make a few clear and meaningful points – quite an achievement! Moreover, in an intriguing way, each appears to address the same topic from different angles by asking quite different questions, at various levels of abstraction. At the top of abstraction is Joanna White-man’s article, tackling the question of how to make human rights law oblige the state to redistribute resources so as to end socio-economic disadvantage. The relationship between equality and socio-economic rights in Octavio Motta Ferraz’ article forms part of the solution rather than the problem, with the problem being how to define socio-economic rights while escaping from the wrong assumption of resource scarcity; his solution comes in terms of equality of opportunity to satisfy basic needs. This particular concept of equality should constitute the content of socio-economic rights. The Equal Rights Trust, in a major forthcoming study, the summary of which we publish here, asks the more pragmatic question of how claiming discrimination or inequality can be instrumental for the purpose of realising socio-economic rights through court judgments.

Moving to a more specific set of issues, Bob Hepple is interested in how gender equality in employment can be achieved through equality law of a new type, and whether the existing convention(al) frameworks as interpreted to date will really work in the 21st century. Tarryn Banister explores how gender-based violence can be more effectively challenged through the interconnection between the right to equality and the right to have access to health care services, including reproductive health care. Finally, the double interview with Geoff Budlender and Iain Byrne adds some more facets to the theme from several other angles.

On such a polyhedron of a theme, many people would be tempted to work out their own approach. From my own angle, at the bottom of the relationship between equality and socio-economic rights lies what I call the
“pyramid question”. The pyramid is of course the predominant shape of current societies in terms of socio-economic inequality, where the more unequal societies resemble steeper pyramids. The question itself could not be simpler: are you happy to live in a pyramid, or are you not?

The evolution of human rights ideology has reached a point where most experts today will state that they support “equality in respect of socio-economic rights”. At least this is what Article 2 of the International Covenant of Economic, Social and Cultural Rights requires of them as a basic condition of speaking the human rights language. When it comes to the distribution of wealth, the socio-economic rights framework, and the rights framework more generally, accommodates everyone – left, right and centre. Thus, experts will display a large spectrum of different opinions, all of them legitimate within the human rights discourse, regarding the question: what exactly is meant by “equality in respect of socio-economic rights”?

Some experts mean, narrowly, an enforceable right to non-discrimination in respect to the exercise of certain recognised economic or social rights – for example, that no one should be treated less favourably because of a legally protected characteristic such as race or gender in school admissions, workplace benefits, rental contracts, etc. Among these experts, some will, and some will not accept that socio-economic status and/or poverty are, or should be, protected characteristics. Other experts would interpret “equality in respect of socio-economic rights” as containing a possibility, or even a state obligation, to eliminate poverty and/or socio-economic disadvantage. Still others would interpret “equality in respect of socio-economic rights” as amounting to socio-economic equality.

These interpretations, expressed in deceptively similar, overlapping and intertwining human rights law terms, mask completely different agendas. There is a fundamental difference between efforts to abolish poverty and efforts to abolish inequality. It is one thing to want to lift people from poverty and ensure everyone has basic necessities; and it is quite another to want socio-economic equality among people.

Socio-economic rights and equality rights experts are situated along the entire political spectrum from left to right; and all the nuanced positions about how the three options above interact are also found along that same axis of political economy. Some will not change the shape of the socio-economic pyramid while making race, gender and a couple of other characteristics irrelevant to one’s position inside it. Others will push the entire pyramid upwards, so that those at the bottom layers could enjoy basic necessities, and would no longer be poor in any way, but would still be at the bottom of a hierarchy. Still others will demolish the pyramid, if only they could. Among the latter tribe, there will be different views as to how fast, and through what means, the pyramid should be flattened out.

So from my own perspective, looking through the thick muddle of the relationship between equality and socio-economic rights, I see below the many theories essential disagreement over some of the most basic political values, sometimes articulated as conscious choices, sometimes “merely” political instincts. It is always interesting, at least for me, to watch how human rights and equality experts express their political instincts in normative language, when they are telling us how a certain right should be understood; what the right way to interpret its content is; or what that right really is.
And yet, despite the political diversity among human rights and equality experts, I suspect that a certain majority want to at least flatten the pyramid somewhat. The most radical ones will wish to interpret the universally recognised “right to equality” as containing a “right” to “socio-economic equality”, and they might as well use the law as a tool working in this direction. This is of course a legitimate use of the law, but the problem is not about legitimacy. The expectation that we can use human rights law (including equality law) to transform societies is a legal fantasy. Lawyers will not re-shape the pyramid unless they act with politicians. This is because rights are inferior to powers. Socio-economic rights are for the poor; says Geoff Budlender in this issue. Indeed, the poor have the right to education, while the rich have education. The poor have the right to food and housing, while the rich have food and housing, and so on.

The inevitability of politics flies in our face from the luminous article of Octavio Motta Ferraz in this issue: if resources are enough for everyone on earth to live a good life (a point which he re-claims with youthful energy, almost fifty years after Marcuse1), then why? Why don’t we set out to re-distribute global wealth more equally?

Because we have come to the boundary where rights meet power; where law meets politics. The politics of the future is unpredictable. Will the political processes related to wealth distribution slowly build a global consensus about the immorality of a society of socio-economic inequality? This is not impossible. In a now lost civilisation in which I grew up, I was raised to perceive economic inequality as both immoral and distasteful. No amount of subsequent experience has been able to completely erase from the political DNA of my generation of East Europeans the vague disgust of the contrast between wealth and misery. Of course, political DNA is not guaranteed to be passed down. But what I am saying is that it is just possible that in the future, political processes might result in a shared understanding among growing numbers of people that to enjoy life’s worthy pursuits one should not want to be disturbed – indeed degraded – by the surrounding repulsiveness of material inequality.

However, it is also possible that such an understanding might not emerge for many centuries, in which case generation after generation will be measuring life’s victories by the vulgar and boring standards of material wealth. In any case, whatever lies in the future, there is likely to be a small but respectable role for equality rights. “Rights” may be inferior to powers, but in today’s pyramids, powers clash and compete in a game of “rights”, among other games; and within the rights game, equality and socio-economic rights are rising in importance. This is good news for those of us who are working in the hope to see, from time to time, a “right” to “equality” enforced, through legal coercion, as a symbolic reminder of our possible egalitarian future.

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