

# Structural Violence as a Human Rights Violation

KATHLEEN HO\*

## Abstract

Human rights literature up to this point has not adequately addressed what it means to have structural violations of human rights. This essay uses the theory of structural violence to illuminate how structural inequalities that systematically deny some people their basic human needs constitute a structural violation of human rights. In making this argument, structural violence theorists define violence as the avoidable disparity between the potential ability to fulfill basic needs and their actual fulfillment. The theory further locates the unequal share of power to decide over the distribution of resources as the pivotal causal factor of these avoidable structural inequalities. Recognizing that structural causes are responsible for constrained agency is pivotal in making the transition from structural violence to structural violations of human rights. It is the effect of structures on individual agency that results in this gap between potential and actual fulfillment of rights. This essay uses Thomas Pogge and Amartya Sen's work on poverty to substantiate this claim that when agency is constrained to the extent that fundamental human needs cannot be attained, structural violence becomes a structural violation of human rights. Applying structural violence to the human rights discourse, there emerges a clear emphasis on the need for special protection of social and economic rights that have for too long been marginalized in favor of civil and political rights. Moreover, the right to development directly addresses concerns raised by the structural violence theory. Specifically, this right recognizes how the unequal distribution of power in global financial institutions and trade regimes results in global inequality and therefore insists on international assistance and cooperation to remedy this glaring injustice. Finally, Audrey Chapman's 'violations approach' is examined as a possible alternative to the current monitoring mechanism for social and economic rights; however this approach falls short in holding the international community responsible for rights violations.

## 1. Introduction

The notion of 'structural violations of human rights' is increasingly gaining currency in international human rights arenas. There are two salient and seemingly untenable aspects of our world today to which this idea is responding: severe global inequality and a huge disparity between the rights accorded to all human beings through the international human rights regime and the massive and continual violation of those rights. While human rights violations may conjure up images of torture at Guantanamo, challenges to free speech at Tiananmen Square or the displacement of millions in Darfur, structural violations are paired with images of a different nature: starving children, diseased bodies, and desperate poverty. One of the outstanding differences to note between the two is that with the former example one can easily isolate the violators. At Guantanamo, there are American soldiers to blame. At Tiananmen, the tanks are visible, and the soldiers in them. In Darfur, newspapers and broadcasts highlight the Janjaweed militias. However, when you see starving children, diseased bodies, and desperate poverty there is no easy pointing of fingers. Why does this situation exist? Is it not a natural and unavoidable condition of the world? After all, people

have been dying from starvation and disease since the beginning of time. How exactly does one characterize starvation and disease as human rights violations?

To answer these questions, this essay will proceed in a systematic fashion by piecing together the idea of structures, as explicated by structuralism, and the theory of structural violence as a way to understand structural violations of human rights. Structuralism raises an important consideration about constrained agency and what that implies for the relationship between structures and agents. Upon examination, structural violence yields a complex picture of inequality as it considers economic, political, and social factors. While structuralism and structural violence indeed present a picture of a vastly unequal world, does this inequality constitute a violation of human rights? Having explored what constitutes structural violations of human rights, the essay will continue with implications of the structural analysis of human rights violations for the formulation of human rights. Applying the theory of structural violence to the human rights discourse illuminates the often marginalized and neglected category of social and economic rights. Audrey Chapman's 'violations approach' presents an alternative to current monitoring mechanisms for these poorly enforced rights. The right to development is also discussed as a single right that fully integrates both sets of rights, civil and political rights as well as social, economic and cultural rights. It also directly addresses root causes of global inequality by emphasizing the need for international assistance and cooperation. In the final section, the paper will consider alternatives to the structural violations approach with a brief discussion about realist and culturalist models of human rights violations.

## 2. Structuralism

To conceive of structural violations of human rights, one must first take, as a starting point, a structuralist view of the world, where structures and institutions are central to analysis. Structuralist analysis, according to Landman, 'focuses on the holistic aspects of society, including interdependent relationships among individuals, collectivities, institutions, and/or organizations. Structuralist analysis is interested in the social, political, and economic networks that form between and among individuals.'<sup>1</sup> Structures manifest themselves in a variety of forms both at the domestic and international levels. Politically and economically, structures include class and class coalitions, and institutions including business organizations, political parties and global institutions like the United Nations (UN), World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT). Social structures include sexism and racism, as well as class-based structures.<sup>2</sup>

Distinct from rationalism, structuralism asserts that individuals and states do not make decisions solely on the basis of rational choice. Instead, 'individual actors are not completely free agents capable of determining particular outcomes. Rather, individuals are embedded in relational structures that shape their identities, interests and interactions.'<sup>3</sup> While it is generally accepted that the world is not composed strictly of structures without autonomous agents,

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\* Kathleen Ho is currently pursuing her MA degree in Human Rights at the University of Essex under a Rotary Ambassadorial Scholarship. She received her undergraduate degree in Comparative Literature and International Studies at Northwestern University. After her undergraduate degree she travelled to China on a Princeton-in-Asia Fellowship to teach oral English and English writing at the Zhejiang University of Technology. After her MA degree she will begin her law degree at the University of Virginia.

<sup>1</sup> T. Landman, *Studying Human Rights* (New York, NY: Routledge, 2006), at 45.

<sup>2</sup> *Ibid.*, at 46.

<sup>3</sup> *Ibid.*, at 45.

the extent to which these structures constrain agency is highly contested. First, to what extent do international institutions constrain the choices made by states? Second, how do these structures, coupled with domestic institutions, constrain individual choices? And how does constraint of these individual choices constitute a violation of human rights?

### 3. Structural Violence

This question of structure and constrained agency is particularly crucial for structural violence theorists. The pioneering professor of peace and conflict research, Johan Galtung, was the first to coin the phrase 'structural violence'.<sup>4</sup> While his concerns were first and foremost related to peace research, his concept of structural violence is widely applicable and has extended to such fields as anthropology, clinical medicine, and sociology. The theory of structural violence provides a useful framework for the understanding of structural violations of human rights, through an examination of how structures constrain agency to the extent that fundamental human needs are unattainable.

Galtung first defines violence as 'avoidable impairment of fundamental human needs or, to put it in more general terms, the impairment of human life, which lowers the actual degree to which someone is able to meet their needs below that which would otherwise be possible.'<sup>5</sup> The first aspect of this definition to note is the inclusion of the word, 'avoidable'. According to Galtung, 'when the potential is higher than the actual [it] is by definition avoidable and when it is avoidable, then violence is present.'<sup>6</sup> Galtung offers an example,

if a person died from tuberculosis in the eighteenth century it would be hard to conceive of this as violence since it might have been quite unavoidable, but if he dies from it today, despite all the medical resources in the world then violence is present according to our definition.<sup>7</sup>

Here, the potential and actual levels match in the case of the tuberculosis patient in the eighteenth century; whereas the potential afforded by medical resources in the present day is higher than the actual.

This expanded conception of violence in terms of its avoidability criteria and the idea of a gap between what is possible and what is actually attained presents a myriad of contestable issues. How does one define what is possible or potential? How does one decide or even ascertain when something is avoidable or not? From the oppressive Burmese military junta, where forced labour, torture, rape, use of child soldiers, and other atrocities against ethnic minorities abound, to the cities of America where poor African-American women are disproportionately at risk of HIV/AIDS infection and death and also disproportionately suffered from rape, murder, and starvation in the aftermath of Hurricane Katrina, these injustices and inequalities all constitute violence under this new broad definition.

In order to understand the crucial distinction between these types of violence, Galtung constructs a typology of violence composed of three categories: personal, structural, and cultural.<sup>8</sup> Here, the personal and structural aspects will be highlighted. For Galtung, the case of the Burmese military junta would be a case of personal or direct violence where the actor(s) and object(s) of violence are readily identifiable. Here, the actor is the military junta

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<sup>4</sup> Johan Galtung, 'Violence, Peace, Peace Research' (1969) 6.3 *Journal of Peace Research* at 167.

<sup>5</sup> Johan Galtung, 'Kulturelle Gewalt' (1993) 43 *Der Bürger im Staat* at 106.

<sup>6</sup> Galtung, n. 4 above, at 169.

<sup>7</sup> *Ibid.*, at 168.

<sup>8</sup> Johan Galtung, 'Cultural Violence' (1990) 27.3 *Journal of Peace Research* 291.

and the objects are the victims of torture, rape and forced labour. Galtung asserts that structural violence, as opposed to personal or direct violence, is indirect in that 'there may not be any person who directly harms another person in the structure. The violence is built into the structure and shows up as unequal power and consequently as unequal life chances.'<sup>9</sup> Therefore, in the case of racial inequality in America, social structures, particularly racism, systematically disadvantage African-American men and women who suffer from unequal life chances. There is no person that directly harms those HIV-infected African-American women, rather it is the structure of racial inequality, historically rooted in slavery, that perpetuates constraints in agency and unequal opportunities to receive an education, have access to medical care and justice and to secure a stable job.

The question here is not so much why people suffer from HIV/AIDs or why people die during natural disasters but why African-Americans as a group, and women in particular, suffer disproportionately? Why is it that African-American women are more at risk than, say, Caucasian women, and why is it harder for them to access medical care and treatment once they are infected or to have access to food, shelter and safety during natural disasters? These are the questions at the heart of structural violence and, as this paper will later illustrate, at the heart of structural violations of human rights. Racial inequality, often coupled with poverty, experienced by African-Americans is an institutionalized social structure that lowers the level of actual fulfillment of one's fundamental needs, such as healthcare, below the potential, where the potential is defined by the availability and access that other American citizens enjoy. Thus, racial inequality is an example of structural violence and inequality itself is constitutive in the definition of avoidability and potential. Inequality, *prima facie*, betrays the fact that an unrealized fundamental human need is avoidable. It also establishes a certain level of what constitutes the potential by comparing it to what others can achieve.

Moreover, structural violence as a theory helps to explain the distribution of such suffering. Structural violence, while it may not directly implicate the actor of violence, as outlined by Galtung, exposes a clear logic behind the systemic nature of how violence is distributed. Paul Farmer, a medical anthropologist and physician, further elaborates on Galtung's formulation of structural violence. Farmer asserts that structural violence is 'not the result of accident or a *force majeure*; they are the consequence, direct or indirect, of human agency'.<sup>10</sup> Specifically, this human agency is implicated through structures that reflect an unequal distribution of power. The inequalities that exist in terms of disproportionate life chances because of disease or poverty are directly caused by an unequal distribution of resources but the underlying problem is that 'the power to decide over the distribution of resources is unevenly distributed'.<sup>11</sup> Structural violence has 'exploitation as the centerpiece. This simply means that some, the topdogs, get much more (measured here in needs currency) out of the interaction in the structure than the other, the underdogs'.<sup>12</sup> Structural violence, therefore, originates in this unequal distribution of power among actors and can further trace its origins to human agency. This unequal distribution of power then systematically disadvantages those who do not hold as much if any power at all.

The additional layers and multiple dimensions of structural violence are then built upon this fundamental inequality and manifest themselves in terms of economic and social inequalities, as already introduced in the example of racial inequality and African-Americans. Farmer contends that 'suffering is structured by historically given (and often economically driven)

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<sup>9</sup> Galtung, n. 4 above, 171.

<sup>10</sup> P. Farmer, *Pathologies of Power* (Berkeley: University of California Press, 2005), at 40.

<sup>11</sup> Galtung, n. 4 above, 171.

<sup>12</sup> Galtung, n. 8 above, 293.

processes and forces that conspire – whether through routine, ritual, or, as is more commonly the case, the hard surfaces of life - to constrain agency.<sup>13</sup> Here, Farmer connects the historically established structures that are perpetuated by these ‘hard surfaces of life’, which include ‘racism, sexism, political violence and grinding poverty’, as constraints on individual agency.<sup>14</sup> Structural violence theory aspires therefore to provide a nuanced structuralist analysis of the relationship between structures and agency. These structures result in an unequal distribution of resources which results in actively constraining agency. For structural violence theorists, the distribution of power through structures, whether it is called exploitation or violence, enhances the agency of some but at the expense of constraining the agency of others. How, then, does the theory of structural violence connect to human rights violations? This essay claims that when agency is constrained to the extent that fundamental human needs cannot be attained, structural violence becomes a violation of human rights and thus constitutes a structural violation of human rights.

To substantiate the claim made above, this essay will examine the structural causes of severe global poverty and the impacts of poverty on agency. Poverty is a prime example of how structural violence leads to an understanding of structural violations of human rights since, as Farmer notes, ‘the world’s poor are the chief victims of structural violence...the poor are not only more likely to suffer; they are less likely to have their suffering noticed’.<sup>15</sup> It is the poor whose agency is severely compromised and whose actual fulfillment of fundamental human needs is visibly below the potential. Examining the position of the poor illuminates the unequal suffering of human rights violations that are the result of power differentials as exercised through global economic as well as social structures.

#### 4. Poverty as structural violence

So far, this essay has established the nature of structures and a theory asserting that power inequalities are built into these structures, yielding violent results. Here, severe or absolute poverty (according to the World Bank, people with incomes at less than about \$1 per day) will be considered as a manifestation of economic inequality resulting from structural violence. To apply the theoretical framework of structural violence, then, what structures have unequal distributions of power to create this global inequality? Further, what constitutes an avoidable disparity between actual and potential abilities to satisfy basic human needs?

Structural violence theorists characterize the world system as vastly unequal, exemplified by a growing disparity between those who are rich and getting richer and those who are poor and getting poorer. Taking this observation as a point of departure, further examination of the general distribution of severe poverty and understanding what this indicates about the causal role of structures in poverty persisting in the world today is necessary. According to Thomas Pogge, ‘nearly a fifth of all human beings alive today, 1,175 million, live below \$1/day.’<sup>16</sup> The recent 2006 Helsinki-based World Institute for Development Economics Research of the United Nations University (UNU-WIDER) ‘reports that the richest 1% of adults alone owned 40% of global assets in the year 2000, and that the richest 10% of adults

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<sup>13</sup> Farmer, n. 10 above, 40.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., at 50.

<sup>16</sup> T. Pogge, ‘Priorities of Global Justice’ in David Held and Anthony McGrew (eds.), *The Global Transformations Reader*, (Cambridge: Polity Press, 2003) 548-558 at 548.

accounted for 85% of the world total.' It also notes that 'average wealth amounted to \$144,000 per person in the USA in year 2000, and \$181,000 in Japan...India [had] per capita assets of \$1,100, and Indonesia with \$1,400 per capita.' Another striking finding is that ninety per cent of the total world wealth is concentrated in North America, Europe, and high income Asia-Pacific countries.<sup>17</sup>

Dependency theorists contribute to an understanding of the distribution of severe poverty. They provide analysis illuminating the structural violence embedded in this inequality. For them, the world is divided between the core industrialized countries and periphery developing countries. According to dependency theorists, 'peripheral countries face unfair advantages in their terms of trade, access to foreign capital, and ability to make maximal use of their own factor endowments in ways that would promote economic growth with equity.'<sup>18</sup> GATT is a specific structure that allocates these advantages unfairly. According to Ngaire Woods, under GATT

there was a clear inequality in power, with the 'Quad' (the US, the European Union, Japan and Canada) able to work behind the scenes to shape most decisions. The results were trading rules which had a very uneven impact on countries. Importantly these results reflected a process which magnified inequalities among members.<sup>19</sup>

Thomas Pogge, in *World Poverty and Human Rights*, presents further evidence of the causal role of global institutions in creating the international disparity between oppression and power. His analysis of the international borrowing privilege and the international resource privilege illuminate how these regulations 'imposed by wealthy societies and cherished by authoritarian rulers and corrupt elites in the poorer countries, contribute substantially to the persistence of severe poverty'.<sup>20</sup> Jeffrey Sachs also notes the disproportionate vulnerability of Third World countries in international institutions such as the International Monetary Fund (IMF). He observes,

The G7 countries, plus the rest of the European Union, represent a mere 14 per cent of the world's population. Yet these countries have 56 per cent of the votes in the IMF Executive Board . . . There is no talk about negotiation with the poorer countries, no talk about finding a fairer voice for those countries in the new international system. The rest of the world is called upon to support G7 declarations, not to meet for joint problem-solving.<sup>21</sup>

The GATT, the IMF and other global institutions are examples of the historically given and economically driven processes and forces to which Farmer refers in his definition of structural violence. They are historically given because they are reproducing historically established balances of power, and they are economically driven processes and forces since the rich use these structures to get richer.

Moreover, this evidence presents a world where political power is held in the hands of a few, the central inequality that gives rise to structural violence. Here, the notion of structural violence applies directly because the power to decide over the distribution of resources is highly uneven. Pogge asserts that the developed countries'

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<sup>17</sup> The World Institute for Development Economics Research of the United Nations University (UNU-WIDER), 5 December 2006 Press Release of The World Distribution of Household Wealth. Available at: <http://www.wider.unu.edu/research/2006-2007/2006-2007-1/wider-wdhw-launch-5-12-2006/wider-wdhw-press-release-5-12-2006.pdf>. Last accessed 16 May 2007.

<sup>18</sup> Landman, n. 1 above, 46.

<sup>19</sup> N. Woods, 'Order, Globalization and Inequality in World Politics' in David Held and Anthony McGrew (eds.), *The Global Transformations Reader*, (Cambridge: Polity Press, 2003) 463-476 at 468.

<sup>20</sup> T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), at 115.

<sup>21</sup> Jeffrey Sachs, 'Stop Preaching', *The Financial Times*, 5 Nov. 1998.

governments enjoy a crushing advantage in bargaining power and expertise. And our representatives in international negotiations do not consider the interests of the global poor as part of their mandate. They are exclusively devoted to shaping each such agreement in the best interest of the people and corporations on their own country...In such negotiations, the affluent states will make reciprocal concessions to one another, but rarely to the weak.<sup>22</sup>

The United Nations Development Programme 1999 report substantiates this dominance and concentration of wealth in the hands of a few:

- OECD countries, with 19% of the global population, have 71% of global trade in goods and services, 58% of foreign direct investment and 91% of all Internet users.
- The recent wave of mergers and acquisitions is concentrating industrial power in mega-corporations – at the risk of eroding competition. By 1998 the top 10 companies in pesticides controlled 85% of a \$31 billion global market – and the top 10 in telecommunications, 86% of a \$262 billion market.<sup>23</sup>

This understanding of economic globalization, while certainly only touching the surface of this vast debate, importantly locates a pivotal aspect of the global economic structure that gives rise to structural violence. That is, in the economic exchange and transformation of the world, some, who Galtung had referred to as ‘topdogs’, benefit a great deal more from the interaction in the structure than the ‘underdogs’, or as in the above quote, referred to as ‘the losers’, who are left to suffer growing poverty and have no opportunity to benefit in the future because of growing marginalization from the global economy.<sup>24</sup>

Having established a very basic outline of the structural nature of poverty, the next issue to address is how exactly poverty constitutes structural violence. As Pogge states, his ‘criticism is not that they [the poor] are worse off than they might be, but that we and our governments [of developed countries] participate in depriving them [the poor] of the objects of their most basic rights.’<sup>25</sup> Moreover, the aggregate gap between the amount needed for those under the \$1/day poverty line to reach that line is 0.16 per cent of the gross national incomes of the high-income economies. Therefore, ‘for the first time in human history it is quite feasible, economically, to wipe out hunger and preventable diseases worldwide without real inconvenience to anyone’.<sup>26</sup> The conditions of global inequality that result in severe poverty are certainly avoidable.

Moreover, poverty creates conditions where the actual ability to meet one’s fundamental human needs are obstructed. There are clear indicators that poverty effectively constitutes the violence that creates the disparity between actual and possible abilities to meet fundamental human needs. Again, statistics provide a lucid picture:

815 million persons are undernourished; 1.1 billion lack access to safe water; more than 880 million lack access to basic health services; roughly one third of all human deaths, some 50,000 daily, are due to poverty-related causes, easily preventable through better nutrition, safe drinking water, vaccines, cheap re-hydration packs and antibiotics.<sup>27</sup>

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<sup>22</sup> Pogge, n. 20 above, 20.

<sup>23</sup> United Nations Development Programme, UNDP Human Development Report 1999 (New York, NY: Human Development Report Office, UNDP, 1999).

<sup>24</sup> There are clear objections to holding the global economy responsible for the persistence of severe poverty. Numerous arguments are made that allocate blame to nations not pursuing optimal economic policies or others who argue that other national factors such as people tolerating corrupt governments are just as, if not more, important than the global economy for explaining inequality. For a more comprehensive understanding of this debate, see Pogge, n. 20 above.

<sup>25</sup> Pogge, n. 20 above, 23.

<sup>26</sup> Pogge, n. 16 above, 549. For more information on the feasibility of ending world poverty see Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin Press, 2005).

<sup>27</sup> Pogge, n. 16 above, 548,9.

Poverty clearly places individuals at a much higher risk of malnourishment, disease and death.

It is clear from these indicators that ‘severe poverty causes massive underfulfillment of social and economic human rights, such as the “right to a standard of living adequate for the health and well-being of oneself and one’s family, including food, clothing housing and medical care.”’<sup>28</sup> While this causal link is evident, what makes poverty itself a violation of human rights? Amartya Sen’s approach provides an answer to this question. Sen lays out a new understanding of poverty that is no longer premised solely on income; rather, he conceives of poverty as a non-fulfillment of basic human rights where inadequate command over economic resources are involved.<sup>29</sup>

## 5. Poverty as a structural violation of human rights

Sen contends that to understand poverty one must

concentrate on the individual’s real opportunity to pursue her objectives [and therefore] account would have to be taken not only of the primary goods the persons respectively hold, but also of the relevant personal characteristics that govern the conversion of primary goods into the person’s ability to promote her ends.<sup>30</sup>

So the different contexts of each individual present a different set and/or amount of primary goods that allow a person to be able to obtain or perform things he or she values. Thus, a person with disabilities may require more or a different set of primary goods to have the same capabilities as an able-bodied person. Poverty, then, is ‘the failure of basic capabilities to reach certain minimally acceptable levels’, where basic capabilities are understood as basic freedoms ‘such as the freedoms to avoid hunger, disease, illiteracy, and so on’.<sup>31</sup> For Sen, the opposite of poverty and, indeed, the very mechanism to realize a fulfillment of basic human rights is the full realization of one’s agency. By removing the ‘unfreedoms’ instituted by social, economic and political inequalities that constrain their agency, individuals can secure their basic capabilities.<sup>32</sup>

This understanding of poverty illuminates how the idea of a disparity between actual and possible abilities to meet one’s needs and the notion of avoidability in Galtung’s definition of structural violence are directly applicable to the discourse of human rights. The disparity between the actual ability to meet needs and the possible or potential ability, in the human rights context, consists of a gap between actual or de facto rights and potential or de jure rights.<sup>33</sup> De jure rights are those fundamental human rights that are enshrined in human rights law. When these rights fail to be recognized or realized, in other words, when the de facto rights fall short of the de jure rights, violence, according to Galtung’s definition, is present. Crucial in making the transition from violence to human rights violations is the recognition that structural causes are responsible for constrained agency. Structural violence

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<sup>28</sup> *Ibid.*, at 549. Severe poverty also causally contributes to violations of civil and political rights which have been extensively explored by numerous scholars, most prominent of whom is Amartya Sen in *Development as Freedom* (Oxford: Oxford University Press, 1999) and *Poverty and Famines: An Essay on Entitlements and Deprivation* (Oxford: Oxford University Press, 1983); however, this essay will focus primarily on poverty’s impacts on violations of social and economic rights.

<sup>29</sup> Office of the High Commissioner of Human Rights, *Human rights and Poverty Reduction: A Conceptual Framework* (Geneva: Office of the United Nations High Commissioner for Human Rights, 2004), at 6.

<sup>30</sup> A. Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), at 74.

<sup>31</sup> OHCHR, n. 29 above, 7,9.

<sup>32</sup> Sen, n. 30 above, 18,9.

<sup>33</sup> Landman, n. 1 above, 47.

illuminates the causal relationship between power differentials in structures and its effect on individual agency and, when applied to human rights, illuminates structural causes of human rights violations. It is the effect of structures on agency that results in the gap between de jure and de facto rights.

Poverty consists of a systematic or structural denial of basic freedoms, as articulated by Sen, resulting in agency constrained to the extent that individuals are unable or lack the 'capability' to meet their basic needs. The denial of one freedom amplifies or multiplies the denial of other freedoms, rendering the poor disproportionately vulnerable to a whole array of violations. Poverty not only means lack of money; it means a concomitant impairment of access to adequate healthcare, water, shelter, etc. In terms of de facto and de jure rights, the poor clearly

experience a different de facto realization of human rights...those living in poverty, on balance, have less access to the kind of economic resources that are necessary for adequate healthcare, education and welfare services, which may in turn effect the degree to which they enjoy their civil and political rights.<sup>34</sup>

Poverty, therefore, constitutes a structural violation of human rights. There are systemic reasons that explain why the poor bear a disproportionate burden of rights violations. In this sense, Farmer's assertion rings eerily true:

Human rights violations are not accidents; they are not random in distribution or effect. Rights violations are, rather, symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who will be shielded from harm.<sup>35</sup>

Furthermore, poverty, although it

has an irreducible economic connotation does not necessarily imply the primacy of economic factors in the causation of poverty. For example, when discrimination based on gender, ethnicity or any other ground denies a person access to health-care resources, the resulting ill-health is clearly a case of capability failure that should count as poverty because the lack of access to resources has played a role.<sup>36</sup>

The social factors, such as sexism and racism, also represent additional instances of structural violence that constrain agency.

From a structuralist perspective, with a focus on interdependent relationships, there are clear inequalities between collectivities along social axes. Recalling the example cited earlier in the essay regarding African-American women who are disproportionately at risk of contracting and dying from AIDS and suffering from rape and starvation among numerous other human rights violations in natural catastrophes, race is clearly a social axis along which inequalities have been institutionalized. Scheper-Hughes and Bourgois contend that since social structures have institutionalized structural violence, social structures therein render that violence invisible. For them, structural violence is 'everyday violence [or] part of the normative fabric of social and political life. Structural violence is generally invisible because it is part of the routine grounds of everyday life...'<sup>37</sup> Most studied in the social axes of structural violence are race, class and gender inequalities. The social location of the individual is crucial to determining how the individual's agency is constrained, and how that makes an individual vulnerable to human rights violations.

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<sup>34</sup> Landman, n. 1 above, 47.

<sup>35</sup> Farmer, n. 10 above, 7.

<sup>36</sup> OHCHR, n. 29 above, 8.

<sup>37</sup> N. Scheper-Hughes and P. Bourgois, eds. *Violence in War and Peace: An Anthology* (Malden, MA: Blackwell Publishing, 2004), at 4.

## 6. Structural violations and the human rights discourse

While structural violence serves a useful purpose in providing a framework that leads to an understanding of structural violations of human rights, it also influences conceptions of human rights. This influence takes the form of advocating the equal allocation of resources and emphasis on social and economic rights. As explicated above in the section on poverty, there is a ready correlation between the actual and potential disparity in the structural violence disparity and the de facto and de jure rights gap.

Structures are responsible for this violence resulting in an individual's constrained agency. This focus on structures in the context of the international human rights regime did not gain salience until the post-Cold War era, as the UN began to admit poor, non-Western states which

introduced a new emphasis on economic rights into international debate. In 1974, a number of texts concerning the so-called New International Economic Order were approved. These texts sought to draw attention away from human-rights violations in individual states to the structural causes of human-rights violations in global economic inequality.<sup>38</sup> (emphasis added)

Though the New International Economic Order movement did not outlive the 1970s, it was pivotal in laying the groundwork for the conceptual move from injustice and inequality to the formulation of a human rights violation.<sup>39</sup> With the new focus on structural analysis of human rights violations, there was an increasing focus on social and economic rights, which have also been called 'second generation rights'. These are the rights that are rendered invisible by institutionalized social and economic inequalities.

The legal nature of the international human rights regime further marginalizes social and economic rights as they are difficult to monitor and render justiciable.<sup>40</sup> Only recently have frameworks been constructed to help facilitate the identification of economic and social rights violators and their victims. These recent developments in the direction of making social economic rights justiciable include instituting minimum core values (as a remedy for the weak language of 'progressive realization'), benchmarks and indicators, and issuing general comments that advocate a legal obligation for international cooperation and assistance.<sup>41</sup> While these new measurements are surely innovative, their effectiveness as monitoring mechanisms is questionable. Audrey Chapman, former Rapporteur for the United Nations Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social, and Cultural Rights, advocates separating the 'progressive realization' requirement from the monitoring process. Chapman suggests adopting a 'violations approach' for monitoring which would consist of 'a review process for evaluating compliance with the Covenant on Economic, Social and Cultural Rights [hereinafter the Covenant] which is consistent with the review processes used for other international instruments.'<sup>42</sup>

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<sup>38</sup> M. Freeman, *Human Rights* (Cambridge: Polity Press, 2002), at 47.

<sup>39</sup> Centre for Development and Human Rights, 'The Right to Development: A Primer' (New Delhi: SAGE Publications, 2004), at 46-47.

<sup>40</sup> Audrey Chapman, 'A 'Violations Approach' for Monitoring the International Covenant on Economic, Social and Cultural Rights' (1996) 18.1 *Human Rights Quarterly* 23 at 24-29. Available at [http://muse.jhu.edu/journals/human\\_rights\\_quarterly/v018/18.1chapman.html](http://muse.jhu.edu/journals/human_rights_quarterly/v018/18.1chapman.html). Last accessed 18 May 2007.

<sup>41</sup> Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, emphasized the importance of using indicators and benchmarks as a tool to measure the progressive realization of rights. For more information see: Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, UN Doc. E/CN.4/2006/48.

<sup>42</sup> Chapman, n. 40 above, 36.

She argues that among the many advantages of adopting this type of approach is the greater protection and promotion of these rights:

After all, the goal of any approach to human rights is to enhance the enjoyment of rights of individual subjects and to bring them some form of redress when the rights are violated, not to abstractly assess the degree to which a government has improved its level of development on a range of statistical indicators. A violations approach, therefore, returns the focus to the tangible domain in which it belongs.<sup>43</sup>

The conception of structural violations of human rights supplemented with the violations approach implies an expanded notion of human rights, not only in creating a stronger mechanism to enforce social and economic rights, but also in deconstructing notions of a false dichotomy between social and economic rights as positive obligations and civil and political rights as negative in nature. While structural violence rests upon this notion of a disparity between actual and potential, it also consists of multiple permutations of this structural violence. Structural violence is also 'that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance'.<sup>44</sup> So, for example, referring back to the case of the tuberculosis patient who died, if a country continued to divert funds from its medical system and the treatment and care of tuberculosis patients to defence funds, the violence present is one that increases the distance between the potential and the actual. On the other hand, if richer countries from abroad were recruiting medical students from this poorer country resulting in fewer doctors to care for tuberculosis patients, that would constitute violence in the form of impeding the decrease of this distance. These additional layers of structural violence can be understood as reading negative duties into social and economic rights. This new understanding has important implications for human rights in terms of dismantling the false dichotomy between civil and political as negative rights and social and economic rights as positive rights entailing financially-burdensome obligations.

The introduction of the 'tripartite typology of duties' or the respect, protect and fulfill approach to rights reinforces the notion of interdependence between and among all rights and effectively reveals the violations of rights that were previously difficult to identify. Respect requires a negative obligation 'to refrain from direct violations of the right'; protect 'requires duty-holders to prevent a right from being infringed by third parties'; and fulfill 'includes a duty to provide resources when individuals have no alternative way to satisfy their basic needs'.<sup>45</sup> Chapman's approach to violations roughly follows these categories, which are:

- (1.) violations resulting from actions and policies on the part of governments;
- (2.) violations related to patterns of discrimination; and
- (3.) violations related to a state's failure to fulfill the minimum core obligations of enumerated rights.<sup>46</sup>

The first type of violation reflects the respect duty to refrain from infringing on rights. The second type of violation is related to the protect obligation. Chapman observes that the provisions for nondiscrimination in the Covenant 'have been interpreted as requiring both negative measures to prevent discrimination and positive "affirmative action"-type initiatives to compensate for past discrimination'.<sup>47</sup> Finally, the third type of violation explicitly states the fulfill dimension. For Chapman, the state, as a party to the Covenant, is responsible for respecting, protecting

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<sup>43</sup> *Ibid.*, at 38.

<sup>44</sup> Galtung, n. 4 above, 168.

<sup>45</sup> P. Hunt, *Reclaiming Social Rights* (Hants, England: Dartmouth Publishing Company Limited, 1996), at 31-4.

<sup>46</sup> Chapman, n. 40 above, at 43.

<sup>47</sup> *Ibid.*, at 44.

and fulfilling these human rights and therefore responsible for the structural violations of these rights. Chapman's 'violations approach' relies on the UN Committee on Economic, Social and Cultural Rights reviewing periodic reports from the state parties to the Covenant and issuing concluding observations; therefore it remains focused on the state and its legal obligations as party to an international legal document and specifically on economic, social and cultural rights. This focus on state responsibility is also central to the Maastricht Guidelines on Economic, Social and Cultural Rights. These state, in paragraphs 18 and 19, that acts by non-state entities as well as international organizations fall within the parameters of the state's responsibility to protect rights.<sup>48</sup>

However, responsibility extends beyond state borders. The Covenant also recognizes the need for 'international cooperation and assistance' in Article 2.1. The formulation of the right to development further engages this responsibility of the international community, where developed countries and international financial institutions become an important part of a process to realize the spectrum of human rights, from civil and political to social, economic and cultural. According to Galtung, human rights declarations, while they espouse norms of equality,

often suffer from the deficiency that they are personal more than structural. They refer to distribution of resources, not to power over the distribution of resources. In other words, human rights as usually conceived of are quite compatible with paternalism whereby power-holders distribute anything but ultimate power over the distributions, so that equalization without any change in the power structure is obtained...<sup>49</sup>

Galtung made that observation in 1969 in 'Violence, Peace, Peace Research', well before the formulation of the right to development.<sup>50</sup> In the 1986 Declaration on the Right to Development, Article 4.2 addresses what Galtung called a 'deficiency.' It states:

Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.<sup>51</sup>

It imposes a duty on developed nations to address global inequality. The Independent Expert on the Right to Development, Arjun Sengupta, noted in his fourth report the integral nature of international cooperation to this right.<sup>52</sup> Foreign savings and foreign investment are pivotal to the success of development in any poor country. However, Sengupta agrees with Galtung that resource transfer is not enough; rather, international assistance must include 'international cooperation for supplying technology; providing market access; adjusting the rules of operation of the existing trading and financial institutions and intellectual property protection; and creating new international mechanisms to meet the specific requirements of the developing countries.'<sup>53</sup>

Goal 8 of the Millennium Development Goals promulgated in September 2000 operationalizes this right and insists that developed states provide international assistance.

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<sup>48</sup> 'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* at 691.

<sup>49</sup> Galtung, n. 4 above, 188.

<sup>50</sup> *Ibid.*

<sup>51</sup> General Assembly Resolution 41/128, 4 Dec. 1986.

<sup>52</sup> Fourth Report of the Independent Expert on the Right to Development, Mr. Arjun Sengupta, United Nations Open-ended Working Group on the Right to Development, U.N. Doc E/CN.4/2002/WG.18/2, paras. 42-45.

<sup>53</sup> *Ibid.* at para. 43.

Goal 8 is to 'develop a global partnership for development', and one of the aspects of this goal is to:

Address the least developed countries' special needs. This includes tariff- and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries; cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction.<sup>54</sup>

This insistence on international cooperation rests on the essence of the right to development. This right does not, like social, economic and cultural rights, make a claim to a minimum core requirement; instead, this right is 'a process that expands the capabilities or freedom of individuals to improve their well-being and to realize what they value' (emphasis added).<sup>55</sup> Arjun Sengupta further refines this concept of capabilities and the structural explanations for why poor people are disproportionately vulnerable to human rights violations that Amartya Sen first introduced.

For Sengupta, the right to development is a vector that consists of each of the human rights, and its value is also dependent upon economic growth.<sup>56</sup> To illustrate this vector concept, take, for example, the right to health. It is dependent upon the level of fulfillment of other rights such as the right to water, housing and security, while all of these rights can be enhanced or diminished according to economic indicators like gross domestic product, employment, and per capita consumption.<sup>57</sup> The right to development, the value of the vector, rests upon the increase in enjoyment of the other without the deterioration of any of these rights. The right to development thus ties together the key aspects of structural violations of human rights by emphasizing the inter-related nature of civil, political, social, economic and cultural rights as well as the international responsibility for violations of these rights.

Although the Maastricht Guidelines attribute violations of human rights committed by non-state actors and international organizations to state parties, it remains unclear how the right to development attributes responsibility. It is clear that these non-state actors should participate in creating an amenable environment for states to honour their human rights obligations as Sengupta outlines above; however, if they do violate a human right through their practices, there are no legal practices available to hold them responsible. Chapman's 'violations approach' only works for states party to the Covenant. Noted at the beginning of this paper was the difficulty in identifying perpetrators of structural violations of human rights. The new framework of unpacking each right to include respect, protect and fulfill elements helped to identify the state as responsible for structural violations. However, the provisions for international assistance and cooperation in the Covenant as well as in the literature on the right to development falls short of holding transnational corporations or international financial institutes responsible for human rights violations.

## 7. Alternative Conceptions

Alternative conceptions of human rights violations include ones that focus on individuals who are responsible rather than the structures that produce the violations. Such examples

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<sup>54</sup> Millennium Development Goals, Available at <http://www.un.org/millenniumgoals/index.html>. Last accessed 17 May 2007.

<sup>55</sup> Sengupta, n. 52 above, para. 3.

<sup>56</sup> Second Report of the Independent Expert on the Right to Development, Mr. Arjun Sengupta, to the Human Rights Commission, A/55/306, paras 23-25.

<sup>57</sup> Ibid.

include the principal-agent model espoused by Neil Mitchell and the 'strategic logic' of mass killings theory by Benjamin Valentino. For Mitchell and Valentino, academics 'have spent so much time and intellectual capital on the structural factors that allow, encourage, exacerbate, or inhibit atrocities that we have often neglected the role of the perpetrators themselves.'<sup>58</sup> Mitchell and Valentino take a realist perspective of the world, where individual agency is the focus of their analysis. For them, small groups of elites make rational decisions to conduct atrocities. While the individual role of human rights violations cannot be entirely neglected, these authors concede the importance of structural causes of human rights violations. In Valentino's conclusion, 'it becomes clear that ultimately, structural factors help determine which regimes are at greater risk for mass killing.'<sup>59</sup> Mitchell also acknowledges the structural context for mass violations of human rights by historically contextualizing each of his case studies before he begins his analysis. While the contributions of Mitchell and Valentino are significant to the study of mass killings where structural factors play a pivotal role, the types of violations studied in this paper are invisible using this individual rational approach. Desperate poverty and diseased populations have not yet been effectively studied through a realist approach.

Other conceptions include culturalist explanations for human rights violations that overlap with the huge body of literature concerning cultural relativism, the Asian values debate, and criticism of the universality of human rights, which lies well beyond the scope of this paper. However, to provide a brief understanding of this alternative perspective presented here are the two polar ends of the culturalist point of view. On one extreme end, culture is simply a factor to explain how individual agency is constrained by shared values and norms. For example, cultural practices throughout the world systematically discriminate against women where they are denied the right to vote, suffer from domestic abuse, and are excluded from employment opportunities. At the other extreme, the existence of cultural differences precludes even the notion of human rights violations. 'Arguments that sustain and excuse these human rights abuses [against women] - those of cultural norms, "appropriate" rights for women, or western imperialism' fall under the cultural relativism umbrella 'which argues that there are no universal human rights and that rights are culture-specific and culturally determined.'<sup>60</sup> This cultural aspect was not explored in this paper; however, in 'Cultural Violence', Galtung does discuss his theory on how culture can, in some instances, constitute a type of violence.<sup>61</sup> This convergence of culturalism, cultural violence and human rights violations deserves further study.

The structuralist perspective taken in this paper, however, is distinct from realist and culturalist views in that realists focus on individual agency as supreme whereas culturalists emphasize the powerful role of cultural influences shaping individual decisions. While structuralism is often criticized for neglecting the power of individual agency, the focus of this paper has been on exactly why certain populations, particularly the poor, experience more constraints and limits on that agency. Structures provide some of the explanations for those constraints. The cultural aspect is beyond the scope of the paper but well worth

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<sup>58</sup> Matthew Krain, 'Agents of Atrocity: Leaders, Followers, and the Violation of Human Rights in Civil War and Final Solutions: Mass Killing and Genocide in the Twentieth Century' (March 2006) 4.1 Perspectives on Politics 233 at 234.

<sup>59</sup> Ibid.

<sup>60</sup> 'Women's Rights: Human Rights Watch.' Available at <http://hrw.org/women/>. Last accessed 21 May 2007. For further information about how the culturalist approach intersects with human rights discourse see Landman, n. 1 above, 48-52.

<sup>61</sup> Galtung, n. 8 above.

further research, specifically in terms of how shared values and norms constrain individual agency. Culturalist explanations could perhaps provide reasons for why some individual capabilities are limited to the extent that they are unable to meet their basic needs, which would result in a human rights violation.

## 8. Conclusion

Paul Farmer posits, 'human rights can and should be declared universal, but the risk of having one's rights violated is not universal'.<sup>62</sup> This observation is at the heart of structural violations of human rights. There are systemic and structural causes that place some populations at a greater risk of human rights violations than others. This inequality in risk can be traced to uneven distributions of power. This central tenet of structural violence reveals the pattern of human rights violations that manifest themselves as economic and social inequalities. Structural violence, as this essay has shown, exists when there is an avoidable gap between actual and potential abilities to meet human needs. This framework is applicable to human rights violations in that constrained agency plays a pivotal role in how individuals experience this gap between the actual and the potential. When economic and social structures conspire to limit one's agency to the extent that fundamental human needs cannot be met then structural violence becomes a structural violation of human rights.

This essay used poverty to exemplify how structural violence is a useful theory to locate the origins of structural violations of human rights. After an examination of the nature of poverty distributions and how structures are responsible for the persistence in poverty, it was shown that poverty not only causes human rights violations, but, under the formulation of Amartya Sen, also itself constitutes a violation of human rights as it exemplifies constrained agency. Finally, applying structural violence to the human rights discourse, there emerges a clear emphasis on social and economic rights. The centrality of the principle of equality in structural violations resonates with the focus on equality in the foundations of social and economic rights (as distinct from freedoms and liberties in civil and political rights). The recent formulation of the right to development fully captures the implications of the structural violence theory. The emphasis on international assistance and cooperation and the integration of all the human rights into the concept of a vector indicates a holistic approach to addressing global inequality that the human rights regime lacked before. However, the puzzle presented at the start of this paper, how to attribute responsibility for widespread disease and poverty, remains. Chapman's violations approach provides a preliminary answer. States which sign international human rights covenants have a legal obligation to uphold these rights. However, changing the 'pathologies of power' to which Farmer refers requires seriously committing to international assistance and cooperation and, among many other changes, adjusting the rules of international financial institutions, as outlined by Arjun Sengupta in his Fourth Report. The rigorous accountability of these rights lies in the human rights regime's ability to address the shortcomings of enforcement mechanisms for states and creating incentives for other actors in the international community to participate in its efforts.

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<sup>62</sup> Farmer, n. 10 above, 231.

## Bibliography

CENTRE FOR DEVELOPMENT AND HUMAN RIGHTS, 'The Right to Development: A Primer' (New Delhi: SAGE Publications, 2004) 46-47.

CHAPMAN, AUDREY, 'A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights' (1996) 18.1 *Human Rights Quarterly* 23-66.

FARMER, PAUL, *Pathologies of Power* (Berkeley: University of California Press, 2005).

FREEMAN, M., *Human Rights* (Cambridge: Polity Press, 2002).

GALTUNG, JOHAN, 'Cultural Violence' (1990) 27.3 *Journal of Peace Research* 291-305.

---, 'Kulturelle Gewalt' (1993) 43 *Der Bürger im Staat* 106-112.

---, 'Violence, Peace, Peace Research' (1969) 6.3 *Journal of Peace Research* 167-191.

---, 'Violence, War and their impact' 2004 *Polylog Forum for Intercultural Philosophy* 5  
Available at: <http://them.polylog.org/5/fgj-en.htm>. Last accessed 20 Nov. 2006.

HUNT, P., *Reclaiming Social Rights* (Hants, England: Dartmouth Publishing Company Limited, 1996).

HUNT, PAUL, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, UN Doc. E/CN.4/2006/48.

LANDMAN, T., *Studying Human Rights* (New York, NY: Routledge, 2006).

KRAIN, MATTHEW, 'Agents of Atrocity: Leaders, Followers, and the Violation of Human Rights in Civil War and Final Solutions: Mass Killing and Genocide in the Twentieth Century' (March 2006) 4.1 *Perspectives on Politics* 233-235.

'Maastricht Guidelines on Violations of Economic, Social and Cultural Rights' (1998) 20 *Human Rights Quarterly* 691-705.

Millennium Development Goals, Available at  
<http://www.un.org/millenniumgoals/index.html>. Last accessed 17 May 2007.

OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS. *Human rights and Poverty Reduction: A Conceptual Framework* (Geneva: Office of the United Nations High Commissioner for Human Rights, 2004).

POGGE, THOMAS, 'Priorities of Global Justice' in David Held and Anthony McGrew (eds.), *The Global Transformations Reader*, (Cambridge: Polity Press, 2003) 548-558.

---, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002).

SACHS, JEFFREY, 'Stop Preaching', *The Financial Times*, 5 Nov. 1998.

---, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin Press, 2005)

SCHEPER-HUGHES, N. and BOURGOIS, P. (eds.) *Violence in War and Peace: An Anthology* (Malden, MA: Blackwell Publishing, 2004).

SEN, A., *Development as Freedom* (Oxford: Oxford University Press, 1999).

---, *Poverty and Famines: An Essay on Entitlements and Deprivation* (Oxford: Oxford University Press, 1983)

SENGUPTA, ARJUN, *Second Report of the Independent Expert on the Right to Development*, Mr. Arjun Sen Gupta, to the Human Right Commission, A/55/306.

---, *Fourth report of the independent expert on the right to development*, Mr. Arjun Sen Gupta, United Nations Open-ended Working Group on the Right to Development, U.N. Doc E/CN.4/2002/WG.18/2.

UNITED NATIONS DEVELOPMENT PROGRAMME, *UNDP Human Development Report 1999* (New York, NY: Human Development Report Office, UNDP, 1999).

United Nations General Assembly Resolution 41/128, 4 Dec. 1986.

VASAK K., ed., *The International Dimensions of Human Rights Volume 1* (Westport, Connecticut: Greenwood Press, 1982).

WOODS, NGAIRE, 'Order, Globalization and Inequality in World Politics' in David Held and Anthony McGrew (eds.), *The Global Transformations Reader*, (Cambridge: Polity Press, 2003) 463-476.

'Women's Rights: Human Rights Watch.' Available at <http://hrw.org/women/>. Last accessed 21 May 2007.

WORLD INSTITUTE FOR DEVELOPMENT ECONOMICS RESEARCH OF THE UNITED NATIONS UNIVERSITY, THE (UNU-WIDER), 5 December 2006 Press Release of The World Distribution of Household Wealth. Available at: <http://www.wider.unu.edu/research/2006-2007/2006-2007-1/wider-wdhw-launch-5-12-2006/wider-wdhw-press-release-5-12-2006.pdf>. Last accessed 16 May 2007.