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## Occupy Wall Street and international human rights

Martha F. Davis

*Northeastern University School of Law*

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## OCCUPY WALL STREET AND INTERNATIONAL HUMAN RIGHTS

*Martha F. Davis\**

*“We are the 99 percent” is a great slogan. It correctly defines the issue as being the middle class versus the elite (as opposed to the middle class versus the poor).<sup>1</sup>*

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### INTRODUCTION

By definition, practically all of us are in the “99 percent” of Americans with annual incomes below \$506,553.<sup>2</sup> Yet at the same time that the 99 percent slogan unites us, it also masks vast differences in income and economic stability between households. Of that 99% of Americans, about 6% — or one out of fifteen — live in extreme pov-

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\* Professor of Law, Northeastern University School of Law; Co-Director, Program on Human Rights and the Global Economy. My thanks go to Hope Lewis, Gillian MacNaughton, Cathy Albisa, Risa Kaufman and Maria Green for sharing their insights and expertise on this topic.

1. Paul Krugman, *We Are the 99.9%*, N.Y. TIMES, Nov. 24, 2011, at A35, available at <http://www.nytimes.com/2011/11/25/opinion/we-are-the-99-9.html>.

2. *The Numbers*, TAX POLICY CENTER (May 12, 2011), <http://taxpolicycenter.org/numbers/displayatab.cfm?DocID=2970>.

erty, defined within the United States as having income of less than half of the official poverty line.<sup>3</sup> The number of Americans with incomes at or below the national poverty line is even greater, at fifty-one million.<sup>4</sup> Looking even more broadly, the Census Bureau reports that about one-third of the American population has incomes below 150% of the poverty line.<sup>5</sup> These working households typically “live paycheck to paycheck,” with little to spare for extras beyond basic household necessities.<sup>6</sup> The remaining two-thirds of Americans, labeled “other” in Census Bureau reports on the growth of U.S. poverty, are above the 33% identified as poor but below the 1% defined by the Occupy Wall Street (OWS) movement as excessively wealthy. In varying degrees, this top one-third of Americans has a share of the economic prosperity of the nation. While many in this group enjoy only a small fraction of the wealth held by the very top echelons of U.S. earners, their economic existence is also vastly different—and considerably more stable—than that of the bottom rungs of the national economic ladder.<sup>7</sup>

Our collective membership in the “99 percent” notwithstanding, the inequality between economic sectors and across income levels in the U.S. is greater than ever and still growing.<sup>8</sup> According to the non-partisan Congressional Budget Office, between 1979 and 2007, after-tax income grew by 275% for the top 1% of households, 65% for the next 19%, just under 40% for the next 60%, and 18% for the bottom 20%.<sup>9</sup> Analyzing government data, economists Thomas Picketty and Emmanuel Saez calculate that these income disparities are the great-

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3. See *Census: 1 in 15 Americans Among the Poorest of the Poor*, PBS NEWSHOUR (Nov. 3, 2011), [http://www.pbs.org/newshour/bb/social\\_issues/july-dec11/poverty\\_11-03.html](http://www.pbs.org/newshour/bb/social_issues/july-dec11/poverty_11-03.html).

4. See Jason DeParle, Robert Gebeloff & Sabrina Tavernise, *Older, Suburban and Struggling, ‘Near Poor’ Startle the Census*, N.Y. TIMES, Nov. 19, 2011, at A1, available at <http://www.nytimes.com/2011/11/19/us/census-measures-those-not-quite-in-poverty-but-struggling.html?pagewanted=all>.

5. *Id.*

6. *Id.*

7. Gregory Acs & Austin Nichols, *America Insecure: Changes in the Economic Security of American Families*, URBAN INST. (Feb. 2010), [http://www.urban.org/uploadedpdf/412055\\_america\\_insecure.pdf](http://www.urban.org/uploadedpdf/412055_america_insecure.pdf) (describing differing levels of insecurity and economic mobility of top and bottom quartiles of Americans).

8. *Trends in the Distribution of Household Income Between 1979 and 2007*, CONG. BUDGET OFFICE (Oct. 25, 2011), <http://www.cbo.gov/publication/42729>.

9. *Id.*

est since 1928, shortly before the stock market crash of 1929 that ushered in the Great Depression.<sup>10</sup>

The genius of the OWS movement is to unite these increasingly economically disparate groups, from the bottom 6% of earners up to the ninety-ninth percentile, around issues of economic inequality. Historically, these economic sectors, even in times of less inequality, have not always been united. Despite clearly overlapping interests, workers' rights and organizing efforts have been distinct from similar efforts by the very poor.<sup>11</sup> For example, in the 1960s, poor people in the United States, with liberal middle class allies, mobilized around efforts to address poverty, resulting in the Welfare Rights Movement of the 1960s that followed on the national War on Poverty.<sup>12</sup> Efforts to explicitly expand the welfare rights movement to include workers, and thus transition toward a movement addressing broader issues of economic justice, foundered.<sup>13</sup> From the opposite direction, efforts to expand more middle class movements to include the poor have also failed. For example, the significant successes of the civil rights movement led by Martin Luther King, Jr., could not be replicated when Reverend King turned his attention to the rights to adequate housing and the Poor People's Campaign shortly before his death. Instead, the Poor People's Campaign is typically denominated as a failure—in part because of the timing of King's assassination and other circumstances outside the organization's control, and in part because of the difficulty of mobilizing broad coalitions to address economic issues.<sup>14</sup>

A more recent example of this difficulty is the Poor People's Economic Human Rights Campaign of the 1990s and 2000s, a campaign that challenged Americans to take concrete steps to alleviate deep

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10. Avi Feller & Chad Stone, *Top 1 Percent of Americans Reaped Two-Thirds of Income Gains in Last Economic Expansion: Income Concentration in 2007 Was at Highest Level Since 1928, New Analysis Shows* (Sept. 9, 2009), <http://www.cbpp.org/cms/index.cfm?fa=view&id=2908>; see, e.g., JOHN KENNETH GALBRAITH, *THE GREAT CRASH: 1929* (1955).

11. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 106 (1971) (noting trade union reluctance to focus organizing efforts on the unemployed).

12. See generally GUIDA WEST, *THE NATIONAL WELFARE RIGHTS MOVEMENT: THE SOCIAL PROTEST OF POOR WOMEN* (1981).

13. MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960–1973* 139–40, 144–45 (1993).

14. Marian Aguiar, *Poor People's Washington Campaign*, in *AFRICANA: THE ENCYCLOPEDIA OF THE AFRICAN AND AFRICAN AMERICAN EXPERIENCE* (Kwame Appiah & Henry Gates eds., 1999) (noting that most historians consider the Poor People's Campaign to have been only minimally successful).

poverty, such as turning over abandoned real estate to the very poor.<sup>15</sup> Led by homeless people, this aggressive campaign did little to directly or deliberately engage higher income people in their activism other than through fundraising and involvement of college student volunteers. The campaign's mission—"to unit[e] the poor across color lines as a leadership base for a broad movement to abolish poverty"—further emphasizes the primary focus on the poor, without a clear appeal to those who identify as workers or members of the middle class.<sup>16</sup>

In contrast to these more targeted organizing efforts, the Occupy movement in the U.S. seemingly has straddled these divides between economic sectors by pitting all of them against the ultra-wealthy top 1%. But while OWS achieved a level of broad recognition and engagement that has seldom, if ever, been achieved by poor people's movements, this shift in the operative organizing frame, from poverty to inequality, poses some strategic challenges, particularly in the U.S. context.<sup>17</sup> This Article examines one of those challenges by considering the question of whether the extreme, increasingly entrenched economic inequality within the United States constitutes a violation of international human rights law. The answer to this question may either open up, or problematize, an avenue for extending to the global stage the debate about inequality in the United States that has been initiated by OWS in domestic forums.

The Article proceeds as follows. First, I look at the fundamental question of whether extreme economic inequality constitutes a human rights violation in the context of the U.S. To analyze that question, I begin by examining the extent to which poverty has been deemed to raise international human rights concerns. As I articulate, international human rights institutions have generally addressed poverty indirectly rather than directly, focusing on the ways in which

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15. See POOR PEOPLE'S ECON. HUM. RTS. CAMPAIGN, <http://economichumanrights.org> (last visited Apr. 7, 2012).

16. Clayton Ruley, *A Talk with Natasha Euler on the Kensington Welfare Rights Union*, GEOCLAN, <http://www.geoclan.com/community/articles/06/ATalkwithNatashaEuleronTheKensingtonWelfareRightsUnion.htm> (last visited Apr. 7, 2012). On the difficulty of framing organizing messages across class lines, see Ellen Reese & Garnett Newcombe, *Income Rights, Mothers' Rights, or Workers' Rights? Collective Action Frames, Organizational Ideologies, and the American Welfare Rights Movement*, 50 SOC. PROBS. 294, 294 (2003).

17. See, e.g., Eric Zorn, *At Long Last, Equal Time for the Inequality Issue*, CHI. TRIBUNE, Oct. 12, 2011, at C31, available at [http://articles.chicagotribune.com/2011-10-12/news/ct-oped-1012-zom-20111012\\_1\\_inequality-equal-time-household-wealth](http://articles.chicagotribune.com/2011-10-12/news/ct-oped-1012-zom-20111012_1_inequality-equal-time-household-wealth) (urging greater awareness of rising inequality and its impact).

poverty frustrates the exercise of internationally recognized substantive and procedural human rights such as the right to shelter or the right to vote. I then use a similar lens to examine the issue of entrenched economic inequality. This analysis indicates that economic inequality remains a fraught concept at the international level, with only scant support in the text and practice of international law to support a claim that extreme economic inequality within a highly developed nation like the United States directly violates human rights norms.

Next, I examine several of the ways in which poor people's movements in the United States have utilized human rights framing and international human rights mechanisms to further their social change efforts, particularly in the last decade. Again, while freedom from poverty is not a formally protected human right, much international discussion has documented the relationship of poverty to the exercise of protected substantive and procedural rights, such as the right to education or the right of political participation. Further, some advocates have charged that governments bear accountability for poverty when it is a direct consequence of government policies or a government failure to act.<sup>18</sup> Poor people's organizations in the United States have utilized these conceptual approaches and, as this Article chronicles, in recent years, human rights advocacy has been a particularly fruitful tool for poor people's organizing campaigns.

Finally, I examine the extent to which similar human rights-based frames might be available to OWS given the movement's explicit focus on inequality across broad economic lines, and its attention to unequal distribution in the midst of the relative prosperity of a developed nation such as the United States. I propose two frames drawing on international human rights norms that might serve the OWS Movement well in both domestic and international forums.

First, like the approach taken with respect to extreme poverty, the impact of economic inequality on the exercise of substantive and procedural human rights could be analyzed and directly connected to effective violations of these rights. For example, gross economic inequality might be connected to violations of a right to education, as the wealthy abandon support for public education or other public goods.<sup>19</sup> Further, rather than dwell on the consumptive inequities

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18. See, e.g., Paula Braveman & Sofia Gruskin, *Poverty, Equity Human Rights and Health*, 81 BULL. WORLD HEALTH ORG. 539, 540 (2003).

19. See, e.g., Robert Reich, *How the Public Good Died in America*, SALON (Jan. 5, 2012), [http://www.salon.com/2012/01/05/how\\_the\\_public\\_good\\_died\\_in\\_america/](http://www.salon.com/2012/01/05/how_the_public_good_died_in_america/).

perpetuated by economic inequality, the OWS movement might also utilize internationally-accepted concepts of public participation and good government as vehicles for articulating the human rights implications of extreme income inequality within the United States.

Second, and more tentatively, I suggest that entrenched and extreme economic inequality might raise concerns under international anti-discrimination norms. International law bars discrimination on a number of grounds familiar to U.S. audiences, including race, gender, and ethnicity. The law, however, holds open the possibility that other classifications might also be deemed to violate human rights law. I suggest that the U.S. context requires a close look to determine whether the deep, entrenched inequalities here actually establish a new “suspect class,” suppressing democratic participation and violating widely accepted equality norms.

### I. DOES ECONOMIC INEQUALITY VIOLATE INTERNATIONAL HUMAN RIGHTS?

By focusing on gross, entrenched, and expanding inequality rather than poverty,<sup>20</sup> the Occupy movement raises a question that is surprisingly difficult under international human rights law: whether economic inequality violates human rights.

Working on a parallel track, scholars and activists have struggled for years to resolve the question of whether poverty itself violates human rights law.<sup>21</sup> While poverty is not identical to economic inequality, because of the overlap between these concepts and their human impacts, it is instructive to first look at the treatment of poverty under international human rights law before proceeding to examine the concept of inequality under human rights regimes.

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20. See, e.g., Esme Deprez & Catherine Dodge, *Occupy Wall Street Protests Inject Income Inequality into Political Debate*, BLOOMBERG (Nov. 9, 2011), <http://www.bloomberg.com/news/2011-11-09/occupy-wall-street-protests-inject-income-inequality-into-political-debate.html>.

21. See, e.g., FREEDOM FROM POVERTY AS HUMAN RIGHT: WHO OWES WHAT TO THE VERY POOR (Thomas Pogge ed., 2007) [hereinafter FREEDOM FROM POVERTY]; Ctr. for Econ. & Soc. Rights, *Human Rights and Poverty: Is Poverty a Violation of Human Rights?*, (Dec. 2009) (unpublished manuscript), available at <http://www.cesr.org/downloads/CESR%20Briefing%20-%20Human%20Rights%20and%20Poverty%20-%20Draft%20December%202009.pdf>; William Easterly, *Poverty Is Not a Human Rights Violation*, AID WATCH (June 5, 2009), <http://aidwatchers.com/2009/06/poverty-is-not-a-human-rights-violation/>.

### A. Poverty and Human Rights

A manifestation of unequal income distribution both between and within nations, the devastating impacts of extreme poverty on human lives are well known.<sup>22</sup> Further, considerable scholarly work has identified the philosophical basis for freedom from poverty as a human right.<sup>23</sup> This empirical and philosophical work, however, has not been translated into concrete, ascertainable legal standards.<sup>24</sup> Despite extensive background analysis, poverty is itself not explicitly identified in international human rights documents as a human rights violation.<sup>25</sup>

At the same time, as the UN Independent Expert on the Question of Human Rights and Extreme Poverty recognized in his 2005 report on the United States, “[w]hile poverty is not defined as a human rights violation per se under international human rights law, conditions of poverty are both a cause and a consequence of the non-realization of rights guaranteed in international human rights instruments.”<sup>26</sup>

In other words, progress in alleviating poverty is intimately related to, and a necessary component of, the implementation and enforcement of a human rights regime. By the same token, government failure to address poverty causes human rights violations by frustrating access to individuals’ exercise of the full range of human rights. The very existence of an Independent Expert on Human Rights and Ex-

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22. See, e.g., Harry Holzer et al., *The Economic Costs of Poverty in the United States: Subsequent Effects of Children Growing Up Poor*, CTR. FOR AM. PROGRESS 1–18 (Jan. 24, 2007), available at [http://www.americanprogress.org/issues/2007/01/pdf/poverty\\_report.pdf](http://www.americanprogress.org/issues/2007/01/pdf/poverty_report.pdf); Thomas Pogge, *Poverty Is a Violation of Human Rights*, ONLINE OPINION (Aug. 1, 2005), <http://www.onlineopinion.com.au/view.asp?article=3717&page=1>.

23. See, e.g., FREEDOM FROM POVERTY, *supra* note 21.

24. See Ctr. for Econ. & Soc. Rights, *supra* note 21 (noting the “lack of clarity within the human rights movement as to the linkages between human rights and poverty”); see also Thomas Pogge, *Ethical and Human Rights Dimensions of Poverty: Towards a New Paradigm in the Fight Against Poverty*, UNESCO POVERTY PROJECT (March 2003), [http://portal.unesco.org/shs/es/files/4363/10980840881Pogge\\_29\\_August.pdf/Pogge%2B29%2BAugust.pdf](http://portal.unesco.org/shs/es/files/4363/10980840881Pogge_29_August.pdf/Pogge%2B29%2BAugust.pdf) (distinguishing between moral human rights and legal human rights).

25. See Independent Expert on the Question of Human Rights and Extreme Poverty, *Mission to the United States*, ¶ 9, Comm’n on Human Rights, U.N. Doc. E/CN.4/2006/43/Add.1 (Mar. 27, 2006) (by Arjen Sengupta).

26. *Id.*

treme Poverty attests to this close interrelationship between human rights violations and poverty.<sup>27</sup>

On the international stage, the relationship between poverty and human rights is most directly articulated in the Copenhagen Declaration on Social Development and Programme of Action, adopted by the World Summit for Social Development convened by the United Nations in 1995.<sup>28</sup> The Copenhagen Declaration specifically catalogs the linkages between poverty and specific human rights, stating that

poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life.<sup>29</sup>

In recognition of these linkages, the nations participating in framing the Copenhagen Declaration and Programme of Action undertook a series of commitments both domestically and internationally to further social development goals articulated in the document.<sup>30</sup>

In particular, nations participating in the Copenhagen Declaration committed to the eradication of “absolute” poverty and the reduction of “overall” poverty.<sup>31</sup> Absolute poverty was defined as “a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services.”<sup>32</sup> Absolute poverty is a subset of the broader con-

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27. The position of Independent Expert on the Question of Human Rights and Extreme Poverty was created by the U.N. in 1999. *See, e.g.*, Independent Expert on Extreme Poverty, *Human Rights and Extreme Poverty*, Comm’n on Human Rights, U.N. Doc. E/CN.4/2004/43 (Feb. 29, 2004) (by A.-M. Lizin) *available at* [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/67750bb7d0eb1004c1256e7b002c4a10/\\$FILE/G0411124.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/67750bb7d0eb1004c1256e7b002c4a10/$FILE/G0411124.pdf). In June 2011, the U.N. expanded the position’s mandate and changed the position’s title to that of Special Rapporteur. *See Special Rapporteur on Extreme Poverty and Human Rights*, OFFICE HIGH COMM’R FOR HUMAN RTS., <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx> (last visited Apr. 15, 2012).

28. *See* World Summit for Social Development, Copenhagen, Den., Mar. 6–12, 1995, *Report of the World Summit for Social Development*, U.N. Doc. A/CONF/166/9 (Apr. 19, 1995) [hereinafter Copenhagen Declaration].

29. *Id.* at 41.

30. *Id.*

31. *Id.* at 13–14.

32. *Id.* at 41.

cept of overall poverty, which is described as including the full set of human rights and poverty linkages set out above, from lack of income to lack of participation in cultural life.<sup>33</sup>

The Copenhagen Declaration clarified that overall poverty (as opposed to absolute poverty) is endemic, occurring in all countries

as mass poverty in many developing countries, pockets of poverty amid wealth in developed countries, loss of livelihoods as a result of economic recession, sudden poverty as a result of disaster or conflict, the poverty of low-wage workers, and the utter destitution of people who fall outside family support systems, social institutions and safety.<sup>34</sup>

As described by sociologist Ruth Lister, the concept of overall poverty in the Copenhagen Declaration, with its list of key indicators, was intended to provide a basis for cross-national comparisons.<sup>35</sup> Overall poverty includes a component of relativism; the poverty that it defines is, to some degree, relative to the capacity of the nation to avoid such destitution.<sup>36</sup> Yet, recalling the focus of this essay, this definition of overall poverty—described as the juxtaposition of “poverty amid wealth”—does not fully capture the broad and deep inequality across income lines and economic sectors that OWS targets. OWS challenges not only the poverty arising from economic inequality, e.g., the poverty amid wealth, but also the growing spread between rich and less rich.

The Copenhagen Declaration’s definitions of poverty emerged in the context of an international conversation on development and globalization.<sup>37</sup> But it is important to note, as did commentators Alice MacDonald and Elizabeth Mottershaw, that “[d]evelopment and anti-poverty work are not synonymous,”<sup>38</sup> despite the inclusive language of the Copenhagen Declaration. Thus, the emerging right to

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33. *Id.*

34. *Id.*

35. RUTH LISTER, POVERTY 32–33 (2004).

36. See, e.g., Peter Townsend et al., *The International Measurement of ‘Absolute’ and ‘Overall’ Poverty: Applying the 1995 Copenhagen Definitions to Britain*, in POVERTY AND SOCIAL EXCLUSION IN BRITAIN: THE MILLENNIUM SURVEY 71 (Christina Pantazis et al. eds., 2006).

37. See, e.g., U.N. Secretary-General, *Implementation of the Outcome of the World Summit for Social Development and of the 24th Special Session of the General Assembly*, ¶¶ 58–59, U.N. Doc. A/60/80, (May 23, 2005) (recommending new approaches to development ten years after the Copenhagen Declaration).

38. Alice McDonald & Elizabeth Mottershaw, *Poverty, Inequality and Human Rights: Do Human Rights Make a Difference?*, JOSEPH ROWNTREE FOUND. 11 (Sept. 2009), <http://www.jrf.org.uk/sites/files/jrf/poverty-human-rights-full.pdf>.

development within international law has not simultaneously heralded the emergence of a right to be free of poverty.<sup>39</sup> Indeed, of particular relevance to OWS's agenda within the United States is the fact that in practice, "the development discourse is generally not addressed to poverty within developed nations."<sup>40</sup>

At the same time, development and anti-poverty work are not wholly divorced. The conceptual connections between anti-poverty work and development work are subtle and directional, rather than having immediate practical impacts. For example, while noting the importance of development models as a rich source of ideas and approaches, MacDonald and Mottershaw address the uses of human rights in domestic anti-poverty work by stressing the more procedural aspects of human rights as its most important contributions to anti-poverty efforts.<sup>41</sup> The authors concluded, for example, that human rights norms:

- (1) Define poverty as having multiple dimensions;
- (2) Enshrine socially and legally guaranteed entitlements;
- (3) Provide a framework to pursue accountability of poverty; and
- (4) Promote the dignity and autonomy of people experiencing poverty.<sup>42</sup>

Thus, human rights norms strengthen anti-poverty efforts but—in the absence of a direct human right to be free of poverty—do so only indirectly, by linking these efforts to underlying entitlements to food, shelter and so on, and connecting them to international mechanisms of government accountability.

The international community's appreciation of the ways in which poverty can frustrate the exercise of human rights owes much to the work of Nobel economist Amartya Sen.<sup>43</sup> Sen rejects the wholly static notion of absolute poverty, while still endorsing a non-relativist component of the definition of poverty. According to Sen,

The characteristic feature of "absoluteness" is neither constancy over time, nor invariance between societies nor concentration on food and nutrition. It is an approach to judging a person's deprivation in absolute terms (in the case of a poverty study, in terms of cer-

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39. See Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986); see also Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 HARV. HUM. RTS. J. 137, 159 (2004).

40. MacDonald & Mottershaw, *supra* note 38, at 11.

41. *Id.*

42. *Id.*

43. AMARTYA SEN, DEVELOPMENT AS FREEDOM 74 (1999).

tain specified minimum absolute levels), rather than in purely relative terms vis á vis the levels enjoyed by others in society.<sup>44</sup>

The absolute standard of poverty is met, he argues, when such deprivation undermines people's freedom "to choose a life one has reason to value."<sup>45</sup> This, then, leaves people without an ability to enjoy the full range of human rights, even if those rights are theoretically available to them under their particular political system.

Following this approach, though freedom from poverty is not itself a human right, the connection between poverty and human rights, and the role of the international community in alleviating poverty, is widely accepted.<sup>46</sup>

### B. Inequality and Human Rights

While the question of whether extreme economic inequality violates human rights is not precisely the same as the question of whether poverty is a human rights violation, many of the same international law sources are pertinent. For example, the Copenhagen Declaration holds relevant lessons here, too. The Declaration's framers went further than simply identifying the ways in which poverty undermines the exercise of human rights and undertook, among other things, to create a framework for action that will "[p]romote the equitable distribution of income and greater access to resources through equity and equality of opportunity for all,"<sup>47</sup> seemingly adopting a relativist view of human rights violations. Mechanisms for implementing the framework specifically addressed in the Declaration include the restructuring of domestic taxes and the adoption of other redistributive approaches within domestic economies.<sup>48</sup>

Despite this language, however, the terms of the Declaration have not been understood to create a direct human right to economic equality. The five- and ten-year convenings to discuss implementation of the Declaration's provisions have not articulated such a right.<sup>49</sup> Nor have prior understandings been revisited. Earlier human rights

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44. SABINA ALKIRE, VALUING FREEDOMS: SEN'S CAPABILITY APPROACH AND POVERTY REDUCTION 156 (2005) (quoting AMARYTA SEN, COMMODITIES AND CAPABILITIES 673 (1985)).

45. SEN, *supra* note 43, at 285.

46. *See, e.g.*, Pogge, *supra* note 22.

47. Copenhagen Declaration, *supra* note 28, at 9.

48. *Id.* at 44.

49. *See, e.g.*, *Copenhagen+ 5*, UNED-UK, <http://www.earthsummit2002.org/wssd/> (last visited Mar. 24, 2012).

treaties such as the International Covenant on Civil and Political Rights (ICCPR) speak to equality based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” but this status-based equality right does not seem to extend explicitly to economic equality.<sup>50</sup> Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for guarantees of access to economic and social rights, such as the right to decent work and the right to social insurance.<sup>51</sup> But these guarantees reference minimum standards rather than setting levels of access calibrated by the relative wealth of others in society.<sup>52</sup> As concluded by the UN-sponsored International Forum for Social Development, “[i]nequalities in income and in living conditions within and between countries are not defined as just or unjust in international texts or in national constitutions.”<sup>53</sup> The Copenhagen Declaration, without the force of a treaty and drafted in a context of concern about impacts of development in less wealthy nations, does not alter this underlying human rights regime. Notably, despite the Copenhagen Declaration’s references to inequality, the issue was “scarcely mentioned five years later in the United Nations Millennium Declaration.”<sup>54</sup> Under international human rights law it appears that economic inequality is not a *per se* human rights violation. In fact, the issue has received much less scholarly attention than that directed to the question of absolute versus relative measures of poverty.

The origins of existing human rights standards offer clues as to why they do not address economic inequality generally, much less economic inequality within developed nations such as the United States. Throughout the drafting of foundational international human rights instruments, participating nations performed a delicate balancing act

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50. See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter UDHR or Universal Declaration]. As discussed further below, however, more analysis of this “other” category might yield a place for economic inequality as a suspect state of affairs.

51. International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

52. See, e.g., ICESCR, art. 11 (protecting “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”). “Adequate” is not measured according to the wealth of others but according to what is needed in order to live. *Id.*

53. *Social Justice in an Open World: The Role of the United Nations*, INT’L FORUM FOR SOC. DEV. 2 (2006), <http://www.un.org/esa/socdev/documents/ifsd/SocialJustice.pdf> [hereinafter *Social Justice*].

54. *Id.*

between the interests of sovereignty with the need to ensure baseline human protections worldwide as a means to ward off a repeat of the scourge of World War II.<sup>55</sup> The United States played a prominent role in drafting not only the civil and political aspects of the international human rights regime, but also—particularly through the involvement of Eleanor Roosevelt in drafting the Universal Declaration of Human Rights—in articulating the economic, social and cultural rights addressed by human rights instruments.<sup>56</sup> It is inconceivable that the United States would have acceded to an approach that would jeopardize the ascendancy of a market-based economy, particularly at a time in the 1950s when Cold War politics pitted the U.S. approach directly against the centrally-controlled economies of the Soviet bloc.<sup>57</sup> No wonder, then, that income inequality within nations is nowhere directly addressed in those human rights instruments having the force of law and is only mentioned explicitly in documents that are primarily directed toward developing nations.<sup>58</sup>

## II. POOR PEOPLE'S MOVEMENTS AND INTERNATIONAL HUMAN RIGHTS

Despite the indirect way in which poverty enters international human rights analysis, domestic anti-poverty activists in recent years have been able to make ample use of human rights norms. In some ways, these activists can be seen as the precursors to OWS. A brief history of poor people's movements in the United States and their use of human rights norms and mechanisms is set out below.

### A. The 1960s–70s and the Welfare Rights Movement

The utility that U.S. poor people's movements have found in pursuing issues of extreme poverty in international forums is a relatively recent phenomenon. By all accounts, the welfare rights movement of

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55. See Hope Lewis, "New" Human Rights: U.S. Ambivalence Toward the International Economic and Social Rights Framework, in BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 103 (Catherine Albisa et al. eds., 2009).

56. *Id.*; see also MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND UNIVERSAL DECLARATION OF HUMAN RIGHTS (2001).

57. See generally CAROL ANDERSON, EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944–1955 (2003); MARY DUDZIAK, COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY (2d ed. 2011).

58. *Social Justice*, *supra* note 53.

the 1960s and early 1970s was a purely domestic movement.<sup>59</sup> Though activists filed lawsuits and pursued them as far as the U.S. Supreme Court in many instances, they did not take the additional step of appealing to U.N. mechanisms for assistance in enforcing human rights norms against extreme poverty. Even within their domestic advocacy, welfare rights advocates did not raise human rights or international frameworks as part of their persuasive efforts.<sup>60</sup> Lawyers for the movement worked to develop a theory of a “right to life” that shared many elements of human rights norms, but they grounded their legal theories squarely in the text of the U.S. Constitution rather than in international human rights law.<sup>61</sup>

This domestically-focused approach was not for lack of relevant models or a lack of awareness of international possibilities. In the 1950s, the U.S. government famously raised the international context of America’s racial apartheid system in its amicus brief to the U.S. Supreme Court supporting school integration in *Brown v. Board of Education*, pointing out that the continuation of Jim Crow had an impact on the nation’s international standing.<sup>62</sup> Likewise, the NAACP, after which the poor people’s legal campaign was explicitly modeled, had a history of appeals to international forums, including several petitions to the United Nations.<sup>63</sup> Women’s rights advocates of an earlier era had also been active in using international norms to move forward on a domestic civil rights agenda, particularly in the area of women’s full citizenship rights.<sup>64</sup> There was, however, no similar appeal to international contexts or international norms in the many welfare cases that reached the Supreme Court in the 1960s and 1970s, nor did welfare rights advocates apparently raise international human rights issues in their public education campaigns and legislative work in any serious way, despite a rich trove of international work on which to draw.<sup>65</sup> The rhetoric of human rights, including references to “human dignity,” was sometimes present, but the historic record

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59. See, e.g., FELICIA KORNBLUH, *THE BATTLE FOR WELFARE RIGHTS* (2007); PREMILLA NADASEN, *RETHINKING THE WELFARE RIGHTS MOVEMENT* (2012); PREMILLA NADASEN, *WELFARE WARRIORS: THE WELFARE RIGHTS MOVEMENT IN THE UNITED STATES* (2005).

60. DAVIS, *supra* note 13.

61. A. DELAFIELD SMITH, *THE RIGHT TO LIFE* (1955).

62. DUDZIAK, *supra* note 57.

63. ANDERSON, *supra* note 57.

64. See generally Martha F. Davis, *Not So Foreign After All: Alice Paul and International Women’s Rights*, 16 *NEW ENG. J. INT’L & COMP. L.* 1 (2010).

65. See generally DAVIS, *supra* note 13.

reflects little analysis or effort to use human rights mechanisms to further their work.<sup>66</sup>

For example, in 1966, the members of the National Welfare Rights Organization (NWRO), the largest and most cohesive of the welfare rights groups active at the time, came together to set out a “bill of rights” for their movement. The four prongs were:

- (1) Adequate income: A system which guarantees enough money for all Americans to live dignified lives.
- (2) Dignity: A system which guarantees welfare recipients the same full freedoms, rights and respect as all American citizens.
- (3) Justice: A fair and open system which guarantees recipients the full protection of the Constitution.
- (4) Democracy: A system which guarantees recipients direct participation in the decisions under which they must live.<sup>67</sup>

The use of the term “dignity” invokes human rights norms, as dignity is a key concept in the Universal Declaration of Human Rights, but any reference to human rights in the NWRO document is sufficiently subtle to be lost on most readers.<sup>68</sup> Instead, the NWRO’s Bill of Rights seems to appeal most directly to broader concepts of fairness and rights defined in the U.S. Constitution, which is specifically referenced by the document and by the “Bill of Rights” designation itself.

To the extent that they adopted larger frames for their welfare rights advocacy, the NWRO situated their work in terms of the ongoing and vibrant women’s rights or civil rights movements rather than human rights efforts. As NWRO leader Johnnie Tillmon wrote in a remarkable first-person essay in the inaugural issue of *Ms. Magazine* in 1972, “Welfare is a women’s issue,” and “the ladies of N.W.R.O. are the front-line troops of women’s freedom.”<sup>69</sup> Similarly, NWRO founder George Wiley—a former leader of the Congress of Racial Equality—had strong ties to the civil rights movement that influenced

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66. WEST, *supra* note 12.

67. NICK KOTZ & MARY LYNN KOTZ, *A PASSION FOR EQUALITY: GEORGE WILEY AND THE MOVEMENT* 200 (1977).

68. In its Preamble, the UDHR explicitly reaffirms “the dignity and worth of the human person.” UDHR, *supra* note 50.

69. Johnnie Tillmon, *Welfare Is a Women’s Issue*, 1 *MS. MAG.* 1 (1972), *reprinted in* MAJOR PROBLEMS IN AMERICAN URBAN HISTORY 426 (Howard P. Chudacoff ed., 1994).

his approach to organizing and activism concerning social and economic rights.<sup>70</sup>

At the time that the NWRO and its sister organizations were active in the late 1960s and early 1970s, few domestic organizations were prepared to withstand the political backlash and diversion that might be triggered by an appeal to international standards. Accusations of Communism and practices of red-baiting were routinely used by opponents of welfare rights in an effort to marginalize activists' efforts.<sup>71</sup> An internationalist strategy to secure welfare rights in the United States was strategically questionable, and would simply have compounded the political problems that the movement faced at home.<sup>72</sup> The accusations of Communism leveled at Martin Luther King, Jr., particularly when he turned his attention more directly to social and economic rights through the Poor People's Campaign, were a stark reminder of the minimal purchase that such human rights norms had in the American context.<sup>73</sup> The 1960s welfare rights movement was a product of its time in regard to its focus on purely domestic mechanisms for economic reform.

### B. The 1990s to Today

By the 1990s, however, domestic activists were prepared to move, cautiously at first, toward using human rights frameworks and international forums to pursue domestic issues, including issues relating to poverty. The Cold War was long over, dialing back any external pressures that might have deterred activists from moving in this direction.<sup>74</sup> A pioneer in envisioning directions for this effort was Dorothy Thomas, founding director of the Women's Rights Project of Human Rights Watch.<sup>75</sup> Thomas's writings and personal advocacy for an expansion of human rights approaches within the U.S. civil rights com-

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70. KOTZ & KOTZ, *supra* note 67, at 181–93.

71. *See, e.g.*, ELLEN REESE, *BACKLASH AGAINST WELFARE MOTHERS: PAST AND PRESENT* 90 (2005).

72. On the problems that the Civil Rights movement faced when it attempted to pursue an international strategy, see generally ANDERSON, *supra* note 57.

73. *See* TAYLOR BRANCH, *PARTING THE WATERS: MARTIN LUTHER KING AND THE CIVIL RIGHTS MOVEMENT, 1954-1963* (1988); KOTZ & KOTZ, *supra* note 67, at 253 (expressing civil rights leaders' concern at being accused of Communism).

74. Scott Cummings, *The Internationalization of Public Interest Law*, 57 *DUKE L.J.* 891, 900–02, 906 (2008).

75. Kristin Choo, *A Nation Apart; Making Sure Women Don't Get Left Behind on Namibia's March to Freedom*, CHI. TRIB. (Nov. 1, 1998), [http://articles.chicagotribune.com/1998-11-01/features/9811010331\\_1\\_namibia-human-rights-watch-independence](http://articles.chicagotribune.com/1998-11-01/features/9811010331_1_namibia-human-rights-watch-independence) (profiling Dorothy Thomas).

munity gradually won allies and supporters among other progressive thought leaders, among leading civil rights organizations such as the Leadership Conference on Civil Rights, the American Civil Liberties Union (ACLU) and the NOW Legal Defense and Education Fund, and among key funders such as the Ford Foundation.<sup>76</sup> In 2004, the ACLU established a new and unprecedented human rights program in its national office, specifically “dedicated to holding the U.S. government accountable to universal human rights principles in addition to rights guaranteed by the U.S. Constitution.”<sup>77</sup> The ACLU’s program self-identifies as “part of a reemerging movement of U.S. based organizations that uses the international human rights framework in domestic rights advocacy.”<sup>78</sup> In 2009, the Leadership Conference on Civil Rights, founded in 1950, changed its name to the Leadership Conference on Civil Rights and Human Rights, in acknowledgment of the growing relevance of human rights frameworks to the work of its constituent organizations.<sup>79</sup> The Ford Foundation also expanded its work on human rights in the United States, providing support for several gatherings critical to the emergence of this work.<sup>80</sup>

This avenue for advocacy was not limited to traditional civil rights groups. In fact, groups focused on poverty, and led by poor people, were early leaders in the re-emergence of domestic appeals to human rights. The reason for this leadership has been well-articulated by Steve Hitov, General Counsel to the Coalition of Imokalee Workers, a group of migrant farmworkers that has successfully used international human rights norms in its advocacy efforts.<sup>81</sup> According to

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76. Dorothy Q. Thomas, *Advancing Rights Protection in the United States: An Internationalized Advocacy Strategy*, 9 HARV. HUM. RTS. J. 15, 18 (1996).

77. See *About the ACLU’s Human Rights Program*, AM. C.L. UNION (Jul. 18, 2007), <http://www.aclu.org/human-rights/about-aclus-human-rights-program>.

78. *Id.*

79. See LEADERSHIP CONFERENCE ON CIV. AND HUM. RTS., <http://www.civilrights.org> (last visited March 15, 2012). The Leadership Conference is also leading an advocacy effort to change the name of the U.S. Civil Rights Commission to the U.S. Commission on Civil and Human Rights, in order to more fully reflect the scope of the Commission’s work. See, e.g., *Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights*, LEADERSHIP CONFERENCE ON CIV. RTS. EDUC. FUND (Mar. 2009), [http://www.protectcivilrights.org/pdf/reports/commission/lccref\\_commission\\_report\\_march2009.pdf](http://www.protectcivilrights.org/pdf/reports/commission/lccref_commission_report_march2009.pdf).

80. CLOSE TO HOME: CASE STUDIES OF HUMAN RIGHTS WORK IN THE U.S. (Larry Cox & Dorothy Q. Thomas eds., 2004) [hereinafter CLOSE TO HOME]; Cynthia Soohoo et al., *Interview with Larry Cox*, in 2 BRINGING HUMAN RIGHTS HOME: PORTRAITS OF A MOVEMENT (2008).

81. See generally *About CIW*, COALITION IMMOKALEE WORKERS, <http://www.ciw-online.org/about.html> (last visited Mar. 15, 2012).

Hitov, “civil rights are for those who have rights, while human rights are for those who are so marginalized that they have no rights.”<sup>82</sup> Welfare recipients and the extreme poor—including low wage workers such as migrant tomato pickers—are just such a group, and in many ways, their appeals to international human rights norms led the way for other domestic advocates.

One of the most active groups in this arena has been the Philadelphia-based Kensington Welfare Rights Union (KWRU), named for the neighborhood in Philadelphia where the group was founded.<sup>83</sup> KWRU members have consistently used human rights norms in their advocacy, going well beyond simple human rights rhetoric. Working with the New York-based National Economic and Social Rights Initiative (NESRI) and others, the Kensington group led the Poor People’s Economic Human Rights Campaign in filing a complaint with the InterAmerican Commission on Human Rights challenging the 1996 welfare reform law that purported to strip welfare of its status as an entitlement.<sup>84</sup> They mounted a series of Poor People’s Marches to the United Nations to decry the U.S.’s failure to address the nation’s most extreme poverty.<sup>85</sup> They worked with members of the Pennsylvania state legislature to commission regional hearings and a state-funded study of Pennsylvania’s compliance, or lack thereof, with human rights norms.<sup>86</sup> According to one commentator, “Kensington is the American organization that has been most successful in linking the activism of the civil rights movement to the legal human rights framework.”<sup>87</sup>

But the KWRU is not alone among poor people’s organizations in using human rights as a potent organizing tool. For example, Survivors, Inc., a low income women’s group in Massachusetts, has actively sought human rights approaches to its work.<sup>88</sup> The group is currently spearheading an effort to establish Boston as a “human rights city,” a

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82. Steve Hitov, Panel Presentation at Northeastern University School of Law (Nov. 3, 2012) (on file with author).

83. CLOSE TO HOME, *supra* note 80, at 50 (describing origins of the KWRU).

84. Peter Weiss, *International Human Rights Comes of Age: United States Held to Account in IACHR*, 7 NO. 2 HUM. RTS. BRIEF 3 (2000), available at <http://www.wcl.american.edu/hrbrief/07/2economic.cfm>.

85. CLOSE TO HOME, *supra* note 80, at 55.

86. *Id.* at 54–55.

87. Ron Feemster, *Economic Rights Are Human Rights*, NHI: SHELTERFORCE ONLINE (May/June 2004), <http://www.nhi.org/online/issues/135/organize.html> (quoting Roger Normand, Executive Director, Center for Economic and Social Rights).

88. See generally SURVIVORS INC., <http://survivorsinc.org/> (last visited Mar. 15, 2012).

campaign that they see as directly related to their historic efforts to implement domestically the social and economic rights provisions of the Universal Declaration of Human Rights.<sup>89</sup>

As the number of domestic advocacy organizations using human rights frameworks to address poverty expands, they become too numerous to catalog in any detail here. Additional examples include the United Workers organization in Baltimore, a union of low wage workers using human rights frameworks to campaign for living wages;<sup>90</sup> the Maryland Legal Aid Bureau, framing its legal representation and anti-poverty advocacy through a human rights-based mission;<sup>91</sup> the Coalition of Immokalee Workers, the migrant worker-led organization fighting for humane working conditions and wages for tomato pickers in Florida;<sup>92</sup> and the Vermont Workers Center, a leader in the successful effort to adopt universal health care in Vermont on human rights grounds.<sup>93</sup>

In addition to these efforts of poor people's organizations to use human rights in their individual organizing work, many of these organizations also bridge historic divides by engaging in collective advocacy on human rights issues, working alongside civil rights groups, women's rights groups, and other longstanding advocacy leaders. For example, most organizations employing human rights frameworks in their domestic advocacy are members of the U.S. Human Rights Network (USHRN), a national network of U.S.-based human rights organizations, many of which are focused primarily or exclusively on addressing poverty and expanding the recognition of economic and social rights in the United States.<sup>94</sup> Lawyers using human rights frames on their clients' behalf may also be members of the Bringing

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89. See Dottie Stevens, *Human Rights Cities in Boston?*, 23 SURVIVAL NEWS 10 (2010–2011), available at <http://survivorsinc.org/SurvivalNews-v23n1.pdf>.

90. See *Human Rights*, UNITED WORKERS, <http://unitedworkers.org/human-rights/> (last visited Mar. 15, 2012).

91. See, e.g., J. Peter Sabonis, *Using a Human Rights Framework at the Maryland Legal Aid Bureau*, 44 CLEARINGHOUSE REV. 450, 450 (2011).

92. See *About CIW*, *supra* note 81.

93. See, e.g., Mariah McGill, *Everybody in, Nobody out: Vermont's New Plan for Universal Health Care*, 45 CLEARINGHOUSE REV. 216, 216 (2011).

94. See U.S. HUM. RTS. NETWORK, <http://www.ushrnetwork.org/> (last visited Mar. 16, 2012). The Network has a Member Caucus on Economic, Social and Cultural Rights. See *Member Caucuses*, U.S. HUMAN RIGHTS NETWORK, <http://www.ushrnetwork.org/content/campaignsection/member-caucuses> (last visited Mar. 16, 2012).

Human Rights Home lawyers network, a national forum for information-sharing on this approach.<sup>95</sup>

Beyond merely networking and sharing information, some of these groups' work has involved targeted advocacy on poverty issues. For instance, coordinated through the USHRN, a number of the groups listed above came together in 2005 to assist with an official visit to the United States of the U.N. Independent Expert on Human Rights and Extreme Poverty.<sup>96</sup> During the visit, the U.N. representative held meetings with "people living in poverty, civil society organizations working with and for people living in poverty, and government representatives in New York City; Immokalee, Florida; New Orleans and Baton Rouge, Louisiana; Jackson and the Delta region, in Mississippi; Appalachia, in Kentucky, and Washington, D.C."<sup>97</sup> The Expert's final report underscored the magnitude of the extreme poverty facing many in the U.S., a situation that is often masked by the many more visible examples of prosperity.<sup>98</sup> Indeed, the Independent Expert began his report by noting the high levels of inequality in the U.S., observing that "[t]he case of the United States is particularly interesting as it presented an apparent paradox: as the wealthiest country on earth, with a US\$ 12 trillion economy, the United States also has one of the highest incidences of poverty among the rich industrialized nations."<sup>99</sup> Domestic advocacy organizations have taken steps to publicize these observations as well as to demand concrete policy responses at the local and national levels.<sup>100</sup> Similar organizing has also taken place around official visits of other Rapporteurs, such as the U.N.

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95. See *Bringing Human Rights Home Lawyers' Network*, COLUM. L. SCH., [http://www.law.columbia.edu/center\\_program/human\\_rights/HRinUS/BHRH\\_Law\\_Net](http://www.law.columbia.edu/center_program/human_rights/HRinUS/BHRH_Law_Net) (last visited Mar. 16, 2012).

96. At the time of the visit, the Special Rapporteur on Extreme Poverty and Human Rights was denominated an Independent Expert. See *supra* note 27 and accompanying text.

97. Independent Expert on the Question of Human Rights and Extreme Poverty, *supra* note 25, at 2.

98. *Id.* at 4.

99. *Id.*

100. For example, the Independent Expert's Report was posted on a widely circulated on-line journal: Arjun Sengupta, *Extreme Poverty and Human Rights—A Mission Report on the United States*, SSRN (Jan. 6, 2007), <http://ssrn.com/abstract=961230>. It was also cited by Civil Society organizations in their submissions as part of the U.S. Universal Periodic Review in 2010. See, e.g., *Universal Periodic Review Joint Reports, United States of America, Submitted from Civil Society, April 9, 2010, to the Human Rights Council of the United Nations*, at 266, (Aug. 2010) [hereinafter *UPR Shadow Report*], [http://www.law.columbia.edu/ipimages/Human\\_Rights\\_Institute/USHRN%20Human%20Rights%20Report.pdf](http://www.law.columbia.edu/ipimages/Human_Rights_Institute/USHRN%20Human%20Rights%20Report.pdf).

Special Rapporteur on the Right to Adequate Housing, who visited the U.S. in 2009, and the U.N. Special Rapporteur on the Right to Water and Sanitation, who reported on the United States in 2010.<sup>101</sup>

Likewise, a large network of U.S.-focused organizations have participated in preparing human rights “shadow reports” critiquing the United States government’s reports to United Nations monitoring bodies such as the Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee that monitors country compliance with the International Covenant on Civil and Political Rights (ICCPR), and the Human Rights Council that conducts Universal Periodic Reviews of all UN-member nations.<sup>102</sup> The topics covered by these critiques are wide-ranging. For example, the shadow submission to the Human Rights Council in 2010 included sections on homelessness and food insecurity as well as a discussion of the macroeconomic structures contributing to poverty in the United States.<sup>103</sup> In sum, collectively as well as individually, the members of this network have found that international human rights mechanisms offer opportunities to engage the U.S. government on the international stage on issues of great concern to domestic advocates—particularly issues relating to poverty.<sup>104</sup>

### III. THE IMPACTS OF ECONOMIC INEQUALITY ON HUMAN RIGHTS VALUES

While, like poverty, economic inequality cannot be said to be a human rights violation per se, the ways in which advocates have successfully linked poverty and human rights to make progress on both issues suggests the possibility of a similar approach for the OWS movement. At least two approaches to the international human rights regime are available to OWS activists who want to put extreme economic inequality on the international human rights agenda.

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101. See, e.g., Gillian MacNaughton, *Human Rights Frameworks, Strategies and Tools for the Poverty Lawyer’s Toolbox*, 44 CLEARINGHOUSE REV. 437, 441–42 (2011) (describing advocacy around the visit of the U.S. Special Rapporteur on Housing); Cynthia Hubert, *U.N. Investigator Urges Sacramento to Provide Water, Sanitation for the Homeless*, SACRAMENTO BEE, Feb. 4, 2012, at A1, available at <http://www.sacbee.com/2012/02/04/4238427/un-investigator-urges-sacramento.html>.

102. See, e.g., Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators? The Shadow (Reporter) Knows—Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. 475 (2009).

103. *UPR Shadow Report*, *supra* note 100.

104. See, e.g., DANIEL CHONG, *FREEDOM FROM POVERTY: NGOs AND HUMAN RIGHTS PRAXIS* 78 (2010) (describing changing advocacy approaches to economic and social rights).

### A. Impacts on Public Goods and Values of Democracy

First, like poverty, extreme economic inequality has been widely recognized as problematic for all rights-bearers within a community. For example, according to the recent report of the National Equality Panel of the United Kingdom. “Wide inequalities erode the bonds of common citizenship and recognition of human dignity across economic divides.”<sup>105</sup>

As a practical matter, extreme economic inequality affects the ability to exercise a range of substantive and procedural human rights. As the Social Forum noted, “[w]hen income and income-related inequalities reach a certain level, those at the bottom of the socioeconomic ladder are no longer in a position to enjoy many of their basic rights. Inequalities tend to intensify and accumulate.”<sup>106</sup> Considerable empirical evidence supports this phenomenon.<sup>107</sup> Economic inequality may be destabilizing for society at large, with unanticipated impacts on the availability of shared resources and public goods such as public schools, public parks, public libraries, recreation facilities, public safety initiatives and other traditionally collective, community-based activities.<sup>108</sup> Further, inequality has a corrosive effect on human relations that leads to spikes in social stress, violence and even health effects such as mortality rates.<sup>109</sup> As stress builds, people withdraw from the public sphere, and as public institutions are degraded, even more people consider withdrawing their participation, creating a downward spiral that is hard to reverse.

There are many examples of such phenomenon in the United States today. At the same time that the nation registers record levels of income inequality, library cutbacks are rampant and public schools

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105. United Kingdom Government Equalities Office, *An Anatomy of Equality: Report of the National Equalities Panel*, U.K. GOV'T EQUALS. OFFICE 2 (Jan. 2010), <http://eprints.lse.ac.uk/28344/1/CASEREport60.pdf>.

106. *Social Justice*, *supra* note 53, at 8.

107. See Jim Manzi, *Keeping America's Edge*, 2 NAT'L AFF. 3 (2009), available at [http://nationalaffairs.com/doclib/20100419\\_Manzi\\_Winter10.pdf](http://nationalaffairs.com/doclib/20100419_Manzi_Winter10.pdf) (noting impact of income inequality on social cohesion); Anna Bernasek, *Economic View: Income Inequality, and Its Cost*, N.Y. TIMES (June 25, 2006), <http://www.nytimes.com/2006/06/25/business/yourmoney/25view.html> (citing studies).

108. For an experimental confirmation of this phenomenon, see L.R. Anderson et al., *Inequality and Public Good Provision: An Experimental Analysis*, 37 J. SOCIO-ECONOMICS 1010, 1017–24 (2008) (inequality reduces contribution to public good of all group members).

109. RICHARD WILKINSON, *THE IMPACT OF INEQUALITY: HOW TO MAKE SICK SOCIETIES HEALTHIER* 23 (2005).

are struggling to close budget gaps.<sup>110</sup> Police and firefighting forces have been cut back in communities across the country.<sup>111</sup>

Because of the extreme economic inequality in the United States, the resulting decreases in services fall much harder on some sectors of the population than others. The poorest Americans always bear the worst brunt of such cuts in social services.<sup>112</sup> But one need not be poor to suffer the consequences of school failure and public library closures. Human rights are clearly implicated by this gradual process in which public goods are dismantled and replaced with market-based commodities, driving a further wedge between people based on income—substituting private schools for public schools, bookstores for libraries, private security services for police, gated communities for public neighborhoods, private recreation centers for public parks.<sup>113</sup> Human rights to education, to rest and leisure, and to safety are all directly undermined by deep social inequality, even if a human right to economic equality is not directly cognizable.

As a practical matter, extreme and entrenched inequality also undermines the exercise of a range of more structural human rights norms recognized in calls for government transparency and good government practices. The right of participation, protected by the ICCPR, is the most obvious of these rights, but rights to speech, due process and other aspects of procedural fairness are all encompassed in this claim.<sup>114</sup>

Again, this charge rests on empirical evidence that in the United States is both familiar and obvious. As economic inequality increases,

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110. See, e.g., Kristen A. Graham: *At News Conference, Speakers Say Budget Cuts Hitting Philadelphia Schools Too Hard*, PHILA. INQUIRER, Feb. 24, 2012, at B1; Melissa Jenko, *Chicago Library Cuts to Take Toll on Job-Seekers, Children; Impact of Mayor's Proposed Layoffs, Reduced Branch Hours is Sinking in*, CHI. TRIB., Oct. 25, 2011, at C7.

111. See, e.g., Nicholas Johnson et al., *An Update on State Budget Cuts*, CTR. ON BUDGET & POLICY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=1214> (last updated Feb. 9, 2011).

112. See, e.g., Monica Davey, *Families Feel Sharp Edge of State Budget Cuts*, N.Y. TIMES, Sept. 6, 2011, at A22.

113. See generally *Toward Economic and Social Rights in the United States: From Market Competition to Public Goods*, NAT'L ECON. & SOC. RIGHTS INITIATIVE (Apr. 2010), [http://nesri.org/sites/default/files/UPR\\_Report\\_NESRI\\_1.pdf](http://nesri.org/sites/default/files/UPR_Report_NESRI_1.pdf).

114. See, e.g., *Human Rights Principles*, UN POPULATION FUND, <http://www.unfpa.org/rights/principles.htm> (last visited Apr. 8, 2012) (“All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.”).

the political process becomes more and more susceptible to influence by those who wield the greatest financial power.<sup>115</sup> In U.S. political campaigns corporate money already eclipses money of individuals.<sup>116</sup> This power imbalance is compounded by the growth in extreme individual economic inequality.

The poor certainly bear the brunt of these developments, and their voice is virtually non-existent in debates of public policy in the United States,<sup>117</sup> but inequality's impact on human rights to political participation extends far beyond the very poor and affects the viability of democracy on a large scale. As observed by a Task Force of the American Political Science Association, "[o]ur government is becoming less democratic, responsive mainly to the privileged and not a powerful instrument to correct disadvantages or to look out for the majority."<sup>118</sup> The Copenhagen Declaration draws this connection between inequality and democratic participation repeatedly.<sup>119</sup>

Nevertheless, some within the international community have expressed cynicism about the viability of an argument based on the connections between human rights and democratic participation. According to one commentator,

[e]xtensive references to democracy and human rights in the [Universal] Declaration are evidence of the desire, if perhaps not necessarily the feasibility, of using human rights as a framework for sustainable development and solving other ailments of humankind. All of this enthusiasm and commitment to human rights must be taken

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115. See, e.g., Larry M. Bartels, *Economic Inequality and Political Representation* (Aug. 2005) (unpublished manuscript), available at <http://www.princeton.edu/~bartels/economic.pdf>.

116. See generally Emily Badger, *Following the Money a Year After Citizens United*, MILLER-MCCUNE (Jan. 19, 2011), <http://www.miller-mccune.com/politics/following-the-money-a-year-after-citizens-united-27440/>; Heidi Walsh & Robin Young, *How Companies Influence Elections: Political Campaign Spending and Oversight at America's Largest Companies*, SUSTAINABLE INVS. INST. & IRRRC INST. (Oct. 2010), [http://www.irrcinstitute.org/pdf/How\\_Companies\\_Influence\\_Elections.pdf](http://www.irrcinstitute.org/pdf/How_Companies_Influence_Elections.pdf).

117. See *American Democracy in an Age of Rising Inequality*, TASK FORCE ON INEQUALITY & AM. DEMOCRACY (2004) [hereinafter *American Democracy*], <http://www.apsanet.org/imgtest/taskforcereport.pdf> (noting that politicians are more responsive to affluent constituents than others and that "citizens with lower or moderate incomes speak in a whisper"); see also Frances Ravensbergen & Madine VanderPlaat, *Barriers to Citizen Participation: The Missing Voices of People Living with Low Income*, 45 CMTY. DEV. J. 389 (2010) (describing efforts in Canada to increase participation of low income people in policy development).

118. *American Democracy*, *supra* note 117, at 18.

119. See, e.g., Copenhagen Declaration, *supra* note 28, at 30–31.

with some caution, for the international human rights movement has been distinguished more by rhetoric than practice.<sup>120</sup>

Whatever the politics of this issue are on the international level, the human rights movement in the United States has established its commitment to hold the U.S. government to a standard higher than mere rhetoric. The way appears open to the OWS to join others in this space, using international human rights mechanisms to push forward, on the international stage, arguments about the impacts of inequality in the United States.

### B. The Lens of Class-Based Inequalities

Second, entrenched and extreme economic inequality may raise human rights issues within the definitions of equal protection guarantees under international law. The ICCPR and other human rights instruments identify a familiar roster of classifications that are subject to particular scrutiny by the international community.<sup>121</sup> This list, however, is not exclusive, and the possibility that “other” categories might be of equal concern is explicitly acknowledged.<sup>122</sup> Might extreme inequality provide an entryway to give content to this category of “other”?

There are some relevant developments in domestic U.S. law. Neither poverty nor inequality has been viewed as suspect under the Constitution’s equal protection clause.<sup>123</sup> An equal protection lens, however, has sometimes been employed by the Supreme Court in examining measures that inhibit full political participation.<sup>124</sup> In fact, the Court’s recognition of the need to protect equal access to government—and the Court’s special role in providing representation reinforcement in instances where some groups are excluded—has been a stepping stone to greater status as a protected class.<sup>125</sup>

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120. Yash Ghai, *Human Rights and Social Development: Toward Democratization and Social Justice*, U.N. RESEARCH INST. FOR SOC. DEV. 2 (Oct. 2001), <http://www.pogar.org/publications/other/unrisd/hr-social-dev-01e.pdf>.

121. See ICCPR, *supra* note 50, at art. 2 (listing “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” as classes of special concern).

122. *Id.*

123. See, e.g., *San Antonio v. Rodriguez*, 411 U.S. 1 (1973).

124. See *Romer v. Evans*, 517 U.S. 620 (1996) (striking down state constitutional amendment that barred localities from passing antidiscrimination measures for gays).

125. See, e.g., JOHN HART ELY, *DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW* 74–75 (1980); Statement of the Attorney General on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011), available at <http://www.justice.gov/>

In the case of extreme economic inequality, the identity of the class is far more fluid over time than the other categories identified under international law; individuals do move across economic class lines more often and more easily than across lines of race or gender.<sup>126</sup> At the same time, however, the negative impact of inequality on democratic participation is particularly rigid and unresponsive to political initiatives, suggesting that a representation reinforcement approach, holding governments accountable for reducing economic inequality based on its anti-democratic impact, may be warranted.<sup>127</sup>

Some scholars have cautioned against expanding the scope of international equal protection norms to encompass economic inequalities. For example, Dr. Anja Seibert-Fohr argues that “to clothe purely economic inequalities as an issue of human rights raises serious concerns over the dilution of the human rights ideal.”<sup>128</sup> United States courts have also rejected the claim that equal protection norms support judicial intervention to address economic inequalities. Yet extreme economic inequality cannot be wholly divorced from the “human rights ideal.” Ample empirical evidence supports the assertion that such inequality has significant impacts on individuals’ access to a range of human rights.

This second approach also seems available to OWS should it seek to pressure the U.S. in international forums. International law, unlike much domestic law that is phrased in negative terms, contemplates affirmative government obligations to protect human rights.<sup>129</sup> OWS could certainly credibly argue that the U.S. government has a positive obligation under international law to take steps to rectify the extreme inequality in the nation in order to remedy violations of basic equality

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opa/pr/2011/February/11-ag-222.html (articulating U.S. government view that classifications based on sexual orientation are subject to heightened scrutiny).

126. Isabel Sawhill, *Overview*, in *GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 2* (Isabel Sawhill et al. eds., 2008) (noting that Americans still experience considerable mobility, though there is less for those in economic extremes).

127. *See, e.g.*, Joseph Lawler, *Motor Voter and Turnout 15 Years After the NVRA* (2008) (unpublished undergraduate research), available at [http://economics.nd.edu/assets/24018/lawler\\_j.pdf](http://economics.nd.edu/assets/24018/lawler_j.pdf) (noting that overall voter turnout remains low despite higher voter registration as a result of Motor Voter law).

128. Anja Seibert-Fohr, *The Rise of Equality in International Law and Its Pitfalls: Learning from Comparative Constitutional Law*, 35 *BROOK. J. INT’L L.* 1, 25 (2010).

129. *Frequently Asked Questions*, UNITED NATIONS OFFICE HIGH COMM’R FOR HUM. RTS., <http://www.ohchr.org/EN/ABOUTUS/Pages/FrequentlyAskedQuestions.aspx> (last visited Apr. 8, 2012) (“International human rights law lays down obligations of Governments to take positive action in certain ways . . .”).

principles enshrined in relevant international standards, especially given the impact of these violations on democratic participation.

### CONCLUSION

While OWS is global in some sense, it has not taken the step of using international legal mechanisms to raise issues of inequality in international forums.<sup>130</sup> Though there is no clear statement in international law that would obligate the U.S. government to address extreme economic inequality, there are at least two routes to argue that such inequality violates international human rights norms, emphasizing the indirect impacts of inequality on the exercise of important protected rights such as education and participation.

It is possible, however, that OWS will be able to achieve the same impact on the development of international law without direct participation in international forums. Since its inception, OWS has proceeded as a local movement with global reach. Movement activists are found in unusual places—Occupy Lincoln, Occupy South Bend, Occupy Spokane, Occupy Tulsa, Occupy Bangor, Occupy Jacksonville, as well as Occupy Wall Street, and Occupy Global. In fact, the Occupy movement is uniquely and designedly de-centralized, with roots in virtually every community of any size across the nation.

At the same time, the central messages of Occupy activists have national and global resonance. To take one example, Occupy Bangor defines itself, as do most other local Occupy gatherings, as a group that is concerned about the growing gap between rich and poor in America, as well as corporate control of the political process.<sup>131</sup> The Occupy Bangor website includes the group's five "points of consensus," a mixture of global and local concerns that together unite this collective:

1. We reject the concentration of wealth and power in the 1%.
2. We support voting rights and election policies that benefit the 99%.
3. We support local ordinances and state-wide legislation that benefit people without homes or those without adequate food in our community.

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130. See, e.g., Karla Adam, *United in Anger, Occupy Wall Street Protesters Go Global*, WASH. POST, Oct. 16, 2011, at A20.

131. *About Us*, OCCUPY BANGOR, <http://www.occupybangor.org/about-us> (describing the group's mission and activities) (last visited Apr. 8, 2012).

4. We encourage Americans to withdraw their money from corporate banks and reinvest it in local banks and credit unions.
5. We support a constitutional amendment to remove personhood from corporations.<sup>132</sup>

While Occupy Bangor and other Occupy groups nationally strike a blow for local banks and local enclaves of poverty and against corporate interests, they also highlight the overall trend of growing national – and international – inequality.

International law currently provides only indirect routes to raise this inequality as a human rights claim in international forums. While a right to be free of extreme inequality is not currently formally recognized as a human right, the international human rights system is dynamic and capable of change. Perhaps the time has come for not only poverty, but extreme economic inequality, to gain recognition as human rights violations. As Eleanor Roosevelt observed, and as the Occupy Movement amply illustrates, such human rights revolutions can begin “[i]n small places, close to home.”<sup>133</sup>

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132. *Id.*

133. Eleanor Roosevelt, “The Great Question,” remarks delivered at the United Nations in New York (Mar. 27, 1958), *available at* <http://www.harpers.org/archive/2007/12/hbc-90001953>.