

John Harrington and Maria Stuttaford (eds). ***Global Health and Human Rights: Legal and Philosophical Perspectives***. New York: Routledge, 2010. Pp. 232. £85 (pbk £24.99). ISBN: 9780415479387.

John Tobin. ***The Right to Health in International Law***. New York: Oxford University Press, 2012. Pp. 440. £74. ISBN: 9780199603299.

Two recent publications present a defence of the right to health as it is articulated in international law and also provide insights into the array of impediments to realizing the health right. Despite a perceived conceptual lack of coherence and a limited appreciation of its relevance among health care professionals identified in these two books, the right to health has nevertheless succeeded in capturing greater attention in global policy circles. Local health care system reform initiatives around the globe increasingly make reference to the right to health. Both books are particularly helpful additions to the literature in light of recent advances in the development of the health right.¹ Yet, each offers a very different assessment of its present status and prognosis for its future development.

John Harrington and Maria Stuttaford's edited volume brings together a variety of internationally renowned scholars of law, philosophy, and health policy to offer an interdisciplinary exploration of the 'development of rights-based approaches to health' (at i). John Tobin's book also draws from a range of different disciplines and offers a truly outstanding and comprehensive examination of the health right. From the history of its inclusion in the corpus of international law, to its conceptual foundations and substantive content, to measures required to secure it, Tobin's text on the right to health could well be the most helpful to date. It provides an accessible overview to readers interested in understanding obligations arising from the right to health under international law and impediments to implementation.

A central organizing claim of the Harrington and Stuttaford volume is that the right to health, previously relegated to a secondary status in the hierarchy of human rights, now enjoys an elevated status as policy makers and health practioners increasingly realize that approaching problems in health care delivery systems and public health through a human rights framework can be valuable. The editors argue that recognition of the right to health can be valuable to give normative force to imperatives as varied as ensuring access to essential medicines and creating international cooperation to combat disease. Accordingly, the contributions included in their collection are intended to 'demonstrate, the right to health has a powerful and wide-ranging contribution to make to law, politics and policy-making' (at 3). The principal aim of the volume is to show the 'cognitive, archaeological and critical' advances that the health right can provide to debates in law, politics, and policy (at 3).

The 'cognitive' aspect of the contribution the right to health can offer to law and policy involves moving beyond the 'self-referential terms of legal argument' towards a closer pairing of human rights law with public health. Hunt and Leader's chapter on the Role of the UN Special Rapporteur on 'Developing and Applying the Right to the Highest Attainable Standard of Health' best highlights the importance of appreciating the disciplinary symbiosis between human rights law and public health. The authors advocate 'parallel processing' to assess

¹ The following list is far from exhaustive. However, other noteworthy recent publications that address global health problems and the right to health in international law include: M. Grodin, D. Tarantola, G. Annas, and S. Gruskin (eds), *Health and Human Rights in a Changing World* (2013); J.M. Zuniga, S.P. Marks, and L.O. Gostin (eds), *Advancing the Human Right to Health* (2013); J. Ruger, *Health and Social Justice* (2012); N. Daniels, *Just Health: Meeting Health Needs Fairly* (2008); A. Buchanan (ed.), *Justice and Health Care: Selected Essays* (2009); A.E. Yamin and S. Gloppen (eds), *Litigating Health Rights: Can Courts Bring More Justice to Health?* (2011); Sen, 'Why and How is Health a Human Right?', 372 *Lancet* (2008) 2010; O. Aginam and O. Okafor, *Global Health Governance: International Law and Public Health in a Divided World* (2005).

measures and proposals to promote health under both systems. Accordingly, they advance a human rights-based approach to health care that recognizes the central role of health workers in realizing the right and how the right can aid health care workers in advancing their aims to provide service.

In an effort to address the challenge that the right to health was conceptually 'divorced from the realities of public health and medicine' (at 31), Hunt shares several of the lessons he learned during his tenure as the Special Rapporteur – most significantly the positive potential for the use of indicators and the importance of different forms of accountability. While judicial bodies can declare an existing arrangement deficient and entertain claims to vindicate victims who are denied entitlements, Hunt argues that policy approaches can encourage proactive development of appropriate health initiatives before violations occur. He advances a 'constructive accountability' which would facilitate processes to 'identify what works so it can be repeated and what does not so it can be revised' (at 32).

Using South African jurisprudence as a point of departure, Lisa Forman's chapter on the nature of the minimum core obligations is an exceptional overview of the evolution of the concept. She provides a critical exploration of the limits and possibilities of the core concept for understanding the range of actions required to realize and respect rights. She allows for the possibility that the conceptual shift towards recognition of a non-derogable core obligation could 'reflect a doctrinal overreach', but nevertheless maintains that 'the core concept provides what can be seen as a rights based approach to systemic deprivation' which would require a re-organization of public priorities (at 68). From a human rights perspective rooted in the concept of a core set of obligations, where large numbers lack basic needs there are likely to be violations that require scrutiny and remedy rather than merely the misfortune of a few that may be more easily ignored.

Brigit Toebe's important intervention on corruption is particularly illuminating. She presents a forceful and compelling case that corruption can constitute a violation of the right to health. Bringing together a range of research Toebe demonstrates the ways in which the health care sector, broadly understood to include private hospitals, insurers, commercial suppliers of goods and services, can become vulnerable to corruption. She also offers an assessment of the high costs imposed on those deprived of access to health care due to the misuse and abuse of power.

The 'archaeological' aspect of the contribution that the right to health can offer to law and policy involves moving beyond 'a rigidly biomedical model' of health care towards a more expansive understanding of human welfare that gives due attention to the underlying social, economic, and environmental causes of disease and premature death. To this end, Aoife Nolan's chapter on the child's right to health and how courts have approached the problem offers an explanation for the need to give special priority to protecting and promoting the health interests of children in a manner that appreciates how social conditions shape health outcomes. Benjamin Mason Meier's engaging social history of the role of the World Health Organization (WHO) in the evolution of human rights is instructive for its discussion of different models that have enjoyed prominence at different times in global health governance. Meier unearths how more or less respect is accorded to human rights discourse at different times as the WHO alternates between a biomedical view of health and one orientated towards underlying determinants. The chapter by Roger Brownsword on the ancillary-care responsibilities of researchers is well executed and thought-provoking; however, its inclusion in the volume appears misplaced as, unlike the other chapters, it does not focus on obligations imposed by international law.

The 'critical' aspect of the contribution that the right to health can offer to law and policy involves challenging conventional assumptions regarding the nature of constraints and the consequences of policy choices in order to provide new possibilities for improving health. The right to health allows advocates to call into question societal conditions that create negative health outcomes, with the consequence that these circumstances can no longer be deemed mere

externalities or matters of fate. Thus, unsafe working conditions that are too common in modern global supply chains and have led to the loss of many lives recently in Bangladesh could be criticized with normative reference to the right to health, permitting perhaps a paradigm shift concerning the externalities of fast and inexpensive manufacturing.

The chapters by Baxi and O'Connell offer the most critical reflections interrogating the right to health in the context of the politics of creating global policy frameworks and the pressures of economic globalization. Baxi's chapter on approaches to global justice begins the volume, while O'Connell's chapter on the human right to health in an age of market hegemony concludes it.

Baxi cautions that 'languages of constraint are crafted to avoid the justice-obligations owed to [diseased and variously injured, unhealthy, starving and powerless] peoples' (at 16) who are suffering. For Baxi, realization of the right to health is impaired by the failure on the part of its advocates to provide an animating theory (or theories) of health care justice. Not just the right to health, but health justice is needed. He points to the 'phrase regime' of the United Nations as a hegemonic system of policy languages that excludes justice in favour of other formulations such as 'sustainable development' as an instance of what occurs in the absence of an animating theory (at 15).

Baxi commends recent developments including the view advanced by Hunt that 'an effective health system is now declared as a "core social institution no less than a court system or a political system" (at 14). He also supports the robust formulation of the health right as one 'to an effective and integrated health system encompassing healthcare and the underlying determinants of health, which is responsive to national and local priorities, and accessible to all' (at 14). But Baxi still remains critical of these moves, for they continue to be 'focused on global social policy, rather than global justice' (at 14).

He concedes that justice language is fraught with indeterminacy when compared with policy and rights languages, that contemporary theories of justice do not yield easy translation into policy, and that justice could inspire passions and political action rather than the reasoned deliberation likely to result in a consensus around norms and standards. Nevertheless, he calls upon policy makers to take up the difficult task of clarifying the relationship between justice theories and the right to health discourse.

In conclusion, O'Connell's consideration of human rights in an age of market hegemony provides a broad context for the book's contribution to current debates. He offers a comparative assessment of the difference between viewing health care through the 'optics' of a market commodity versus a human right. His intervention makes plain the inherent clash between the market imperative of profit making that is by nature exclusionary and rights that are in principle inclusive.

The editors do not purport to 'distill a single substantive message from the rich diversity of thought pursued in these essays' (at 5). Nor does one emerge, which is disappointing. Instead, the editors offer that the 'overriding insight' of the essays selected is 'more abstract' and that they contribute to an 'increasingly detailed understanding of the right, its growing prominence in legal and non-legal discourses and its centrality to social and political reform' (at 5). Indeed, each essay does contribute to the development of a more detailed understanding of the health right. Harrington and Stuttford are highly optimistic about future developments, writing that with '[e]ach increase in knowledge mandated by the right to health ... each conceptual refinement of the right itself' the space for 'critical debate over the terms of justice and solidarity' expands (at 5).

Tobin's work contributes to the conceptual refinement called for by Harrington and Stuttford. The author provides a close examination of the inner workings of the right and does much to contribute to its conceptual refinement. At the same time he is less optimistic and questions the excessive optimism for the future of the right on the part of its proponents in the absence of an authoritative 'account of its normative content that moves beyond an empty aspirational slogan' (at 3).

He contests Harrington and Stuttford's claims that the right to health is truly playing a prominent role in the development of health policy and delivery of health services around the

world. More than a general survey of the health right, Tobin's book is an exhaustive review of a range of literatures and well-documented research that takes up the challenge of addressing the infirmities that have placed the right to health on the periphery of policy debates. The result is a comprehensive biography of the right and a critical assessment of its current status.

Tobin states that his aim is to defend a vision, neither unduly optimistic nor pessimistic, that 'sees the right to health as a concept that has matured dramatically ... holds immense promise as both a normative framework and an operational framework, but which will continue to confront many challenges' (at 1). This aim is modest, for the book accomplishes much more. The primary focus of the book is the formulation of the health right adopted in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the text reads rather woodenly in some places – perhaps because it began as a PhD project. Nevertheless, the book is well constructed, clear, and provides perhaps the most helpful analysis currently available of the right as it is contained in the ICESCR.

After clarifying the scope of his project, as a prelude to his analysis of the substantive content of the right and the obligations associated with it, Tobin charts the history of the right to health. His discussion counters views that predominantly credit Communist ideology with respect for the right and discusses the role of Catholic values in Latin America and the emergence of the welfare state as contributing antecedents.² His presentation of the philosophical foundations of the right is particularly helpful for it also addresses in turn different common principled objections to the health right including the libertarian objection, the status objection, as well as what Tobin terms the 'resource allocation dilemma' and the 'relativist challenge', among others.

In an important chapter for the purpose of understanding how the right could become more relevant in developing a future framework, Tobin outlines 'a methodology to produce meaning for the right to health' (at 75). Tobin argues that the right to health in international law is plagued with 'interpretive dilemmas' with respect to numerous issues including: the meaning of the highest attainable standard of health and the nature of the social determinants that impact on health; the content of the minimum core of the right; whether the right is justiciable; and whether states must prevent threats to an individual's health from non-state actors. He maintains that insufficient attention has been given to interpretive methodologies on the part of scholars and policy makers. For Tobin, the methods of providing human rights with substantive meaning currently in use are insufficient because they are 'unaccompanied by any explanation, or at best a scant explanation, as to the methodology used to generate the interpretation offered' (at 76).³ Tobin proposes a 'more reflective, strategic, and transparent methodology for the interpretation of the right to health' which starts with the understanding that interpretative acts must 'persuade the relevant "interpretative community" that a particular interpretation of the right to health is the most appropriate meaning to adopt' (at 77). He explains how 'interpretive communities' can be engaged to create a common understanding of the right's content, and argues that stakeholders must move beyond understanding states as the sole guarantors of the right. Through the 'constructive engagement' methodology Tobin proposes, content is given to rights through a process that is 'principled, clear and practical, demonstrate[s] coherence both in its reasoning and within the system of international law', all while sensitive to global and local contexts. Tobin offers that this methodology of meaning making would result in a

² M. Craven, *The International Covenant on Economic Social and Cultural Rights: A Perspective on its Development* (1995), at 9 (attributing to the Soviet Union support for articulating and adopting international socioeconomic rights while ignoring Latin American influences); Neier, 'Social and Economic Rights: A Critique', 13 *Hmn Rts Brief* (2006) 1; Gavison, 'On the Relationship between Civil and Political Rights and Social and Economic Rights', in J. Coicud, M. Doyle, and A. Gardner (eds), *The Globalization of Human Rights* (2003).

³ To demonstrate this point Tobin points to, among others, Ruger, *supra* note 1, and J. Griffin, *On Human Rights* (2008).

more communitarian model of approaching the right. The balance of the book considers how constructive engagement could inform the meaning of the right and its associated obligations.

The true strength of Tobin's work is his clear analysis of obligations. His chapters analysing the meaning of the highest attainable standard of health and the obligations to use 'all appropriate means' 'progressively [to] realize' the health right are thorough and work to further refine the right. For instance, Tobin takes up the challenge of the concept of minimum core obligations in reference to what emerges as reasonable for those within the interpretive community, broadly defined, those who are engaged in assessing legitimacy. The challenge to providing the right to health with content lies in diversity within the interpretive community. Tobin allows that the progressive nature of obligations remains 'both the strength and weakness of [the health] right' (at 252).

Tobin's discussion of freedom from treatment and experimentation in his chapter on the meaning of the right is particularly welcome, as these themes are usually not engaged with in work by proponents of the right who tend to focus more predominantly on the positive entitlements associated with health rather than liberties and freedoms.

The case studies contained in the book's concluding chapters on obligations under international law to abolish harmful practices and to secure the right to health through international cooperation are interesting and informative. He considers female genital cutting and the implications of the international intellectual property regime for access to medicines. Indeed, it would have been helpful to have more examples offered throughout the book applying Tobin's outlined methodology of constructive engagement involving interpretive communities.

Both of the books under review are timely and welcome additions to a developing interdisciplinary public discourse on global health and deserve a place in the libraries of scholars, practitioners, and policy makers who wish to gain a greater understanding of the relevance of the rights in the creation of future frameworks to improve health and elevate the human condition around the world.

Individual Contributions to John Harrington and Maria Stuttaford (eds), *Global Health and Human Rights*

John Harrington and Maria Stuttaford, Introduction;

Uendra Baxi, The Place of the Human Right to Health and Contemporary Approaches to Global Justice: Some Impertinent Interrogations;

Paul Hunt and Sheldon Leader, Developing and Applying the Right to the Highest Attainable Standard of Health: The Role of the UN Special Rapporteur (2002–2008);

Lisa Forman, What Future for the Minimum Core? Contextualizing the Implications of South African Socio-Economic Rights Jurisprudence for the International Human Right to Health;

Roger Brownsword, The Ancillary-Care Responsibilities of Researchers: Reasonable But Not Great Expectations;

Brigit Toebes, Human Rights and Health Sector Corruption;

Aoife Nolan, The Child's Right to Health and the Courts;

Benjamin Mason Meier, The World Health Organization, the Evolution of Human Rights and the Failure to Achieve Health for All; and

Paul O'Connell, The Human Right to Health in an Age of Market Hegemony.

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