

**Measuring Justice:
Internal Conflict over the World Bank's Empirical Approach to Human Rights**

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How can we measure justice? Are there tensions between an instrumental and an intrinsic conception of justice? These questions are currently being debated within the World Bank, an international development agency founded in 1946 under a mandate of poverty reduction. On May 15-16, 2006, members of the Bank's Legal Department led a workshop on developing justice indicators that examined these questions. The participants included thirty Bank employees, the Nordic-Baltic Foreign Ministries, and experts from four continents. The Bank organized the workshop in preparation for a new trust fund on justice and human rights, aimed at the "practical" promotion of human rights considerations at the institution. One of the objectives of the workshop was to "consider 'what measuring justice means,' including both the objective of and methodologies for doing so."¹

The Measuring Justice Initiative, which attempts to quantify the performance of the justice sector in developing countries, is part of a larger trend in the Bank to empirically measure normative concepts. My research focuses on the institution's empirical treatment of human rights and its support for an instrumentalist interpretation of the concept. One example of this recent approach is the Bank's Human Rights

¹ Report of the Justice and Human Rights Initiative, Workshop on Developing Justice Indicators, Oslo (May 15-16, 2006).

Indicator Project, a parallel initiative to Measuring Justice, which began in 2005 and is also based in the Legal Department. This project aims to develop a methodology and operational tools to measure and assess human rights and integrate them into development processes. It is an effort to demystify human rights for employees, particularly some economists, who remain skeptical of their value for the Bank's work.

Yet if one were to examine this project in isolation, one would overlook the multiplicity of human rights interpretations among employees. Whereas some promote human rights as instrumental goals toward achieving poverty reduction, others define them as legal obligations or as moral imperatives. Meanwhile, there is a sizable minority of staff who interpret them as political considerations that are beyond the Bank's mandate.

Why is the Bank exhibiting such divergent approaches to human rights? I argue that the "interpretive pluralism" over human rights reveals contradictions within the Bank's bureaucratic culture and, in particular, a tension between principles and pragmatism. This chapter seeks to analyze the internal conflicts that led to the current empirical approach by presenting a genealogy of human rights at the Bank. My analysis is based on ethnographic fieldwork at the World Bank headquarters in Washington, D.C. over a period of two years, including the summers of 2002 and 2004 and the 2005-2006 academic year. I demonstrate that human rights has been a taboo topic within parts of the institution, but the type and extent of the taboo has changed over time and in different contexts. Moreover, when the concept of human rights has been incorporated into Bank discourses and practices, it has often been in a partial or inconsistent manner.

Before I proceed to discuss the human rights taboo, I would like to clarify how

human rights can relate to the work of the Bank. The institution may be implicated in human rights in at least three possible activities: (i) the Bank's lending of money to governments that violate human rights; (ii) its direct or indirect violation of human rights through its projects (e.g., the forcible displacement of indigenous peoples resulting from a Bank-financed dam project); and (iii) the Bank's promotion of human rights through its work (e.g., designing projects with specific human rights objectives). Human rights here include economic, social, and cultural rights, as well as civil and political rights.

The Human Rights Taboo and its Historical Origins

There has been and continues to be a taboo on human rights in the Bank's policies and much of its practice. Despite years of internal and external pressure and the institution's adoption of a number of social and environmental policies, the Bank has no overarching operational policy or guidelines on human rights.² Moreover, the Bank has not adopted a rights-based approach to development as have many other agencies, including the United Nations Development Program (UNDP), the United Nations Children's Fund, and the UK's Department for International Development. Human rights concerns are not systematically incorporated into the decision making of staff or consistently taken into consideration in projects, although there are some exceptions.³ Existing incorporation is mostly ad hoc and up to the discretion of employees. The marginality of human rights in official policies stands in contrast to the Bank's rhetoric, including official reports and public speeches by its leadership in support of the issue.

² Although there are no operational policies that directly concern human rights, the Indigenous Peoples Policy does briefly refer to the human rights of indigenous peoples.

³ For instance, some Bank documents have referred to human rights, and employees do indirectly work on human rights, particularly economic, social, and cultural rights (as I discuss later in this chapter).

Not only have human rights not been incorporated into the Bank's official policies, but they are also not openly discussed within many parts of the institution. Many employees consider it taboo to discuss the topic in conversation and to include references to it in their project documents. The Bank is an environment of tabooed topics, which become part of the everyday consciousness of employees and encoded in their daily routines. Employees have been socialized to adopt a set of attitudes and beliefs about human rights and its relationship to the Bank.

The taboo against talking about human rights is part of a larger taboo against explicitly addressing ethical issues in general. Even though employees clearly face moral or ethical dilemmas in their work, they are usually not encouraged to speak about them publicly. Many employees often refrain from discussing rights and wrongs and instead prefer to talk about trade-offs. According to a senior official, much of the Bank's work revolves around an ethos of technical excellence and objectivity. When this official met with staff about ethical issues, she found that "people [felt] that they are expected to do things or asked to do things in countries which they're not necessarily comfortable with."⁴ She further mentioned that the Bank's institutional culture with regard to ethics contrasts to that of the Office of the United Nations High Commissioner for Refugees (UNHCR), where she briefly worked. At the UNHCR, ethical and moral issues were constantly on the agenda and discussed openly among staff.⁵

What are the origins of the human rights taboo? Employees that I interviewed most often cited legal restrictions in the Bank's Articles of Agreement as the primary reason for why they do not discuss human rights or explicitly cite them in project

⁴ Interview with official, Office of the President, World Bank, in Washington, D.C. (May 15, 2006).

⁵ Ibid.

documents. The restrictions arise from provisions in Article IV, Section 10 and Article III, Section 5(b).⁶ Article IV, Section 10 prohibits political activity and permits only economic considerations in decision making:

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighted impartially in order to achieve the purposes stated in Article I.

Article III, Section 5(b) limits the factors that the Bank can consider in the granting of loans and restricts political considerations:

The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

These provisions have stymied the Bank's explicit promotion of human rights, particularly civil and political rights, which have been interpreted as political considerations or interferences in the political affairs of member countries. Bank officials have historically viewed economic, social, and cultural rights as less problematic because they are considered to be more consistent with the Bank's mandate.

Another reason for the taboo has been political constraints arising from the Bank's Board of Executive Directors, which is deeply divided over the issue of human rights. Some countries like China and Saudi Arabia are highly opposed to an explicit human rights agenda that would include the protection of civil and political rights (which they view as a reflection of Western values). Other countries like India and Brazil

⁶ Articles of Agreement of the International Bank for Reconstruction and Development, July 22, 1944.

(middle-income countries that are responsible for a substantial portion of the Bank's revenue) fear that a focus on human rights would increase transaction costs for loans. Their view is that if the institution used human rights protection as a conditionality on lending, it would adversely affect many borrower countries with poor human rights records while not impacting similarly situated donor countries. Some countries also caution that a human rights conditionality would significantly hinder the Bank's poverty reduction goals and turn the institution into a policeman for the developing world.

There are a number of other related reasons that employees cite for why they do not address human rights. They include: (i) human rights work is beyond the Bank's mission of poverty reduction, and other organizations like the UN have the mandate and expertise to work on this issue; and (ii) human rights and a rights-based approach to development are difficult to operationalize because they are too abstract and vague.

The strongest enforcers of the taboo have historically been lawyers in the Legal Department, although there is often self-policing among employees. Because Bank lawyers are responsible for interpreting and applying the Articles of Agreement, they have been the most cautious in referring to human rights in project documents. As recently as 2004, when the Social Development Unit wrote its strategy paper, the Legal Department required the deletion of any reference to "human rights." The authors of the strategy paper had to resort to using less "political" words like inclusion, cohesion, and accountability (World Bank 2005). It is therefore surprising that certain members of the Legal Department are currently spearheading initiatives on human rights, including the Measuring Justice Initiative and the Human Rights Indicator Project. According to a senior Bank official, the Legal Department felt a particular burden to take up the human

rights agenda because it had been policing Bank discourse on the topic for so many years.⁷

The Taboo's Evolution

Internal and external pressure over the past two decades has influenced the Bank to reexamine its approach to human rights although not to significantly alter it. Non-governmental organizations (NGOs) like Human Rights Watch, the Bank Information Center, and Oxfam International have pressured the institution to adopt a more holistic approach to development and recognize that issues like human rights are directly related to the Bank's economic aims. They have joined internal advocates, academics, and human rights experts like Mary Robinson, former UN High Commissioner on Human Rights, in stressing the interdependence between human rights and development. Moreover, the Bank has recently felt pressure from some private financial institutions that have adopted a more progressive stance on human rights out of a concern for their public image and the reputational risk of committing human rights abuses.

In 1995, James Wolfensohn became President of the Bank and ushered in an era of more open dialogue on human rights. According to Wolfensohn, it took about three to four years to educate staff that human rights was an important issue within the context of the Bank's work.⁸ Under his leadership, the Bank published its first official report on human rights, which recognized the institution's role in promoting and protecting human rights but stopped short of stating that it had an international legal obligation to do so (World Bank 1998). Since the report's publication in 1998, Bank documents and

⁷ Interview with senior official, Legal Department, World Bank, in Washington, D.C. (May 25, 2006).

⁸ Interview with James Wolfensohn, former President, World Bank, in New York, N.Y. (June 14, 2007).

speeches have periodically mentioned human rights, although the Bank's Board of Executive Directors has continued to oppose its official incorporation into institutional policy.⁹ As official rhetoric has adjusted over time, the type and extent of the human rights taboo has changed as well. As I will further describe later in this chapter, there have been various manifestations of this change within the institution.

Selective Application of the Taboo (by Topic and Country)

The taboo against working on and speaking about human rights has not applied equally to all rights, sectors, and countries. Historically, the institution has more openly engaged in economic, social, and cultural rights, as opposed to civil and political rights. Many Bank projects and programs directly target the realization of these rights, such as the rights to education and health. Civil and political rights have not been recognized as part of the Bank's work because they have been interpreted as beyond its mandate and not directly related to its mission of poverty reduction. Although the Bank has begun to pay attention to such issues as legal and judicial reform and corruption, it still refuses to fund police, prosecutors, and prisons. A justice reform project typically only provides funding for the training of judges and administrative support for courts, but not for the criminal justice sector. The inability to fund police and prisons has become a huge impediment for Bank project managers working in such countries as the Sudan, where support for these components is critical in any development initiative.¹⁰ As a result, other

⁹ See DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, STRATEGIES FOR ACHIEVING THE INTERNATIONAL DEVELOPMENT TARGETS: HUMAN RIGHTS FOR POOR PEOPLE 16 (2000) (concluding that "the reluctance of some of [the Bank's] shareholders . . . to incorporate human rights into its development work could constrain its poverty reduction strategies").

¹⁰ Interview with official, Legal Department, World Bank, in Washington, D.C. (May 1, 2006).

donors like the UNDP have taken a leadership role in administering criminal justice projects in these countries.

The Bank has addressed human rights more openly with regard to particular rights-holders, including indigenous peoples and women. For instance, its Indigenous Peoples Policy is its only operational policy that explicitly uses the term “human rights”: It aims to ensure that “the development process fosters full respect for the dignity, human rights, and cultural uniqueness” of indigenous peoples. The Bank does not have a similar policy to address the rights of other vulnerable peoples, such as ethnic minorities, although some of its projects have targeted distinct minorities like the Roma in Eastern Europe or Afro-descendants in Latin America. In the area of gender equality, the Bank has applied a rights-based approach as delineated in its 2001 report, *Engendering Development – Through Gender Equality in Rights, Resources and Voice*. In addition, its Country Policy and Institutional Assessments (a rating system for determining resource allocation to the poorest borrower countries) includes ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) as a criterion for assessment.

Moreover, Bank employees selectively apply the taboo on projects in certain countries but not others. For example, they avoid using the term or taking a rights-based approach in influential countries that have voiced strong opposition, like China and Saudi Arabia. Given that these countries are considered important borrowers from the Bank and a significant source of its revenue, employees working on projects in these countries are often pressured to avoid explicit references to human rights for fear of angering

government officials. They know that these countries could easily seek funding from the private sector if they become dissatisfied with the Bank.

Let us compare the approaches used for two Bank projects related to HIV/AIDS control, prevention, and/or treatment: the Tuberculosis and HIV/AIDS Control Project in the Russian Federation (approved on April 3, 2003) and the HIV/AIDS Prevention and Control Project in St. Lucia in the Caribbean (approved on July 6, 2004). There is a significant disparity between how, and the extent to which, each project explicitly frames HIV/AIDS as a human rights issue. According to the UN Commission for Human Rights' international guidelines on HIV/AIDS and Human Rights (1997), the realization of rights by people living with HIV/AIDS requires protection against stigma and discrimination with regard to access to health, education, and social services.¹¹ The St. Lucia project includes components on reducing stigma and discrimination as well as legal reforms for ensuring universal civil, economic, and social rights. The Russia project, in contrast, emphasizes prevention and control, and also provides treatment for persons infected. There are no components on stigma and discrimination nor any explicit recognition of the need to ensure universal civil, economic, and social rights, as is mentioned in the St. Lucia project. The decision not to frame HIV/AIDS in human rights terms in the Russia project is in large part due to politics in the borrower country. The Russian government is more cautious about human rights and HIV/AIDS, which are viewed as sensitive, politically charged topics. Even if the St. Lucian government took the same view, Russia holds much more influence than St. Lucia over Bank project

¹¹ International Guidelines on HIV/AIDS and Human Rights, UNHCR res. 1997/33, U.N. Doc. E/CN.4/1997/150 (1997).

design because it is a major borrower from the Bank and one that the Bank does not want to upset.¹²

Thus staff members have applied divergent human rights approaches based on the country in which they are working. An employee that I interviewed who is sympathetic to the rights-based approach nonetheless did not apply it when implementing projects in very low-income countries:

In a country like Haiti where the budget is so small, it wouldn't be very helpful to talk to them about a broad human rights approach to everything they need to do. And then this poor government . . . would say, "Oh, what do I do first?" And we'd give them a list of 600 things, and they'd throw in the towel and what would we do then? So based on what their budget is and where we think they have capacity and where there's some ownership and communities around it, that's where you move forward first and hopefully produce results that then gives them a bit more legitimacy and credibility, and you push a bit further. . . . So we had to sit down and decide what is the trade-off between focusing on infrastructure and education in Haiti before health.¹³

Determining how to make such a trade-off is difficult for many employees and leads to inconsistent implementation of projects across countries.

Explicit Exceptions to the Taboo

There are settings in the Bank where the human rights taboo does not apply at all. Internal critics have made space within the institution where controversial topics like human rights can be discussed and alliances can be forged with external advocates. The most prominent example is the Friday Morning Group (FMG), which serves as a tolerant

¹² For a detailed comparison of the two projects' treatment of HIV/AIDS as a human rights issue, see Sarfaty 2007.

¹³ Interview with official, Civil Society Team, Latin America and Caribbean Region, World Bank, in Washington, D.C. (May 23, 2006).

venue, or an “oasis” in the words of one member, for the exchange of new ideas.¹⁴ Since 1979, this small group of staff has met every Friday to candidly discuss the values of development work. Participants and outside speakers are asked to talk about the ethical values that motivate their work, and how they relate to the values supported by the Bank. The group is considered “a rare ‘safe space,’ a place where there is respectful support for ideas and gentle or not so gentle challenges and questions” (Cadario & Marshall 2006). Many issues that were once considered controversial and became mainstream in the Bank over time were first introduced at the FMG. Examples of such topics include the environment, corruption, debt relief, and indigenous peoples.¹⁵ Employees have also discussed ethical dilemmas in projects, such as the controversial China—Western Poverty Reduction Project in 2004 that led to protests by human rights NGOs on behalf of the people of Tibet. At the time of the incident, the FMG scheduled a discussion between a Bank director from the East Asia region and representatives from the International Campaign for Tibet and two other NGOs. In this respect, the FMG has encouraged an open exchange of views regarding important human rights issues facing staff.

Another alternative outlet that recently sprung up is the Critical Development Thinking (CDT) Group, which is composed of young Bank employees and external activists who share a commitment to social justice and seek to bring critical perspectives into their work. In addition to organizing discussions and debates on alternative approaches to development, the CDT Group met with former Bank President Paul

¹⁴ Interview with official, Operations Evaluation Department, World Bank, in Washington, D.C. (Nov. 16, 2005).

¹⁵ Interview with official, Global Development Learning Network, World Bank Institute, in Washington, D.C. (Nov. 10, 2005).

Wolfowitz and established a regular channel with his office to share recommendations on promoting accountability. To take action on priority topics like human rights, ethics, and social justice, the CDT Group has cooperated with NGOs like the Bank Information Center and has invited speakers from social movements like the landless workers movement in Brazil. In doing so, members of the CDT Group have pursued external alliances to bring up concerns like human rights that are still taboo within many parts of the institution.

Variations of the Taboo

Although there may be a taboo among many employees on explicitly invoking human rights, the taboo has not extended to implicit human rights work. Some Bank officials are committed to human rights principles but frame their work in alternative terms. Scholars have referred to this practice as “rhetorical repackaging” (Uvin 2004). In addition, there are officials who adhere to the capabilities approach, which shares many of the same concerns as the human rights approach such as human freedom and dignity.¹⁶

To capture some of the meanings behind human rights without using the term, Bank employees have referred to other principles like social development, participation, inclusion, social accountability, transparency, good governance, and empowerment. These terms are considered “bywords” that, as one employee explained, are simply

¹⁶ However, according to Amartya Sen, human rights is a much broader framework than the capabilities approach because it includes due process rights (such as fair treatment) that are not considered to be capabilities. (Interview with Amartya Sen, Professor of Economics, Harvard University, in Washington, D.C. (May 23, 2006)). See also Sen 2004, 336.

“different filters on the same lens.”¹⁷ Many employees prefer them to rights language because they are considered less political, more easily defined, more receptive to measurement, and more negotiable to trade-offs. As a result, “you avoid all the internal obstacles as well as our Board’s obstacles, and you could still do the same job.”¹⁸ Yet, these bywords do not carry the same legal and rhetorical weight as human rights. One Bank lawyer expressed misgivings about “how much violence you do to the concept of human rights by going very far under other banners and other discourses.” He was frustrated over “the lack of recognition [among Bank staff] of the limits of doing human rights work but calling it something else.”¹⁹ Thus, one way that the taboo has changed over the past few years is that some employees are adhering to human rights principles but framing them in alternative terms. The question remains whether this type of framing dilutes the substance of human rights.

Another variation of the taboo is employees’ support for particular interpretations of human rights and avoidance of others. The recent human rights efforts by members of the Legal Department reveal a preference for an instrumental interpretation over an intrinsic interpretation of human rights, which is grounded in the international human rights legal framework and defines human rights as legally binding duties on states. The preference for an instrumental interpretation arises from the dominance of economists and an economic way of thinking within the institution. A senior economist observed:

Things really happen in the Bank when an economic case could be made for them. You put it in economic language. This is how corruption came in. It sort

¹⁷ Interview with official, Operations Evaluation Department, World Bank, in Washington, D.C. (Nov. 16, 2005).

¹⁸ Interview with official, Civil Society Team, Latin America and Caribbean Region, World Bank, in Washington, D.C. (May 23, 2006).

¹⁹ Interview with official, Legal Department, World Bank, in Washington, D.C. (Jan. 17, 2006).

of became acceptable internally to talk about corruption when people could show with cross-country regressions that it's related to lower growth. Similarly, [that's what happened with] some of these governance indicators related to democracy, and transparency of law, and social capital. People needed [empirical evidence] to say that okay, it's alright for us to work on this. So one obstacle would be to try and articulate rights issues in the way that economists could understand."²⁰

Because of the need to appeal to economists in the Bank, the lawyers leading the current initiative have favored an instrumental framework, which provides a functionalist rationale for promoting human rights (as a means to an end) and measures their value based on whether they enhance development effectiveness and make good business sense. Some employees perceive this approach as easier to operationalize because it is more flexible to the resource constraints that development practitioners face in borrower countries. The current Measuring Justice Initiative and Human Rights Indicator Project reflect this empirical approach to value-normative concepts.

A Tension Between Principles and Pragmatism at the World Bank

The selective application of the human rights taboo and the variations on and exceptions to it suggest that the Bank's approach to human rights is not uniform. How are we to understand the conflicting approaches within the institution and the evolution of the taboo over time? I contend that there are contradictions within the Bank's organizational culture that reflect a tension between principles and pragmatism (i.e., a tension between pursuing normative, intangible values and goals, and finding a practical way to solve problems), which may involve trade-offs between competing principles.

²⁰ Interview with official, Development Research Group, World Bank, in Washington, D.C. (Mar. 14, 2006).

The tension between principles and pragmatism is apparent in the internal struggles among Bank lawyers and within lawyers themselves over how to define and frame human rights. Many lawyers have welcomed an economic framing as the only entry point to bringing human rights into the institution. However, they are also concerned that human rights be used “in the right way,” referring to a legalistic interpretation.²¹ Because they view concepts like human rights and justice as abstract and somewhat ambiguous, they are attempting to empirically measure them so as to better operationalize them in projects. Such an approach is aimed at getting economists on board by instrumentalizing human rights and valuing them for their contribution to poverty reduction rather than for their intrinsic value. As one Bank lawyer declared, “The mainstream way of convincing and persuading people is an economic way of seeing things. Unfortunately, all the other disciplines, like social development for example, are forced to use that language to make their case. And I think that’s unfair in a way. It’s raising the bar for their arguments to be accepted. [But] that’s really the dominant way of doing business [at the Bank].”²²

Given their legal training, lawyers have worried over whether they are compromising on the substance of human rights. They recognize that there are risks in taking an overly technical approach to rights that uses empirical tools like indicators and checklists. They insist that it “is essential . . . that efforts to integrate human rights in development practice not compromise those key characteristics [of legal obligations and duties] in the process, and risk the impoverishment of rights discourse and the

²¹ Interview with Deputy General Counsel, Legal Department, World Bank, in Washington, D.C. (May 25, 2006).

²² Interview with official, Legal Department, World Bank, in Washington, D.C. (May 1, 2006).

undermining of core values and objectives that human rights were conceived to realize” (Decker et al. 2005: 49).

In an environment like the Bank where nearly everything seems to be subject to cost-benefit analysis, many employees are troubled by principles that appear to be non-negotiable and not subject to trade-offs. There are costs to trying to commensurate seemingly incommensurable values. In her analysis of the struggle between Yavapai Indians and the Bureau of Reclamation over a dam in Arizona, Wendy Espeland explains that the Bureau’s attempt to translate land into instrumental terms led to political resistance by the Yavapai (who viewed land as an incommensurable value) and a reinterpretation of their collective identity (Espeland 1998: 40). In the context of the Bank, the conflict over economizing human rights is leading to a reevaluation of professional identities (particularly among lawyers) as well as the institution’s own identity.

The tension between principles and pragmatism that arises over human rights is part of a larger conflict over the Bank’s identity. Although the Bank’s explicit mission is poverty reduction, it is a vague goal that is vulnerable to multiple interpretations. As the Bank has taken on issues like the environment and judicial reform, internal and external critics have accused it of “mission creep,” which refers to the shifting of activities away from an organization’s original mandate (Einhorn 2001: 22). One could distinguish between the Bank’s explicit mandate and multiple implicit mandates, which cover a range of poverty reduction-related issues. There are internal battles over what constitutes the Bank’s true mission and what topics deserve to be funded more than others. For example, when Bank managers have resisted issues like human rights (particularly civil

and political rights), they have defined them as outside the Bank's mandate and thus unsuitable for the organization's work program. Other issues that are viewed as implicitly related to the Bank's core mission, such as gender and social development, have been given fewer resources. As a result, advocates for these issues have attempted to frame them as more pragmatic and measurable, in line with the Bank's mainstream economic development goals.

For example, Bank sociologists and anthropologists in the late 1990s and early 2000s aimed to package the concept of social capital within an economic framework to give it legitimacy. Yet in doing so, many of them struggled with the tension between principles and pragmatism. They tried to design a concept that "could readily engage in conversations with the economic arguments underpinning much of the Bank's activity" (Bebbington et al. 2004: 42). They believed that if social capital could be quantified and discussed econometrically, it could bridge the gap between social development specialists and economists. Yet, as with the debate over how to frame human rights, several non-economists critiqued this approach. They argued that converting social capital into a quantifiable asset "independent of the broader political economy does unacceptable violence to any concept of social relationships" (Bebbington et al. 2004: 46). Would mainstreaming such concepts as social capital within an economic framework dilute them and cause irreparable damage? If so, is this an acceptable cost because it may be the only way to introduce social issues into an economist-dominated institution like the Bank?

Here we see the risks of translating human rights too far into the existing power structure. As Sally Merry observes, if human rights "are translated so fully that they blend into existing power relationships completely, they lose their potential for social

change” (Merry 2006: 135-136). This risk is part of the dilemma of human rights framing and “vernacularization” strategies: They will not induce radical, long-term change if they do not challenge existing power structures and are too compatible with dominant ways of thinking (Merry 2006:136, 222). Yet they also need to resonate with local cultural understandings to appear legitimate and become part of local rights consciousness (Merry 2006: 137, 222). This dilemma raises a number of important questions: Can human rights be so extensively vernacularized that they lose their essential core, or even contradict their fundamental meanings? Must human rights retain a connection to a legal regime (and be linked to state obligations deriving from international law) to truly qualify as “human rights” and not another concept like “empowerment”? My research suggests that the human rights vernacularization process is a continuous renegotiation of meanings among actors that constantly struggle for power. In this way, human rights can function as an adaptable technology rather than just a fixed set of principles.

Interpretive Pluralism over Human Rights

In the introduction to this volume, Kamari Clarke and Mark Goodale seek to understand “the multiplicity of justice as it is constituted and reconstituted discursively, legally, and politically” (Introduction, this volume). This chapter similarly uncovers the plural nature of the human rights framework and problematizes the relationship between human rights and law. The fragmented character of human rights is due to its multiple and sometimes contradictory roles (e.g., as a tool of empowerment for weak, dispossessed individuals; as a unifying goal for social movements; and as a symbol of the

U.S.-led neoliberal project). As Austin Sarat and Thomas Kearns argue, “the allure of human rights persists because they can, and do, mean many things at once. . . . They both constitute us as subjects and provide a language through which we can resist that constitution and forge new identities” (Sarat and Kearns 2001: 6-7). Human rights can be a double-edged sword because they can simultaneously be enabling and constraining (see Cowan 2006).

Many anthropologists have adopted a discursive approach to human rights that “radically decenters international human rights law” and assumes that “social practice is, in part, constitutive of the idea of human rights itself” (Goodale 2007: 8; see also Baxi 2002). They have analyzed the paradoxical nature of rights discourse, as in the colonial context where the discourse’s dual registers of primordial sovereignty and radical individualism are simultaneously operating (Comaroff 1995). They have also studied the impact of human rights on local social and political contexts, whether in a community or an international institution. Such studies have addressed the interaction and possible conflicts between human rights discourse and other global normative discourses, such as those of justice or human dignity (Rajagopal 2007: 280).

What have been underemphasized in existing studies are the power dynamics between the human rights discourse and other discourses and, most importantly, between human rights interpretations themselves. Multiple discourses and their related agendas (including gender, corruption, and the environment, to name but a few) have entered the Bank over the past two decades. Depending on which employee you ask, these discourses may operate in tension with the Bank’s dominant discourse of economic development. Whether these discourses are commensurable or not, and how they

interact, depends on how they are interpreted. According to my research, their interpretation in turn is related to the professional and social norms of employees. Are the discourses of human rights and development reconcilable? An economist, lawyer, and sociologist may respond differently, based on their professional training and their respective definitions of human rights and development. Moreover, a civil society advocate or an Executive Director on the Bank's Board may hold distinct interpretations as well.

My research focuses on the interpretive pluralism over human rights among bureaucrats and, in particular, the conflict between the intrinsic and instrumental interpretations that closely correspond to different professionals (e.g., lawyers and economists, respectively). The power relationship between interpretations depends on the institutional and social context where human rights are being situated. As I described in this chapter, the lawyers leading the Bank's Measuring Justice Initiative are attempting to operationalize a human rights agenda by applying an instrumental interpretation that resonates with the economists and economic thinking that are dominant within the institution. Thus human rights norms are being "economized," or framed for economists, to fit with the Bank's organizational culture. This study demonstrates that the conditions under which human rights are translated and diffused within an institution are shaped by the discursive politics among bureaucratic experts.

References

- Baxi, Upendra. 2002. *The Future of Human Rights*. Oxford: Oxford University Press.
- Bebbington, Anthony, Scott Guggenheim, Elizabeth Olson, and Michael Woolcock. 2004. Exploring Social Capital Debates at the World Bank. *The Journal of Development Studies* 40: 33-64.
- Cadario, Paul, and Katherine Marshall. 2006. What on Earth is the Friday Morning Group?. World Bank Group Staff Connections Intranet.
- Comaroff, John L. 1995. "The Discourse of Rights in Colonial South Africa: Subjectivity, Sovereignty, Modernity," in *Identities, Politics, and Rights*. Edited by Austin Sarat and Thomas R. Kearns, pp. 193-236. Ann Arbor: University of Michigan Press.
- Cowan, Jane. 2006. Culture and Rights after Culture and Rights. *American Anthropologist* 108:9-24.
- Decker, Klaus, Siobhán McInerney-Lankford, and Caroline Sage. 2005. Human Rights and Equitable Development: "Ideals," Issues, and Implications. Background paper for World Bank 2006.
- Einhorn, Jessica. 2001. The World Bank's Mission Creep. *Foreign Affairs* 80: 22-31.
- Espeland, Wendy. 1998. *The Struggle for Water: Politics, Rationality, and Identity in the American Southwest*. Chicago: The University of Chicago Press.
- Goodale, Mark. 2007. "Introduction: Locating Rights, Envisioning Law Between the Global and the Local" in *The Practice of Human Rights: Tracking Law Between the Global and the Local*. Edited by Mark Goodale and Sally Engle Merry, pp. 1-38. Cambridge, UK: Cambridge University Press.
- Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: The University of Chicago Press.
- Rajagopal, Balakrishnan. 2007. "Introduction: Encountering Ambivalence" in *The Practice of Human Rights: Tracking Law Between the Global and the Local*. Edited by Mark Goodale and Sally Engle Merry, pp. 273-84. Cambridge, UK: Cambridge University Press.
- Sarat, Austin, and Thomas R. Kearns. 2001. "The Unsettled Status of Human Rights: An Introduction" in *Human Rights: Concepts, Contests, Contingencies*. Edited by Austin Sarat and Thomas R. Kearns, pp. 1-24. Ann Arbor: University of Michigan Press.

Sarfaty, Galit A. 2007. "Doing Good Business or Just Doing Good: Competing Human Rights Frameworks at the World Bank" in *The Intersection of Rights and Regulation: New Directions in Sociolegal Scholarship*. Edited by Bronwen Morgan, pp. 93-106. Aldershot: Ashgate Press.

Sen, Amartya. 2004. Elements of a Theory of Human Rights. *Philosophy & Public Affairs* 32: 315-356.

Uvin, Peter. 2004. *Human Rights and Development*. Bloomfield, CT: Kumarian Press.

World Bank. 1998. *Development and Human Rights: The Role of the World Bank*. Washington, D.C.: The World Bank.

World Bank. 2001. *Engendering Development: Through Gender Equality in Rights, Resources and Voice*. Washington, D.C.: The World Bank.

World Bank. 2005. *Empowering People by Transforming Institutions*. Washington, D.C.: The World Bank.