

Faced with the increasing influx of refugees, European states have recently begun to install internal borders to supplement the external ones characterized by what Albahari calls the “policing-humanitarian nexus” of an already inadequate refugee policy. The new internal fences and border controls threaten Europe’s self-image and call into question its legal obligations to refugees and asylum seekers.

The author offers no straightforward policy prescriptions. Much of his account highlights ambiguous trade-offs, paradoxes, and moral and legal dilemmas. Yet he concludes on a somewhat hopeful note, by suggesting that—in the case of Italy, at least—the country’s economy and society would benefit considerably from an influx of young immigrants to bring new vitality to an aging population. This prospect, however politically dubious at present, would offer a winning combination of humanitarian and pragmatic goals.

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Alicia Ely Yamin, *Power, Suffering, and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter*, (Philadelphia: University of Pennsylvania Press, 2016), 336 Pages, ISBN 978-0-8122-4774-9

In Greek mythology, the Hydra is a monster with regenerative power. Chop off its head and it grows one or more new ones. Toiling to establish economic, social, and cultural rights over the last twenty-five years has felt like confronting the Hydra. Dispose of one objection to economic, social, and cultural rights and others spring up in its place.

During the Cold War, it was difficult to have a rational, informed discussion about economic, social, and cultural rights. With the fall of the Berlin Wall, these human rights were back on the agenda, as they had been in the years immediately following the Second World War. But proponents of economic, social, and cultural rights found they had emerged from one inhospitable environment, the Cold War, and stepped into another, economic neo-liberalism.

In the 1990s and thereafter, objections to economic, social, and cultural rights came thick and fast. Address one objection and another appeared. For example, they are not *real* human rights. If they are human rights, they are non-justiciable. They are vague and costly. They are not operational, but aspirational. What does progressive realization mean? Can it be measured by using existing indicators or do we need new ones? What is the “value-added” of economic, social,

and cultural rights? Most recently, if accountability is more than monitoring and requires independent review, what does “independent” mean? Like the Hydra’s heads, one objection is dispatched, more or less satisfactorily, and others sprout.

Of course there are legitimate issues and tough questions that require coherent answers. But they are often raised, not as issues and questions to be tackled so that economic, social, and cultural rights can empower disadvantaged individuals, communities, and populations; instead they are often raised as obstacles to stymie the realization of these human rights for those living in poverty, as well as others who desperately need them.

Nonetheless, countless people from the global to the local have helped to dispatch the serial objections. At one stage, the scholarship of Henry Shue and Asbjørn Eide was vital.¹ At another, fresh thinking on indicators and benchmarks proved crucial.² General Comments gave normative detail to vague treaty provisions. Special Rapporteurs, non-governmental organizations (NGOs), and scholars (sometimes the same individuals sliding between these communities) applied these norms to specific issues in specific countries and found specific violations of economic, social, and cultural rights. New concepts and frameworks were devised, akin to making maps for

new frontiers. The non-justiciability objection became unsustainable in light of the enormous growth of judicial decisions on economic, social, and cultural rights, reinforced by the General Assembly’s adoption of the Optional Protocol to International Covenant on Economic, Social, and Cultural Rights (ICESCR).³ Policy makers, practitioners, activists, and “ordinary people” demonstrated that these rights can make a difference and contribute to social change. Progressive states and dogged international officials made indispensable contributions. But the objections kept—and keep—coming.

This is the context of Ali Yamin’s terrific book. Moreover, Yamin addresses some of the recurring objections to economic, social, and cultural rights which “reveal certain limited assumptions about society, the obligations of the state, and the demands of justice.”⁴ *Power, Suffering and the Struggle for Dignity* has numerous commendable features. Here are a few of them.

First, the book is passionate, lucid, and accessible. Rich in scholarship and learning, it is neither manual nor textbook. It provides an exemplary interdisciplinary account of the transformative promise of what Yamin calls human rights frameworks for health. The book is laced with poignant stories and has a strong autobiographical quality.

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1. HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* (2d ed., 1996); ASBJØRN EIDE, *Economic, Social and Cultural Rights as Human Rights*, in *ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK* (Asbjørn Eide, Catarina Krause, & Allan Rosas eds., 2d ed. 2001). For discussion see PAUL HUNT, *RECLAIMING SOCIAL RIGHTS, INTERNATIONAL AND COMPARATIVE PERSPECTIVES* (1996).
 2. OHCHR, *HUMAN RIGHTS INDICATORS: A GUIDE TO MEASUREMENT AND IMPLEMENTATION*, HR/PUB/12/5 (2012).
 3. G.A. Res. 63/117, *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (5 Mar. 2009), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/477/81/PDF/N0847781.pdf?OpenElement>.
 4. ALICIA E. YAMIN, *POWER, SUFFERING, AND THE STRUGGLE FOR DIGNITY: HUMAN RIGHTS FRAMEWORKS FOR HEALTH AND WHY THEY MATTER* 53 (2016).

Second, it not only deserves to be read by those working in, or thinking about, the intersection between human rights and health, it should also be studied by anyone interested in economic, social, and cultural rights. The cliché, “the devil’s in the detail” is sometimes the reverse of the truth. In relation to economic, social, and cultural rights, the devil is sometimes not in the detail but in sweeping generalizations, which are so large that they are almost unfathomable and unmanageable. Take for example dignity, which Yamin emphasizes as the core of human rights. It is easier to think about the implications of dignity as a human rights concept, if it is considered in relation to someone living with intolerable pain and their entitlement to equitable access for pain relief. So although Yamin’s main focus is human rights and health, and especially women’s and children’s health, the specificity of her discussion illuminates some of the common but elusive dimensions of economic, social, and cultural rights. Moreover, her specificity highlights the inextricable linkages between economic, social, cultural, civil, and political rights. Accordingly, the book’s readership should extend beyond the human rights and health communities.

Third, it provides an excellent and penetrating discussion of human rights frameworks for health. Briefly, Part I calls for “rethinking conventional approaches to human rights, as well as health.”⁵ Across four chapters, Yamin discusses dignity, the imperative of regulating power in both the public and private spheres, extreme poverty as a human rights violation, and the interconnected-

ness of all human rights. Drawing from social medicine and social epidemiology, she highlights the limitations of conventional biomedical and public health approaches. In a human rights framework she explains, “social determinants are not distal, background factors but are determining causes, which must be addressed alongside the immediate needs of patients for care.”⁶ Her final chapter in Part I places health systems at the heart of both the right to health and human rights approaches to health. Using the language of Lynn Freedman, a health system is understood as a core social institution. Accountability is a recurrent theme throughout Parts I and II, including the role of judicially led health system reform, such as the remarkable judgment of the Colombian Constitutional Court in July 2008.

Part II is more academic and examines four well known elements of the human rights based approaches to health: accountability, participation, equality and discrimination, and international assistance and cooperation. Yamin presents a “circle of accountability” in which the central idea is that accountability should be integral to every decision throughout the policy cycle.⁷ She does not adopt Freedman’s “constructive accountability” but agrees that accountability is more than “naming and shaming.”⁸ She identifies three aspects of obligations towards progressive realization of health-related rights: what the state is doing, how much effort it is expending, and the process it adopts. One of the book’s most interesting and far reaching chapters is on participation. Here the author argues

5. *Id.* at 12.

6. *Id.* at 97.

7. *Id.* at 111, 134.

8. *Id.* at 135. See also L. P. Freedman, *Human Rights, Constructive Accountability and Maternal Mortality in the Dominican Republic: A Commentary*, 82 INT’L J. GYN’OGY & OBSTET. 111 (2003).

that “a human rights framework requires understanding where power resides and how power operates to keep people from challenging inequity”⁹ and this calls for awareness of “internalized domination” and “fostering critical consciousness.”¹⁰ The chapter on equality and non-discrimination is a fine survey of familiar human rights territory—for example, formal and substantive equality—but then it goes further, condemning “the sophistry that economic policy is beyond the concern of a human rights framework.”¹¹ Yamin also revisits a key contemporary human rights and health question: how to prioritize health-related interventions in a manner consistent with human rights? The chapter on human rights beyond borders includes a welcome call to hold donor states accountable for their bilateral and collective decisions.

Fourth, the book looks at human rights and women’s and children’s health in the context of power. The discussion on power is the book’s most radical contribution and is reflected on virtually every page. For example, human rights based approaches “must subvert entrenched and insulated institutions and what have become virtually hegemonic views of the world.”¹² They require “changes not only

in policy but also in politics in order to produce social transformation.”¹³ Again, “we need to have more trust in an emancipatory, confrontational politics that encourages and sustains open conflict over health as a *deeply and inexorably political issue*, without resorting to violent suppression.”¹⁴

Some UN bodies have also highlighted the relationship between human rights and power, as well as the transformative nature of human rights. In 2001 for example, the UN Committee on Economic, Social, and Cultural Rights adopted a statement on poverty which included:

While the common theme underlying poor people’s experiences is one of powerlessness, human rights can empower individuals and communities. The challenge is to connect the powerless with the empowering potential of human rights. Although human rights are not a panacea, they can help to equalize the distribution and exercise of power within and between societies.¹⁵

In a book with this high degree of achievement it seems churlish to ask for more. However, beginning at the turn of the century, there is a rich UN literature on human rights and poverty relevant to Chapter 2.¹⁶ More on the meaning of

9. YAMIN, *supra* note 4, at 16.

10. *Id.* at 175.

11. *Id.* at 198.

12. *Id.* at 19.

13. *Id.* at 243.

14. *Id.* at 169, emphasis in the original.

15. UN Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International covenant on Economic, Social and Cultural Rights*, ¶ 6, U.N. Doc. E/C.12/2001/10 (4 May 2001).

16. *Id.* See, e.g., the multiple reports of the UN Special Rapporteur on extreme poverty and human rights, available at <http://www.ohchr.org/EN/Issues/Poverty/Pages/AnnualReports.aspx>; as well as OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, HR/PUB/06/12; the Guiding Principles on Extreme Poverty and Human Rights adopted by the Human Rights Council in 2012, Human Rights Council, Res 21/11 Guiding Principles on Extreme Poverty and Human Rights, U.N. Doc. A/HRC/RES/21/11 (27 Sept. 2012).

maximum available resources, such as the scholarship of Aoife Nolan, would have been welcome.¹⁷ Certainly, obligations arise from the duty to protect but are they *all* immediate?¹⁸ In her discussion on accountability, Yamin is right to highlight the central role of judicial remedies at the national level. But regrettably, judicial remedies have little relevance for global accountability in health where a key contemporary challenge is still to secure effective independent review of duty-bearers. The chapter on international assistance and cooperation would have been fortified by the mention of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social, and Cultural Rights, as well as the work of Mark Gibney and others.¹⁹ As early as 2002, Jennifer Tooze analyzed some of the pioneering attempts of the UN Committee on Economic, Social and Cultural Rights to hold donors accountable.²⁰

Nonetheless, this book is a wonderful contribution to the burgeoning literature on human rights and health. Yamin correctly emphasizes that human rights do not offer “magic bullet” solutions and she wisely rejects “empty sloganeering.”²¹

In conclusion, *Power, Suffering and the Struggle for Dignity* brings us back to the Hydra. Yamin’s discussion of human

rights and power implicitly explains why the Hydra regenerates and objections keep coming. As the UN Committee on Economic, Social and Cultural Rights highlighted, economic, social, and cultural rights have the potential to “equalize the distribution and exercise of power within and between societies.”²² Bluntly, many of those in positions of power and privilege do not wish this to happen. They do not want a redistribution of power within and between societies. Many of them wish to preserve the status quo. Thus, they and their ideological allies keep raising objections. As one objection is dispatched, they raise another. The Hydra’s heads multiply.

Yamin eschews revolution for reasons that might be summarized as *plus ça change, plus c’est la même chose*. So should the disadvantaged and their allies seek legislative and executive power through the ballot box and if successful, use their position to create space for the transformative power of economic, social, cultural, civil, and political rights for all, in both the public and private spheres? This would make a welcome change from responding to the self-serving objections of the privileged and powerful. But, if as Yamin suggests, the goals are to “subvert entrenched and insulated institutions” and “to make a

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17. ECONOMIC AND SOCIAL RIGHTS AFTER THE GLOBAL FINANCIAL CRISIS (Aoife Nolan ed., 2014); see also International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., art. 2(1), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).
 18. YAMIN, *supra* note 4, at 147.
 19. Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* 34 HUM. RTS. Q 1084 (2012); MARK GIBNEY, INTERNATIONAL HUMAN RIGHTS LAW: RETURNING TO UNIVERSAL PRINCIPLES (2d ed. 2016); Paul Hunt, Judith Bueno de Mesquita, Paul Hunt & Rajat Khosla, *The Human Rights Responsibility of International Assistance and Cooperation in Health*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 104 (Mark Gibney & Sigrun Skogly eds., 2010).
 20. Jennifer Tooze, *Aligning States’ Economic Policies With Human Rights Obligations: The CESCR’s Quest For Consistency*, 2 HUM. RTS. L. REV. 229 (2002).
 21. YAMIN, *supra* note 4, at 6.
 22. UN Comm. ESCR, *supra* note 15, ¶ 6.

different world, and to make ourselves different in the process," would this be enough?²³ And if not enough, what is to be done?

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Chi Adanna Mgbako, *To Live Freely In This World: Sex Worker Activism in Africa*. (New York: NYU Press, 2016), ISBN: 9781479849062, 272 Pages.

Chi Adanna Mgbako's *To Live Freely In This World: Sex Worker Activism in Africa* is the first full-length ethnographic text on the experiences and activism of African sex workers. In it, Mgbako provides case studies from a variety of African countries where sex workers' rights organizations range from nascent to fully formed. (These countries are South Africa, Namibia,

Nigeria, Mauritius, Kenya, Uganda, and Botswana.) Instead of telling a story that consists only of violence and degradation, those too are present, Mgbako seeks to narrate the ways that sex workers are employing human rights discourses and community organizing to lead to social, political, and economic betterment in their lives. The sex worker organizations profiled in the book do not seek to "save" sex workers. Instead, they fight against unsympathetic police, local governments, and the nation-state. They also struggle against the ideologies of anti-prostitution activists who believe that all sex workers are victims of patriarchal violence and are in need of rescue.

Mgbako does not only focus on cisgendered women.¹ Her study has a variety of participants across genders and sexual orientations. She takes an intersectional analysis to sex workers' lives, looking at how a multiplicity of oppressions—homophobia, transphobia, HIV/AIDS status, class, and migrancy—often collide, leading to pervasive job, familial, and housing discrimination. African sex workers fight these through concerted organizing, taking to the streets and courtrooms to battle human rights abuses, and to empower themselves, refusing to be the victims they are often portrayed to be. Mgbako counters stereotypes of African sex workers as diseased and objects of pity through her extensive first person narratives. These clearly illustrate African sex workers across the continent as agentive as they fight for the right for sex work to be as protected as other forms of labor. Mgbako shows how African sex workers are not isolated in their organiz-

23. YAMIN, *supra* note 4, at 19, 249.

1. Cisgender, denoting or relating to a person whose self-identity conforms with the gender that corresponds to their biological sex; not transgender.