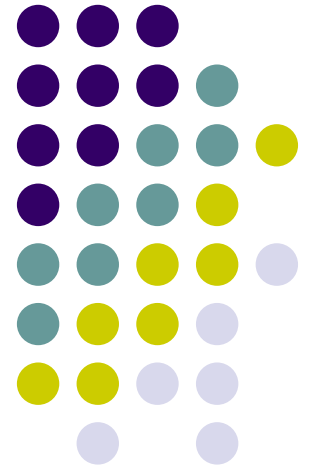


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***What are the implications of a
fundamental rights based
approach for actors in the
development of social policy?***





The current confusion

- Role of ‘non-state actors’
- Globalisation pressures on States to reduce services
- New governance – ‘withering away of the State’!!!
- The ‘race to the bottom’
- The rise of ‘right rhetoric’



Fundamental Rights

- universal, interdependent, interrelated, people-centred and holistic
- compete with pressures for profits, market competitiveness, efficiency and cost-effectiveness in the neo-liberal climate
- act as a means of empowerment to complement social movements

Fundamental Rights as law



‘For too many people the law has become identified with the State and divorced from concerns of humanity. The time has come to uncouple law from the State and give people the sense that the law is theirs. Human rights are the privileged ground where we can bring the law back to the common conversation of humankind’ (Klug 2000)

The Rights Rhetoric



- NPM has adopted rights rhetoric
- Accepted in this context by many NGOs
- Overlap of common managerialist and human rights language terms is causing confusion
(indicators, action plans, benchmarks)
- “access’ to rights rather than examining “enjoyment” of rights

Example of Dumbing-Down



“The development of more formal expressions of entitlements across the range of public services and the setting of standards and guidelines regarding the standard of service delivery that can be expected by the customer, taking into account the Council of Europe recommendations on access to social rights;” (Irish NAPs incl 2003-2005)

EU Commission *Joint Report* (2003)



“Demands in the consultation process for a right-based approach in social exclusion policies, are only addressed in terms of developing standards of access to quality public services...”

ICESCR 1966



- Ratified by 150 States (including all EU States)

The States Parties to the present Covenant recognize 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. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Article 2(1)



“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”

Minimum Core Obligation



- Minimum obligation – no derogation
- Without discrimination
- Lack of resources - no excuse
- Threshold of human dignity

Progressive Realisation and No Regression



- Meeting higher standards ‘to the maximum of available resources’
- Resources within the State and provided by the international community
- States cannot defer indefinitely the full realisation of rights
- Regression in times of recession must not affect vulnerable



Obligations of States

**AS
RESOURCES
INCREASE**



NO REGRESSION

**PROGRESSIVE
REALIZATION
*OF RIGHTS***



ALL STATES

***MINIMUM CORE OBLIGATIONS
and NO DISCRIMINATION***



Clarifying the obligations

- Limburg Principles (1986)
(Nature of States obligations)
- all States parties have the obligation to begin immediately to take steps to fulfil their obligations
- General Comments (16 to date)

Maastricht Guidelines (1997)



- codification of the principles
- States are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights
 - Refrain from interfering with rights
 - Prevent violations by 3rd parties
 - take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.



International Human Rights Instruments from UN, Council of Europe, EU and others.



STATE

Admin. systems

Policies

Public spending /budgets

Laws

Regulation and enforcement of rights in markets

People with rights - People with rights - People with rights

Realizing Socio-economic Rights



- Duty to respect, protect, promote and fulfill
- “Minimum core obligations” – human dignity
- No discrimination
- Progressive realization according to resources of State
- No regression
- No Violations (Limburg P. and Maastricht G.)

Vienna Declaration (1993)



‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis ...it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms’

EU Human Rights Report 2004



The European Union seeks to respect and promote universal human rights as laid down in the Universal Declaration of Human Rights of 1948 and the subsequent International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966... The EU adheres to the principles of universality, interdependence and indivisibility of all human rights and democratic freedoms, which these international legal instruments enshrine – as reaffirmed at the 1993 World Conference on Human Rights held in Vienna

Social Inclusion and OMC



- ‘to facilitate participation in employment and access by all to the resources, rights, goods and services’
- All EU States have accepted ICESCR rights
- None addressed in NAPsincl

Commission Joint Report of 2001 defined the terms poverty and social exclusion as referring



... to when people are prevented from participating fully in economic, social and civil life and/or when their access to income and other resources (personal, family, social and cultural) is so inadequate as to exclude them from enjoying a standard of living and quality of life that is regarded as acceptable by the society in which they live. In such situations people often are unable to fully access their fundamental rights .

NAPs incl 2003-2005



- No references except few States such as Sweden and Denmark
- What about the EUCFR, where EU institutions were to act in line with its fundamental rights?
- This does not bode well for a mainsteaming approach to human rights in EU social policy

NGOs as Social Movements



- Social Movement for fundamental rights
 - **Litigation**
 - **Protest**
 - **Politics**
- Less sheep and more goats!