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Claremont McKenna College

Escaping the Snowstorm: Legal Rights and Economics in the
Developing World

Submitted to

Professor Paul Hurley

By

Zane Tolchinsky

For

Senior Thesis

Fall 2020

June 15, 2020

Acknowledgements

I conceived of the original idea for this project in the spring of 2019. Over the next year and some change, this thesis evolved into what it is today. In the second half of that period, a pandemic posed an unprecedented challenge. In the face of this challenge, the people close to me emerged as an indispensable support system. Without them, I might never have completed this project. To that end, I would like to thank:

- My friends: for the late nights spent working and the late nights spent procrastinating.
- My family: for cultivating in me a passion for questions and sheltering me while I searched for answers.
- My professors: for providing me with a foundation of knowledge and guiding me through my academic growth.
- Above all, Professor Hurley: for sticking with me through me through this process as the world seemed to crumble around us, and for the hours of conversation, encouragement, invaluable insight, and time spent working and reworking.

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I. When Scarcity is Not Moderate

In May of 1846, 82 American pioneers left Independence, Missouri, bound for California. Normally, those traveling the California Trail would leave mid-April to save time to cross the western mountain passes before winter. When the group arrived in Wyoming, sensing the urgency of a late start, they elected to take an untested shortcut through the Wasatch Mountains. This shortcut ultimately added a month to their expedition, and by early November, they found themselves stranded beneath a blizzard in the mountains of the Sierra Nevada. With the mountain passes now rendered impenetrable, the pioneers retreated and set up camp at the nearby Truckee Lake to wait out the winter.¹

Quickly, the food and supplies they had left dwindled, and one by one, the settlers began to perish from starvation. As their numbers dropped, the remaining survivors confronted the desperate reality of the situation: no food, no way out, and no end in sight. Without any resources to maintain themselves, the group engaged in one of the most grotesque acts a person can do; they boiled the frozen bodies of their fallen comrades and consumed their flesh.²

This is not a story about the Donner Party, but a story about scarcity. More specifically, how does our conception of “what we should do” change when we lack the means to sustain our normal obligations? When the surviving members were eventually

¹ Evan Andrews, “10 Things You Should Know About the Donner Party,” History.com (A&E Television Networks, April 14, 2016), <https://www.history.com/news/10-things-you-should-know-about-the-donner-party>.

² Andrews, “10 Things You Should Know About the Donner Party.”

rescued in April of 1847, they readily admitted to cannibalism. They were not convicted or charged with any criminal acts.

Just as people can find themselves with new standards of justice in dire circumstances, many governments find themselves making decisions in situations of extreme scarcity. There is no shortage of literature providing guidance for just policy choices in the developed world. Famously, John Rawls, in *A Theory of Justice*, lays out the circumstances in which justice can exist. Rawls understands these circumstances as “the normal conditions under which human cooperation is both possible and necessary.”³ Among them, Rawls posits the necessity of “moderate scarcity,” where not only are resources not so overabundant that “cooperation become[s] superfluous,” but conditions not “so harsh that fruitful ventures . . . break down.”⁴

But what happens when scarcity is not moderate? Rawls thrives when distinguishing what is just when circumstances are ideal and these circumstances are presupposed. However, what does this mean for the government of Burundi, with a GDP per capita of just \$700?⁵ These conditions, by any measure, would qualify as harsh. Reality confronts us with an abundance of such harsh conditions. Burundi cannot afford to create an extensive system of “equal basic liberties.”⁶ Their economic capabilities

³ John Rawls, *A Theory of Justice*, Rev. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), 109.

⁴ Rawls, 110.

⁵ “COUNTRY COMPARISON: GDP - PER CAPITA (PPP),” The World Factbook (Central Intelligence Agency), accessed June 13, 2020, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>.

⁶ Rawls, 266.

restrict their capacity to create the justice prescribed by the standards of moderate scarcity.⁷ This paper carves out a space not in ideal theory, but nonideal theory focused on the absence of moderate scarcity.

This is a descriptive argument, focused within the sphere of how governments actually function. To that end, this paper is an account of how rights work under extreme restrictions, what makes these rights robust and valuable in practice, and how a nation can achieve a larger bundle of rights.

The last pioneer to be rescued from the Sierra Nevada was a Prussian man, Lewis Keseberg. When he was finally rescued in April of 1847, rumors circulated from other survivors that Keseberg had not only cannibalized the bodies of other travelers but had murdered them for food.⁸ While Keseberg was never formally charged due to the lack of evidence, it was clear that had there been evidence, he would have faced certain punishment.

In conditions of moderate scarcity, neither cannibalism nor murder is remotely acceptable. Nevertheless, when travelers found themselves trapped in a snowstorm with no way out, one became acceptable, and the other did not. Why? What determines, when trapped in the snowstorm, which obligations remain, and which fall by the wayside?

In his book *Dark Ghettos*, Thomas Shelby, similarly, argues extreme scarcity alters obligations, in this case: in the ghettos. Shelby argues for different standards for

⁷ “World Report 2020: Rights Trends in Burundi,” Human Rights Watch, January 14, 2020, <https://www.hrw.org/world-report/2020/country-chapters/burundi>.

⁸ Andrews, “10 Things You Should Know About the Donner Party.”

criminal acts that result from “inequities in the prevailing opportunity structure,” because “one is not necessarily being unreasonable when one chooses unlawful means to attain the expected standard of living.”⁹ But just as Lewis Keseberg was held to a certain standard, regardless, Shelby maintains that this scarcity “does not mean that the ghetto poor have no moral duties to one another or to others.”¹⁰ Even for those living in ghettos, there are still duties, such as avoiding “unnecessary suffering” and “mutual respect.”¹¹

Shelby focuses on how nonideal theory might shed light on those living in harsh conditions in circumstances of injustice. Yet, people can find themselves in situations of extreme scarcity, not as a result of unjust circumstances created by human beings, but by the randomness and harshness of the world. The Donner Party did not find themselves trapped in a snowstorm with dwindling supplies because any person or government wronged them. No, they were thrust into a terrible situation because of weather patterns they could not predict. But just the same, their obligations changed—cannibalism became acceptable—in light of their options. Routinely, we observe an individual person’s obligations broaden and narrow in conjunction with the resources at their disposal, regardless of the cause. Should we not expect governments’ obligations to do the same?

So, to the question at hand: what obligations do governments have when they find themselves, metaphorically speaking, trapped in a snowstorm? The world is populated

⁹ Tommie Shelby, “Part III: Rejecting the Claims of Law — Crime,” in *Dark Ghettos: Injustice, Dissent, and Reform* (Cambridge, MA: The Belknap Press of Harvard University Press, 2016), <https://books.apple.com/us/book/dark-ghettos/id1176267048>.

¹⁰ Shelby, “Part III: Rejecting the Claims of Law — Crime,”

¹¹ *Ibid.*

with countries living with an extreme scarcity of resources. The government of the Democratic Republic of the Congo generated only \$4.63 billion in revenue in 2017, less than 5% of Alphabet's revenue the same year.¹² What if a government must choose between providing a police force and providing clean water; what is the right thing to do when either outcome would represent an injustice in the developed world? Similarly, if "ought implies can," they cannot be criticized for failing to provide both water and police if they cannot afford both. Governments under the right circumstances must be able to make terrible choices, justly.

When discussing an individual's obligations, we often speak in the language of "what they owe to other individuals." In contrast, discussions concerning governments should first revolve around what they owe to their citizens. In *A Theory of Justice*, Rawls answers this question by providing a framework for determining a just bundle of rights and distributions. If Rawls requires moderate scarcity as a precondition for justice, then, at least in part, the most just end for a government in extreme scarcity must be to take its citizens to moderate scarcity so that they too may experience full justice; they must guide their country out of the snowstorm.

¹² John Callaham, "Alphabet Records \$110 Billion in Revenue for 2017, Google's Annual Hardware Sales Doubled," Android Authority, February 1, 2018, <https://www.androidauthority.com/alphabet-q4-2017-earnings-834774/>; "The World Factbook: Congo, Democratic Republic of The," The World Factbook (Central Intelligence Agency), accessed June 13, 2020, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/cg.html>.

This paper does not answer the question of how they can do this. Instead, it provides the language for discussions centering around the choices developing nations must make concerning human rights.

In Chapter Two, Stephen Holmes and Cass R. Sunstein’s book, *The Cost of Rights*, serves as a springboard. Holmes and Sunstein argue that, from a descriptive perspective, negative rights—traditionally understood—do not exist; they are a myth. Dispelling with the idea of negative rights will reveal an unfortunate, yet crucial, truth. All rights are positive rights. Hence, all rights have costs.

Chapter Three uses this truth to create a new framework for understanding rights within the policymaking process: not as endowed, but as a type of good that governments must “purchase” for their citizens. Like most goods, rights can exist to varying degrees of quality. Governments are responsible for creating and paying for the institutions necessary to maintain and protect different rights.

This new framework will move us into Chapter Four, where we will ground “rights as goods” within the reality of extreme scarcity. Situated within this context, we will confront the reality that all nations will not be able to purchase all rights and will instead have to make choices between them. Instead of asking, “what rights do we have?” nations must ask, “what rights are worth paying for?” Additionally, can a nation buy “cheaper,” less robust, versions of a right if that is all they can afford?

In Chapter Five, we will grapple with whether certain rights are more valuable, not intrinsically, but specifically to a developing nation. This chapter invokes Amartya Sen’s conception of instrumental freedoms from *Development as Freedom* to highlight how some rights can derive value through how they connect and facilitate the creation of

other rights. In the context of a government attempting to maximize extremely scarce resources, rights that facilitate economic development have more value. Economic development is not an end within itself; instead, economic development is a means for governments to purchase larger, higher-quality, bundles of rights for their citizens. Consequently, conversations concerning which rights should be prioritized for developing nations should include the language of which rights will allow for the most economic development as a means for growing a nation's "purchasing power" for other rights. In other words, even if, according to a moral theory, a specific right has less intrinsic value, a right can be more valuable for a developing nation if it grows that nation's ability to acquire other rights.

In this way, nations will exist within a continuum where their obligations will expand in line with their resources. Importantly, this continuum falls below whatever threshold where an ideal theory kicks in, such as Rawls' first principles at the threshold of moderate scarcity. In truth, the threshold does not matter. The theory in this paper represents a pathway forward towards more resources and more rights. At what point on this pathway and which obligations of ideal theory shall apply is a different question for a different paper, and not crucial towards understanding the issues addressed in this one. As will be argued in more detail, more rights and resources are necessary for almost any ideal theory to apply.

Finally, Chapter Six will highlight the distinct advantage that such conversations have in creating a neutral space for discussion. Specifically, regardless of one's held opinions regarding the "ideal" bundle of rights—whether they lean towards

libertarianism, classical liberalism, or any other belief system—all can profitably participate in discussions concerning rights using the language of economic development.

My hope for this paper, ultimately, is to provide the tools for conversations surrounding rights for struggling nations. These conversations, inherently, involve tackling seemingly impossible tasks: choosing some rights that many would consider basic over others. These tools are lacking within the existing canon of ideal theory. The privilege of nations living in moderate scarcity is that they can choose to ignore the reality of the snowstorm. But for those nations making their way out of the storm, they require a means for choosing among which normally unjust methods are not only just, but necessary.

II. The Myth of Negative Rights

This chapter primarily seeks to synthesize a central argument of Stephen Holmes and Cass R. Sunstein's book, *The Cost of Rights*. As foreshadowed in Chapter One, this paper concerns, in part, whether nations may purchase rights as goods for their citizens. To that end, understanding the relationship between costs and rights is essential. However, this chapter is not a calculus of the specific costs of rights; instead, it is an answer to the questions: do rights have costs? And if so, which? Spoiler alert: the answer is "yes" and "all of them."

Holmes and Sunstein begin by grounding their argument within a descriptive realm as opposed to a moral realm. They write that they are "more interested in explaining how legal systems function and less oriented towards justification."¹³ Importantly, this paper exists within a similar sphere focused on the reality of governance and the application of justice rather than theory.¹⁴

From this perspective, Holmes and Sunstein introduce a popular "dichotomy" found in legal scholarship: positive versus negative rights. There are many more robust definitions of positive and negative rights that rely more heavily on notions of private moral obligations. These definitions have their own value. However, for the purpose of this paper, we will assume the definitions Holmes and Sunstein provide fitted to their

¹³ Stephen Holmes and Cass R. Sunstein, *The Cost of Rights: Why Liberty Depends on Taxes* (New York, NY: W. W. Norton, 2000), 16.

¹⁴ This chapter borrows heavily from an essay I wrote for a PPE Politics seminar my 3rd year of college. This essay was written in response to reading *The Cost of Rights* for the very first time. This essay, and the thoughts that composed it, laid the groundwork and eventually served as the foundation for this project.

descriptive argument. Ultimately, it does not matter if these definitions are accepted, merely that in this context, the terms “positive” and “negative” correspond to Holmes and Sunstein’s understanding.

According to this understanding, negative rights are those that “ban and exclude government,” while positive rights “invite and demand government.”¹⁵ Holmes and Sunstein intend to reject this understanding to arrive at their desired conclusion, “all rights are positive rights.”¹⁶ This is not to say that negative rights do not exist morally. Perhaps, it is true there are certain rights the government *should* be excluded from. But from a descriptive perspective, the question becomes: *is* the government excluded from these rights in order for them to exist in practice?

To answer this question, they run through a few examples that highlight the paradoxical nature of negative rights. For example, they offer a right that intuitively fits neatly into the “negative” category: the right against being tortured by police officers and prison guards. At first glance, one might assume such a right obviously requires no government action: only that the government refrains from torture. Yet, Holmes and Sunstein highlight that for a state to actually guarantee this right, they must pay salaried doctors who are willing to submit evidence in court to check up on inmates. More broadly, rights require a judiciary to protect against violations.¹⁷ In fact, to protect violations of *any* right, a judiciary is required to enforce punishment in the case of

¹⁵ Holmes and Sunstein, 40.

¹⁶ *Ibid*, 48.

¹⁷ *Ibid*, 45.

violations. Therefore, minimally, all rights cost “whatever it costs to recruit, train, supply, pay and monitor” the judiciary.¹⁸

If the cost of these institutions is the minimum, Holmes and Sunstein provide numerous examples of more “costly” rights. For example, rights that demand government agencies to provide remedies and interpret legislation.¹⁹ Therefore, if all rights cost—at a minimum—the price of a judiciary, then legal rights presuppose the judiciary.²⁰ Furthermore, if almost all government revenue stems, in some form, from taxes, then legal rights also presuppose taxes.

What are taxes? They are a positive act of government. They not only “invite” government, they “demand” it. They must be legislated, collected, and enforced, all positive acts of government. It is this quality that leads to Holmes and Sunstein’s conclusion: if legal rights presuppose taxes, and all taxes are positive acts of government, then **all rights are positive rights.**²¹

Why is this conclusion so crucial for this paper? If we accept that all rights are positive, then we accept that all rights have some cost, even if it is to varying degrees. If this were not the case, all developing nations could conceivably have every single negative right robust, protected, and in place. These negative rights would be free; they

¹⁸ Holmes and Sunstein, 48

¹⁹ Ibid. 48

²⁰ In Western thought, the adversarial system is held up as the standard for the Rule of Law. If such a system involves representation, as it does in the United States and many other countries, this facet alone can be costly enough to even challenge the capabilities of nations with moderate scarcity.

²¹ Holmes and Sunstein, 44-48.

would not be subject to the same limitations that extreme scarcity of resources poses on so-called positive rights.

This is not the case. If these rights, and all rights, do indeed carry a financial price tag, then we can better understand why a government struggling in extreme scarcity would have to choose between rights. They cannot afford them all. If all rights have costs, all of us, not just developing nations, find ourselves confronted with a new articulation of a relatively old question. Instead of asking, “what rights do we have?” we must ask ourselves, “what rights are worth paying for?”

III. Rights as Goods

In the previous chapter, we established a crucial feature of legal rights. They all have costs. In this chapter, we will springboard off of this recognition to make a relatively small, but perhaps uncomfortable, move. We can think about legal rights as goods to be purchased by governments on behalf of their citizens.

This mindset seems to fly in the face of everything we teach about rights. Often, that they are inalienable and equal for all human beings. The idea that a government could choose to—or choose not to—“purchase” a right for its citizens appears directly counter to that understanding.

We must recognize that this conception of rights is strictly applicable in the moral sense. They speak to our private obligations. Consequently, these beliefs about moral rights can coexist with a reformulation of how we think of legal rights. Moral rights run parallel to legal rights; they inform each other, but they are not each other.

If when legal rights exist, they have costs, what happens when legal rights do not have costs? Logic would dictate that based on the previous premise—if a legal right has no cost—it does not exist. If a government does not collect taxes, does not fund a judiciary, does not create the necessary institutions, then there exist neither protections nor means for repercussions if a citizen finds this right violated. Legally, the right is not there.

Morally speaking, there is no difference between what rights you have when the government funds a judiciary, and when there is no judiciary. If you believe that the government has an obligation not to violate your freedom of speech in the former

context, then this obligation remains in the latter. However, if the government chooses to disregard this obligation and violates this right anyways, you can seek protection from a judiciary in the former case, but not in the latter. In this way, legal rights are distinct from moral rights. Moral rights mandate what everyone should or should not do. Legal rights dictate what happens if someone chooses to ignore this mandate.

This is true in the developing world, just as it is true in the developed world. In the United States, there are plenty of rights that we have decided not to afford legal protections. For example, many may believe they have a moral right not to lie and not be lied to, barring a few exceptions. Yet, there is no legal consequence for telling a lie in the US except in specific situations where you can prove damages. Protections (outside of previously stated cases) against being lied to have zero budgetary costs for the United States government, and therefore *legally*, the right does not exist, despite its moral status. As Holmes and Sunstein write that “a legal right exists, in reality, only when and if it has budgetary costs.”²²

Conceivably, if we imagine for a moment the First Amendment, the government could pass a law outlawing lying. Given how often people lie, giving this law teeth would take considerable effort. A new court would be made dedicated to lying cases, or a special department in the police force focused on tracking down liars. These new institutions would require additional funding. To pay for these new costs, the government would likely need to levy a new tax.

²² Holmes and Sunstein, 19.

So, moral rights are not legal rights. But they can be if, through our governments, we choose to make them so. It is this act—of choosing—that acts as the vehicle for thinking of legal rights as goods to be purchased. A nation and its citizens are consumers of rights. A nation’s government must decide that it desires a legal right for its citizens, as an individual decides it desires a sweater for his or her person. However, first, both must calculate the cost of their respective “good.” In the case of the individual, they check the price tag in the store.

For the nation, it is a policymaking exercise. The nation must decide what institutions are necessary to make a right exist. These costs will be dependent on the type of citizens within the nation. For example, we can imagine a society composed of well-intentioned citizens that defer entirely to the government to set up laws and will respect those laws regardless of what they are. In this society, there would be no violators of laws. Consequently, there would be no need for institutions to handle these violators, making the costs of legal rights absurdly cheap, if not bordering on free.

Would this be a case of legal rights without costs? Possibly, but unfortunately, human history has yet to provide us with such a nation where violators of rights and laws do not exist. This paper’s focus is grounded in real-world decisions. We can safely assume that all legal rights there will eventually be at least one violator. Therefore, all legal rights will, indeed, have costs.

On the other end of the spectrum, we can consider a society built on greed with no respect for moral values. How would the costs of legal rights be different in this

situation?²³ If every citizen is a potential violator, then that nation would face extremely high price tags for the purchase of legal rights. In the real world, nations will find themselves situated between these two extremes, with the cost of legal rights existing, in part, as a function of where they sit on this spectrum.

What if a law is enforced not by government adjudication and sanctions, but by the social actions—via outcasting—of the citizens? In this case, there are costs, but the government does not suffer them. From a government perspective, the legal right might be considered costless. However, again, on the scale of a nation, it seems improbable that a law could ever be fully enforced without government intervention. For example, we can imagine a murderer with no interest in taking part in society content to live in the woods. Social outcasting would not be enough to protect the right to life from such a violator. Much like the case of the perfectly well-intentioned society, we can safely put this situation aside while focusing on developing nations. Nevertheless, if this framework were applied elsewhere, these considerations could be taken into account.

After determining cost, nations must consider whether this purchase is affordable. Do they have the money to create these intuitions? If not, can they borrow it? If they do put forth resources to protect the right, the right now exists legally. Similarly, the individual gives the store their debit card and walks out wearing a brand-new sweater.

Obviously, there are key differences between buying a right and buying a sweater. Most notably, the notion of transfer. Someone owns the sweater previously, and purchasing it will result transfer costs to the initial owner in exchange for the garment. A

²³ First, we might wonder how a society lacking all morality came together to enforce a conception of moral rights, but that is neither here nor there.

legal right is not owned previously. The United States does not buy its right to free press from Australia. When it comes to legal rights, the act of purchasing is also an act of creation.

If legal rights are the goods, then what is the marketplace? What legal rights are available for purchase? In this scheme, purchasing a right is an act of making a moral right legal. Therefore, whatever we consider as moral rights determines the possibilities of which legal rights we would purchase.

This is where ideal theory plays a role. For example, the set of right Rawls prescribes for a nation living in moderate scarcity would determine the available “goods,” or potential rights, that a nation would purchase. Why? Conceivably, a government could build institutions and fund protections for your legal right never to be given a gift. Under this policy, if someone did give you a gift, you could sue them. Of course, no one would ever want or need these protections. The rights we would want to purchase would be those that we feel, morally, we are owed, and should be protected.

The other way we can think of rights as goods is with respect to quality. When an individual goes to a clothing store, they face more than the choice of whether to buy a sweater or not. Often, there are multiple sweaters available. Some might be cheaper but made of poor-quality fabric, and others might be much more expensive, but higher quality. Legal rights can share these characteristics. Let us consider the right to private property. There is a range of protections for one’s right to private property. Imagine, at the lowest end of the spectrum, a nation pays for one policeman and one judge for the entire population. Technically speaking, this nation has attempted to purchase your right

to private property, but they have bought such a poor-quality version of it, akin to having no right at all. This nation has purchased a sweater made of soggy paper towels.

A nation could also purchase a high-quality version of this right. Imagine, instead, the government assigns a policeman and judge to every citizen. A citizen of this country would have an incredibly robust version of the right to private property. This is a sweater made of silk laced with gold.

Such a purchase would only be an option for nations with obscene wealth (and that do not care about diminishing marginal returns). A nation going to the marketplace of rights must not only consider what rights are available but also what quality of each right is available. As will be discussed in greater detail in Chapter 5, India experimented with both an adversarial system and a mediation system for enforcing the Rule of Law.²⁴ However, due to the country's economic restrictions, the nation can only afford to provide court dates for a small number of citizens, which violates the idea of rights as equally accessible to all.²⁵ While mediation might not offer the same quality of Rule of Law, the system is much more affordable and thus accessible to more of the population.²⁶ Depending on economic capabilities, some protections for rights might be beyond a nation's budget, and the country's citizens would benefit overall from a more affordable option.²⁷

²⁴ Karina T Hwang, "CMC Senior Theses," *CMC Senior Theses* (2015), http://scholarship.claremont.edu/cmc_theses/1171.

²⁵ Hwang, 44.

²⁶ Ibid.

²⁷ Ibid.

Why is it important to understand rights as goods? As individuals, our thinking is primed to make choices about the purchase of goods; we do it practically every day. Is this sandwich worth it? Do I really need a new shirt? Which movie is better? We are also primed to consider goods within the context of available resources and tradeoffs. If we only have fifty dollars in our bank account, we cannot afford a pair of shoes and a shirt. We must choose.

The language of goods, something that feels natural, can be transferred to the world of rights, something that may feel unnatural. But it is the intersection of these two worlds that will allow developing nations to fully maximize their resources. Rights as goods and nations as purchasers will lay the foundation for a more robust understanding of the decisions developing nations must make.

IV. Unaffordable Rights

The Human Freedom Index is a measure defined as “the absence of coercive constraint.”²⁸ Co-published by the Cato Institute, the Index is notably broad.²⁹ In this paper, we will use the Human Freedom Index to understand different nation’s protections of human rights relative to each other. This Index does not cover exactly what we are after. For example, part of the Human Freedom Index uses “actual crimes committed” as a measure of safety. If this number were low because of a very moral population that does not commit crimes, it would not necessarily mean that nation has more robust rights protections.³⁰ Regardless, the Human Freedom Index is a helpful tool for approximating the degree to which different nations protect human rights.

In 2018, the countries with the five lowest GDPs measured on the Human Freedom Index were: Seychelles, Gambit, Belize, Central African Republic, and Bhutan.³¹ All five of these nations’ GDPs were less than 0.01% of the GDP of the United

²⁸ “Human Freedom Index,” Cato Institute, March 26, 2020, <https://www.cato.org/human-freedom-index-new>.

²⁹ “Human Freedom Index,” Cato Institute.

³⁰ Ian Vasquez and Tanja Porcnik, “The Human Freedom Index 2018,” The Human Freedom Index 2018 (Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom, 2018), <https://www.fraserinstitute.org/sites/default/files/human-freedom-index-2018.pdf>.

³¹ “GDP Ranking,” Data Catalog, accessed June 13, 2020, <https://datacatalog.worldbank.org/dataset/gdp-ranking>; Ian Vasquez and Tanja Porcnik, “The Human Freedom Index 2019,” ed. Fred McMahon, The Human Freedom Index 2019 (Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom, 2019), <https://www.cato.org/sites/cato.org/files/human-freedom-index-files/human-freedom-index-2019.pdf>.

States. Not a single one of these countries ranked within the top 60 of the 162 measured nations.³² Not a single country within the bottom 35% of GDP rankings ranked within the top 50 of the 2019 Human Freedom Index.³³ This begs the question: why can the poorest countries not maintain a robust system of protected rights on par with wealthy countries?

As an aside, the reverse of this phenomenon does not exist; wealthy countries do not necessarily protect rights to the greatest degree. For example, China has the second-highest GDP, yet is only ranked 126 on the Human Freedom Index.³⁴ Chapter Five will discuss the reason for this disparity in greater detail, but the simplest explanation is that wealth only enables rights; it does not guarantee them.³⁵

Back to the question at hand: why are poor countries unable to protect rights like wealthy countries? The bottom 68 lowest-ranked countries by GDP do not even break the Human Freedom Index's top 50.³⁶ This trend is not surprising. Most do not envision developing nations as leaders in human rights. By examining this trend through the lens of the framework laid in Chapters One and Two, we can better understand the connection between GDP and rights.

³² “The Human Freedom Index 2019.”

³³ “GDP Ranking,” Data Catalog.

³⁴ Ibid.

³⁵ Chapter Five further unpacks that greater economic capabilities can only enable a state to direct funding to a certain end, such as rights. However, many other factors determine whether or not a state will actually purchase these protections for rights.

³⁶ “GDP Ranking,” Data Catalog.

In *The Cost of Rights*, Holmes and Sunstein paint a bleak picture for citizens not living in developed nations, “unfortunate individuals who do not live under a government capable of taxing and delivering an effective remedy have no legal rights.”³⁷ Eloquently put, “statelessness spells rightlessness.”³⁸ Yet, Holmes and Sunstein speak broadly when discussing a government incapable of taxing. On the one hand, “statelessness” could be referring to a dysfunctional government, one that simply cannot carry out the necessary tasks to collect taxes. Whether due to the incompetency of government officials, or some other reason such as geographic constraints, there is some obstacle in the way of transferring wealth into the revenue stream. On the other hand, Holmes and Sunstein could also be referring to a perfectly competent government governing a people too poor to pay sufficient taxes to support a robust system of rights. So, while yes, “statelessness spells rightlessness,” in this case, poverty also spells rightlessness. In Chapter Three, we determined that legal rights must be “bought” in some sense. In this chapter, we confront the reality that if we must purchase rights, then rights can also be unaffordable.

Imagine that you are the king or queen of a wealthy nation with a population of one thousand people and a GDP of \$100,000. You collect taxes at a flat rate of 10%, bringing your revenue to \$10,000 a year. You decide that you would like to “purchase” a full set of rights for your citizens. You decide this set includes freedom of speech, the right to privacy, freedom of religion, the right to private property, and freedom of movement. After some analysis, you determine how much it will cost you to implement a

³⁷ Holmes and Sunstein, 19.

³⁸ Ibid.

minimal version of each right Freedom of speech will require a court with judges to prosecute violations, which will cost \$1000. The right to privacy will cost you the same plus the cost of an agency to determine regulations on what information your citizens should be able to protect, for a total of \$1500. Next, you determine freedom of religion will need the same institutions and thus will cost the same, \$1500. The right to private property will be more expensive, as it will require a police force. You determine protecting this right will cost \$2500. Finally, freedom of movement will be the most expensive as you will need to create a system of roads, so this right will cost you \$3000. In total, purchasing all of these legal rights for your citizens will run you \$9500. Luckily, this is \$500 less than your revenue for the year, so you will be able to purchase all of these rights, and have a surplus left over for whatever else your nation requires.

That is the easy example. Now, let us move to the harder example, and the one more relevant to this paper. You are still the king or queen of a nation with one thousand citizens, but now with a GDP of just \$30,000. Your tax rate is still 10%, bringing your revenue to \$3000 a year. You desire to purchase your citizens the same bundle of rights as the first example, and after some analysis, you determine that they will cost you exactly the same price to implement. Clearly, you do not have enough revenue to purchase all of the rights.

What options do you have left? You could just purchase freedom of movement or property rights, allowing your citizens to live without any protections for the other rights. You could also afford a bundle of two rights picked from freedom of speech, privacy rights, and freedom of religion. Either way, there is no feasible way for your citizens to have the entire bundle of rights.

When we embrace the concept that all legal rights have budgetary costs, understanding why the poorest countries cannot create a top-ranked system of human rights is easy and intuitive. They cannot afford it. To compare the poorest countries to the wealthiest creates the trap of assuming that they face the same choices. This assumption is a mistake. When it comes to basic human rights, the wealthiest countries ask: *how* best do we protect these rights? The poorest must answer: *which* rights do we protect, and to what extent?

How might a developing nation choose among these rights? If all rights have equal moral value, we could pick between bundles by flipping a coin. This framework adds a new dimension to choices about protecting rights: monetary costs and benefits.

Before we fully apply this framework, let us first acknowledge another option—purchasing cheaper, or discount, versions of rights. A discount right is simply the idea that something is better than nothing. For example, if the main expense for protecting freedom of movement is building a system of roads, is there another way to protect this right without this cost? What if, instead, a nation created a mediation system where you could bring complaints against those who prevent you from moving? Or, as is the case in certain rural areas of the United States, the state could mandate legal easements, which allow the public to cross private property to reach a destination. These systems would not protect freedom of movement like roads might, but they would provide protection where citizens otherwise would have none. This idea of purchasing discount versions of rights offers another element of rights. But it also creates new questions: at what point is a right so discounted that it becomes worthless? Are there certain rights that should never be bought at discount? The harsh reality is that nations living in extreme poverty face

decisions those with abundance may never consider. To make just choices when faced with such decisions, nations must use every tool at their disposal. In the next chapter, we will unpack these tools.

V. Economic Development as Means

In the previous chapter, we explored how extreme scarcity and limited protections of rights are intertwined problems for developing nations. Rights have monetary costs, and these costs present uniquely large obstacles for countries without wealth. For nations not in this category, there is literature available in ideal theory that provides guidance and on which rights are basic. For example, Rawls' first principle of justice asserts a set of freedoms as a priority. However, these prescriptions do not provide guidance in the short-term for nations that cannot afford to purchase this set of freedoms.

While the costs are the greatest barrier to entry for these nations, paradoxically, they are also the greatest source of guidance. If we accept that rights have both monetary costs and benefits, there is an entirely new dimension by which we can understand rights. This new dimension allows for two additional means of analysis. First, and most intuitive, it opens up the opportunity for discount opportunities. Second, monetary costs and benefits link rights to other rights. By abstracting conversations about a single right to a broader system, we can access a map that illuminates a path toward achieving a full set of robust rights.

As discussed in previous chapters, nations have more options at their disposal beyond either purchasing or not purchasing a right. They can also pursue a discounted version. Korina Hwang, a student at Claremont McKenna College, argued the merits of such a path in her senior thesis, "The Procedural Aspect of the Rule of Law: India as a Case Study for Distinguishing Concept from Conception." Hwang focused on the Rule of

Law as a political ideal for both developing and developed countries.³⁹ Hwang distinguishes between the procedural ends of Rule of Law, which require a legal system that—among other things—applies norms and directives effectively and consistently, and the conception of the Rule of Law, for example, the adversarial court system ingrained in Western thought.⁴⁰ Due to cultural and capacity constraints stemming from economic limitations, India's adversarial system has proven ineffective and inconsistent at administering the nation's laws.⁴¹ In contrast, mediation as an alternative to court litigation has produced more positive results.⁴² Here we find an example of a nation that, in light of its budgetary limitations, benefits from purchasing a “discount” version of a right, i.e., mediation over the adversarial system.

We can maintain that, given the resources, the adversarial court system might be more effective at furthering the moral ends of justice than a mediation system. Yet, because India cannot afford to implement such a system, attempting to do so actually undermines the initial ends of Rule of Law. Mediation accomplishes these ends more effectively while maximizing resources. Eventually, if India experiences enough economic growth, the nation's citizens may benefit from a more robust and thorough set of rights under the adversarial system. But at the moment, Hwang's research suggests

³⁹ Hwang, 2.

⁴⁰ Hwang, 44.

⁴¹ Ibid, 41.

⁴² Ibid, 45.

that the best use of resources is the less robust but more affordable “discount” version of Rule of Law, mediation.

Does this mean, given extreme scarcity, cheaper is always better? Not quite. Hwang’s example illustrates how we can use the monetary costs of rights to make prudent policy decisions. All rights have costs. But do rights also have monetary benefits? To understand how we can use monetary benefits as a tool, we must first recognize that rights are often connected. This is by no means novel. Amartya Sen, in *Development as Freedom*, uses this concept as a crucial component of his argument that development is “an integrated process of expansion of substantive freedoms that connect with one another.”⁴³ Sen’s argument extends beyond that of rights, as discussed in this paper. Instead, Sen focuses on capabilities, as a “kind of freedom,” described informally as “the freedom to achieve various lifestyles.”⁴⁴ To that end, Sen often speaks about legal rights as “determinants” of freedom, where his focus lies.⁴⁵ While the two are not synonymous, they exist parallel enough that Sen’s work on the interrelatedness of freedom can serve as a springboard to understanding how rights interrelate.

To that end, Sen creates a distinction between how we might understand different aspects of human freedom. On the one hand, there is an “intrinsic importance of human freedom as the preeminent objective of development.”⁴⁶ On the other, there is the

⁴³ Amartya Sen, *Development as Freedom* (New York, NY: Anchor Books, 1999), <https://books.apple.com/us/book/development-as-freedom/id422539593>, 33.

⁴⁴ Sen, 141.

⁴⁵ *Ibid*, 25.

⁴⁶ *Ibid*, 78

“instrumental effectiveness of freedoms of different kinds to promote human freedom.”⁴⁷

This idea is of particular relevance to this paper. Sen provides the example of literacy.

While many would argue that the freedom to read has intrinsic importance, Sen also highlights the instrumental value of literacy. Illiteracy provides a huge barrier to entry for economic activities, and thus inhibits economic growth. Furthermore, illiteracy acts as a barrier to political participation. In this way, literacy not only has intrinsic value but instrumental value from furthering economic and political freedoms.⁴⁸

Certain rights, like freedoms, have instrumental value beyond their inherent value. To understand this phenomenon, let us focus on a specific case: property rights. In the realm of legal rights, we can understand property rights as institutionally protected by the government. As discussed at length, such protections are costly. First, legislators must make decisions about what constitutes ownership. Second, governments must pay for a system to adjudicate ownership disputes and violations. Moreover, they will have to pay for a police force to prevent violence, coercion, or burglary. Costs do not necessarily end there. For example, what if legislators decide they would like to protect property beyond that of material goods and include intellectual property. Then, they will need regulatory bodies to control how and when ideas are protected, such as the United States Patent and Trademark Office.

Clearly, expanding property rights is a costly affair. Why would a developing nation dedicate so much of their limited resources to one place? In the spirit of Hwang,

⁴⁷ Sen, 78.

⁴⁸ Ibid, 96.

perhaps we should seek to spend only a minimal amount on protections. But we are ignoring a crucial component of legal rights: monetary benefits. This is to ask: while we know that there are going to be costs associate with property rights, are there also economic benefits the nation will earn back?

As it turns out, the answer is yes. Orguzhan Dincer, a professor at Illinois State University, set out to quantify the economic benefits nations that invested in the protection of property rights received.⁴⁹ Dincer gathered data from 1982–1997 on global economic development and property rights protections, using a rule of law index as a proxy.⁵⁰ After adding a set of controls, Dincer modeled how saving rates devoted to physical or human capital varied based on the level of property rights protections.⁵¹ Dincer found that “per Capita GDP in a country is positively related with the degree of property rights protection.”⁵² Furthermore, by sorting the countries into three categories—low, medium, and high degrees of property rights protection—Dincer managed to quantify the monetary return. The model suggests that for countries with a high degree of protection, a 10% increase in the saving rate devoted to physical capital

⁴⁹ Orguzhan Dincer, “The Effects of Property Rights on Economic Performance,” *Applied Economics* 39, no. 7 (2007): pp. 825-837, <https://doi.org/10.1080/00036840500461964>.

⁵⁰ Dincer, “The Effects of Property Rights on Economic Performance.”

⁵¹ *Ibid.*

⁵² *Ibid.*

leads to an 11.1% increase in per capita GDP, whereas the same saving rate leads to a 1.7% increase in per capita GDP in countries with a low degree of protection.⁵³

Why is this 9.4 percentage point boost in GDP per capita so important? For one, it helps quantify the monetary benefit of these protections. Using a model such as Dincer's, a developing nation could predict the return on their investment. But it actually does something even more groundbreaking. This model does not just measure monetary return on investments. It highlights a particular instrumental value of property rights. Why? As this paper has discussed at length, legal rights have costs—costs that restrict developing nations. An increase in GDP does not just mean a bigger economy or more wealth. Economic growth can also increase the potential of a developing nation to purchase additional legal rights. With the right decision-makers in power, a nation could invest that 9.4 percentage point increase into building institutional protections for more rights. If we factor in the potential economic benefits of particular rights, our framework becomes more dynamic. Our choice is not: given X resources we can afford to purchase rights Y, Z, or A. Instead, it is a bit more complex. At this point, given X resources, we can afford to purchase rights Y, Z, or A. But, if we purchase Y now, it will spur economic growth to such an extent that in ten years, we can afford all three rights, whereas we can only afford one now.

As Sen writes extensively, there are many conceivable mechanisms by which some freedoms gain instrumental value. Through the framework developed in this paper, the potential of legal rights to spur economic development emerges as one such

⁵³ Dincer, “The Effects of Property Rights on Economic Performance.”

mechanism. Legal rights can absorb the moral value of additional rights purchased by the economic gains it provides. Consequently, if a developing nation must choose between rights, the rights that “absorb” the value of others suddenly appear much more attractive. As discussed, rights may also gain instrumental value in other ways, such as limiting obstacles to our freedoms and capabilities. For example, perhaps protections for free speech does not produce the same level of economic growth as property rights, but free speech may reduce barriers to political participation and self-governance, and consequently empower citizens to protect other rights that they deem important. While this benefit may be harder to measure or quantify, that does not make this instrumental benefit any less valuable.

Economic growth as a mechanism is uniquely relevant for developing nations. For nations already living under conditions of moderate scarcity, there is less of a direct connection between increased economic growth and the acquiring of other legal rights. These nations might not currently protect rights, not due to reasons of budgetary limitations caused by GDP size, especially concerning the rights we consider basic. In contrast, the lack of rights protections experienced by developing nations is directly connected, and in part, caused by their small GDP.

In the previous chapter, we hinted at the limitations of economic growth as a mechanism for increasing right. Economic growth only enables the purchase of more rights; it does not mandate the purchase. Remember, back to the example of China. Despite the nation having the second-highest GDP in the world, it is only ranked 126 on the Human Freedom Index. Money is a necessary condition for the expansion of legal rights, but it is not sufficient. Economic growth expands rights when governments use

increased revenues to create institutions. This revenue only empowers governments to be able to purchase these protections. Without decision-makers with the proper incentives, this increased revenue could never be directed to expand rights. In fact, it could even be used to restrict them. Therefore, political freedoms that allow citizens to incentivize and check their governments might be considered preconditions for economic growth to fully realize its potential.

In the end, this framework offers a balance between two phenomena: 1) economic growth acting as a precondition for legal rights, and 2) certain legal rights acting as a precondition for manifesting the potential of economic growth. When it comes to developing nations, the order in which things are done matters. On the one hand, the issues raised in this paper present reasons for purchasing rights which spur economic growth first. Take our example of choosing between expanding protections for property rights and expanding protections of freedom of speech. If we only have enough revenue to expand protections for one of these rights, which should we choose? What if expanding freedom of speech will generate no additional economic growth, but expanding property rights will generate enough economic growth to expand protections for freedom of speech? If we expand property rights, in the long run, our end-state will enable the purchase of both rights. In contrast, if we purchase expansions for freedom of speech first, then our end-state will never allow for the purchase of both rights without outside events. But the keyword here is “enable.” Our second phenomenon suggests that without freedom of speech and other political freedoms, this economic growth might never be converted to any additional legal rights.

The real-life decisions faced by developing nations are not quite as simple as binary choices presented in this paper's thought experiments. Every nation will have its own obstacles, history, culture, and other facets that make its policy choices unique. Consequently, one struggles to imagine a universally applicable sequence of prioritization for legal rights. More likely, the road "out of the snowstorm" will look less like a straight line, and more like a winding road—expanding some of a right that promotes economic growth here and then expanding a political right that will ensure this growth is used best over there. This balancing act may not lead to quickest economic growth, but if there is any lesson from the Donner Party, shortcuts often carry great risk.

This is not an argument that developing nations should prioritize economic growth in the name of increasing legal rights. This is a push to weave the monetary costs and benefits of legal rights into the policy decision-making process. Rarely do conversations around rights forget their political components, yet they often forget their economic components. A cost-aware approach shines light on opportunities for saving, but monetary benefits of legal rights can provide opportunities for smart long-term policy decisions. In the end, economic development is a tool—and a powerful one—for understanding the potential of legal rights. Nevertheless, titular to this chapter, it is the means, not the end.

In practice, what does this distinction mean? Sen, in an article written in 1993, titled "Markets and Freedoms: Achievements and Limitations of the Market Mechanism in Promoting Individual Freedoms," argued against the assumption that economic

efficiency benefits of competitive markets would translate to freedoms.⁵⁴ While Sen conceded that the competitive market mechanism, absent certain externalities, does have the capability to promote the “autonomy and immunity from encroachment” aspects of freedom, issues of inequality also translate to the field of freedom, “and if anything tend to get magnified.”⁵⁵

In this paper, Sen confronted perspectives that tout competitive markets as effective mechanisms in achieving economic development. Even if this were true, these arguments only advocate unrestrained competitive markets if economic development is the ultimate end. If economic development is only a means of achieving a more valued end—in Sen’s case, expanding capabilities—then the realm of what is justified in pursuit of economic development becomes considerably smaller.

This chapter references analysis quantifying the monetary benefits of property rights. Reasonably, the same methodology could be used on any legal right. For example, intuitively, freedom of movement does not only have intrinsic value, but an individual’s ability to interact unreservedly with their surroundings most likely has enormous economic implications. Unfortunately, the same level of research does not exist on other rights as has been conducted on property rights. If efforts in scholarship were made to quantify the economic implications of protecting other rights, developing nations would

⁵⁴ Amartya Sen, “Markets and Freedoms: Achievements and Limitations of The Market Mechanism In Promoting Individual Freedoms,” *Oxford Economic Papers* 45, no. 4 (1993): pp. 519-541, <https://doi.org/10.1093/oxfordjournals.oep.a042106>.

⁵⁵ Sen, “Markets and Freedoms: Achievements and Limitations of The Market Mechanism in Promoting Individual Freedoms.”

have more resources at their disposal to maximize their budget while advancing legal rights.

Both of these cases in this chapter—Dincer’s research into property rights and Hwang’s exploration of India’s mediation system—illustrate how prioritizing certain legal rights might be approached under this paper’s framework. Historically, rights have often been shielded from their budgetary costs and benefits, as if such discussions might stain the purity of the moral concept. This resistance harms nations that are most vulnerable and would most benefit from the protection of legal rights. Countries with scarce resources do not have the privilege to ignore the real and unavoidable costs of protecting rights. However, they also could reap the benefits of fully informed decision-making. Economic development, properly understood as a powerful tool to further the ends of legal rights, has the potential to ground policy choices within the reality of the obstacles facing struggling countries. This is why such discussions must feature the monetary costs and benefits of rights, not as an afterthought, but at their forefront.

VI. Economic Development as a Common Language

Conversations around rights often break down into two camps: those with beliefs adjacent to social liberalism and those with beliefs adjacent to libertarianism. Those in the first camp demand a relatively large bundle of political and economic rights and see government as a facilitator of public good. The second camp holds moral negative rights as a standard with the expectation that a limited government exists to protect those rights from infringement. Often, libertarians center their beliefs around protections for private property. In the world of moderate scarcity, disagreements about the role and extent of government can create an impenetrable divide on policy.

My hope is that the framework offered in this paper may allow developing nations to avoid these divides, for two reasons. First, and not unique to this framework, the earliest stages of development seem to appeal to less disagreement in general. In conditions of moderate scarcity, disagreements often center around the ends of government. Social liberal theories lean towards ends of government such as expanding quality of life or—as Sen would argue—capabilities. In contrast, libertarians demand that the government protects citizens from infringements on their rights, and then, in a sense, get out of the way.

In conditions of moderate scarcity, development has advanced enough that we seem to be surpassing the limits of government as libertarians would see it, yet still climbing to expand capabilities according to social liberals. For developing nations, their level of protection of rights is limited to such an extent by their resources. Both social liberals and libertarians tend to agree that such nations need an expanded government.

The second reason, and more specific to this framework, is that, even though these camps disagree on the ends of government, both have reasons for supporting legal rights that spur economic growth. Social liberals, historically, are more resistant towards economic development taking the forefront of policy conversations, often leaning towards more egalitarian justifications. The framework presented in this paper is mostly aimed at such believers. The previous chapter argues the value of economic development as a mechanism for enabling the expansion of rights. Social liberals should favor rights that expand economic development for developing nations, not for economic development's own sake, but for its ability to enable them to reach the egalitarian ends they seek. For example, they have reasons for protecting property rights before other rights, not because they see economic growth as a valued moral end, but because this economic growth will enable the government to purchase a larger, more robust system of protections for all citizens.

In contrast, Nozick-style libertarians' belief system espouses the protection of property rights as of central importance. However, even if libertarians' ideal end-state is a world with a limited government protecting negative rights, this framework gives them reasons to support policies in developing nations beyond those rights. Just as is the case for the social liberal, the protections libertarians hope to purchase will be costly (although not as costly). They will need a judiciary. Depending on how robust they wish their protections, they could require an expansive police force. As is the central argument of Holmes and Sunstein's *The Cost of Rights*, these measures will require funding.

More importantly, libertarian claims to private property hinge upon the Lockean Proviso of leaving all individuals with "enough, and is good." Many libertarians believe

that in conditions of moderate scarcity, this proviso is met. However, most would agree this proviso is not met in conditions of extreme scarcity. If libertarians wish for citizens to have claims to private property, they must first enact measures that further economic growth. To this end, libertarians have reasons to support a wide range of policies they might otherwise resist. In developing nations, a libertarian could conceivably support programs like mandatory vaccinations or intellectual property protections if they could be tied to economic growth.

By highlighting the value of the monetary costs and benefits of rights, this framework allows for more space for agreement on where developing nations should spend resources. Agreement, in the developing world, is arguably a more important asset than in the developed world. While the stagnation of government in countries like the United States due to polarization undoubtedly brings severe consequences, these consequences do not compare to those suffered in countries without self-sustaining institutions.

This is not an argument that developing nations should subscribe to a tunnel vision approach centered upon economic growth. Nor is this even an argument that economic growth has more value than other justifications for purchasing certain legal rights. This is a reminder—a reminder of the importance of the economic realities.

Countries in extreme scarcity do not have the luxury of considering costs as an afterthought. Attempting to apply an ideal theory of what set of rights should be protected for countries in moderate scarcity to developing nations is not only impractical but ignores the central question facing developing nations: what rights can we afford?

Without acknowledging that *all* legal rights have costs, it is impossible to have any conversations of worth for nations that cannot afford to ignore these costs.

Furthermore, if one acknowledges costs, they should acknowledge that some rights also have monetary benefits. Without doing so, policymakers are vulnerable to making mistakes about the true impact of allocating resources towards specific protections. Whether connected through the mechanism of economic growth or another mechanism, rights can have instrumental value that is crucial for understanding how a developing nation can one day achieve a full bundle of rights.

Finally, with these costs and benefits in mind, both sequencing and discounting become essential pillars of wise policymaking for countries in extreme scarcity. Sequencing, because the order in which resources are allocated to legal rights will impact the speed that the expansion of rights will become available. Discounting, because for countries without resources to spare, resources spent should be maximized. Furthermore, recognizing legal rights as subject to degrees of protection opens the door, justifying stripped-down legal rights that might otherwise be considered unacceptable in more developed nations.

Somehow, along the way, conversations surrounding rights were siphoned into realms implicitly acknowledged as “non-economic areas.” But to discuss rights without economics is a privilege afforded to those not facing extreme economic pressure. For developing nations, there are no non-economic areas. To pretend otherwise is to not only counterproductively divert discussions, but to hold these nations to unjust and unfair standards.

Works Cited

Andrews, Evan. "10 Things You Should Know About the Donner Party." History.com.

A&E Television Networks, April 14, 2016. <https://www.history.com/news/10-things-you-should-know-about-the-donner-party>.

Callaham, John. "Alphabet Records \$110 Billion in Revenue for 2017, Google's Annual Hardware Sales Doubled." Android Authority, February 1, 2018.

<https://www.androidauthority.com/alphabet-q4-2017-earnings-834774/>.

"COUNTRY COMPARISON :: GDP - PER CAPITA (PPP)." The World Factbook.

Central Intelligence Agency. Accessed June 13, 2020.

<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>.

Dincer, Orguzhan. "The Effects of Property Rights on Economic Performance." *Applied Economics* 39, no. 7 (2007): 825–37. <https://doi.org/10.1080/00036840500461964>.

"GDP Ranking." Data Catalog. Accessed June 13, 2020.

<https://datacatalog.worldbank.org/dataset/gdp-ranking>.

Holmes, Stephen, and Cass R. Sunstein. *The Cost of Rights: Why Liberty Depends on Taxes*. New York, NY: W. W. Norton, 2000.

"Human Freedom Index." Cato Institute, March 26, 2020. <https://www.cato.org/human-freedom-index-new>.

Hwang, Karina T. “The Procedural Aspect of the Rule of Law: India as a Case Study for Distinguishing Concept from Conception.” *CMC Senior Theses*, 2015.

http://scholarship.claremont.edu/cmc_theses/1171.

Rawls, John. *A Theory of Justice*. Rev. ed. Cambridge, MA: Belknap Press of Harvard University Press, 1999.

Sen, Amartya. *Development as Freedom*. *Apple Books*. New York, NY: Anchor Books, 1999. <https://books.apple.com/us/book/development-as-freedom/id422539593>.

Sen, Amartya. “Markets and Freedoms: Achievements and Limitations Of The Market Mechanism In Promoting Individual Freedoms.” *Oxford Economic Papers* 45, no. 4 (1993): 519–41. <https://doi.org/10.1093/oxfordjournals.oep.a042106>.

Shelby, Tommie. “Part III: Rejecting the Claims of Law — Crime.” Essay. In *Dark Ghettos: Injustice, Dissent, and Reform*. Cambridge, MA: The Belknap Press of Harvard University Press, 2016.

Vasquez, Ian, and Tanja Porcnik. Edited by Fred McMahon. *The Human Freedom Index 2019*. Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom, 2019. <https://www.cato.org/sites/cato.org/files/human-freedom-index-files/human-freedom-index-2019.pdf>.

Vasquez, Ian, and Tanja Porcnik. *The Human Freedom Index 2018*. Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom, 2018. <https://www.fraserinstitute.org/sites/default/files/human-freedom-index-2018.pdf>.

“The World Factbook: Congo, Democratic Republic of The.” The World Factbook.

Central Intelligence Agency. Accessed June 13, 2020.

<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/cg.html>.

“World Report 2020: Rights Trends in Burundi.” Human Rights Watch, January 14,

2020. <https://www.hrw.org/world-report/2020/country-chapters/burundi>.