JUSTICE, EQUITY + SUSTAINABILITY

PROJECTIONS *volume 8*
MIT JOURNAL OF PLANNING

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TEXT SET Univers 57 Condensed, Univers 47 Condensed. Digitally published using Adobe InDesign. Printed and bound in the United States of America by Sherman Printing, Canton, MA.

COVER IMAGE "Untitled" Rebuilding Series, mixed media on wood. Painting + image, Anna Livia Brand.

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FROM A PRESENTATION GIVEN ON MARCH 4, 2008 AT DUSP, MIT

CAPABILITIES AND HUMAN RIGHTS APPROACHES : COMPETING PARADIGMS OR RE-ENFORCING MODELS

Human rights and human development/capabilities approaches have emerged as contending alternatives to the neoliberal model for development. Neither of them has yet replaced economics and the Washington Consensus[1] as the guiding model for development. On separate but similar tracks, rights-based and capabilities approaches demand that 'development' be guided by values of human rights and expanding human choice, and that they contribute to achieving those valued outcomes. Though their origins lie outside the profession of development, rights and capabilities approaches have profound appeal to development practitioners concerned about the poverty, exclusion, and deepening inequality that economic models of development have yet failed to address. Donor agencies, from governments to international NGOs, claim to have rights-based approaches. Most express commitment to achieving the Millennium Development Goals. They have been less successful in articulating what human rights and human development/capabilities approaches mean in practice (Uvin).

This essay explores the rights and capabilities approaches, asking in what ways they are similar and different and whether they are approaches that can and should be explicitly integrated in policy and practical models that will shape a new paradigm of how development occurs. Rights-based approaches, emphasizing the role of the state as duty-bearer, can be top down. Capability approaches, emphasizing individual capabilities and agency, have the potential to be bottom up, particularly when agency is exercised collectively. The essay suggests that integrating rights and capability approaches is effectively done by recognizing that development is a highly political process, and that change efforts need to identify the power of key stakeholders and support the emergence of new institutions that allow the currently excluded poor to access opportunities. Development is a process that needs to go beyond top down state obligations for protecting or providing rights (from fear of torture and to food, water, education). The process needs to incorporate the bottom up capabilities or freedoms that allow individuals and groups to access and expand the opportunities they value. Development needs explicitly to contribute to the ability of states to assure rights, and to the ability of individuals and groups to demand rights and capabilities.

Power is an uncomfortable (and invisible) concept for most development practitioners; yet development takes place within the state, which, by definition, has coercive power used at best to assure minimum functions of security, law and order. Global development actors, from the World Bank to international NGOs work directly through government or with government approval. Local development actors operate within the state and are subject to state power, benign or malevolent. States, charged as the *duty-bearers* for guarantee of human rights and committed by international agreement to achieving the MDGs, more often than not, do not deliver on human rights or on the functionings promised in the MDGs. This failure may be due to lack of capacity, or to corruption and venality. The questions thus become: how can and how should, rights and capabilities approaches challenge the ineffective or the unwilling state?

Emergence of human rights approaches[2]

Human rights standards emerged and were codified as international law following the experiences of World War II. States ratified a series of international agreements that charged them with the legal obligation of protecting the rights of all citizens and assuring a life of freedom and dignity. Human rights are sometimes divided into civil and political rights versus economic, social and cultural rights. The role of the state is paramount as the duty-bearer:

- to honor human rights obligations (e.g. not to torture, deny the vote or interfere with freedom of thought or religion);

- to protect citizens from rights violations (e.g. to assure that citizens are not trafficked or that children obliged to work); and

- to provide access to human rights (e.g. to provide the rights to water, education or food — particularly if these are not being supplied by the market).

In this way, rights can be seen as a top-down process, with the state as the duty-bearer. Because rights are a legal obligation of the state, they should be able to be adjudicated, but the state holds the obligation to act.

Human rights have other characteristics. They are individual, not community rights. They are the same for all people (universal), and no one right can be said to be more important that another (indivisibility) and we cannot suspend one right in order to achieve another. We have rights because we are human (inalienability). Rights represent universally agreed upon standards or human values. There is less clarity in the human rights literature about how rights are achieved in the absence of state fulfillment of its obligations.

Peter Uvin has made the argument (2004) that this extraordinary development of rights standards remained largely divorced from the development enterprise —until very recently. Human rights specialists thought development was about economics and service delivery and did not make connections between the conditions of human well-being and achievement of rights. Development professionals had nothing against human rights. If they were informed about human rights, they saw them as a legal and political issue and not their responsibility. Since the late 1990s, a large number of development agencies has adopted a rights based approach to development planning and funding over the past 10 to15 years. It remains unclear what a rights-based approach to development means in practice.

One often cited definition of the rights-based approach comes from the UN High Commissioner for Human Rights focuses on rights as a conceptual framework —a vision of what development should produce. While it talks about operations, the focus is on promoting and protecting:

> A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international rights standards and operationally directed to promoting and protecting human rights. (UNHCHR)

The UNHCHR definition goes on to cite principles of equality, equity, accountability, empowerment and participation that should guide rights based approaches, and says that any development approach should be explicit about the link to rights and pay particular attention to vulnerable groups and others that may be marginalized by discrimination.

Because human rights are tied to the obligations of the state as the duty-bearer, a human rights approach may be difficult in contexts where the state is unwilling to uphold its obligations. Norway, with its rights-based approach, chooses to work with countries and institutions that "share the same values" and promote "democratic institutions, good governance, rule of law and fundamental freedoms". (Skarstein) The Norwegian position illustrates the links between democratic governance and rights, and acknowledges the need for empowerment, but it says little about how this works when the state is not ready.

International NGOs[3] have increasingly committed themselves to rights based approaches. Oxfam International, for example, began work in the late 1990s on defining a rights focus for a strategic plan for its progam, education and policy advocacy work. It selected five rights: to a livelihood; to basic services; to security in the family, the community and the nation from violence, armed con ict and natural disasters; to a voice and to participation; and to identity and protection from exclusion because of gender, ethnicity, disability. Many in Oxfam who worked on the rights based approach were in uenced by the work of Amartya Sen (see below). Individually and together, the Oxfams worked to understand what difference a rights based approach would mean for their work. As the discussion below will suggest, the Oxfams moved beyond the concept of a rights based approach as being about the obligations of the state. They also looked at the capabilities of people, as individuals and groups, to in uence the state and other centers of power in order to claim their rights.

Human Development and Capabilities Approach

Human Development and Capabilities Approaches have been termed a 'paradign shift' and as "... the leading alternative to standard economic frameworks for thinking about poverty, inequality and human development" (Clark, 2; see also Kuonqi, Shahyd). Indeed, former World Bank economist Mahbub-ul-Huq was one of the leading forces behind the Humand Development Reports, launched in 1990, and the Human Development Index as an alternative to GDP for measuring development. UNDP continues to pursue human development/capabilities approaches, but at the same time as it also focuses on a rights based approach.

Intellectually, the human development and capabilities approaches are grounded on the work particularly of Amartya Sen and others, particularly Martha Nussbaum. For Amartya Sen, development should be seen as a kind of freedom, or the capabilities "to lead the kind of life she or he has reason to value" (87). Development is about expanding substantive human freedoms or capabilities to do the kinds of things, or functionings, that one values. Functionings are broad and indeterminate. They may range from being adequately nourished, to being respected. Capabilities represent the ability of the individual to achieve certain functionings and the freedom to choose whether to exercise those functionings. Sen often gives the example of having the capability of adequate nutrition and choosing to fast. Such a person has the same functioning as a starving person, but a vastly different set of capabilities. (75) This distinction is important because it asks the development practitioner to think about individual choice.

Capabilities have substantive value and are legitimate goals. Sen also argues that capabilities are at the same time instruments. They can be used in order to achieve or expand other functionings and capabilities. He lists five instrumental capabilities or freedoms: political, economic, social, transparency guarantees and protective security (18, 36-40). The instrumental function of a capability implies agency, or the ability of individuals, and groups, to act to expand their own range of choices, and not simply to rely on the state to guarantee rights. This, too, is an important distinction. It says that individuals are not just objects of state or duty bearer actions, but agents who are actors, who participate, and whop are agents of change. Individuals and groups have agency and can use their capabilities to demand, from the bottom up.

Sen goes further, arguing that development is an expansion of people's capabilities that enables participation in decision-making. Thus development is not just about achieving outcomes one values, but about the freedom to participate in the process of decision-making about choices being made. (Sen, 291) This has implications for development interventions.

Peter Evans (and others) extend Sen's arguments about participation in the processes of decision-making ("thick" democracy) by noting the importance of collective action and the role of "mobilizing" organizations, such as labor unions, political parties or other entities that use the power of groups to make voices heard. The implication of this for development is important. Not only does it imply that participation in policy making is important for human development, but that participation may be enabled through collective action. Development interventions, thus, may extend to work with groups and to group capacity building to enable the capabilities for participation.

Capabilities, Rights and the MDGs

As noted above, Mahbub-ul-Haq, a major force behind the UNDP Human Development Reports, wanted an alternative to economic models that focused on growth and used GDP (gross domestic product) as a measure of changes in development. The Human Development Index (HDI), a composite of consumption, literacy and life expectancy, was launched by the first Human Development Report as the competitor to GDP. UNDP continued to refine the HDI in successive HDRs, and to add additional indicators (gender) both to track change and to motivate governments and others to seek improvements in the well-being of those who have traditionally been excluded or at the bottom. Recognition of the power of indicators and goals contributed to the emergence of a global commitment of governments to the Millennium Development Goals. Heads of State agreed in 2000 to reduce poverty by one half by 2015, and to meet other very specific goals related to human well-being. These MDGs re ect specific capabilities and mirror human rights established in international agreements. Where rights set broad standards, the MDGs provide operational benchmarks. The MDGs also set priorities among rights—naming goals we should achieve by 2015. Because the goals are measureable and timebound, they provide a mechanism by which governments can be held accountable. The MDGs seem to be a practical way to make progress on rights and human development.[4]

The MDGs depend largely on governments for their achievement. As approved by governments, they are indeed a set of measures that can be used to pressure governments to act, but they lack an analysis of the institutions and practices that may constrain achievement of the goals and they lack an analysis of power differences among the different actors. The MDGs

- Make no direct reference to rights
- Ignore inequalities (except for gender);
- Re ect global power inequalities: the Summit agreements focus on changes in developing countries in seven goals and set less specific obligations for developed countries in goal eight;
- Focus accountability for results on developing country governments and at the state level.
- Represent quick fixes; they measure achievement of outcomes but don't challenge underlying causes or constraints on sustainability.

The MDGs have potential to produce remarkable reductions improvements in human well-being that meet basic human rights standards and that contribute to building substantive and instrumental capabilities. It is less clear that the MDGs will produce the individual and collective capabilities for participation in the political process of decision-making and the capacity for sustainability.

Incorporating Capabilities into a Rights –based Approach: Oxfam America and Care USA

Oxfam America[5] and Care USA separately adopted a rights-based approach as they sought to move

from "a development model based on filling poor people's needs to one in which people are able to claim what is rightfully theirs..." (Care Oxfam America 2007: 4). Care and Oxfam undertook an RBA Learning Project[6], starting in 2002, in order to identify what distinguished rights-based approaches from what they called 'traditional' development interventions and to explore what difference a rights-based approach made for project impact. From the start, the language of Care and Oxfam incorporated both the rights emphasis on the state as the duty bearer and capabilities of rights-holders as agents or actors who can claim rights. Care and Oxfam recognize individuals as agents, with the right and potential to be actors at the local and at the policy levels. They use a definition from Jochnick and Garzon:

> The rights-based approach requires that people be regarded as active agents.... the rights-based approach takes empowerment a step further in aiming for not only the ability to sustain oneself but the additional capacity to in uence public policies and make claims in defense of one's rights. (Care and Oxfam America 2007: 20)

Thus a major output of the Learning Project,— eight essential elements of rights-based projects,— re ects the integration of support to both rights holders and the duty bearer (the state). The eight elements confront power distribution as an underlying cause of poverty. The elements, listed below, emphasize the importance of working at all levels: from the bottom up and the top down:

Oxfam-Care: 'Essential' Elements of RBA Projects

1. Poverty analysis; including explicit and ongoing analyses of power, gender and risk
2. Community centered development; including building sustainable capacity to claim rights and drive decision-making
3. 'Duty-bearers' engaged, held accountable
4. Advocacy for sustainable change in policy and practice
5. Alliance building
6. Working at multiple levels
7. Focus on groups that are marginalized, excluded
8. Problems framed as rights issues and linked to national or international standards. (Ibid. 20)

These eight elements suggest that Care and Oxfam America take on power disparities in many ways. Taken as a whole, the eight elements contribute to individual and collective capabilities to participate in the political process of policy making or decision-making. It is noteworthy that the elements begin with a call for an analysis of the poverty situation, including its power dimensions. Who are the relevant stakeholders; what their interests and relative power; and how do they exercise power. Power distributions are not static, but can be changed. Change starts with awareness, for example of structural constraints to gaining land titles or lack of access to information about prices or markets that bar the freedom or capability of individuals and groups to propose and demand change in policies and practice that limit attainment of rights (and capabilities).

The Care/Oxfam elements are politically sophisticated in approaches to addressing structural issues and rights violations. They call for (shifting) alliances at different levels and for engagement with government in addressing problems or rights violations. The elements avoid a traditional 'naming and shaming' of governments that fail to meet human rights standards. Instead, the Care/Oxfam approach suggests working toward making governments a partner in and owner of the solution.

The learning emerging from the Care and Oxfam America project incorporates both individuals and groups as rights holders and states as duty bearers. What is distinctive about the Care/Oxfam framework is the significance it gives to collective civil society actors, particularly NGOs. Civil society actors have potential freedom to confront the power inequities and structural constraints that cause and sustain poverty and injustice. States themselves, and inter-governmental agencies like the UN, which are creatures of states, lack this freedom. Civil society, if representing the interests of the rights holders is an important collective counter-balance to the power of state actors as duty bearers. How it does this will be in uenced by the context.

CONCLUSION

Rights and capabilities approaches have not yet replaced economic paradigms as the theory driving development choices. Together they have the potential to re-shape our thinking about the nature of sustainable development in the 21st century. Rights and capabilities approaches are linked but different. They share clarity about human values and about the outcomes of development being greater than economic changes. One key difference resides in the emphasis placed on the responsibility of the state as duty bearer (RBA), and the potential of individuals and collectives to be actors (CA) in achieving rights and capabilities.

Implementing a capabilities approach, where building capabilities is seen not just as an end, but also as a means for achieving rights and greater capabilities, has profound implications for the ways in which development actors operate. This brief essay suggests a few changes. Development actors need to include a power analysis in their assessments of poverty and exclusion. And then to contribute to building the capabilities of individuals and groups, who are excluded, to organize and participate in decision-making on development choices. Development actors need to build partnerships, including with governments and the business sector, to expand ownership of rights and capabilities. Donors may need to recognize the difference between achieving service delivery goals, like school enrolment or mortality reductions, and building capabilities of excluded groups to participate. We need to know how to measure this expansion of capabilities. Development workers, from managers to field workers, need to give up control over the outcomes and play the role of facilitating the capacities to make the changes needed to allow all actors in a society to participate in delivering rights and capabilities.

AUTHOR'S BIOGRAPHY

Professor Susan Holcombe's teaching and publications builds on a career of practice and a focus on building capabilities for human development. She is a Professor of the Practice at The Heller School for Social Policy and Management at Brandeis University.

[ENDNOTES]

1. For discussion of the Washington consensus, see: John Williamson. 2000. "What should the World Bank think about the Washington Consensus?" in *The World Bank Research Observer.* Vol. 15, no. 2 (August 2000), pp. pp. 251-64. http://www.worldbank.org/research/journals/wbro/obsaug00/pdf/(6)Williamson.pdf. Accessed 8-2-06.

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2. The evolution of human rights standards in the post World War II period is described in detail in many locations. Peter Uvin (2004) has a useful discussion on rights and development; see specifically pp. 9-43.

3. See, for example, the work of INTRAC on European NGOs and rights based approaches.

4. See "Human Rights and the Millenium Development Goals: Making the Link. 2006. http://www.hurilink.org/Primer-HR-MDGs.pdf.

5. The author was director of programs at Oxfam America in the late 1990s when Oxfam began adopting the rights based approach.

6. The RBA Learning Project first developed eight case studies of Care and Oxfam Projects that had used a rights based approach. Using this evidence base, it assembled a workshop of Care and Oxfam Program staff from 12 countries to analyze the cases. They went on to identify, from a practitioner perspective, the 'essential' elements of a rights based approach.

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